

BILL ANALYSIS

C.S.H.B. 2616
By: Giddings
Public Education
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties note that students who are suspended are more likely to drop out of high school, experience academic failure and grade retention, hold negative school attitudes, and face incarceration. C.S.H.B. 2616 seeks to address this issue in part by eliminating discretionary out-of-school suspensions of students enrolled in a grade level below grade three at a public school or open-enrollment charter school.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the commissioner of education in SECTION 5 of this bill.

ANALYSIS

C.S.H.B. 2616 amends the Education Code to prohibit a student enrolled in a public school in a grade level below grade three from being placed in out-of-school suspension. The bill requires the commissioner of education by rule to establish minimum standards for behavior management techniques that may be used for such a student as an alternative to placing the student in out-of-school suspension and requires the standards to require a behavior management technique to be a positive behavior support that is age appropriate and research based. The bill requires the Texas Education Agency (TEA) to develop a database of positive behavior support systems that satisfy those standards and to make the database available to each public school district and open-enrollment charter school.

C.S.H.B. 2616 requires each district to develop and implement for students enrolled in a grade level below grade three a positive behavior program that is age appropriate and research based, that models positive behaviors, that promotes a positive school climate, that uses only behavior management techniques that comply with the established minimum standards, that does not rely on the use of out-of-school suspensions or placements in a disciplinary alternative education program as a means of managing problematic behavior, and that includes behavior management strategies such as positive behavioral interventions and supports, trauma-informed practices, social and emotional learning, referral services, and restorative practices. The bill requires each district to develop and implement an early detection and prevention program to address the needs of such students who are experiencing behavioral or disciplinary challenges, with the program designed to provide appropriate evaluations, services, and supports to the student and the student's family. The bill requires a positive behavior program or an early detection and prevention program to include methods for improving in-school suspension by incorporating behavior management techniques that comply with the minimum standards established by the

bill's provisions. The bill authorizes a district, in developing such a program, to request assistance from a regional education service center. The bill requires each district to submit to TEA written procedures detailing the implementation of each such program not later than September 1, 2018; to make the procedures publicly available; and to train educators and other student support staff as necessary to implement the required programs. The bill authorizes the commissioner to adopt rules as necessary to implement these provisions concerning the programs.

C.S.H.B. 2616 changes the type of training relating to instruction of students with disabilities by educators who work primarily outside the area of special education included in the staff development provided by a school district from training that is based on scientifically based research, as defined by the federal No Child Left Behind Act, to training that is evidence-based, as defined by the federal Every Student Succeeds Act. The bill also requires the staff development provided by a school district to include training for educators who work with students enrolled in a grade level below grade three on the positive behavior and early detection prevention programs required by the bill. The bill subjects an open-enrollment charter school to discipline management practices or behavior management techniques established by the bill, including staff development training on the bill's positive behavior and early detection prevention programs.

C.S.H.B. 2616 authorizes the commissioner, in a manner determined appropriate by the commissioner, to sanction a district or charter school that permits a student enrolled in a grade level below grade three to be placed in out-of-school suspension unless the suspension is otherwise authorized or that fails to comply with a requirement under the bill's provisions concerning positive behavior and early detection and prevention programs.

C.S.H.B. 2616 reenacts and amends Section 37.001(a), Education Code, as amended by Chapters 487 (S.B. 1541) and 1409 (S.B. 1114), Acts of the 83rd Legislature, Regular Session, 2013, to conform to changes made by the latter act and to require the student code of conduct adopted by each independent school district board of trustees to state that a student enrolled in a grade level below grade three may not be placed in out-of-school suspension except as otherwise authorized. The bill also specifies that, with regard to the provision of methods and options for disciplining students in the student code of conduct, such methods and options include disciplining students enrolled in a grade level below grade three using behavior management techniques that comply with the minimum standards established by the bill as an alternative to out-of-school suspension.

C.S.H.B. 2616 applies beginning with the 2018-2019 school year.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2616 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED	HOUSE COMMITTEE SUBSTITUTE
SECTION 1. Section 12.104(b), Education Code, is amended.	SECTION 1. Same as introduced version.
SECTION 2. Section 21.451(d), Education Code, is amended to read as follows:	SECTION 2. Section 21.451(d), Education Code, is amended to read as follows:

(d) The staff development:
 (1) may include training in:
 (A) technology;
 (B) conflict resolution;
 (C) discipline strategies, including classroom management, district discipline policies, and the student code of conduct adopted under Section 37.001 and Chapter 37; and
 (D) preventing, identifying, responding to, and reporting incidents of bullying;
 (2) subject to Subsection (e) and to Section 21.3541 and rules adopted under that section, must include training that is evidence-based [~~based on scientifically based research~~], as defined by Section 8101, Every Student Succeeds Act [~~9101, No Child Left Behind Act of 2001~~] (20 U.S.C. Section 7801), and that:
 (A) relates to instruction of students with disabilities; and
 (B) is designed for educators who work primarily outside the area of special education; [~~and~~]
 (3) must include suicide prevention training that must be provided:
 (A) on an annual basis, as part of a new employee orientation, to all new school district and open-enrollment charter school educators; and
 (B) to existing school district and open-enrollment charter school educators on a schedule adopted by the agency by rule; and
 (4) notwithstanding Subdivision (1)(C), must include for educators who work with students enrolled in a grade level below grade four training on the positive behavior and early detection prevention programs under Section 37.0183.

SECTION 3. Section 37.001(a), Education Code, as amended by Chapters 487 (S.B. 1541) and 1409 (S.B. 1114), Acts of the 83rd Legislature, Regular Session, 2013, is reenacted and amended to read as follows:

(a) The board of trustees of an independent school district shall, with the advice of its district-level committee established under Subchapter F, Chapter 11, adopt a student code of conduct for the district. The student code of conduct must be posted and prominently displayed at each school campus or made available for review at the office of the campus principal. In addition to establishing standards for student conduct,

(d) The staff development:
 (1) may include training in:
 (A) technology;
 (B) conflict resolution;
 (C) discipline strategies, including classroom management, district discipline policies, and the student code of conduct adopted under Section 37.001 and Chapter 37; and
 (D) preventing, identifying, responding to, and reporting incidents of bullying;
 (2) subject to Subsection (e) and to Section 21.3541 and rules adopted under that section, must include training that is evidence-based [~~based on scientifically based research~~], as defined by Section 8101, Every Student Succeeds Act [~~9101, No Child Left Behind Act of 2001~~] (20 U.S.C. Section 7801), and that:
 (A) relates to instruction of students with disabilities; and
 (B) is designed for educators who work primarily outside the area of special education; [~~and~~]
 (3) must include suicide prevention training that must be provided:
 (A) on an annual basis, as part of a new employee orientation, to all new school district and open-enrollment charter school educators; and
 (B) to existing school district and open-enrollment charter school educators on a schedule adopted by the agency by rule; and
 (4) notwithstanding Subdivision (1)(C), must include for educators who work with students enrolled in a grade level below grade three training on the positive behavior and early detection prevention programs under Section 37.0183.

SECTION 3. Section 37.001(a), Education Code, as amended by Chapters 487 (S.B. 1541) and 1409 (S.B. 1114), Acts of the 83rd Legislature, Regular Session, 2013, is reenacted and amended to read as follows:

(a) The board of trustees of an independent school district shall, with the advice of its district-level committee established under Subchapter F, Chapter 11, adopt a student code of conduct for the district. The student code of conduct must be posted and prominently displayed at each school campus or made available for review at the office of the campus principal. In addition to establishing standards for student conduct,

the student code of conduct must:

- (1) specify the circumstances, in accordance with this subchapter, under which a student may be removed from a classroom, campus, disciplinary alternative education program, or vehicle owned or operated by the district;
- (2) specify conditions that authorize or require a principal or other appropriate administrator to transfer a student to a disciplinary alternative education program;
- (3) outline conditions under which a student may be suspended as provided by Section 37.005 or expelled as provided by Section 37.007;
- (4) specify that consideration will be given, as a factor in each decision concerning suspension, removal to a disciplinary alternative education program, expulsion, or placement in a juvenile justice alternative education program, regardless of whether the decision concerns a mandatory or discretionary action, to:
 - (A) self-defense;
 - (B) intent or lack of intent at the time the student engaged in the conduct;
 - (C) a student's disciplinary history; or
 - (D) a disability that substantially impairs the student's capacity to appreciate the wrongfulness of the student's conduct;
- (5) state that a student enrolled in a grade level below grade four may not be suspended except as authorized by this subchapter;
- (6) provide guidelines for setting the length of a term of:
 - (A) a removal under Section 37.006; and
 - (B) an expulsion under Section 37.007;
- (7) ~~(6)~~ address the notification of a student's parent or guardian of a violation of the student code of conduct committed by the student that results in suspension, removal to a disciplinary alternative education program, or expulsion;
- (8) ~~(7)~~ prohibit bullying, harassment, and making hit lists and ensure that district employees enforce those prohibitions; and
- (9) ~~(8)~~ provide, as appropriate for students at each grade level, methods, including options, for:
 - (A) managing students in the classroom, on school grounds, and on a vehicle owned or operated by the district;
 - (B) disciplining students, including disciplining students enrolled in a grade level below grade four using behavior

the student code of conduct must:

- (1) specify the circumstances, in accordance with this subchapter, under which a student may be removed from a classroom, campus, disciplinary alternative education program, or vehicle owned or operated by the district;
- (2) specify conditions that authorize or require a principal or other appropriate administrator to transfer a student to a disciplinary alternative education program;
- (3) outline conditions under which a student may be suspended as provided by Section 37.005 or expelled as provided by Section 37.007;
- (4) specify that consideration will be given, as a factor in each decision concerning suspension, removal to a disciplinary alternative education program, expulsion, or placement in a juvenile justice alternative education program, regardless of whether the decision concerns a mandatory or discretionary action, to:
 - (A) self-defense;
 - (B) intent or lack of intent at the time the student engaged in the conduct;
 - (C) a student's disciplinary history; or
 - (D) a disability that substantially impairs the student's capacity to appreciate the wrongfulness of the student's conduct;
- (5) state that a student enrolled in a grade level below grade three may not be placed in out-of-school suspension except as authorized by this subchapter;
- (6) provide guidelines for setting the length of a term of:
 - (A) a removal under Section 37.006; and
 - (B) an expulsion under Section 37.007;
- (7) ~~(6)~~ address the notification of a student's parent or guardian of a violation of the student code of conduct committed by the student that results in suspension, removal to a disciplinary alternative education program, or expulsion;
- (8) ~~(7)~~ prohibit bullying, harassment, and making hit lists and ensure that district employees enforce those prohibitions; and
- (9) ~~(8)~~ provide, as appropriate for students at each grade level, methods, including options, for:
 - (A) managing students in the classroom, on school grounds, and on a vehicle owned or operated by the district;
 - (B) disciplining students, including disciplining students enrolled in a grade level below grade three using behavior

management techniques that comply with the minimum standards established under Section 37.0182 as an alternative to suspension; and

(C) preventing and intervening in student discipline problems, including bullying, harassment, and making hit lists.

SECTION 4. Section 37.005, Education Code, is amended by adding Subsection (c) to read as follows:

(c) A student enrolled in a grade level below grade four may not be suspended.

SECTION 5. Subchapter A, Chapter 37, Education Code, is amended by adding Sections 37.0182, 37.0183, and 37.023 to read as follows:

Sec. 37.0182. APPROPRIATE BEHAVIOR MANAGEMENT TECHNIQUES FOR CERTAIN STUDENTS. (a) The commissioner by rule shall establish minimum standards for behavior management techniques that may be used for a student enrolled in a grade level below grade four as an alternative to suspending the student under Section 37.005. The standards must require a behavior management technique to be a positive behavior support that is age appropriate and research based.

(b) The agency shall develop a database of positive behavior support systems that satisfy the standards established under Subsection (a) and make the database available to each school district and open-enrollment charter school.

Sec. 37.0183. POSITIVE BEHAVIOR AND EARLY DETECTION AND PREVENTION PROGRAMS FOR CERTAIN STUDENTS. (a) Each school district shall develop and implement for students enrolled in a grade level below grade four a positive behavior program that:

- (1) is age appropriate and research based;
- (2) models positive behaviors;
- (3) promotes a positive school climate;
- (4) uses only behavior management techniques that comply with the minimum standards established under Section 37.0182;
- (5) does not rely on the use of suspensions or placements in a disciplinary alternative

management techniques that comply with the minimum standards established under Section 37.0182 as an alternative to out-of-school suspension; and

(C) preventing and intervening in student discipline problems, including bullying, harassment, and making hit lists.

SECTION 4. Section 37.005, Education Code, is amended by adding Subsection (c) to read as follows:

(c) A student enrolled in a grade level below grade three may not be placed in out-of-school suspension.

SECTION 5. Subchapter A, Chapter 37, Education Code, is amended by adding Sections 37.0182, 37.0183, and 37.023 to read as follows:

Sec. 37.0182. APPROPRIATE BEHAVIOR MANAGEMENT TECHNIQUES FOR CERTAIN STUDENTS. (a) The commissioner by rule shall establish minimum standards for behavior management techniques that may be used for a student enrolled in a grade level below grade three as an alternative to placing the student in out-of-school suspension under Section 37.005. The standards must require a behavior management technique to be a positive behavior support that is age appropriate and research based.

(b) The agency shall develop a database of positive behavior support systems that satisfy the standards established under Subsection (a) and make the database available to each school district and open-enrollment charter school.

Sec. 37.0183. POSITIVE BEHAVIOR AND EARLY DETECTION AND PREVENTION PROGRAMS FOR CERTAIN STUDENTS. (a) Each school district shall develop and implement for students enrolled in a grade level below grade three a positive behavior program that:

- (1) is age appropriate and research based;
- (2) models positive behaviors;
- (3) promotes a positive school climate;
- (4) uses only behavior management techniques that comply with the minimum standards established under Section 37.0182;
- (5) does not rely on the use of out-of-school suspensions or placements in a disciplinary

education program as a means of managing problematic behavior; and
(6) includes behavior management strategies such as positive behavioral interventions and supports, trauma-informed practices, social and emotional learning, referral services, and restorative practices.
(b) Each school district shall develop and implement an early detection and prevention program to address the needs of students enrolled in a grade level below grade four who are experiencing behavioral or disciplinary challenges. The program must be designed to provide appropriate evaluations, services, and supports to the student and the student's family.

(c) In developing a program under Subsection (a) or (b), a school district may request assistance from a regional education service center.

(d) Each school district shall:

(1) submit to the agency for review written procedures detailing the implementation of each program under this section;

(2) after agency review of the procedures under Subdivision (1), make the procedures publicly available; and

(3) train educators and other student support staff as necessary to implement the programs as required by this section.

(e) The commissioner may adopt rules as necessary to implement this section.

Sec. 37.023. SANCTIONS FOR CERTAIN VIOLATIONS. (a) The commissioner shall sanction, in a manner determined appropriate by the commissioner, a school district or open-enrollment charter school that:

(1) permits a student enrolled in a grade level below grade four to be suspended unless the suspension is authorized by this subchapter; or

(2) fails to comply with a requirement under Section 37.0183.

(b) The commissioner may adopt rules as necessary to implement this section.

SECTION 6. This Act applies beginning with the 2017-2018 school year.

alternative education program as a means of managing problematic behavior; and
(6) includes behavior management strategies such as positive behavioral interventions and supports, trauma-informed practices, social and emotional learning, referral services, and restorative practices.

(b) Each school district shall develop and implement an early detection and prevention program to address the needs of students enrolled in a grade level below grade three who are experiencing behavioral or disciplinary challenges. The program must be designed to provide appropriate evaluations, services, and supports to the student and the student's family.

(c) A program under Subsection (a) or (b) must include methods for improving in-school suspension by incorporating behavior management techniques that comply with the minimum standards established under Section 37.0182.

(d) In developing a program under Subsection (a) or (b), a school district may request assistance from a regional education service center.

(e) Each school district shall:

(1) submit to the agency written procedures detailing the implementation of each program under this section;

(2) make the procedures under Subdivision (1) publicly available; and

(3) train educators and other student support staff as necessary to implement the programs as required by this section.

(f) The commissioner may adopt rules as necessary to implement this section.

Sec. 37.023. SANCTIONS FOR CERTAIN VIOLATIONS. The commissioner may sanction, in a manner determined appropriate by the commissioner, a school district or open-enrollment charter school that:

(1) permits a student enrolled in a grade level below grade three to be placed in out-of-school suspension unless the suspension is authorized by this subchapter; or

(2) fails to comply with a requirement under Section 37.0183.

SECTION 6. This Act applies beginning with the 2018-2019 school year.

SECTION 7. (a) Not later than September 1, 2017, each school district and open-enrollment charter school shall submit to the Texas Education Agency the procedures required under Section 37.0183, Education Code, as added by this Act.

(b) Not later than March 1, 2018, the Texas Education Agency shall review the procedures submitted under Subsection (a) of this section to determine initial compliance with the requirements under Section 37.0183, Education Code, as added by this Act.

SECTION 8. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2017.

SECTION 7. Not later than September 1, 2018, each school district and open-enrollment charter school shall submit to the Texas Education Agency the procedures required under Section 37.0183, Education Code, as added by this Act.

SECTION 8. Same as introduced version.