

Restraint and Time Out: The Interplay with FBAs and BIPs

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Commissioner's Rules: Effective June 7, 2022

- Addresses four components of special education discipline.
- FBAs.
- BIPs.
- Restraint.
- Time out.
- Let's go over all of that.....

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What Does It Say About FBAs?

- ❑ It addresses FBAs in the context of “a disciplinary action regarding a student with a disability who receives special education services that constitutes a change of placement under federal law.”
- ❑ Notice: IDEA-eligible students. Not 504.
- ❑ Only a “disciplinary action” that is a “change of placement” as that term is defined in federal law.
- ❑ Let’s detour to take a look at “change of placement.”

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Change of Placement

- ❑ It’s a “removal” from the “current educational placement” that...
- ❑ Is for more than ten consecutive school days; or
- ❑ Is a “series of removals that constitute a PATTERN because:
 1. The removals add up to more than 10 school days;
 2. The behaviors prompting removal are substantially similar; and
 3. Such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

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Practical Implications of That Definition?

- ❑ Almost all DAEP removals are a “change of placement” since they last more than 10 consecutive days and are definitely “disciplinary.”
- ❑ This would include removals based on the “special circumstances” offenses—drugs, weapons, serious bodily injury.
- ❑ Notice that the definition of “pattern” requires consideration of all three of those factors. Getting to the 11th day is not necessarily a “change of placement.”
- ❑ The school has the authority to determine whether or not there is “pattern.” Parents can challenge that decision in DPH.



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Let's Get Back to FBAs... 19 TAC §89.1050 (k)

Disciplinary Action that constitutes a change of placement under federal law

↓
Not later than the 10th school day after COP

↙
Seek consent for FBA

↘
If FBA has been conducted already, only seek consent if over a year old

AND

Review any previously conducted FBA & any BIP

AND

“As necessary” develop a BIP if there is not one
OR

Review the existing BIP

Related or Not



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About FBAs...

- ❑ Neither this law, nor existing federal law, gives any definition of the term "functional behavioral assessment."
- ❑ That gives schools flexibility in how to conduct an FBA, but it would be wise and prudent to have good professional research to support your decisions about this.
- ❑ Let's move on to BIPs....

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Commissioner's Rules and BIPs.

- ❑ Chapter 37 already said that if the ARDC determines that a BIP is appropriate, the BIP "shall be included as part of the student's IEP and provided to each teacher with responsibility for educating the student." TEC §29.005(g).
- ❑ Adds a requirement that a BIP that is part of the IEP must be reviewed annually "and more frequently if appropriate."
- ❑ Duh. Federal law already requires an annual "or more frequent" review of the IEP.
- ❑ But Commissioner's Rules list the issues to be reviewed....

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How to Review the BIP

- ❑ A form with a checklist would be helpful.
- ❑ Of course the ARDC is not limited to those checklist items.
- ❑ See TEC §29.005(g)(h) for the list of items required for a BIP Review.

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What Else About BIPs?

- ❑ In the context of a disciplinary change of placement, besides seeking consent for an FBA and reviewing any existing FBAs, the school (ARDC) must also review any BIPs previously developed; and
- ❑ Develop a BIP if the student does not have one, or review and revise the existing one, all of this only “as necessary.”
- ❑ Timeline: Same as with FBAs—ten school days after change of placement.

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How Does That Compare With IDEA?

- ❑ These new rule requirements are very similar to IDEA requirements. Except under IDEA, FBAs and BIPs are required only when the behavior is a manifestation of disability.
- ❑ Commissioner's Rules do not draw any distinction between behavior that is and is not a manifestation of disability.
- ❑ What about that "as necessary" language?
 - Suggestion: Keep it simple and assume that it's always necessary. Explaining why it was not necessary may be difficult.

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A Few Suggestions About BIPs

- ❑ BIPs are not defined in the law, but they are described as positive behavioral interventions, supports and strategies to address behavior that "impedes the learning" of the student or others.
- ❑ Notice: They are POSITIVE actions that the school takes to encourage appropriate behavior.
- ❑ Does it make any sense to include restraint in a BIP? Short term OSS or ISS? Calling in law enforcement? Not really. (Those are not required to be in the BIP.)
- ❑ Furthermore, you don't need to "authorize" these things in a BIP. They are already authorized by law, policy, and code of conduct.
- ❑ BIPs do not describe what we do TO the student in terms of disciplinary options or emergency situations or criminal offenses. They describe what we do to help student make better choices.

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BIPs: Who Doesn't Have One? #Ubiquitous BIPs



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In the Commissioner's Rules, the BIP is Implicated Everywhere...

- Changes in student's circumstances
- Placement in different educational setting
- AU supplements
- Increase or persistence in disciplinary actions taken regarding the student (19 TAC §89.1055)
- An unauthorized departure from an educational setting (19 TAC §89.1055)
- The safety of student or others (19 TAC §89.1055(g)(2))
- Discipline (19 TAC §89.1050(a)(4))

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In the Commissioner's Rules, the BIP is Implicated Everywhere...

- Impedes behavior of self or others 19 TAC §89.1050(a)(1)
- Disciplinary change of placement 19 TAC §89.1050(k)
- Restraint Documentation for ARD Committee consideration on whether BIP is needed or should be revised (19 TAC §89.1053 (e)(4))
- Notice of restraint and BIP options (19 TAC §89.1053(e)(5)(K))
- Time Out may only be used with array of positive behavior interventions and must be in the BIP (recurrent basis review) (19 TAC §89.1053(g)(h)(i))

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BIP or Not, Employees Maintain the Right to Report a Crime

- See TEC §37.148
- See 34 CFR §300.535

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Restraint and Time Out: Key Resources

- ❑ ISD School Board Policy FOF (Legal)
- ❑ Tex.Educ.Code §37.0021
- ❑ 19 T.A.C. §89.1053
- ❑ District operating procedures will be updated consistent with new rules

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Restraint and Limitations Under Current Law

- ❑ 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 may be used only in emergency situations.
- ❑ Emergency means a situation where a student's behavior poses a threat of 1) imminent serious physical harm to the student or others; or 2) imminent serious property destruction.
- ❑ Limited to use of such reasonable force as is necessary to address the emergency.
- ❑ Restraint shall be discontinued at point emergency ceases.
- ❑ Implemented in a way to protect health and safety of student.
- ❑ Shall not deprive student of basic human necessities.

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Clarification on Restraint and What Restraint Does NOT Include

- ❑ Physical contact or appropriately prescribed adaptive equipment to promote normative body positioning and or physical functioning.
- ❑ Limited physical contact with a student to promote safety (ex., holding a student's hand,) prevent a potentially harmful action (ex., running into a street,) teach a skill, redirect attention, provide guidance to a location, or provide comfort.
- ❑ Limited physical contact or appropriately prescribed adaptive equipment to prevent a student from engaging in SIB.
- ❑ Seat belts or safety equipment to secure student in transportation.

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Commissioner's Rules and Restraint

- ❑ 19 TAC §89.1053 outlines rules about restraint

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Written Notice of Restraint: 11 Components

- Name of student.
- Name of the person who restrained (employee, volunteer, or independent contractor.)
- Date of restraint.
- Time restraint started and ended.
- Location of restraint.
- Nature of the restraint.
- Description of student's activity "immediately preceding" restraint.
- Behavior that prompted restraint.

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11 Components: the Last Three....

- Any effort made to de-escalate the situation and any alternatives to restraint that were attempted.
- If the student has a BIP, whether the plan needs to be revised as a result of the behavior that led to the restraint.
- If the student does not have a BIP, information on the procedure for requesting an ARDC meeting to discuss the possibility of an FBA and/or BIP.

19 TAC §89.1053

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Restraint Notice in Student's File

- This 11-point written notice must be included in the eligibility folder.
- That folder must also include information on the method by which the notice was sent to the parent; and
- The contact information for the parent or the person to whom the notice was sent.

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How Does This Differ From Existing Rules?

- More specific and comprehensive.
- This puts into law what is already in regulation.
- Existing rules require good faith effort to verbally notify the parent of restraint on the day of restraint, with written notice to go in the mail the next school day.
- Seek training on some questions on the notice such as "observations at end of the restraint" and "efforts made to de-escalate."
- Do parents want an ARD to review FBA and BIP options?

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Time Out Under Current Law

It does have a definition:

“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 a setting: (A) that is not locked; and (B) from which the exit is not physically blocked by furniture, a closed door held shut from the outside, or another inanimate object.”

TEC §37.0021(b)(3).

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Time Out Is Allowed With Certain Limitations...

- No physical force or threat of physical force to place student in time out.
- Can only be used “in conjunction with an array of positive behavior intervention strategies and techniques” and must be included in the IEP or BIP “if it is utilized on a recurrent basis to increase or decrease a targeted behavior.”
- It must not preclude the student’s ability to be involved in and progress in the general curriculum and advance toward attaining IEP goals.
- Staff must be trained on this. Documentation must be kept and considered.

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Training on Time Out

- ❑ General education or sped educators should be trained to follow time out as stated in student's BIP or IEP
- ❑ Newcomers to timeout must be trained on time out requirements in student's BIP within 30 school days of being assigned to a position that might utilize the time out options
- ❑ Training on use of time out must address the impact on the ability of the student to progress in the general curriculum and IEP goals
- ❑ Training instruction must be based upon current professionally accepted practices and standards on behavior management and time out

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Documentation on Time Out

- ❑ If time out is in the BIP then document each use of time out that was prompted by the behavior specified in the BIP
- ❑ Describe the behavior that prompted time out
- ❑ ARD Committee must use collected data to judge the effectiveness of the time out intervention and provide a basis for the continued use

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Is Time Out an “Aversive Technique”?

- ❑ It’s included in the list of aversive techniques, but only if the student is “isolated” through the use of physical barriers or is precluded from being able to be involved in and progress in the general curriculum or IEP goals.
- ❑ Also: An aversive technique is one that is intended to reduce the likelihood of behavior reoccurring by intentionally inflicting significant physical or emotional discomfort or pain. TEC §37.0023.

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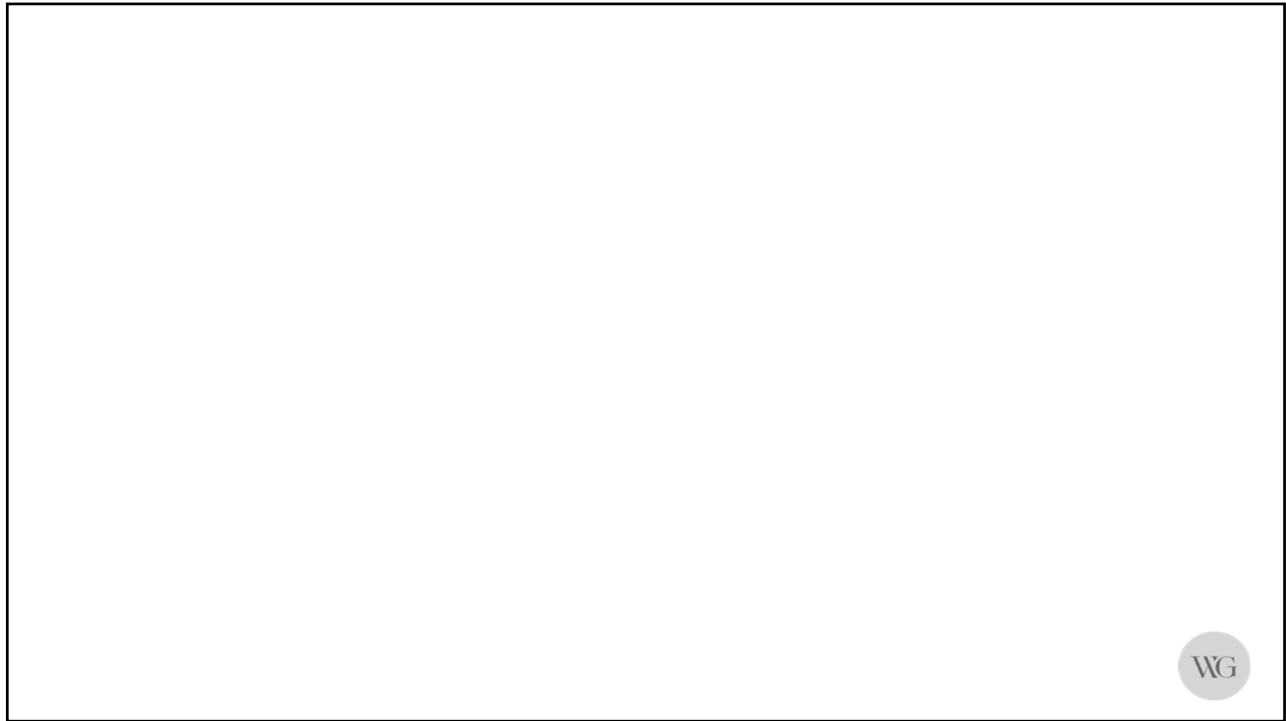
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So What About Student Safety?

- ❑ Believe it or not, the rules include a little provision entitled, **Student Safety**.
- ❑ Wow... so the Commissioner is really taking a stand on school safety?
- ❑ Here you go. Behavior management must be implemented in a way to protect the health and safety of the student and others and no discipline practice may be calculated to inflict injury, cause harm, demean, or deprive the student of basic human necessities.
- ❑ Is that all it says? How then do we deal with assaults of teachers, school shootings, assaults of public servants? Threats on social media? Keep in mind, that this provision and everything else in these rules does not cost the State one penny. Nothing to protect educators.

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