

SUBJECT: Annual review of behavior plans for students in special education

COMMITTEE: Public Education — committee substitute recommended

VOTE: 13 ayes — Dutton, Lozano, Allen, Allison, K. Bell, Bernal, Buckley,
M. González, Huberty, K. King, Meza, Talarico, VanDeaver

0 nays

WITNESSES: For — Jolene Sanders, Coalition of Texans with Disabilities; Steven Aleman, Disability Rights Texas; (*Registered, but did not testify*: Monica Ayres, Citizens Commission on Human Rights Texas; Lisa Flores, Easterseals Texas; Chloe Latham Sikes, IDRA (Intercultural Development Research Association); Jason Sabo, Mental Health America Greater Houston; Matthew Lovitt, National Alliance on Mental Illness (NAMI) Texas; Nancy Walker, Texans Care for Children; Christine Broughal, Texans for Special Education Reform; Courtney Hoffman, Texas Association for Behavior Analysis Public Policy Group; Alycia Castillo, Texas Criminal Justice Coalition; Linda Litzinger, Texas Parent to Parent; Ashley Ford, The Arc of Texas; Thomas Parkinson)

Against — None

On — (*Registered, but did not testify*: Fuat Aki, Melody Parrish, and Justin Porter, Texas Education Agency)

BACKGROUND: Education Code sec. 29.005 requires school districts to develop an individualized education program (IEP) for a student enrolled in a special education program. A committee that develops an IEP may determine that a behavior improvement plan or a behavioral intervention plan is appropriate and should be included as part of the IEP and provided to each of the student's teachers.

Sec. 37.0021 governs the use of restraint and time-out for a student with a disability who receives special education services.

Sec. 37.004 specifies that an admission, review, and dismissal committee must review certain disciplinary actions regarding a student with a disability who receives special education services.

DIGEST:

CSHB 785 would require a review at least annually of behavior improvement or behavioral intervention plans for students with disabilities who were receiving special education services. The bill also would require a behavioral assessment when a disciplinary action regarding such a student resulted in a change in the student's placement under federal law. It would require a school district to provide written notice to a parent when a school used a restraint on such students.

Behavior plan. The bill would require the committee that developed the individualized education program (IEP) for a student whose IEP included a behavior improvement plan or a behavioral intervention plan to review the plan at least annually, and more frequently if appropriate, to address the safety of the student or others or changes that might impact the student's behavior. Such changes would include the student being placed in a different educational setting, an increase or persistence in disciplinary actions, a pattern of unexcused absences, or an unauthorized unsupervised departure from an educational setting.

Behavioral assessment. CSHB 785 would add requirements for school districts when a disciplinary action taken by the district constituted a change in placement under federal law for a student receiving special education services. Not later than the 10th school day after the change in placement, the district would have to seek parental consent to conduct a functional behavioral assessment of the student if one had never been conducted or if the most recent assessment was more than one year old. The district also would have to review any previously conducted assessment and any behavior plan and as necessary revise the plan or develop one.

Restraint and time-out. For each use of restraint in the case of a student with a disability receiving special education services, CSHB 785 would require a school district to provide written notice to the student's parent or guardian. The notice would have to include information about the date and time the restraint started and ended, the location and nature of the restraint, a description of the student's activity immediately before the restraint, the student's behavior that prompted the restraint, any efforts made to de-escalate the situation, and any attempted alternatives to restraint. The notice also would name the district employee, volunteer, or independent contractor who administered the restraint.

If a student had a behavior plan, the notice would have to include whether the plan might need to be revised as a result of the behavior that led to the restraint. If a student did not have a behavior plan, the notice would have to include information on how a parent or guardian could request an admission, review, and dismissal committee meeting to discuss the possibility of conducting a functional behavioral assessment of the student and develop a plan.

A district would be required to include a copy of the written restraint notification in a student's special education eligibility school records along with a copy of the notification provided to the student's parent or guardian and the contact information for the person to whom the district sent the notification.

If a student had a behavior plan, a district would have to document each use of time-out prompted by a behavior specified in the student's plan, including a description of the behavior that prompted the time-out.

Other provisions. The bill would apply beginning with the 2021-2022 school year.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2021.

SUPPORTERS
SAY:

CSHB 785 would ensure students receiving special education services were appropriately served with up-to-date plans for behavioral management and that parents received written notice when a student was restrained. The bill would facilitate the identification of students who might benefit from critical behavioral support and help shape a healthy learning environment so students with disabilities could complete their education.

Behavior plans and assessments. The bill would help to provide up-to-date, student-centered behavioral support, which would improve the overall school climate and safety. Data show that students with disabilities are disciplined at higher rates, which can impact their ability to stay in the classroom and learn. An annual review and update of behavioral intervention plans would help teachers address existing and new student behaviors before they could escalate and require more severe disciplinary action. It also would prevent teachers from receiving outdated information that might unnecessarily stigmatize the student.

Although the annual review of a student's individualized education program already should include a review of any behavior improvement plan in place, this is not always being done. CSHB 785 would help support schools in promoting desired behaviors of students with special education needs by requiring these plans be reviewed regularly.

The bill also would empower families and help identify students who could benefit from having an updated behavior plan by requiring a school district to initiate the process of conducting a behavioral assessment when a disciplinary issue resulted in a change in services for the student. An assessment is a needed first step in developing a plan to address a student's behavior. The committee substitute addressed concerns that the requirement to conduct an assessment would burden districts by removing a strict time requirement for the assessments to be conducted or reviewed.

Restraint. Current law allows students receiving special education services to be restrained, but parents aren't always informed when this happens. A recent report found that students with disabilities are over-

represented in restraint use. The bill would ensure that parents knew the details of the behavior that led to the restraint and how the school handled the restraint.

**CRITICS
SAY:**

CSHB 785 would likely result in districts having to conduct additional behavioral assessments whenever a discipline issue resulted in a change in services for a student with a disability. This could be a burden for some districts since the assessments must be conducted by an individual who has been trained to do them.