

New Legislation: 2019

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Student Discipline

- Nine new bills.
- We will address them in order of importance.
- So let's start with SB 712 and HB 3630: "aversive techniques."



Aversive Techniques

- We have two bills enacted into law on this subject. They are almost identical.
- They prohibit the use of “aversive techniques” on any student by any school employee, volunteer or contracted person.
- Thus this applies to SROs and police officers with whom the district contracts.
- The main thing is to understand the definitions of “aversive techniques.”



Definition: the Umbrella

- An aversive technique is one “that is intended to reduce the likelihood of a behavior reoccurring by intentionally inflicting on a student significant physical pain or emotional discomfort.”
- So it’s an “aversive technique” if (1) your overall goal is to change the student’s behavior, and (2) the means to achieve this involves the intentional infliction of pain or discomfort.
- The statute then gives us 13 examples.



But Before We Look at the Examples....

- Let's think about the purpose behind certain actions.
- What is the purpose of physical restraint?
- When a police officer takes a student into custody and restrains the student, what is the purpose?
- If a police officer uses a taser, what is the purpose?



Let's Consider the Umbrella Definition

- The word "significant" has to mean something. So the fact that the student *experiences SOME physical pain or SOME emotional discomfort* does not mean you are using an "aversive technique."
- But stop and consider the murky line between "some" and "significant."
- Moreover, the level of pain or emotional discomfort a person feels is subjective.



13 Examples: 1-3

1. Anything “designed to or likely to cause physical pain” other than authorized corporal punishment.
2. Electric shocks or the use of “pressure points or joint locks” that are designed to or likely to cause physical pain.
3. Spraying a noxious, toxic or unpleasant spray or mist near a student’s face.



13 Examples: 4-5

4. Denying the student adequate “sleep, air, food, water, shelter, bedding, physical comfort, supervision, or access to a restroom.
5. Ridiculing or demeaning a student in a manner that adversely affects or endangers the learning or mental health of the student, or that constitutes verbal abuse.



13 Examples: 6-9

6. Using a device that immobilizes all four limbs, including any procedure that results in “prone or supine floor restraint.”
7. Actions that impair breathing, including placing an object over the student’s mouth or nose.
8. Restricting circulation.
9. Securing the student to a stationary object while the student sits or stands.



13 Examples: 10-12

10. Inhibiting, reducing or hindering student’s ability to communicate.
11. Chemical restraint.
12. Any “timeout” procedure that “precludes the student from being able to be involved in and progress in the general curriculum, and, if applicable, toward the annual goals” in the IEP, including “isolating the student by the use of physical barriers.”



13 Examples: 13

13. Depriving the student of the use of one or more of the senses. However, this one may be used if the technique a) “does not cause the student pain or discomfort” or b) it complies with the IEP or BIP.

You have to wonder how waterboarding failed to make the list.



Just to Make Sure You Understand

“A school district or school district employee or 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.”

A teacher removing the student from the classroom as per Chapter 37 is NOT an “aversive technique.”



Perspective

- We will get guidance from TEA about this.
- The bill's sponsor's statement of intent should also influence the interpretation of this bill.
- It says that the bill addresses "extreme aversive interventions that may not be used on any student under any circumstances."
- The focus is on techniques that "can cause severe physical, mental, and emotional harm...and should never be used."



A Word to the Coaches

- Conditioning and training that is required of all team members is definitely NOT an aversive technique.
- The thing to think about is how you dish out punishment to the kids who are late for practice, or don't dress out properly, etc.



That's Just One of the Bills!

- Number Two on our list is SB 2432. It creates a new (or four new) mandatory DAEP offenses.
- They are: engaging in conduct that contains the elements of the offense of “harassment” under Penal Code 42.07(a) (1), (2), (3) or (7).
- It only involves harassment of an employee of the school—not another student.



New Mandatory DAEP Offense #1

Initiating communication, and in the course of it, making a “comment, request, suggestion or proposal that is obscene” if done with the intent to “harass, annoy, alarm, abuse, torment, or embarrass” that person.

Is the “F Word” ever uttered in your school?



New Mandatory DAEP Offense #2

Threatening, in a manner reasonably likely to alarm the person, to inflict bodily injury on the person or to commit a felony offense against the person or a member of that person's family or household, or the person's property, if done with the intent to harass, annoy, alarm, abuse, torment, or embarrass the person.



New Mandatory DAEP Offense #3

Knowingly conveying a false report that another person has suffered death or serious bodily injury, if done in a manner reasonably likely to alarm the person receiving the report, and with the intent to harass, annoy, alarm, abuse, torment, or embarrass the person.



New Mandatory DAEP Offense #4

Sending repeated e-communication in a manner reasonably likely to harass, annoy, alarm, abuse, torment, embarrass or offend another.

Notice that this last one is the only one where an intent to “offend” would be sufficient.



Another Transition Plan: HB 2184

- DAEP administrators must give the parent and the principal notice of the date when the student will be released from DAEP.
- Also: a report to the principal as to the student's academic growth while in DAEP and the results of any assessment instruments.
- The principal (or designee) must coordinate the student's transition within five instructional days of the student's return.



The DAEP Transition Plan

- This must include assistance and recommendations from 1) counselors; 2) school district peace officers; 3) SROs; 4) licensed clinical social workers; 5) CBCs; 6) classroom teachers who are or may be responsible for implementation of the plan; and 7) any other appropriate school district personnel.



More on the Plan

- It's the "campus administrator" who bears responsibility for developing the transition plan.
- The plan must include recommendations for the best educational placement of the student; and it may include recommendations for counseling, behavioral management, or academic assistance with a focus on academic or career goals of the student.
- And there's more!



More Recommendations in the Plan

- The transition plan may include recommendations for assistance in obtaining access to mental health services provided by the district or some other entity; information to the parent about how to request an evaluation for special education services; and a regular review of the student's progress toward academic or career goals.
- "If practicable" the administrator should meet with the parent about the transition plan.



More New Laws Re: Discipline

- HB 3012: When a student is sent to ISS or OSS, you must provide "an alternative means of receiving all course work provided in the foundation curriculum....that the student misses" due to the suspension. At least one option must not require use of the Internet.
- SB 38: Hazing: Now applies to ALL student organizations.



A Few More

SB 1306: CBC's contact info on the website!

HB 65: Annual report to TEA on OSS.

HB 692: You may not use OSS with a student who is homeless, unless it's for weapons, drugs, alcohol or acts of violence. Same rule as applies to K-2.

HB 811: Before taking disciplinary action consider if the student is 1) in DFPS conservatorship; or 2) homeless.



SCHOOL SAFETY

HB 1143: Employees who have a license to carry can have the firearm loaded and in the car, as long as the car is locked and the gun is not in plain view.

HB 1387: You can have as many "marshals" as you want.

HB 1791: No signage at school that implies any improper limitation on 2nd Amendment rights.



Active Shooter Plans

HB 2195: Your MEOP (Multihazard Emergency Operations Plan) must include a policy for responding to an active shooter. School peace officers and SROs must complete active shooter response training.



Limits on Duties for SROs

- If you employ SROs, peace officers or security personnel, you must include a list of their duties in the district improvement plan, the code of conduct and any MOU regarding such personnel.
- Those duties must be restricted. SEE NEXT SLIDE!



Restrictions on SROs and Others

- Duties assigned to SROs and other security personnel may not include “(1) routine student discipline or school administrative tasks; or (2) contact with students unrelated to the law enforcement duties” of the person.
- However, they may have “informal contact with a student unrelated to (1) the assigned duties; or (2) an incident involving student behavior or law enforcement.”



One More Thing...

- SB 1707 requires the board to consult with CBCs and other employees to ensure that security personnel are properly tasked as per this statute.



Sharing Information

SB 2135: When law enforcement provides information to the school about the arrest of student, it must include enough information for the school to determine if a threat assessment or safety plan is called for.

If such information is requested by the school, in connection with a safety plan or threat assessment, law enforcement must provide it.



SB 11: The Major School Safety Bill

- This bill emphasizes student mental health as well as “hardening” of facilities along with considerable training re: how grief and trauma affect student learning.
- Principals will want to get familiar with resources available at the Texas School Safety Center: <https://txssc.txstate.edu>.



SB 11: Some Specifics

- If the district receives a bomb threat or terroristic threat regarding a facility where students are present it “shall provide notification of the threat as soon as possible to the parent...of each student who is assigned to the campus or who regularly uses the facility.”
- Talk to law enforcement about what is ASAP in this context.



Threat Assessments

- TSSC will provide model policies and procedures. TEA will adopt rules.
- The board must establish a “safe and supportive school team” for each campus.
- Each team must be trained by TSSC or ESC.
- Team must have members with expertise in counseling, behavior management, school administration, school safety/security, emergency management and law enforcement.



More on Threat Assessments

- Each campus must have a team, but one team can serve multiple campuses.
- The team will conduct a threat assessment regarding “individuals who make threats of violence or exhibit harmful, threatening, or violent behavior.”
- If a person is deemed a serious risk, this must be reported to the superintendent. If this is a student, the superintendent must immediately attempt to inform the parent.



Suicide, Substance Abuse

- If the team identifies a student at risk of suicide, it will follow the district’s suicide prevention program. If that student also makes a threat of violence, the team will conduct a threat assessment.
- If the team identifies a student using drugs, alcohol or tobacco, it will follow district policy.



HEALTH: MENTAL AND PHYSICAL

- HB 496: New vocabulary for us: “bleeding control stations.”
- HB 638: More flexibility for posthumous diplomas.
- HB 961: The school nurse can require removal of a student from an activity due to possible concussion.
- HB 3703: More kids will be on medical marijuana.



HB 18: The Major Mental Health Bill

- Much emphasis here on training and education about grief, trauma and substance abuse.
- Your handbook and website must include information about how the district promotes physical and mental health, resources available, and, for each campus, a statement of whether or not it has a fulltime nurse or full time counselor.



PERSONNEL

- HB 3 requires TEA to create a “do not hire” registry. People will be on this list due to 1) criminal history; 2) revocation of certificate based on certain offenses, or 3) determination by the Commissioner of certain types of misconduct.
- Private schools will have access to this Internet portal registry.



Expanding SB 7

HB 3 requires schools to report to TEA when a non-certified employee is terminated or resigns when there is evidence of the type of misconduct that would be reported to SBEC for a certified employee.

Basically, this expands this reporting requirement to all employees.



Amending SB 7

- SB 1476 tells us that a superintendent is not required to report alleged misconduct to SBEC if the superintendent 1) completed the investigation of the allegations prior to termination or resignation; and 2) determined that the educator did not engage in the alleged misconduct.



Child Abuse Reporting

HB 621 permits a lawsuit if a “professional” suffers an “adverse action” for reporting, in good faith, suspect abuse or neglect.

“Adverse action” includes any action that affects compensation, promotion, transfer, work assignment, or performance evaluation or “any other action that would dissuade a reasonable employee from making or supporting a report of abuse or neglect.”



Teachers Know Best: Deviating from Scope and Sequence

- Schools may not penalize a teacher who does not follow recommended S&S if the teacher has determined that students need more or less time in a specific area.
- However, appropriate action can be taken for deviating from S&S if based on documented evidence of a deficiency in classroom instruction based on observation or documented third-party information.



Teachers Know Best: Teacher Removal

- Administrators may not assign an area of deficiency “solely on the basis of disciplinary referrals...or documentation regarding student conduct.”
- But teachers may be classed as deficient based on “documented evidence of a deficiency in classroom management obtained through observation or a substantiated report.”



One More Thing

- Teacher removing the student from the classroom as per Chapter 37 is not a removal that has to be reported on PEIMS.
- But the CBC might decide to do something to the student that would have to be reported.



Private Schools

- SB 1230 essentially applies SB 7 reporting requirements to private schools. Also, applicants for positions with private schools will be required to fill out the same affidavit that public school applicants must complete.



We Love You, Mom!!

- Nursing moms can breastfeed their child in any location the mom has the right to be...and as per HB 541 she may now express the milk in any location where she has the right to be.



OPERATIONS

- HB 1495: This was the backup plan when the effort to bar any lobbying by governmental agencies failed. It requires itemization in the school budget of any expenditures “directly or indirectly influencing or attempting to influence the outcome of legislation or administrative action.”
- TASB has already communicated to its members about this.



Public Comment

- HB 2840: Every person who wishes to address the board re: an agenda item must be allowed to do so before or during consideration of that item.
- Could be some LONG board meetings.
- Boards can adopt rules about this.
- Rules may not prohibit criticism.



Lunch!

- HB 3145: A person appointed as a “conservator” of a child has the right, at all times, to attend school activities, including lunches, performances and field trips, unless a court order says otherwise.
- Court orders will rarely say otherwise.
- In most situations, both parents are “conservators” after divorce.



Emergencies: TOMA and PIA

- SB 494 changes timelines for emergency board meetings, and temporarily suspends PIA timelines.
- Emergency is a situation that requires “immediate action because of an imminent threat to public health and safety or a reasonably unforeseeable situation.
- Such as: hurricane, tornado, flood, power failure, etc. That kind of thing.



PIA Changes

- SB 944: New vocabulary: “temporary custodian.” That’s you.
- Upon request, the temporary custodian must turn the information over to the school.
- Until requested, the temporary custodian must either forward public information to the district’s server, or otherwise preserve the information.



The “Walking Quorum” Problem

- SB 1640 makes it a crime for a board member to knowingly engage in any communication concerning an issue in the school’s jurisdiction if the communication is part of a series of communications all of which occur outside of a board meeting and collectively involve a quorum of the board.



The Chick Fil A Bill

- SB 1978 prohibits adverse action against a “person” that is even partially motivated by the person’s membership in, affiliation with, or contribution to a religious organization.
- The school’s immunity is waived.
- “Person” does not include a school employee acting within scope of employment. So Chick Fil A is a person. You are not.
- This statute cannot be construed to prevent the school from providing a benefit or service authorized by law.



Charters

- SB 2293: The Commissioner will create a common application form that all charters must use (2020-21 school year).
- Guidelines for charter school waiting lists.
- Charter reports to TEA.



Other Operational Matters

- HB 305/963: Information on the website.
- HB 403: Training of boards, superintendents.
- HB 793: Boycotting Israel.
- HB 3834 and SB 820: Cybersecurity.
- SB 22: Planned Parenthood.
- SB 1376: Removing tasks from TEA.



CURRICULUM

- HB 391: Students must be allowed to take home any instructional materials used by the student, subject to availability.
- If the student does not have “reliable access to technology” at home, the school must provide materials in a written format.
- However, this does not require the purchase of printed copies of materials the district would not otherwise purchase.



Character Education

- HB 1026 makes this mandatory and adds “gratitude” as the 10th positive trait to be cultivated.
- The other nine: Courage, Trustworthiness, Integrity, Respect and Courtesy, Responsibility, Fairness, Caring, Good Citizenship, School Pride.
- What about humility?



History EOC Exam

- HB 1244 requires that it include 10 questions randomly selected from the civics test administered as part of the naturalization process.
- The questions must be aligned with the TEKS for the course.



Changes to STAAR

- HB 3906 establishes policy that 1) assessment instruments are as short as practicable; and 2) they minimize disruption to the educational program.
- Details are spelled out in the bill.



Other Curriculum Changes

- HB 539: Valedictorians of tiny schools are in!
- HB 678: Sign language is a LOTE.
- HB 2210: Students in state hospital accountability.
- HB 3435: Girls in STEM Day—March 1.
- SB 213: IGCs extended.
- SB 1276: How the MOU deals with dual credit.
- SB 1828: Holocaust Remembrance Week.



How Do You Feel About Math?

- If you don't like math SB 232 is for you: It says you don't have to take Algebra II, but you need to know the consequences of your cowardice. So you will be advised.
- If you do like math, SB 1374 is your bill: You can take Algebra I and Geometry at the same time. Holy Euclid!!



ATTENDANCE and ENROLLMENT

- HB 330 and 1051: Dropouts.
- HB 548: PEIMS and truancy.
- HB 1597: Military families—special rules for admission.
- HB 2190: Charters and their employees' kids.
- HB 2526: End of the “bedroom rule.”
- SB 1679: Pre-K continued eligibility.
- SB 1746: Who is “at risk”? Now 14 categories.



SPECIAL EDUCATION

- SB 139: Still making amends for the 8.5% debacle.
- TEA to develop a form of notice.
- Schools required to send it the parent of every child who is, or who has, attended the school in 2019-2020.



Other Special Education Bills

- HB 165: Endorsements available!
- HB 706: Audiology.
- HB 965: “Intellectual” disability—no more MR.
- HB 1709: Surrogates for kids in foster care.
- SB 54: Regional Day Schools to be studied.
- SB 522: VI students and braille.
- SB 2075: Audiobooks for kids at risk of dyslexia.



Perspective

- Let's remember some of the things that did not happen: vouchers. Bathroom bills.
- HB 3 made major improvements in school finance.
- From the perspective of public education, it was the best legislative session we have had in a long time.
- That happened because educators got involved.





Thank You!

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