

Text of Adopted Amendment to 19 TAC

Chapter 89. Adaptations for Special Populations

Subchapter AA. Commissioner's Rules Concerning Special Education Services

Division 2. Clarification of Provisions in Federal Regulations and State Law

§89.1053. Procedures for the Use of Confinement, Restraint, Seclusion, and Time-Out.

- (a) Requirement to implement. In addition to the requirements of 34 Code of Federal Regulations (CFR), §300.324(a)(2)(i), school districts and charter schools must implement the provisions of this section regarding ~~the use of~~ restraint, ~~and~~ time-out, and crisis prevention and intervention training. In accordance with the provisions of Texas Education Code (TEC), §37.0021 (Use of Confinement, Restraint, Seclusion, and Time-Out), it is the policy of the state to treat with dignity and respect all students, including students with disabilities who receive special education services under TEC, Chapter 29, Subchapter A. In accordance with this policy, students may not be confined in a locked box, locked closet, or other specially designed locked space as either a discipline management practice or a behavior management technique.
- (b) Definitions.
- (1) "Crisis" means a situation in which a student is experiencing a state of dysregulation that overwhelms the student's baseline coping mechanisms and:
- (A) may cause impaired logical thinking, potential risk of serious physical harm to self or others, functional impairment, or involuntary physiological responses; and
- (B) is best addressed by crisis prevention and intervention to return the student's behavior to a regulated state and avoid an emergency as defined in this section.
- (2) "Crisis prevention and intervention training" means evidence-based strategies, including proactive ongoing use of best practices, that are designed to equip individuals to recognize, respond to, and de-escalate crises and emergencies through individualized, developmentally and neurologically responsive supports and to use, only when necessary and appropriate, safely applied physical interventions.
- (3) ~~(1)~~ "Emergency" ~~[Emergency]~~ means a situation in which a student's behavior poses a threat of:
- (A) imminent, serious physical harm to the student or others; or
- (B) imminent, serious property destruction.
- (4) "Imminent" means likely to occur immediately or without delay, leaving no reasonable opportunity to prevent serious physical harm through less restrictive interventions. Imminent does not include situations where there is time to safely use de-escalation, redirection, or other less restrictive interventions.
- (5) "Law enforcement duties" means activities of a peace officer relating to the investigation and enforcement of state criminal laws and other duties authorized by the Code of Criminal Procedure, subject to any limitations as determined by the board of trustees of a school district under TEC §37.081(d).
- (6) ~~(2)~~ "Restraint" ~~[Restraint]~~ means the use of physical force or a mechanical device to significantly restrict the free movement of all or a portion of the student's body.
- (A) "Physical restraint" means a personal restriction that immobilizes or reduces the ability of a student to move his or her torso, arms, legs, or head freely.
- (B) "Mechanical restraint" refers to the use of any device or equipment to restrict a student's freedom of movement. The term does not include devices implemented by trained school personnel or utilized by a student that have been prescribed by an appropriate medical or related services provider.

- (7) "Seclusion" means a behavior management technique in which a student is 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.
- (8) "Taser" means a device manufactured, sold, or distributed by Axon Enterprises (formally known as Taser International, Incorporated) that is intended, designed, made, or adapted to incapacitate a person by inflicting an electrical charge through the emission of a projectile or conductive stream. The term, for purposes of this section, includes a similar device manufactured, sold, or distributed by another person.
- (9) ~~(2)~~ "Time-out" [Time-out] means 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 ~~;~~ ;
 - ~~(C) that may occur within or outside the classroom setting; and~~
 - ~~(D) that may occur with or without other students present.~~
- (c) Use of restraint. A school employee, volunteer, or independent contractor may use restraint only in an emergency as defined in subsection (b) of this section and with the following limitations.
- (1) Restraint must be limited to the use of such reasonable force as is necessary to address the emergency.
 - (2) Restraint must be discontinued at the point at which the emergency no longer exists.
 - (3) Restraint must be implemented in such a way as to protect the health and safety of the student and others.
 - (4) Restraint must not deprive the student of basic human necessities.
- (d) Training on use of restraint. Training for school employees, volunteers, or independent contractors must be provided according to the following requirements.
- (1) A core team of personnel on each campus must be trained in the use of restraint, and the team must include a campus administrator or designee and any general or special education personnel whose job duties may place them at high risk of utilizing ~~likely to use~~ restraint.
 - (2) Personnel called upon to use restraint in an emergency and who have not received prior training must receive training within 30 school days following the use of restraint.
 - (3) Training on use of restraint must include prevention and de-escalation techniques and provide alternatives to the use of restraint.
 - (4) All trained personnel must receive instruction in current professionally accepted practices and standards regarding behavior management and the use of restraint.
 - (5) Training on the use of restraint must include instruction on disability-related behaviors, including behaviors associated with neurological, developmental, or emotional disabilities, and evidence-based strategies to prevent, reduce, or respond to such behaviors. This training must emphasize individualized and developmentally appropriate approaches and the use of positive behavioral interventions and supports as alternatives to physical intervention and restraint.
- (e) Documentation and notification on use of restraint. In a case in which restraint is used, school employees, volunteers, or independent contractors must implement the following documentation requirements.
- (1) On the day restraint is utilized, the campus administrator or designee must be notified verbally or in writing regarding the use of restraint.

- (2) On the day restraint is utilized, a good faith effort must be made to verbally notify the parent(s) or person standing in a parental relation to the student regarding the use of restraint.
- (3) Written notification of the use of restraint must be placed in the mail or otherwise provided to the parent(s) or person standing in parental relation to the student ~~[parent]~~ within one school day of the use of restraint. In the case of residential placements, written notification must be provided to the parent(s) or person standing in parental relation to the student within 24 hours of the restraint, regardless of whether the day is a school day, weekend, or holiday.
- (4) Written documentation regarding the use of restraint must be placed in the student's special education eligibility folder no later than the third school day after the restraint ~~[in a timely manner]~~ so the information is available to the admission, review, and dismissal (ARD) committee when it considers the impact of the student's behavior on the student's learning and/or the creation or revision of a behavior improvement plan or a behavioral intervention plan.
- (5) Written notification must be provided to the student's parent(s) or person standing in parental relation to the student for each use of restraint, and documentation of each restraint must be placed in the student's special education eligibility folder. For purposes of this subsection, "each restraint" refers to each time the student is restrained by either physical force or mechanical device and released, regardless of the length of time of the restraint or the time between the release and the restart of the restraint. Multiple restraints may not be combined into a single restraint notification form, reported to the campus administrator or the parent(s) or person standing in parental relation to the student as a single restraint, or reported to the Texas Education Agency (TEA) as a single restraint. The written notification of each restraint must include the following:
 - (A) name of the student;
 - (B) name of the individual administering the restraint;
 - (C) date of the restraint and the time the restraint began and ended;
 - (D) location of the restraint;
 - (E) nature of the restraint;
 - (F) a description of the activity in which the student was engaged immediately preceding the use of restraint;
 - (G) the behavior of the student that prompted the restraint;
 - (H) the efforts made to de-escalate the situation and any alternatives to restraint that were attempted;
 - (I) observation of the student at the end of the restraint;
 - (J) contact information for the parent(s) or person standing in parental relation to the student to whom the school district sent the required ~~[documenting parent contact and]~~ notification of restraint ; and
 - (K) one of the following:
 - (i) if the student has a behavior improvement plan or behavioral intervention plan, whether the behavior improvement plan or behavioral intervention plan may need to be revised as a result of the behavior that led to the restraint and, if so, identification of the staff member responsible for scheduling an ARD committee meeting to discuss any potential revisions; or
 - (ii) if the student does not have a behavior improvement plan or a behavioral intervention plan, information on the procedure for the student's parent or person standing in parental relation to the student to request an ARD committee meeting to discuss the possibility of conducting a functional behavioral assessment of the student and developing a plan for the student.

- (f) Clarification regarding restraint. Restraint may not be used as a disciplinary or behavior management technique or as a method to gain student compliance. The provisions adopted under this section do not apply to the use of physical force or a mechanical device that does not significantly restrict the free movement of all or a portion of the student's body. Restraint that involves significant restriction as referenced in subsection (b)(6) [(b)(2)] of this section does not include:
- (1) physical contact or appropriately prescribed adaptive equipment to promote normative body positioning and/or physical functioning;
 - (2) limited physical contact with a student to promote safety (e.g., holding a student's hand), prevent a potentially harmful action (e.g., running into the street), teach a skill, redirect attention, provide guidance to a location, or provide comfort;
 - (3) limited physical contact or appropriately prescribed adaptive equipment to prevent a student from engaging in ongoing, repetitive self-injurious behaviors, with the expectation that instruction will be reflected in the individualized education program (IEP) as required by 34 CFR, §300.324(a)(2)(i), to promote student learning and reduce and/or prevent the need for ongoing intervention; or
 - (4) seat belts and other safety equipment used to secure students during transportation.
- (g) Use of time-out. A school employee, volunteer, or independent contractor may use time-out in accordance with subsection (b)(9) [(b)(3)] of this section with the following limitations.
- (1) Physical force or threat of physical force must not be used to place, maintain, or keep a student in time-out.
 - (2) Time-out may only be used in conjunction with an array of positive behavior intervention strategies and techniques and must be included in the student's IEP and/or behavior improvement plan or behavioral intervention plan if it is utilized on a recurrent basis to increase or decrease a targeted behavior. The student's ARD committee must review, at least annually, the use, amount, and effectiveness of time-out as a behavioral intervention and consider whether revisions to the student's IEP, behavioral intervention plan, or positive behavior supports are necessary to reduce or eliminate the need for time-out.
 - (3) Use of time-out must not be implemented in a fashion that precludes the ability of the student to be involved in and progress in the general curriculum and advance appropriately toward attaining the annual goals specified in the student's IEP.
- (h) Training on use of time-out. Training for school employees, volunteers, or independent contractors must be provided according to the following requirements.
- (1) General or special education personnel who implement time-out based on requirements established in a student's IEP and/or behavior improvement plan or behavioral intervention plan must be trained in the use of time-out.
 - (2) Newly-identified personnel called upon to implement time-out based on requirements established in a student's IEP and/or behavior improvement plan or behavioral intervention plan must receive training in the use of time-out within 30 school days of being assigned the responsibility for implementing time-out.
 - (3) Training on the use of time-out must be provided as part of a program which addresses a full continuum of positive behavioral intervention strategies and must address the impact of time-out on the ability of the student to be involved in and progress in the general curriculum and advance appropriately toward attaining the annual goals specified in the student's IEP.
 - (4) All trained personnel must receive instruction in current professionally accepted practices and standards regarding behavior management and the use of time-out.
- (i) Documentation on use of time-out. Necessary documentation or data collection regarding the use of time-out, if any, must be addressed in the IEP and/or behavior improvement plan or behavioral intervention plan. If a student has a behavior improvement plan or behavioral intervention plan, the school district must document each use of time-out prompted by a behavior of the student specified in the student's behavior

improvement plan or behavioral intervention plan, including a description of the behavior that prompted the time-out. Documentation of each use of time-out must include:

- (1) a description of the behavior specified in the student's behavior improvement plan or behavioral intervention plan that prompted the use of time out; and
 - (2) any data collected regarding the use of time out, as addressed in the student's IEP, behavior improvement plan, or behavioral intervention plan. The ARD committee must use any collected data to evaluate ~~[judge]~~ the effectiveness of the intervention and provide a basis for making determinations regarding its continued use.
- (j) Crisis prevention and intervention training. Training for school employees, volunteers, or independent contractors must be provided in accordance with the following requirements.
- (1) School districts must create, document, and use risk criteria based on job role, campus assignments, or incident history to determine which personnel, including support staff and law enforcement, require training and the extent of training needed.
 - (2) Personnel who are designated as high risk must receive training that includes non-violent crisis intervention techniques, verbal de-escalation strategies, and safe physical intervention procedures.
 - (3) School districts shall require training using standards from the State Board for Educator Certification's continuing education clearinghouse in accordance with TEC, §21.4514.
 - (4) Minimum recommended training intervals include:
 - (A) annually for personnel determined to have a high risk of crisis involvement; and
 - (B) every two years for other campus-based personnel.
 - (5) Crisis prevention and intervention training may be combined with, or substituted by, other required training when 51% or more of the training content addresses the requirements of this subsection, including:
 - (A) trauma-informed care training in accordance with TEC, §38.036; and
 - (B) conflict resolution and positive student relationships training in accordance with TEC, §21.451(d)(3).
- (k) ~~(f)~~ Student safety. Any behavior management technique and/or discipline management practice must be implemented in such a way as to protect the health, ~~[and]~~ safety, and dignity of the student and others. No discipline management practice may be calculated to inflict injury, cause harm, demean, or deprive the student of basic human necessities. **Aversive techniques, in accordance with TEC, §37.0023, are prohibited from use by a school district or by a district employee, a volunteer, or an independent contractor.**
- (l) ~~(k)~~ Data reporting. With the exception of actions covered by subsection (f) of this section, data regarding the use of restraint must be electronically reported to TEA ~~[the Texas Education Agency (TEA)]~~ in accordance with reporting standards specified by TEA.
- (m) ~~(h)~~ Restrictions on peace officers and security personnel. In accordance with TEC, §37.0021(j), a peace officer performing law enforcement duties or school security personnel performing security-related duties on school property or at a school-sponsored or school-related activity must not restrain or use a chemical irritant spray or Taser on a student enrolled in Grade 5 or below, unless the student poses a serious risk of harm to the student or another person.
- (n) ~~(m)~~ Provisions applicable to peace officers. The provisions adopted under this section apply to a peace officer only if the peace officer is employed or commissioned by the school district or provides, as a school resource officer, a regular police presence on a school district campus under a memorandum of understanding between the school district and a local law enforcement agency, except that the data reporting requirements in subsection (l) ~~(k)~~ of this section apply to the use of restraint by any peace officer performing law enforcement duties on school property or during a school-sponsored or school-related activity.
- (o) ~~(n)~~ The provisions adopted under this section do not apply to:

- (1) juvenile probation, criminal detention, or corrections personnel; or
- (2) an educational services provider with whom a student is placed by a judicial authority, unless the services are provided in an educational program of a school district.