Special Education Legal Update: New Legislation

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Special Populations
Allows a student receiving SpEd services to earn an endorsement on his/her transcript by successfully completing the curriculum requirements.

- Curriculum may be modified as long as the student’s ARDC determines it is sufficiently rigorous.
- ARDC can determine whether the student must achieve satisfactory performance on an EOC in order to earn an endorsement.
SB 281

- Replaces the terms “hearing impaired,” “auditory impairment,” and “speech impaired” in state law with “deaf” or “hard of hearing.”
Requires the IEP for a student with a visual impairment to include instruction in braille and the use of braille unless the student’s ARDC determines and documents that braille is not appropriate for the student.

Requires braille instruction to be provided by a teacher certified to teach students with visual impairments.
HB 965

- Replaces references to “mental retardation” in state law to “intellectual or developmental disability.”
Regarding students who are homeless or in substitute care, requires districts to notify the child’s educational decision-maker and caseworker as soon as practicable after a surrogate parent is appointed for the child.

- Allows districts to appoint a surrogate parent who is an employee of the state, but not an employee of TEA, the district, or any other agency involved in the child’s education or care.
Requires districts to notify the parent/guardian of each student determined to have dyslexia (following a screening) or determined to be at risk for dyslexia or other reading difficulties (based on reading instrument results) of the Texas State Library and Archives Commission’s audiobook program for students with reading disabilities.
HB 3703

- Allows certain qualified physicians to prescribe low-THC cannabis to patients diagnosed with:
  - Epilepsy;
  - Seizure disorders;
  - Multiple Sclerosis;
  - Spasticity;
  - Amyotrophic Lateral Sclerosis (ALS);
  - Autism;
  - Terminal cancer; or
  - An incurable neurodegenerative disease.
Student Discipline
Requires SCC to specify that before any order of ISS, OSS, DAEP placement, expulsion, or JJAEP placement is issued, the CBC will take the following circumstances into consideration:

- self-defense;
- intent or lack of intent at the time the student engaged in the conduct;
- a student’s disciplinary history;
- a disability that substantially impairs the student’s capacity to appreciate the wrongfulness of the student’s conduct;
- a student’s status in the conservatorship of DFPS; and
- a student’s status as a student who is homeless.
“AEP” includes DAEP, JJAEP, and government residential programs/facilities.

Outlines a transition process for a student’s return to a regular campus after AEP:

- Requires AEP administrators to provide campus administrators with a summary of a student’s academic growth while attending AEP and the results of any assessment instruments administered to the student in AEP upon the student’s transition back to campus;

- Requires campus administrators to seek input from the following individuals to create a transition plan for the student no later than five school days after the student is released from AEP:
  - School counselor
  - School peace officer
  - SRO
  - Licensed clinical social worker
  - CBC
  - Classroom teachers who are or may be responsible for implementing the transition plan; and
  - Any other appropriate school personnel.
A student’s transition plan from AEP to a campus must include recommendations for the best educational placement of the student.

A student’s transition plan may include:

- Recommendations for counseling, behavioral management, or academic assistance for the student suited to his/her academic or career goals;
- Recommendations for assistance for obtaining access to mental health services;
- The provision of information to the student’s parent/guardian about how to request a FIE for special education services; and
- A regular review of the student’s progress toward the student’s academic or career goals.

If practicable, the campus administrator must meet with the student’s parent/guardian to coordinate plans for the student’s transition.

Transition plan requirements apply only to students who are subject to compulsory attendance.
“Aversive technique” = 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, including:

- Techniques that are designed to or likely to cause physical pain (except corporal punishment as defined by TEC 37.0011);
- Techniques involving electric shock, pressure points, or joint locks;
- Releasing noxious, toxic, or otherwise unpleasant spray/mist/substance near a student’s face;
- Denying adequate sleep, air, food, water, shelter, bedding, physical comfort, or access to restroom;
- Ridiculing/demeaning a student in a manner that adversely affects or endangers the learning or mental health of the student (including verbal abuse);
- Immobilizing all of a student’s extremities (including prone or supine floor restraint);
- Impairing a student’s breathing by applying pressure to the student’s torso/neck or obstructing the student’s airway;
- Restricting a student’s circulation;
- Securing a student to a stationary object;
- Inhibiting, reducing, or hindering a student’s ability to communicate;
- Chemically restraining a student;
- Using timeout which precludes a student from being able to be involved in and progress appropriately in the required curriculum and, if applicable, toward the annual goals in the student’s IEP (including isolating the student by using physical barriers); and
- Depriving a student of the use of one or more of the student’s senses in a way that causes the student discomfort or pain (except where the conduct is permitted by the student’s IEP or BIP).
No district, district employee, volunteer, or independent contractor may apply an aversive technique to a student or authorize, order, or consent to anyone else applying an aversive technique to a student.

Teachers retain the right to remove students from class in accordance with TEC 37.002.

The Commissioner of Education will provide guidance on how to avoid a violation of the prohibition on aversive techniques in schools.
SB 2432

- Adds certain types of prohibited harassment of a school employee to the list of mandatory DAEP offenses in TEC 37.006:
  - Initiating communication and in the course of the communication making an obscene comment/request/suggestion/proposal;
  - Threatening to inflict bodily injury or commit a felony against a person or the person's family or property, if the threat is reasonably likely to alarm the person receiving the threat;
  - Conveying a false report that another person has suffered death or serious bodily injury, if the report is reasonably likely to alarm the person receiving the threat; and
  - Sending repeated electronic communications in a manner that is reasonably likely to harass, annoy, alarm, abuse, torment, embarrass, or offend another.
HB 3012

- Requires district to provide an alternative means for a student to receive coursework while the student is in ISS or OSS.
  - At least one option must be feasible without the use of the internet.
- Requires juvenile boards to order students who are expelled for making a terroristic threat to attend JJAEP.
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