

§89.1053. Procedures for Use of Restraint and Time-Out.

(a) Requirement to implement. In addition to the requirements of 34 Code of Federal Regulations (CFR), §300.346(a)(2)(i) and (c), school districts and charter schools must implement the provisions of this section regarding the use of restraint and time-out. In accordance with the provisions of Texas Education Code (TEC), §37.0021 (Use of Confinement, Restraint, Seclusion, and Time-Out), it is the policy of the state to treat all students with dignity and respect.

(b) Definitions.

(1) Emergency means a situation in which a student's behavior poses a threat of:

(A) imminent, serious physical harm to the student or others; or

(B) imminent, serious property destruction.

(2) Restraint means the use of physical force or a mechanical device to restrict the free movement of all or a portion of the student's body.

(3) Time-out means a behavior management technique in which, to provide a student with an opportunity to regain self-control, the student is separated from other students for a limited period in a setting:

(A) that is not locked; and

(B) from which the student is not physically prevented from leaving.

(c) Use of restraint. A school employee, volunteer, or independent contractor may use restraint only in an emergency as defined in subsection (b) of this section and with the following limitations.

(1) Restraint shall be limited to the use of such reasonable force as is necessary to address the emergency.

(2) Restraint shall be discontinued at the point at which the emergency no longer exists.

(3) Restraint shall be implemented in such a way as to protect the health and safety of the student and others.

(4) Restraint shall not deprive the student of basic human necessities.

(d) Training on use of restraint. Training for school employees, volunteers, or independent contractors shall be provided according to the following requirements.

(1) Not later than April 1, 2003, a core team of personnel on each campus must be trained in the use of restraint, and the team must include a campus administrator or designee and any general or special education personnel likely to use restraint.

(2) After April 1, 2003, personnel called upon to use restraint in an emergency and who have not received prior training must receive training within 30 school days following the use of restraint.

(3) Training on use of restraint must include prevention and de-escalation techniques and provide alternatives to the use of restraint.

(4) All trained personnel shall receive instruction in current professionally accepted practices and standards regarding behavior management and the use of restraint.

(e) Documentation and notification on use of restraint. In a case in which restraint is used, school employees, volunteers, or independent contractors shall implement the following documentation requirements.

(1) On the day restraint is utilized, the campus administrator or designee must be notified verbally or in writing regarding the use of restraint.

(2) On the day restraint is utilized, a good faith effort shall be made to verbally notify the parent(s) regarding the use of restraint.

(3) Written notification of the use of restraint must be placed in the mail or otherwise provided to the parent within one school day of the use of restraint.

(4) Written documentation regarding the use of restraint must be placed in the student's special education eligibility folder in a timely manner so the information is available to the ARD committee when it considers the impact of the student's behavior on the student's learning and/or the creation or revision of a behavioral intervention plan (BIP).

(5) Written notification to the parent(s) and documentation to the student's special education eligibility folder shall include the following:

(A) name of the student;

(B) name of the staff member(s) administering the restraint;

(C) date of the restraint and the time the restraint began and ended;

(D) location of the restraint;

(E) nature of the restraint;

(F) a description of the activity in which the student was engaged immediately preceding the use of restraint;

(G) the behavior that prompted the restraint;

(H) the efforts made to de-escalate the situation and alternatives to restraint that were attempted; and

(I) information documenting parent contact and notification.

(f) Clarification regarding restraint. For the purposes of subsections (c)-(e) of this section, restraint does not include the use of:

(1) physical contact or appropriately prescribed adaptive equipment to promote normative body positioning and/or physical functioning;

(2) limited physical contact with a student to promote safety (e.g., holding a student's hand), prevent a potentially harmful action (e.g., running into the street), teach a skill, or provide comfort;

(3) limited physical contact or appropriately prescribed adaptive equipment to prevent a student from engaging in ongoing, repetitive self-injurious behaviors; or

(4) seat belts and other safety equipment used to secure students during transportation.

(g) Use of time-out. A school employee, volunteer, or independent contractor may use time-out in accordance with subsection (b)(3) of this section with the following limitations.

(1) Physical force or threat of physical force shall not be used to place a student in time-out.

(2) Time-out may only be used in conjunction with an array of positive behavior intervention strategies and techniques and must be included in the student's individualized education program (IEP) and/or BIP if it is utilized on a recurrent basis to increase or decrease a targeted behavior.

(3) Use of time-out shall not be implemented in a fashion that precludes the ability of the student to be involved in and progress in the general curriculum and advance appropriately toward attaining the annual goals specified in the student's IEP.

(h) Training on use of time-out. Training for school employees, volunteers, or independent contractors shall be provided according to the following requirements.

(1) Not later than April 1, 2003, general or special education personnel who implement time-out based on requirements established in a student's IEP and/or BIP must be trained in the use of time-out.

(2) After April 1, 2003, newly-identified personnel called upon to implement time-out based on requirements established in a student's IEP and/or BIP must receive training in the use of time-out within 30 school days of being assigned the responsibility for implementing time-out.

(3) Training on the use of time-out must be provided as part of a program which addresses a full continuum of positive behavioral intervention strategies, and must address the impact of time-out on the ability of the student to be involved in and progress in the general curriculum and advance appropriately toward attaining the annual goals specified in the student's IEP.

(4) All trained personnel shall receive instruction in current professionally accepted practices and standards regarding behavior management and the use of time-out.

(i) Documentation on use of time-out. Necessary documentation or data collection regarding the use of time-out, if any, must be addressed in the IEP or BIP. The admission, review, and dismissal (ARD) committee must use any collected data to judge the effectiveness of the intervention and provide a basis for making determinations regarding its continued use.

(j) Student safety. Any behavior management technique and/or discipline management practice must be implemented in such a way as to protect the health and safety of the student and others. No discipline management practice may be calculated to inflict injury, cause harm, demean, or deprive the student of basic human necessities.

(k) Data collection requirement. Beginning with the 2003-2004 school year, with the exception of actions covered by subsection (f) of this section, cumulative data regarding the use of restraint must be reported through the Public Education Information Management System (PEIMS).

Source: The provisions of the §89.1053 adopted to be effective August 1, 2002, 27 TexReg 3061.
