

**A REVIEW OF THE SPECIAL  
EDUCATION/STUDENT BILLS  
85<sup>TH</sup> LEGISLATURE'S  
REGULAR SESSION – 2017**

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# SB 179: “David’s Law”

- This bill made revisions to existing law related to harassment, bullying, and cyberbullying of a public school student or minor.
- Previously: bullying involved a pattern of misbehavior.
  - Now: “a single significant act or a pattern of acts by one or more students directed at another student that exploits an imbalance of power and involves...engaging in written or verbal expression, expression through electronic means, or physical conduct...”
- Previously: the effect of such bullying required that there be an effect on the target student: physical harm, or the threat of it; damage to property; or an “intimidating, threatening, or abusive educational environment.”
  - Now: The behavior can also be “bullying” if it “materially and substantially disrupts the educational process or the orderly operation of a classroom or school; or infringes on the rights of the victim at school.”

# SB 179: Cyberbullying is Specifically Added

- Bullying always included “electronic” misconduct
- This bill explicitly adds “cyberbullying” to the bullying laws
  - ▣ The term “means bullying that is done through the use of any electronic communication device, including through the use of a cellular or other type of telephone, a computer, a camera, electronic mail, instant messaging, text messaging, a social media application, an Internet website, or any other Internet-based communication tool.”

# SB 179: Where the Bullying Occurs

- Now bullying can be punished if it:
  - “occurs on or is delivered to” school property or at a school-sponsored or school-related activity on or off school property;
  - occurs on a school bus or vehicle being used for transportation of students to or from school or a school-sponsored or school-related activity; and
  - it is cyberbullying that occurs off school property or outside of a school-sponsored or school-related activity, but only if it:
    - interferes with a student ’s educational opportunities; or
    - substantially disrupts the orderly operation of a classroom, school, or school-sponsored or school-related activity.

# SB 179: Notice to Parents of the Target Student

- Starting September 1, 2017, notice of alleged bullying must be given to the parent of the target student on or before the third business day after the incident is reported.
- The alleged bully's parent is to be notified within a "reasonable time."
- Chapter 37 is amended to allow for expulsion or DAEP for a student who 1) engages in bullying that encourages suicide; 2) incites violence through group bullying; or 3) releases or threatens to release "intimate visual material" of a minor or an adult student without consent.

# SB 7: Other Provisions

- District policy must be revised to allow students to anonymously report bullying
- The bill amends Chapter 37 to allow for expulsion or DAEP for a student who 1) engages in bullying that encourages suicide; 2) incites violence through group bullying; or 3) releases or threatens to release “intimate visual material” of a minor or an adult student without consent.
  - Open enrollment charter schools must also adopt anti-bullying policies and can enact the above disciplinary penalties.
- School counselors’ duties will now include serving as an “impartial, nonreporting conciliator for interpersonal conflicts and discord involving two or more students arising out of accusations of bullying.”
  - “Nonreporting” in this context means that the counselor does not report to law enforcement. However, other reports, such as for suspected child abuse, may be necessary.

# SB 179: Law Enforcement

- After a bullying investigation is completed, the principal may report to law enforcement if the principal has reasonable grounds to believe that a student has engaged in assault or harassment.
  - “Harassment” in this context means sending repeated e-communications in a manner likely to “harass, annoy, alarm, abuse, torment, embarrass or offend another.”
  - Criminal penalties have been enhanced for harassment by e-communication that is done with the intent that the target student will commit suicide or engage in conduct causing serious bodily injury to self.
- This duty can be delegated to another employee supervised by the Principal, but not the school counselor.
- Principals are immune from liability and from disciplinary action when making such a law enforcement report.

# SB 179: Mental Health Provisions

- The law amends the Health and Safety Code to authorize schools to develop practices and procedures regarding mental health, including “grief-informed and trauma-informed” practices, and skills related to managing emotions, establishing and maintaining positive relationships, and responsible decision-making.”
- TEA is tasked with creating a website providing resources for educators working with students with mental health conditions, and continuing education for teachers and administrators may include information about how grief and trauma affect students.



# SB 179: Injunctive Relief for Parents

- SB 179 allows parents or students to seek injunctive relief from a court to stop and/or prevent cyberbullying of a minor.
- This relief could be against the student bully, or the parents of a bully who is under 18.
- Though this provision does not specifically apply to school districts, it could affect districts.

# SB 1398: Special Education Cameras

- This bill was aimed at cleaning up the 2015 legislation.
- It clarifies that:
  - A request to install cameras must be in writing.
  - A parent's request applies only to the classroom in which the parent's child is served, not the entire campus.
  - The only staff members who can make a request are the principal, the assistant principal, and others who are assigned to work in the self-contained classroom or other special education settings.
  - Only the board as a whole—not individual board members—can make a request.
- A board, principal, or assistant principal requestor may limit the request to specific classrooms or settings.

# SB 1398: Who Receives the Requests?

- An administrator at “the primary administrative office of the district or school” will be designated with responsibility for coordinating the provision of equipment to schools and campuses.
- Requestors and related actions:
  - A parent, staff member, or assistant principal must submit a request to the principal or the principal’s designee of the school or campus addressed in the request, and the principal or designee must provide a copy of the request to the designated district administrator.
  - A principal must submit a request to the designated district administrator.
  - A board of trustees or governing body must submit a request to the designated district administrator who must then provide a copy of the request to the principal or the principal's designee of the school or campus addressed in the request.

# SB 1398: How Long Must the Cameras Stay?

- Once installed, the camera stays in place for the rest of the school year, and for the extended school year, as long as the classroom continues to qualify as a setting in which cameras can be placed, unless the requestor withdraws the request in writing.
  - The camera need not operate when students are not present.
- If the district discontinues operation of the camera during a school year, five days notice must be given to each parent in that classroom.
- At least 10 school days prior to the end of the year, the school must give notice to each parent that the cameras will not operate next year unless a new request is filed.

# SB 1398: Who Can View the Tapes?

- An employee or the parent of a student “who is involved in an alleged incident” may view the recording upon request.
- Department of Family and Protective Services personnel as part of an abuse investigation, or SBEC in an authorized investigation.
- A peace officer, school nurse, district/school administrator trained in de-escalation and restraint techniques, or a designated HR staff member responding to a report of an alleged incident, or a district/school administrator who is investigating an employee or report of alleged abuse by a student.
- A contractor or employee performing job duties relating to the installation, operation, or maintenance of video equipment, or the retention of video recordings, may “incidentally view[] a video recording.”

# SB 1398: Retention of Footage

- As a general rule, videos must be maintained for three months.
  - Previously this was a six month retention period.
- If a request to view the video is made, then the video must be retained “until the person has viewed the recording and a determination has been made as to whether the recording documents an alleged incident.”
- If the recording documents an alleged incident, the recording must be retained “until the alleged incident has been resolved, including the exhaustion of all appeals.”
- An employee or the parent of a student “who is involved in an alleged incident” may view the recording upon request.

# HB 674: Limited OSS for Students Under 3<sup>rd</sup> Grade

- A student enrolled in “a grade level below grade three” may not be placed in out-of-school suspension unless, while on school property or while attending a school-sponsored or school-related activity on or off of school property, the student engages in:
  - (1) certain conduct related to weapons .
  - (2) conduct that contains the elements of a violent offense.
  - (3) selling, giving, or delivering to another person or possessing, using, or being under the influence of any amount of:
    - (A) marijuana or a controlled substance
    - (B) a dangerous drug; or
    - (C) an alcoholic beverage, as defined.
- District has the option of developing, in consultation with district campus behavior coordinators or ESC representatives, a disciplinary alternative for a student enrolled in a grade level below grade three who engages in conduct that might otherwise result in OSS (excluding the conduct above).

# HB 1935: “Location-Restricted Knives”

- Previously: Penal Code section 46.01 defined an illegal knife as a knife with a blade of over five and one-half inches, a hand instrument designed to cut or stab another by being thrown, a dagger, dirk, stiletto, poniard, bowie knife, sword or spear.
- Now: A location-restricted knife is simply a knife with a blade of over five and one-half inches.
- New Class C misdemeanor offenses related to location-restricted knives include:
  - A minor intentionally, knowingly, or recklessly carrying on or about his or her person a location-restricted knife, while not on the minor’s own premises or inside or directly en route to a motor vehicle or watercraft under the minor’s control, and not under direct supervision of a parent or legal guardian; and
  - A person intentionally, knowingly, or recklessly possessing or going with a location-restricted knife in certain places, including on the premises where a high school, collegiate, or professional sporting event or interscholastic event is taking place, unless the person is a participant in the event and a location-restricted knife is used in the event.
- It remains a third degree felony to intentionally, knowingly, or recklessly possess or go with a location-restricted knife on the physical premises of a school or educational institution, any grounds or building on which a school-or institution-sponsored activity is taking place, or a school or institution passenger transportation vehicle, whether the school or institution is public or private, unless pursuant to written authorization.



# SB 1152: Student Absences for Military Enlistment

- Under this revision to Section 25.087 of the Education Code, a school district must excuse a student who is 17 or older from attending school “to pursue enlistment in a branch of the armed services of the United States or the Texas National Guard.”
- The absences cannot exceed four days during the student’s entire high school enrollment.
- The district must verify that the student was indeed pursuing enlistment in the armed services or Texas National Guard.

# SB 489: E-Cigarette Instruction

- Now, the local school health advisory council's duties also include recommending policies, procedures, strategies, and instruction to prevent the use of e-cigarettes.

# HB 3024: Additions to Concussion Protocol

- Previously: Students must be immediately removed from an interscholastic athletics practice or competition if one of the following believe the student might have sustained a concussion:
  - a coach
  - a physician
  - a licensed health care professional
- Now: the following individuals are added to that list:
  - a licensed chiropractor
  - the student's parent or guardian or another person with legal authority to make medical decisions for the student

# HB 2537: Higher Ed Counseling for Foster Kids

- Counselors are already required to provide certain postsecondary education information to students and students' parent or guardian.
- Now counseling must include information about the availability of education and training vouchers, and tuition and fee waivers to attend an institution of higher education for students who are or were in the conservatorship of the Department of Family and Protective Services.

# SB 725: Campus Donations of Food

- This law permits a school district or open-enrollment charter school to allow a campus to elect to donate food to a nonprofit organization directly affiliated with the campus through an official for the non-profit, which can include a teacher, counselor, or parent of a student enrolled at the campus.
- Food that can be donated by the campus includes:
  - ▣ surplus food prepared for breakfast, lunch, or dinner meals, or snacks to be served at the campus cafeteria
  - ▣ food donated to the campus as the result of a food drive or similar event
- The donated food “may be distributed at the campus at any time.”
- Campus employees are also allowed to assist in preparing and distributing the food “as volunteers for the nonprofit organization.”

# SB 160: Eliminates TEA Monitoring Based on % of Special Education Services

- This prohibits TEA and the Commissioner of Education from adopting or implementing a performance indicator that solely measures a school district's aggregated number or percentage of enrolled students who receive special education services.
- This also ends the controversial PBMAS indicator that targeted any district that identified more than 8.5% of its kids as receiving special education services.

# HB 657: STAARs and ARDCs

- When a student in special education fails to perform satisfactorily on a STAAR test, this bill requires the ARDC to meet before a STAAR test is administered to the student a second time to determine the manner in which the student will participate in an accelerated instruction program and whether the student will be promoted to the next grade level.
- The school district may promote the student to the next grade level without a second test if the ARDC determines the student is making sufficient progress in the IEP goals.
- No later than September 1 of each school year, a district must notify the parent, or person standing in parental relation, of each student enrolled in special education of the ARDC's options under this law if the student does not perform satisfactorily on an assessment instrument.

# HB 2130: Study of Statewide Assessment on Special Education Students

- Requires TEA to conduct a study on the impact of the statewide assessment program on students in special education.
- Study must address:
  - ▣ Whether assessments comply with the Every Student Succeeds Act
  - ▣ How assessments impact academic progress and higher education opportunities
  - ▣ The impact of exempting special education students from assessment instruments



# SB 1153: Intervention Strategies

- Beginning in the 2017-2018 school year, and each school year after, a school district must notify a parent of each child, *other than a child enrolled in a special education program*, who receives assistance from the district for learning difficulties, including through the use of intervention strategies, that the district provides that assistance to the child.
  - The notice must be provided when the child begins to receive the assistance for that year. The notice must be in writing, and provided in the parent's native language "to the extent practicable."
  - It has certain mandatory elements.
- Parents have a right to see "records relating to assistance provided for learning difficulties, including information collected regarding any intervention strategies used with the child."
- "Intervention strategy" is defined as: a strategy in a multi-tiered system of supports that is above the level of intervention generally used in that system with all children. The term includes response to intervention and other early intervening strategies.
- Requires PEIMS reporting on the total number of students served through 504, and, separately, the number of students with whom the district used "intervention strategies."

# HB 1886: Dyslexia Screening & Transition Services

- In addition to testing, this requires screening for dyslexia and related disorders “at the end of the school year of each student in kindergarten and each student in the first grade.”
- Once a student is identified as having dyslexia, or is receiving accommodations due to dyslexia, the school may not re-screen or re-test the student for dyslexia without first reevaluating the information from the original screening/testing. There is an exception to this general rule if the second testing is required by law—presumably to allow a full individual evaluation under IDEA.
- The bill also strengthens transition services for students with dyslexia, requiring the ARDC to consider, and address in the student’s IEP if appropriate, specific aspects of planning the student’s transition to life after public school, including appropriate parental involvement in the transition.
- Newly added Education Code section 29.011(a-1) requires a student’s ARDC to annually review the transition planning and to update the IEP if necessary.

# SB 2080: PEIMS Tracking

- Under this bill, the Commissioner will develop rules for school districts and open-enrollment charter schools to include in the PEIMS report the number of children with disabilities residing in a residential facility who:
  - ▣ are required to be tracked by the Residential Facility Monitoring (RFM) System; and
  - ▣ receive educational services from the district or school.

# HB 1645: Letters for Special Olympics

- If a school district allows high school students to earn a letter for academic, athletic, or extracurricular achievements, this bill requires the district to allow high school students in the district to earn a letter on the basis of participation in a Special Olympics event.

# SB 2141: Ethics for Paid Advocates

- Under this new law, any non-lawyer representative who is paid for representing someone in an impartial due process hearing must agree to abide by a voluntary code of ethics and professional conduct during the course of representation.
  - The “voluntary code of ethics and professional conduct” will be developed by the Commissioner.
- The representative and the person who is the subject of the special education due process hearing must also enter into a written representation agreement and include in the agreement a process for resolving disputes between the representative and “client.”

# HB 441: No School on Memorial Day, Ever

- Prohibits school districts from administering student instruction on Memorial Day.
- If the district wishes to use Memorial Day to compensate for instruction time lost due to school closures, the Commissioner must approve fewer instructional minutes so that instruction does not occur on that day.

# HB 3632: Tolling of Hearing Timelines

- Extends the statute of limitations period for requesting a special education due process hearing if the parent is an active-duty service member.
- The Commissioner shall adopt rules to implement this section.

# SB 748: Transition Planning

- Allows the participation of persons other than the student's parents if they are invited by the student's parents or the district in which the student is enrolled.
- For students who are at least 18 years of age, the parents may continue to participate in transition planning if invited by the student or the school, or have the student's consent to participate through a Supported Decision-Making Agreement.



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