

# Advocating for Improved Behavior Supports



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# Keeping All Students Safe Act

## Senate Bill 2036/House Bill 1893

Proposes to create national standards for the use of restraints and seclusions in schools including:

- Prohibition of the use of seclusion, mechanical restraint, chemical restraint, aversive behavioral interventions that compromise health and safety, physical restraint that is life-threatening (ex. restricts breathing), and a physical restraint that is contraindicated in treatment documentation specific to that child and/or type of disability.
- Unless documentation exists stating otherwise, a non-life threatening physical restraint may be used if behavior poses immediate danger of serious physical harm to self or others.
  - Can't interfere with child's ability to communicate in primary language/mode of communication
  - Less restrictive interventions have been ineffective

Sponsors:

- House Bill 1983 – CA Representative George Miller
  - Texas Co-Sponsors include: Beto O'Rourke, Sheila Jackson Lee, & Eddie Bernice Johnson
- Senate Bill 2036 – Senator Tom Harkin
  - No Texas Co-Sponsors at this time

# 504 and Special Education Law

- Both provide a right to FAPE with positive behavior supports when needed
- Both provide protections from discipline of behavior that is the manifestation of a disability.
- 504 is often interrupted by looking at IDEA

# Special Education Law and Purpose

- Sources of Special Education Law:
  - IDEA 20 U.S.C. § 1400 et. seq. (34 CFR Part 300)
  - Texas Education Code, Chapters 29 (Special Ed) and Chapter 37 (Discipline)
  - 19 TAC § 89.1001 et. seq. (Commissioner of Education's Rules and State Board of Education Rules)
- To ensure that all children with disabilities have available to them a free appropriate public education ("FAPE") that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. 42 U.S.C. § 1400(d)(1)(A).
- To ensure that the rights of children with disabilities and parents of such children are protected. 42 U.S.C. § 1400(d)(1)(B).

# Eligibility

- To be eligible, the student must meet the definition of one of several enumerated disabilities and, “by reason thereof,” need special education and related services. 42 U.S.C. § 1401(3).

# What if my child is not receiving Special Education yet?

- Request Evaluation in WRITING!
- Referral
- Notice of Rights
- Evaluation
  - If school does not think a child needs to be evaluated, they must send written notice about their decision and the parent's rights within 10 school days.
  - Parent must consent to evaluation, 20 U.S.C. §1414(a)(1)(D)(ii)(II)
    - But, not everything is an evaluation. Screening a student for most appropriate instruction strategies is not an evaluation for special education and does not require notice or consent. 20 U.S.C. § 1414(a)(1)(E)
  - After school receives parent consent, evaluation must be completed within 45 school days
  - Then school has 30 school days to review the evaluation

# Evaluations

- Determine
  - Whether child has disability
  - Student's educational needs resulting from disability
- Report Should Include Assessment of
  - Educational Needs
    - Levels of achievement
    - Problem areas
    - Comparison to other students
    - Reason for any problems
  - Need for Related and Other Special Services
    - Examples: Occupational therapy, speech therapy, physical therapy, assistive technology, counseling, and transportation.
  - Need for Positive Behavioral Supports

# What if my child is in Special Education but behavior challenges not getting better?

- Call an ARD meeting
  - Request new FBA (if current FBA was completed over a year ago); or
  - Request an Independent FBA (if current FBA was completed less than 1 year ago).



# What is a Functional Behavioral Assessment (FBA)?

- Evaluations used to develop positive behavioral supports and a Behavior Intervention Plan (BIP)
  - All behavior serves a function. An FBA attempts to determine what function a student's unacceptable behavior serves. It tries to determine what the student "gets" or "avoids" through the unacceptable behavior.
  - An FBA does not simply describe a behavior. It identifies the biological, social, affective, and environmental factors that initiate, sustain, or end the behavior in question

# What is an FBA?

- Once the underlying function of the unacceptable behavior is identified, the FBA identifies strategies to:
  - Help the student engage in an acceptable replacement behavior that “gets” the student what he wants
  - Decrease the student’s desire to “avoid” the environment/situation causing the unacceptable behavior (Behavior used to “avoid” is often related to lack of appropriate academic services. A good FBA will address academic services.)

# When Should an FBA Be Conducted?

- ARD committee must consider providing positive behavioral interventions when a student's behavior impedes his learning or the learning of others. In order to identify effective interventions, an FBA should be conducted.
- An FBA is required when disciplinary removal is due to conduct that is found to be a manifestation of a student's disability.

# Who Conducts an FBA?

- Behavior Specialist or Psychologist
  - NOTE: IDEA does not say who is qualified to conduct FBAs. Commonly, schools ask teachers to complete checklists to help determine what causes behaviors. While this information may be a helpful part of the FBA, checklists alone are not FBAs.

# Where Does the Information in an FBA Come From?

- Direct observation made by the evaluator in the environments where the behavior(s) typically occur. Evaluator should spend at least a few days observing student in these settings.
- Student interview (and reinforcement surveys)
- Teacher interviews (and written input)
- Review of special education records and disciplinary data

# Common Components of a Quality FBA

- Background information (narrative)
- Detailed description of:
  - Direct observations (each behavior at issue should be described as well as the environment, what happened prior to each behavior, and what happened after each behavior.)
  - Student interview
  - Teacher interview
  - Data collection (e.g. how often each behavior occurred, how often the same events occurred prior to each behavior, how often the same events occurred after each behavior)

# Common Components of a Quality FBA

- Functional Hypothesis
  - Description of what the student may be getting (e.g. attention, control) or avoiding (e.g. embarrassment, frustration) through the unacceptable behavior
  - Description of acceptable behaviors that could serve the same purpose for the student
  - Description of positive strategies to promote acceptable behaviors that serve the same purpose
  - Description of positive strategies to reduce the student's desire to avoid situations/environment

# Common Components of a Quality FBA

- Recommendations for BIP
  - Positive strategies for promoting acceptable behaviors that serve the same function.
  - Example: if a student engages in unacceptable behavior to gain attention, the FBA should identify acceptable behaviors to gain attention and strategies to provide opportunities for the student to engage in those acceptable behaviors



# Common Components of a Quality FBA

- Recommendations for BIP (continued)
  - Positive strategies for decreasing the student's desire to avoid situations/environment.
  - Example: If the student engages in unacceptable behavior to avoid assignments that are difficult, the FBA should identify increased academic support for the student and strategies to minimize potential for frustration/embarrassment
  - Punishment is not a positive behavioral intervention

# What if I Disagree With the Evaluation?

- At the ARD meeting, tell the other Committee members that you disagree with the evaluation (the FBA).
- Notify school officials that you want an independent educational evaluation (IEE).
- School must pay for one IEE unless the school asks for a due process hearing to show its evaluation was appropriate.
- ARD Committee must consider IEE.
- Procedure:
  - Disagree (with evaluation),
  - request IEE,
  - get criteria to me (ask school for criteria for independent evaluators, do not use the ones the school suggests)

# Behavior Intervention Plan (BIP)

- Based on Evaluation Data, including an FBA
- Must include positive supports and interventions (these should be described in the FBA)

# BIP Tips

- Be specific about each behavior at issue
  - “Jane is aggressive” is not specific.
  - “Jane hits other students at recess when she does not get her way” is specific.
- Target a few key behaviors with specific, individualized interventions
  - “Give Jane an opportunity to exercise control” is not specific.
  - “Give Jane the opportunity to choose the recess activity. Give Jane the opportunity to lead the class discussion” are specific interventions.

# BIP Tips

- Describe specific interventions to support the positive behaviors that the student already engages in
- Describe changes that should be made to the environment
- Address effective methods of redirection, modeling, de-escalation as appropriate  
(Remember, positive behavioral support is as much about changing adult behavior as it is about changing the student's behavior)

# BIP Tips

- The Committee needs to determine whether the student can follow all aspects of the Student Code of Conduct. If the student cannot, the BIP should specifically outline exceptions or alternative policies
- Never consent to use of disciplinary removal, law enforcement or restraint. Simply say “I will not agree to the use of disciplinary removal, law enforcement or restraint.” The District may still choose to use these actions; however, you should not agree to them as a part of a BIP.

# Admission, Review and Dismissal (ARD) Meeting

- Who attends
  - Members of Committee:
    - Parents and Student
    - Representative of school district knowledgeable about special ed services
    - 1+ special ed teacher
    - 1+ regular ed teacher (if student is or may be in regular ed classes)
    - Someone who can interpret evaluations.
  - Member does not have to be present if school and parents agree in writing 20 U.S.C. § 1414(d)(1)(c)(i) and (iii). But, if member's area of curriculum or related services is being discussed, member must provide written input to committee before meeting 20 U.S.C. § 1414(d)(1)(c)(i) and (iii)

# IEPs

- IEPs must include:
  - Present levels of academic achievement and functional performance; and
  - A statement of measurable annual goals including both academic and functional goals. 20 U.S.C. § 1414(d)(1)(A)(i)(I)(II)
  - In simple terms, IEPs must address: goals, placement, FBAs and BIPs where appropriate, related services, transition services and supplements.



# Placement

- After the committee develops the IEPs, the school is supposed to determine the Least Restrictive Environment (LRE) where the student can work on their goals with accommodations.
- School districts are supposed to maintain a continuum of placements

**Least Restrictive**

**Most Restrictive**



**Regular Class**

**Self-Contained Class**

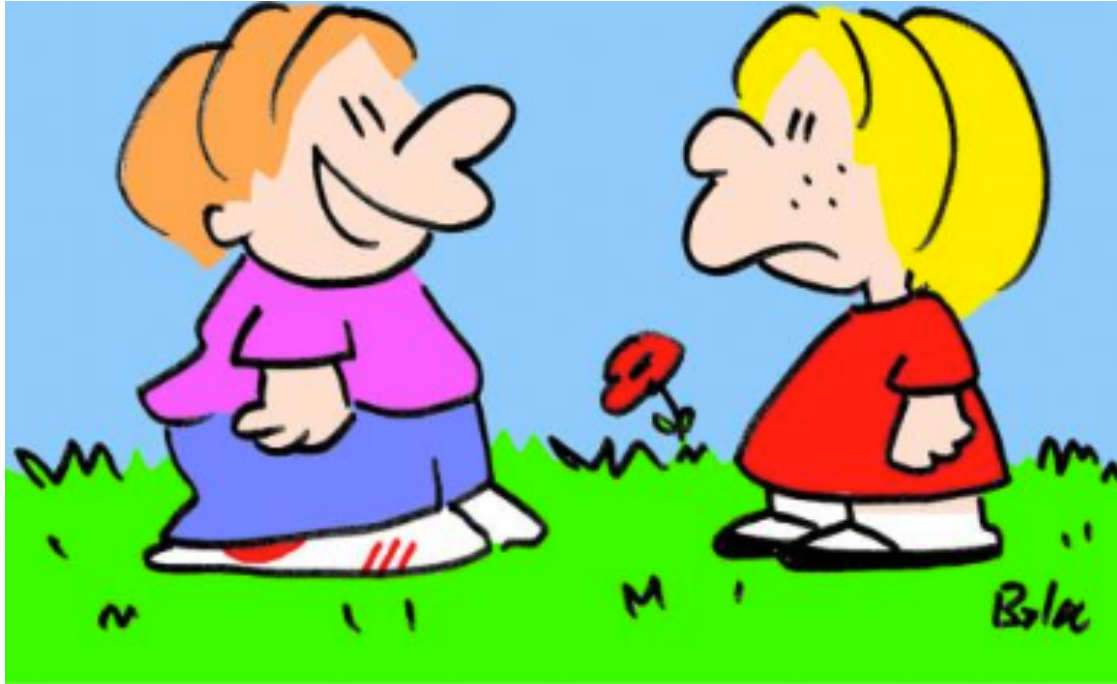
**Separate Campus**

**Residential**

# Placement

- The School must ensure “that to the maximum extent appropriate, children with disabilities...are educated with children who are not disabled” and have access to the “general curriculum.” 20 U.S.C. § 1412(a)(5)
- Special classes, separate schooling or other removal of children with disabilities from the regular educational environment must only occur if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.
- But, presumption for mainstreaming may be overcome if “child is so disruptive in a regular classroom that the education of other students is significantly impaired.” 34 CFR 300.550-556 (comment).

# School Discipline



"The Principal suspended me —  
School is the only place in the  
world where you can get time  
off for *bad* behavior."

# Breaking School Rules: A Statewide Study of How School Discipline Relates to Students' Success and Juvenile Justice Involvement 2011

African-American students and those with particular educational disabilities were disproportionately likely to be removed from the classroom for disciplinary reasons.

- African-American students had a 31% greater chance of being removed from the classroom for discipline reasons for violations that the school has the discretion to decide compared to identical violations by white and Hispanic students.
- Nearly 75% of students who qualified for special education services were suspended or expelled at least once
- 90.2% of the students who qualified due to an emotional disturbance and followed by this study received a discretionary discipline action of suspension or expulsion. Children with an emotional disturbance received discretionary suspensions or expulsion at a higher rate than any other eligibility category or children not identified with a disability.

# “Zero Tolerance” is Not the Law in Texas Anymore

- HB 171 passed and Texas Education Code 37.001(a) was amended in Sept. 2009 to require that in all disciplinary removals, schools “consider” the following:
  - self-defense
  - intent or lack of intent at the time the student engaged in the conduct
  - a student ’s disciplinary history
  - a disability that substantially impairs the student ’s capacity to appreciate the wrongfulness of the student ’s conduct.

# Federal Law (IDEA) Provides More Protection for Longer Removals

- Removal from class for more than 10 consecutive school days; OR
- Removals form a pattern (because they total 10+ days/ year, the behavior is substantially similar, and removals are close in time.



# Examples of Disciplinary Placements:

- Suspension
- Disciplinary Alternative Education Program (DAEP)
- Expulsion
- In-school Suspension
  - Counts toward time of removal if student does not receive services specified by IEP, is not afforded opportunity to continue to appropriately progress in general curriculum, or does not receive same access to non disabled students.

# Disciplinary Placement Over 10 Days

- School must:
  - Notify parent of disciplinary decision and give them a copy of their [procedural safeguards](#) on the same day the school decides to take the disciplinary action.
  - Assemble parents and relevant ARD members for a [manifestation determination](#) review.



# Manifestation Determination Review

- The ARD committee must decide if the student's conduct:
  - Was caused by, or had a direct and substantial relationship to the student's disability; OR
  - Was the direct result of the school's failure to implement the student's IEP.

# Manifestation Determination Review – If Yes

- If yes: The student's conduct is a manifestation of the student's disability and the school must:
  - Conduct a functional behavioral assessment (FBA)
  - Implement a behavior intervention plan (BIP); and
  - Return the student to his prior placement.
- EXCEPTION: Even if conduct was a manifestation, if the behavior involved drugs, weapons, or substantial bodily injury, the student can be placed in a DAEP for up to 45 days.

# Manifestation Determination Review – If No

- Disciplinary procedures applied to non-disabled students may be applied.

# Education Services During Suspension or Expulsion

- A district may be required to provide a Free Appropriate Public Education (FAPE) during suspensions and expulsions.
- If the removal is less than 10 days, the school is only required to provide the same services it provides to non-disabled students.
- If the removal is for more than 10 days then the school must provide services.
  - The services provided don't have to be exactly the same services but the school must enable the child to continue to participate in the general curriculum.

# Discipline of Students not yet Eligible for Special Education

- IDEA may still apply if the school knew your child was disabled before the behavior that caused the disciplinary action occurred.
- Schools have knowledge where:
  - The parent has written the district requesting special education services.
  - The parent has requested a special education evaluation.
  - A child's teacher or other district personnel expressed concerns to other district personnel.
- If the school had “knowledge” then the parent may request an expedited evaluation for IDEA eligibility.
- Schools do not have “knowledge” where the child has been evaluated and determined ineligible or where parent has refused special ed services.

# Restraint and Seclusion

- Seclusion: Banned
  - Students may not be confined in a locked box, locked closet, or locked room that: (A) is designed solely to seclude a person; and (B) contains less than 50 square feet of space. Texas Education Code § 37.0021.
- Restraint: Restricted
  - Only allowed in emergency situations, in which student's behavior poses a threat of: (A) imminent, serious physical harm to the student or others; or (B) imminent, serious property destruction (meaning expensive property). 19 T.A.C. §89.1053
  - Notice Requirements See 89.1053(e)
  - Staff Training Requirements See 19 T.A.C. 89.1053(d)

# Autism Supplement

- Under the Texas Autism Supplement, the following points must be discussed before creating an IEP for a student with autism:
  - Extended educational programming, including extended-day, extended-year
  - Daily schedules with minimal unstructured time
  - In-home and community-based training to acquire social & behavioral skills
  - Positive behavioral support strategies
  - Planning for the life, work and education of children of all ages
  - Parent and family training and support
  - Suitable student-to-staff ratios for children during the various stages of learning
  - Communication interventions
  - **Social skill supports**
  - Professional educator and staff support and training
  - **Teaching strategies based on research-based practices, including discrete-trial training and applied behavior analysis**

# Transition

- Beginning not later than the first IEP to be in effect when the child turns 14\* and then updated annually thereafter. The IEP must include:
  - Appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment and independent living skills, where appropriate

\* The regulations to IDEA 2004 eliminate age 14 requirements (beginning services starting at age 16) but Texas law requires services to begin at age 14



# Transition

- The IEP must also include:
  - Transition services needed to assist the child in reaching those goals, including courses of study; and
  - Beginning not later than one year before the child reaches the age of majority under state law, a statement that the child has been informed of the child's rights under this title, if any, that will transfer to him or her on reaching the age of majority.
- 20 U.S.C. §1414(d)(1)(A)(i)(VIII)

# ADMINISTRATIVE REMEDIES: TEA Complaints, Mediation, and Due Process

# TEA Complaint Process

- First step is to try to resolve problems with school districts by going to an ARD before complaining to TEA.
- If cannot resolve issue at ARD:
  - Write Letter of Complaint to TEA requesting investigation.
  - State the violations believed to have occurred.
  - State the facts on which complaint is based. Be specific.
  - Attach important documents (ARD Documents, evaluations, etc)
  - Sign the complaint.
  - Mail complaint to:
    - Texas Education Agency  
Division of IDEA Coordination  
1701 North Congress Avenue  
Austin, TX 78701-1494
- TEA has 60 days to determine if law has been broken.

# Mediation

- Parents may request mediation whenever there is a complaint or disagreement about special education services.
- Mediation is free.
- To request mediation,
  - Write letter to TEA requesting mediation
  - Include name of school district, name and grade of student, contact information, and a short description of concerns.
- May mail or fax request to:
  - Texas Education Agency  
Division of Legal Services  
1701 North Congress Avenue  
Austin, TX 78701-1494  
Telephone: 512.463.9720 | Fax: 512.475.3662

# Due Process Hearing

- A parent may request an impartial due process hearing as a last resort when they feel the school district has violated special education laws.
- Resembles a trial, but a lawyer is optional
- Must request hearing within one year of the time they knew of the wrongful action (this is more strict than in some states).
- Parent must first attend “resolution session”
  - Held within 15 days from time district receives hearing request
  - If no agreement is reached within 30 days of hearing request, due process hearing can occur.

# Office for Civil Rights Complaint

Two Main Laws that Apply to OCR Complaints for  
Discrimination Against Students with  
Disabilities:

- Section 504 of the Rehabilitation Act (504)
- Title II of the Americans with Disabilities Act (ADA)
  - Online Complaint Form can be found at:  
<http://www2.ed.gov/about/offices/list/ocr/complaintintro.html>

# Office for Civil Rights Complaint

## Examples of OCR Complaints:

- School fails to provide appropriate accommodations and modifications to students with disabilities
- School fails to use evaluation information to determine appropriate modifications and/or accommodations for students with disabilities
- School segregates students with disabilities from their nondisabled peers in both academic or nonacademic settings
- School does not provide students with disabilities with comparable settings or facilities as their nondisabled peers
  - School does not have a system set up for complying with 504
  - School fails to provide accessible transportation
  - School does not allow students with disabilities access to physical education or athletic activities

# How Disability Rights Texas Can Help

- Discipline (Removal, school citations, positive behavior supports)
- Ending and preventing illegal seclusion or restraint
- Inclusion
- Transition Planning
- Assistive Technology
- Child Find
- Advice and Tech Support on other issues

**For help, call: (800) 252-9108**



# Resources

- Interactive Discipline Guide
  - [www.disabilityrightstx.org/resources/education/](http://www.disabilityrightstx.org/resources/education/)
- Special Education Connection
  - <http://www.specialedconnection.com/>
- Wright's Law
  - [www.wrightslaw.com](http://www.wrightslaw.com)
- Texas Education Agency (TEA)
  - Parent Resource Guide  
<http://www.tea.state.tx.us/special.ed/resources/>
  - Complaints, Mediations, Due Process Hearings  
<http://www.tea.state.tx.us/special.ed/medcom/compinfo.html>
- Office of Civil Rights (OCR)
  - <http://www2.ed.gov/about/offices/list/ocr/reports-resources.html>  
Dispute Resolution