

Senate Bill 712

SB 712, enacted by the 86th Texas Legislature and signed into law by Governor Abbott on June 10, 2019, made changes, effective immediately, to the Texas Education Code (TEC), Section 1, Subchapter A, Chapter 37, by adding § 37.0023. TEC § 37.0023 defines and describes “aversive techniques” and prohibits their use on students enrolled in Texas public schools.

This recently added statute defines an “aversive technique” as a technique or intervention that is intended to reduce the likelihood of a behavior reoccurring by intentionally inflicting on a student significant physical or emotional discomfort or pain. A school district, school district employee, volunteer, or an independent contractor of a school district may not apply an aversive technique, or by authorization, order, or consent, cause an aversive technique to be applied to a student. The statute does not prohibit a teacher from removing a student from class under TEC § 37.002.

The term “aversive technique” includes a technique or intervention that results in any one of thirteen separate specific outcomes or actions included in the statute. The thirteen prohibited actions include:

- Causing physical pain, other than an intervention and technique permitted under TEC § 37.0011 (Corporal Punishment)
- Causing physical pain through use of electric shock, pressure points or joint locks
- Releasing noxious, toxic or otherwise unpleasant spray, mist, or substance near the student’s face
- Denying adequate sleep, air, food, water, shelter, bedding, physical comfort, or access to restrooms
- Ridiculing or demeaning the student in a manner that adversely affects and endangers their learning or mental health and constitutes verbal abuse
- Simultaneously immobilizing all four extremities using a device, material, or object including procedures resulting in immobilization known as prone or supine floor restraint
- Impairment of the student’s breathing, including any procedure that applies pressure to the student’s torso or neck, or obstructs their airway including placing an object in, on, or over their mouth or nose, or placing a bag, cover, or mask over the student’s face
- Restricting the student’s circulation
- Securing the student to a stationary object while the student is in a sitting or standing position
- Inhibiting, reducing, or hindering the student’s ability to communicate
- Using a chemical restraint
- Action constituting timeout that prevents the student from being able to be involved in and progress appropriately in the required curriculum and, if applicable, toward the annual goals included in a student’s individualized education program (IEP), including isolating the student using physical barriers
- Depriving the student of the use of one or more of their senses, with the exception that the technique is executed in a manner that does not cause the student discomfort or pain, or is executed in compliance with the student’s IEP or behavior intervention plan (BIP)

Frequently Asked Questions

Q1. Does TEC § 37.0023 supersede or restrict action allowed in TEC § 37.0021 regarding the use of confinement, restraint, seclusion, and time-out?

Answer: No. TEC § 37.0023 does not change the parameters or restrictions regarding the use of confinement, restraint, seclusion, and timeout found in TEC § 37.0021. Rather, TEC § 37.0023 additionally defines and prohibits the use of “aversive techniques” that are intended to reduce the likelihood of a behavior reoccurring by intentionally inflicting on a student significant physical or emotional discomfort or pain. School districts, their employees, volunteers, and independent contractors must comply with both TEC §§ 37.0021 and 37.0023.

Q2. In subsection (a)(9), would a stationary object include a person sitting in a chair or leaning against a wall while holding or restricting a student’s free movement?

Answer: No, subsection (a)(9) would not apply in this situation if the hold or restraint meets the requirements of TEC § 37.0021(d)(1)-(2) and 19 TAC § 89.1053(c), and the person implementing the hold or restraint has received the appropriate training as set forth in TEC § 37.0021(d)(2) and 19 TAC § 89.1053(d).

Q3. What does (a)(13) mean when it states, “except as provided in subsection (c),” regarding depriving the student of the use of one or more of the student’s senses?

Answer: These two subsections, read together, permit the use of an aversive technique that deprives the student of the use of one or more senses as long as use of the technique does not cause the student discomfort or pain or complies with the student's IEP or BIP.

Q4. Subsection (a)(10) indicates that aversive techniques include actions that inhibit, reduce, or hinder the student’s ability to communicate. For a student who is deaf or hard of hearing and who uses his or her hands to communicate through signing, does a restraint, as defined in TEC § 37.0021, constitute an aversive technique under this subsection?

Answer: Not necessarily. Under TEC § 37.0023, an aversive technique is a technique or intervention that is intended to reduce the likelihood of a behavior reoccurring by intentionally inflicting significant physical or emotional discomfort or pain on a student. Meanwhile, restraint is defined as the use of physical force to significantly restrict the free movement of a student's body. (TEC § 37.0021(b)(1); 19 TAC § 89.1053(2)). Rules applicable to students who receive special education services further clarify that restraints may only be used in an emergency. (19 TAC § 89.1053(c)). And an emergency is defined as a situation in which the student's behavior poses a threat of imminent, serious physical harm to the student or others, or imminent serious property destruction. (19 TAC § 89.1053(b)(1)).

Under these provisions, if the restraint was implemented by an appropriately trained individual in response to student behavior that posed a threat of imminent serious physical harm or property destruction, it is unlikely that the restraint would be considered an aversive technique. Conversely, if the restraint was not implemented in response to an emergency, but rather was intended to reduce the likelihood of a behavior reoccurring by intentionally inflicting significant harm on the student, the restraint would violate TEC § 37.0023. Notably, it would also run afoul of 19 TAC § 89.1053(j). This administrative rule requires any behavior management technique or discipline management practice to be implemented in a manner that protects the health and safety of students and further provides that these practices may not be calculated to inflict injury, cause harm, demean, or deprive the student of basic human necessities.

Simply put, when an emergency situation arises that necessitates the restraint of a student who is deaf or hard of hearing and who communicates through the use of signing, LEAs should first safely secure the student from incurring or inflicting harm and then immediately take steps to ensure that the student is able to effectively communicate.