

1. When did HB 785 go into effect?

HB 785 was signed by the Governor on June 4, 2021 and became effective immediately.

2. What does HB 785 require in relation to behavior plans for students, such as Behavior Intervention Plans or Behavior Improvement Plans (BIPs)?

HB 785 amends TEC § 29.005 and requires BIPs, which are part of a student's individualized education program (IEP), to be reviewed annually, at minimum, and more frequently as needed, or when not found effective. When reviewing the student's BIP, the student's admission, review, and dismissal (ARD) committee must address the safety of the student and others, and changes in circumstances, including but not limited to:

- Placement of the student in a different educational setting;
- an increase or persistence in disciplinary actions taken regarding the student for similar types of behavior;
- a pattern of unexcused absences; or
- an unauthorized, unsupervised departure from an educational setting.

3. When does HB 785 require ARD committees to complete Functional Behavioral Assessments (FBAs) for students?

If an FBA has never been conducted or the most recent one is more than one year old, HB 785 requires the local education agency (LEA) to seek consent from a student's parent/guardian to conduct an FBA when an LEA takes a disciplinary action that results in a change of placement of a student serviced by special education. The LEA must seek consent by the 10th school day after the change in placement.

4. Under what circumstances must the ARD committee review and/or revise a student's existing FBA or BIP?

When an LEA takes a disciplinary action that constitutes a change of placement under federal law, the LEA must review any previously conducted FBAs and BIPs, and, as necessary, revise them. Outside the context of a disciplinary change of placement, the LEA should review and/or revise a student's BIP annually, and more frequently, as appropriate.

5. If an LEA performs a student restraint, what must be included in the written notice to the student's parent/guardian, and what has now changed based on HB 785?

LEAs are required to comply with the requirements for restraint and written notice in commissioner rule at 19 TAC §89.1053:

- 1) Name of the student
- 2) Date of restraint
- 3) Time restraint started and ended
- 4) Nature of restraint
- 5) Location of restraint
- 6) Name of the person who restrained the student (employee, volunteer, or independent contractor)
- 7) Description of student's activity immediately preceding restraint
- 8) Behavior that prompted restraint
- 9) Any de-escalation efforts and alternatives to restraint that were attempted
- 10) Information documenting parent contact and notification

HB 785 adds these additional requirements:

- 11) If the student has a BIP, whether the BIP may need to be revised, given the behavior that led to the restraint
- 12) If the student does not have a BIP, the steps that the parent/guardian can take to request an ARD committee meeting to consider conducting an FBA and developing a BIP

Commissioner rule requires that the written notification be placed in the mail or otherwise provided to the parent within one school day of the use of the restraint. The rule also requires that the campus administrator or designee be notified verbally or in writing of the restraint on the day it occurs. Likewise, a good faith effort must be made to verbally notify the parent or guardian about the restraint on the day it occurs. The restraint documentation must also be filed in the student's special education file. The restraint documentation in the student's special education file must also include the method by which written notification was provided to the parent/guardian and the contact information used by the LEA.

6. What factors in restraint documentation should be considered in making a determination that a BIP may need to be revised as a result of the behavior that led to a restraint?

HB 785 added a requirement that BIPs be reviewed at least annually and "more frequently as appropriate." HB 785 does not provide an exhaustive list of factors in restraint documentation to be considered in determining whether a student's BIP may need to be revised, but does indicate that changes in circumstances, such as a change in educational setting, increase or persistence in disciplinary actions, attendance, elopement, and student safety be considered. Additionally, LEAs should consider whether the behavior that led to the restraint is addressed in the current BIP and FBA. Additional considerations could include but are not limited to an increased frequency or severity of the student's behavior, or new behaviors.

7. If a BIP needs revision because of a behavior that led to a restraint, can this revision be completed outside of an ARD meeting?

In making changes to the IEP after the student's annual ARD committee meeting, the student's parent/guardian and the LEA may agree to amend the student's IEP as set forth in 34 CFR §300.324, to include revisions to a BIP which is part of the student's IEP. Amendments to the student's IEP must be shared with the members of the student's ARD committee.

8. What are an LEA's requirements related to time-out, and how does HB 785 amend these requirements?

The requirements for use of time-out can generally be found at 19 TAC 89.1053(g)-(i). Under existing rule in 19 TAC 89.1053(i), LEAs are required to include necessary documentation or data collection regarding the use of time-out, if any, and these must be addressed in the IEP or BIP. The ARD committee must use any collected data to judge the effectiveness of the intervention and provide a basis for making determinations regarding its continued use.

HB 785 further requires that LEAs document each use of time-out prompted by a behavior specified in the student's BIP. Documentation must include a description of the behavior that prompted the time-out.

9. In the case of a disciplinary change in placement where the student's FBA is less than one year old, and the student has a BIP, can the required review of the BIP and FBA occur outside of an ARD committee meeting as long as the review is done within the 10 school days from the change of placement?

No. The student's parent, the LEA, and relevant members of the student's ARD committee (as determined by the parent and the LEA) must convene to conduct a manifestation determination review, which must be held within 10 school days of any change in placement for a child with a disability because of a violation of a code of student conduct. This group must meet to conduct the manifestation determination and, at the same time, review all relevant information in the student's file including the student's IEP, which includes the BIP, along with previously conducted FBAs. The committee will determine whether the student's BIP needs to be revised.

If a disciplinary change of placement occurs for a student, and that student has an FBA that is less than one year old, by the 10th school day following the change of placement, the LEA must review any previously conducted FBA as well as any BIP developed for that student and, as necessary, the ARD committee must revise the BIP.

- 10. If the decision is made for a disciplinary change in placement and, in accordance with Texas Education Code §37.004(b-1)(1)(A), the LEA must seek consent to conduct an FBA, when must consent for the FBA be obtained? Does consent for the FBA and completion of the FBA need to occur within 10 days of disciplinary placement change?**

The requirement is that consent for an FBA must be sought from the student's parent or guardian no later than the 10th school day after the change of placement. There is not a requirement that the consent be obtained and that the FBA also be completed by the 10th school day. Note, however, that by the 10th school day after the change in placement, the LEA must also review any previously conducted FBA of the student and any BIP for the student based on that assessment.

- 11. In the case of a disciplinary change in placement where the student does not have a BIP and has never had an FBA conducted, what must the ARD committee do?**

The ARD committee will describe the FBA process and, if the parent consents to an FBA, the ARD committee will document the parent's consent and will discuss a timeline of completion of the FBA. Once the FBA is completed, the LEA must notify the parent of the outcomes of the FBA. The ARD committee will determine if a BIP needs to be developed based on the outcomes of the FBA and any other relevant factors.

- 12. In the case of a disciplinary change in placement where the student's most recently conducted FBA is more than a year old, what must the ARD Committee do?**

The ARD committee follows the process in question 10. If the parent consents to the FBA process and the student has an existing BIP, the ARD committee will determine if the BIP needs to be revised based upon the outcomes of the FBA and any other relevant factors. Amendments to the student's IEP, which includes the BIP, must be shared with all members of the student's ARD committee and each teacher with responsibility for educating the student.

- 13. Does an ARD committee need to meet to review a BIP if a student attempts to run out of the classroom or campus or engages in other behaviors that pose a safety concern?**

The ARD committee is required to review a BIP, which is part of a student's IEP, at least annually and more frequently if appropriate to address changes in the student's circumstances that may impact the student's behavior or to address the safety of the student or others. HB 785 provides examples of changes in circumstances that may warrant more frequent review of the BIP, such as:

- The placement of the student in a different educational setting;
- an increase or persistence in disciplinary actions taken regarding the student for similar types of behavioral incidents;
- a pattern of unexcused absences; or
- an unauthorized unsupervised departure from an educational setting.

This list is not exhaustive. HB 785 does not specify that a review is required after *each instance* of a behavior, such as running out of a campus or classroom, but that the behavior plan must be reviewed more than once a year, if appropriate.