

1-1 By: Lucio, Menéndez S.B. No. 1584
 1-2 (In the Senate - Filed March 12, 2015; March 23, 2015, read
 1-3 first time and referred to Committee on Education; May 7, 2015,
 1-4 reported adversely, with favorable Committee Substitute by the
 1-5 following vote: Yeas 10, Nays 0; May 7, 2015, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7 Taylor of Galveston	X			
1-8 Lucio	X			
1-9 Bettencourt	X			
1-10 Campbell	X			
1-11 Garcia	X			
1-12 Huffines	X			
1-13 Kolthorst	X			
1-14 Rodríguez	X			
1-15 Seliger			X	
1-16 Taylor of Collin	X			
1-17 West	X			

1-19 COMMITTEE SUBSTITUTE FOR S.B. No. 1584 By: Lucio

1-20 A BILL TO BE ENTITLED
 1-21 AN ACT

1-22 relating to positive behavioral interventions and supports for
 1-23 students enrolled in public school who receive special education
 1-24 services.

1-25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-26 SECTION 1. Section 21.451(d), Education Code, is amended to
 1-27 read as follows:

1-28 (d) The staff development:

1-29 (1) may include training in:

1-30 (A) technology;

1-31 (B) conflict resolution;

1-32 (C) discipline strategies, including positive
 1-33 behavioral intervention and supports strategies, classroom
 1-34 management, district discipline policies, and the student code of
 1-35 conduct adopted under Section 37.001 and Chapter 37; and

1-36 (D) protecting students from bullying, including
 1-37 preventing, identifying, responding to, and reporting incidents of
 1-38 bullying; ~~and~~

1-39 (2) subject to Subsection (e) and to Section 21.3541
 1-40 and rules adopted under that section, must include training based
 1-41 on scientifically based research, as defined by Section 9101, No
 1-42 Child Left Behind Act of 2001 (20 U.S.C. Section 7801), that:

1-43 (A) relates to instruction of students with
 1-44 disabilities; and

1-45 (B) is designed for educators who work primarily
 1-46 outside the area of special education; and

1-47 (3) must include training to ensure that adequately
 1-48 trained school district personnel are available to work effectively
 1-49 with the positive behavioral intervention and support needs of
 1-50 students eligible for the district special education program.

1-51 SECTION 2. Subchapter A, Chapter 29, Education Code, is
 1-52 amended by adding Section 29.021 to read as follows:

1-53 Sec. 29.021. POSITIVE BEHAVIORAL INTERVENTIONS AND
 1-54 SUPPORTS. (a) In this section:

1-55 (1) "Behavior specialist professional" includes:

1-56 (A) a behavior analyst certified by the Behavior
 1-57 Analyst Certification Board;

1-58 (B) a clinical psychologist;

1-59 (C) a licensed specialist in school psychology;

1-60 or

2-1 (D) any other special education professional,
2-2 appropriately certified as determined by the commissioner, with
2-3 experience, knowledge, and training in conducting a functional
2-4 behavioral assessment and developing a positive behavioral
2-5 intervention plan for a student whose behavior interferes with the
2-6 ability of that student or another student to learn.

2-7 (2) "Licensed specialist in school psychology" has the
2-8 meaning assigned by Section 501.002, Occupations Code.

2-9 (3) "Restraint," "seclusion," and "time-out" have the
2-10 meanings assigned by Section 37.0021.

2-11 (b) It is the policy of this state that each school district
2-12 to the maximum extent possible should provide functional behavioral
2-13 assessments to a student whose behavior interferes with the ability
2-14 of that student or of another student to learn. The result of
2-15 student assessments shall be used to develop and provide positive
2-16 behavioral interventions and supports and other strategies to
2-17 enhance academic and social behavioral outcomes for students by:

2-18 (1) emphasizing the use of data to inform decisions
2-19 regarding selecting, implementing, and monitoring the progress of
2-20 evidence-based behavioral practices;

2-21 (2) organizing resources and systems to improve the
2-22 faithful implementation and sustainability of positive behavioral
2-23 interventions and supports strategies; and

2-24 (3) providing training in the use of restraint in
2-25 accordance with Subsection (c).

2-26 (c) Training in the use of restraint provided as required
2-27 under Subsection (b)(3) must:

2-28 (1) ensure that a core team of personnel at each
2-29 campus, including a campus administrator or the administrator's
2-30 designee and any general or special education personnel likely to
2-31 use restraint, are trained in the use of restraint;

2-32 (2) ensure that any other personnel called on to use
2-33 restraint are trained in the use of restraint;

2-34 (3) ensure that any personnel called on to use
2-35 restraint in an emergency situation that have not been previously
2-36 trained receive training not later than the 30th day after the date
2-37 restraint was used;

2-38 (4) include training in:

2-39 (A) prevention techniques;

2-40 (B) de-escalation techniques; and

2-41 (C) alternatives to the use of restraint; and

2-42 (5) include instruction in current professionally
2-43 accepted practices and standards regarding behavior management and
2-44 the use of restraint.

2-45 (d) A school district shall provide positive behavioral
2-46 interventions and supports and related strategies under this
2-47 section in a manner that:

2-48 (1) ensures a student's freedom from restraint and
2-49 seclusion except as provided by Section 37.0021 and rules adopted
2-50 by the commissioner under that section;

2-51 (2) respects human dignity and personal privacy and
2-52 does not cause pain or trauma to a student; and

2-53 (3) ensures a student's right to placement in the least
2-54 restrictive educational environment.

2-55 (e) In the case of a student enrolled in a special education
2-56 program under this subchapter, a school district may use restraint
2-57 and time-out only as provided by Section 37.0021 and rules adopted
2-58 by the commissioner under that section.

2-59 (f) A school district may not use restraint as a substitute
2-60 for or as part of a behavioral intervention plan developed under
2-61 Section 29.005(g).

2-62 (g) Each behavioral emergency restraint report prepared as
2-63 provided by Section 37.0021(d)(3) shall be reviewed by the
2-64 principal of the school or the principal's designee and the
2-65 district administrator designated for that purpose as provided by
2-66 Section 37.0021(d)(4)(A) to:

2-67 (1) determine whether:

2-68 (A) restraint was repeatedly used for an
2-69 individual student; or

3-1 (B) restraint was used multiple times in the same
3-2 classroom or by the same individual; and
3-3 (2) recommend a meeting of a student's admission,
3-4 review, and dismissal committee to, as appropriate:
3-5 (A) revise strategies to enhance academic and
3-6 social behavioral outcomes for a student;
3-7 (B) conduct an updated functional behavioral
3-8 assessment; or
3-9 (C) revise a behavioral intervention plan to
3-10 address behavior that poses imminent danger of serious physical
3-11 harm to a student or another person in accordance with the
3-12 requirements of 34 C.F.R. Section 300.324 relating to the revision
3-13 of the individualized education program to address a lack of
3-14 expected progress.
3-15 (h) The student's admission, review, and dismissal
3-16 committee shall review any behavioral emergency restraint report
3-17 prepared under Section 37.0021(d)(3) concerning the student and:
3-18 (1) consider the impact of the student's behavior on
3-19 the ability of that student or another student to learn; and
3-20 (2) determine the need to create or revise a
3-21 behavioral intervention plan.
3-22 (i) If the student's admission, review, and dismissal
3-23 committee determines that the creation or revision of a behavioral
3-24 intervention plan is necessary, the committee shall create or
3-25 revise the plan and determine the need for school district
3-26 personnel who will implement the plan to participate in training by
3-27 a behavior specialist professional. The committee shall monitor
3-28 the implementation and results of the plan and determine the need
3-29 for any revision of the plan or any additional training for school
3-30 personnel.
3-31 SECTION 3. Section 37.0021, Education Code, is amended by
3-32 amending Subsection (d) and adding Subsections (d-1), (d-2), (d-3),
3-33 (d-4), and (d-5) to read as follows:
3-34 (d) Restraint may be used in the case of a student with a
3-35 disability receiving special education services under Subchapter
3-36 A, Chapter 29, only in circumstances involving imminent serious
3-37 physical harm to the student or another person. The commissioner by
3-38 rule shall adopt procedures for the use of restraint and time-out by
3-39 a school district employee or volunteer or an independent
3-40 contractor of a district in the case of a student with a disability
3-41 receiving special education services under Subchapter A, Chapter
3-42 29. A procedure adopted under this subsection must:
3-43 (1) be consistent with:
3-44 (A) professionally accepted practices and
3-45 standards of student discipline and techniques for behavior
3-46 management; and
3-47 (B) relevant health and safety standards; ~~and~~
3-48 (2) identify any discipline management practice or
3-49 behavior management technique that requires a district employee or
3-50 volunteer or an independent contractor of a district to be trained
3-51 before using that practice or technique;
3-52 (3) require a school that has used restraint for a
3-53 student to prepare a behavioral emergency restraint report
3-54 concerning the use of restraint not later than the third school day
3-55 after the date of the incident;
3-56 (4) require the principal of a school that has used
3-57 restraint for a student to:
3-58 (A) submit a copy of the report prepared under
3-59 Subdivision (3) for review to a district administrator designated
3-60 by the district superintendent as the responsible official for that
3-61 purpose; and
3-62 (B) maintain a copy of the report in the
3-63 student's eligibility folder;
3-64 (5) require the report prepared under Subdivision (3)
3-65 to include:
3-66 (A) the name, age, gender, race or ethnicity, and
3-67 grade level of the student;
3-68 (B) the date and the beginning and ending time of
3-69 the restraint;

4-1 (C) the location and setting of the restraint;
4-2 (D) the name of district personnel or any other
4-3 person who was involved in or administered the restraint;
4-4 (E) a description of the incident and the
4-5 precipitating factors, including the activity in which the student
4-6 was engaged immediately preceding the use of restraint and the
4-7 behavior that prompted the restraint;
4-8 (F) the specific nature or type of restraint
4-9 used;
4-10 (G) a statement indicating whether the student
4-11 currently has a behavioral intervention plan and identifying any
4-12 efforts made to de-escalate the situation and any alternatives to
4-13 the use of restraint that were attempted;
4-14 (H) details of any injury sustained by the
4-15 student or another person as a result of the incident and any
4-16 medical care provided; and
4-17 (I) information documenting parent contact and
4-18 notification;
4-19 (6) require the school that has used restraint for a
4-20 student to:
4-21 (A) not later than the end of the school day on
4-22 which the school used restraint, notify the parent or person
4-23 standing in parental relation to the student regarding the use of
4-24 the restraint; and
4-25 (B) not later than the third school day after the
4-26 date on which the school used restraint, provide a copy of the
4-27 report prepared under Subdivision (3) to the parent or person
4-28 standing in parental relation to the student;
4-29 (7) require the student's admission, review, and
4-30 dismissal committee to:
4-31 (A) collect information regarding the use of
4-32 time-out in connection with the student's individualized education
4-33 program; and
4-34 (B) evaluate the information to determine:
4-35 (i) the effectiveness of the use of
4-36 time-out; and
4-37 (ii) whether the use of time-out should be
4-38 continued; and
4-39 (8) if the student is subjected to an intervention
4-40 described by Subsection (d-3), require the district to provide
4-41 notice to the parent or person standing in parental relation to the
4-42 student regarding that intervention not later than the end of the
4-43 school day on which the student was subjected to the intervention.
4-44 (d-1) In adopting procedures under Subsection (d), the
4-45 commissioner shall include a procedure relating to the
4-46 administration of restraint that immobilizes a student on the
4-47 floor. The procedure shall require a school district employee or
4-48 volunteer or an independent contractor of a school district who
4-49 administers an authorized restraint to a student who becomes prone
4-50 or supine during the restraint to immediately transition the
4-51 student to an appropriate position.
4-52 (d-2) The behavioral emergency restraint report required
4-53 under Subsection (d)(3) may not duplicate existing reporting
4-54 requirements imposed by commissioner rule or required to be
4-55 submitted through the Public Education Information Management
4-56 System (PEIMS).
4-57 (d-3) A school district or a school district employee or
4-58 volunteer or an independent contractor of a school district may not
4-59 authorize, order, consent to, or pay for any of the following:
4-60 (1) an intervention that is designed to or likely to
4-61 cause physical pain, including electric shock or any procedure that
4-62 involves the use of pressure points or joint locks;
4-63 (2) an intervention that involves the directed release
4-64 of a noxious, toxic, or otherwise unpleasant spray, mist, or
4-65 substance near the student's face;
4-66 (3) an intervention that denies adequate sleep, air,
4-67 food, water, shelter, bedding, physical comfort, or access to a
4-68 restroom facility;
4-69 (4) an intervention that involves subjecting the

5-1 student to verbal abuse, ridicule, or humiliation or that can be
5-2 expected to cause the student emotional trauma;

5-3 (5) a restrictive intervention that employs a device,
5-4 material, or object that simultaneously immobilizes all four
5-5 extremities, including any procedure that results in such
5-6 immobilization known as prone or supine floor restraint;

5-7 (6) an intervention that impairs the student's
5-8 breathing, including any procedure that involves:

5-9 (A) applying pressure to the student's torso or
5-10 neck; or

5-11 (B) obstructing the student's airway, including
5-12 placing an object in, on, or over the student's mouth or nose or
5-13 placing a bag, cover, or mask over the student's face;

5-14 (7) an intervention that restricts the student's
5-15 circulation;

5-16 (8) an intervention that secures the student to a
5-17 stationary object while the student is in a sitting or standing
5-18 position;

5-19 (9) an intervention that inhibits, reduces, or hinders
5-20 the student's ability to communicate;

5-21 (10) an intervention that involves the use of a
5-22 chemical restraint;

5-23 (11) an intervention that prevents observation by a
5-24 direct line of sight or otherwise precludes adequate supervision of
5-25 the student, including isolating the student in a classroom by the
5-26 use of physical barriers; or

5-27 (12) an intervention that deprives the student of the
5-28 use of one or more of the student's senses.

5-29 (d-4) For purposes of Subsection (d-3)(11), an intervention
5-30 that denies the student academic instruction by a certified
5-31 educator constitutes an intervention that precludes adequate
5-32 supervision.

5-33 (d-5) In adopting procedures under this section, the
5-34 commissioner shall provide guidance to school district employees,
5-35 volunteers, and independent contractors of school districts in
5-36 avoiding a violation of Subsection (d-3).

5-37 SECTION 4. This Act applies beginning with the 2015-2016
5-38 school year.

5-39 SECTION 5. This Act takes effect immediately if it receives
5-40 a vote of two-thirds of all the members elected to each house, as
5-41 provided by Section 39, Article III, Texas Constitution. If this
5-42 Act does not receive the vote necessary for immediate effect, this
5-43 Act takes effect September 1, 2015.

5-44 * * * * *