

NEW TEXAS LEGISLATION REGARDING USE OF TIME-OUT AND RESTRAINTS

By attorney Sherri Tipton

As a group, children with TS have the same IQ range as the population at large. But problems in dealing with tics, often combined with attention deficits and other learning difficulties, may call for special education assistance. When TS and related conditions affect a child in school, it is essential to know your child's rights.

During the 77th Texas Legislative Session, 2001, SB 1196 was passed adding Section 37.0021 to the Texas Education Code. Section 37.0021 is entitled "Use of Confinement, Restraint, Seclusion, and Time-Out." Prior to the adoption of this law, there had been no state rules governing use of restraint or time-outs. Such decisions were left to local school districts and ARD committees. A number of schools in Texas, including special education schools, were using a practice referred to as "seclusion" or "seclusionary time out" to isolate children exhibiting inappropriate behavior. This technique isolates a child in a space away from the rest of his or her class. In the absence of state guidelines, however, seclusionary practices had been used inappropriately in some schools.

New Section 37.0021 provides that it is the policy of this State to treat all students with dignity and respect. Beginning September 1, 2001, a student with a disability may not be confined in a locked box, locked closet, or other specially designed locked space as either a discipline management practice or a behavior management technique. Section 37.0021 further mandates that the Commissioner of Education, not later than August 1, 2002, adopt procedures for the use of restraint and time-out.

The Commissioner of Education did adopt the new procedures that will go into effect August 1, 2002. Commissioner Rule Section 89.1053 details the new procedures for use of restraint and time-out, which are summarized, in part, below:

Restraint

Under the rule, restraint is defined as the use of physical force or a mechanical device to restrict the free movement of all or a portion of the student's body. Physical or mechanical restraint can only be used in an emergency. An emergency is defined as a situation in which the student's behavior "poses a threat of imminent, serious physical harm to the student or others; or imminent, serious property destruction." Even in an emergency situation, restraint can only be used with the following limitations: 1) restraint shall be limited to the use of only the force 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; and 4) restraint shall not deprive the student of basic human necessities.

By April 1, 2003, a team of personnel at each campus must be trained in the use of restraint. Campus administrators must be informed of the use of restraint on the day it occurs. There must be a good faith effort to notify the parent of use of restraint on the day it occurs. Written notification must be put in the mail to the parents within one school day.

Time-Out

Time-out is defined in the Rule as 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 that is not locked and from which the student is not physically prevented from leaving. Physical force or threat of physical force cannot be used to place a student in time-out. 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 IEP if used on a recurrent basis to increase or decrease a targeted behavior. Time-out may not be used in a way that impacts the student's ability to participate in class and to learn the general curriculum and/or meet IEP goals. By April 1, 2003, general or special education personnel who implement time-out procedures that are in a student's IEP must be trained on the use of time-out.

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What does this new legislation mean for parents of TS children? It is critically important that parents and school personnel understand that, effective August 1, 2002, the use of restraint will be limited to emergency situations. Use of restraint as a recurrent behavior management technique to increase or decrease student behavior will be prohibited. School campuses must immediately begin to plan for activities such as revisions to IEPs that contain restraint as behavior management techniques, implementation of alternatives to the use of restraint, and consideration of which campus and district personnel will attend training. Parents should be communicating with school personnel regarding necessary changes in the IEPs as to the use of restraints or time-outs and address these matters in the ARD meetings. In addition, districts and campuses will need to establish systems that align with the new rules as they relate to the implementation of time-out as a behavior management technique and the use of restraint in emergency situations.

Remember

TS children
Don't want to be out of control.

They don't know how to avoid
situations that cause this to happen.

We need to help them with this lack of
impulse control.

This is not an expression of bad
behavior, rather it is an expression of a
neurobiological disturbance.

Remember

No matter what the standardized
test states, the student with special
problems is entitled by IDEA to an
adjustment of time limits in the in the test
taking situation.

TS is recognized as a developmental
disability and falls under the category of
Other Health Impaired.
Therefore, TS qualifies for this exception.

Individuals Assessing Behavior

Persons responsible for conducting the functional behavioral assessment will vary from state to state and possibly from district to district. Some behavioral assessment procedures, such as standardized tests, may require an individual with specific training (e.g., behavior specialist or school psychologist). With specialized training, experience, and support, however, many components of the assessment can be conducted by other individuals, such as special or general education teachers, counselors, and administrators. Again, it is important to note that interventions should not be based upon one assessment measure alone, or upon data collected by only one observer.



AFNIC is currently seeking in-kind donations of the following:

Laptop computer

A FAX machine

A copy machine

AFNIC is also Seeking grants/funding for the following:

An 800 toll-free hotline

Publication of Web Newsletter

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Please mail your tax deductible contribution to the address shown below, and please make your check payable to AFNIC. The children affected give you their thanks!

AFNIC
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Advocacy –Taking Charge: How To Do It

A primer for parents, by Helen Rader and Jenifer Simpson

Here are some tips that will help you become your child's best advocate!

Believing in your child is essential, no doctor, therapist, teacher, or anyone knows your child better than you do. You have lived with your child with a disability longer and more intimately than anyone else. Only you have the long perspective. The big picture. Trust that knowledge.

Believing in your own intuition is being able to trust yourself and those feelings you have. A hunch is usually a sign, follow your hunches.

Educating yourself is critical. You do not have to become a walking encyclopedia about disability law but, it is very important to learn what your child's rights are before you can fight for them. There are many sources of education and support in your state. The more skills and information you learn the better you can advocate.

Other Tips

1. **Documentation-keep a notebook.** You must write down facts and keep a paper trail.
2. **Phone Calls**-write the date, time, name and title and the telephone number you are talking with in your note book
3. **Letter writing**- After the phone call, sit down and write a short letter which states that you just talked and this is what transpired on the phone.
4. **Meetings**- If a meeting is scheduled at a time you can't attend; ask for it to be postponed. Propose an alternative time. Be sure you know the purpose of the meeting. This will establish what your role is and will help you focus on what your child needs to have happen. Be prepared. If you are going to an IEP, have your suggestions in writing.
5. **Legal Representation or Alternative Resolution**- you can hire a lawyer later if you need to or if you opt to utilize a formal Alternate Dispute Resolution process if it's available or offered.
6. **Use of Anecdotes**- anecdotes are stories to make a point. They are used to give examples, a useful tool if you meet face-to-face.

You'll know you are an advocate when you feel like you had to decide between being popular or being respected.

Editor note: Based on a longer version by same authors

Behavioral Intervention Plan

After collecting data on a student's behavior, and after developing a hypothesis of the likely function of that behavior, a team develops (or revises) the student's behavior intervention plan or strategies in the IEP. These may include positive strategies, program or curricular modifications, and supplementary aids and supports required to address the disruptive behaviors in question. It is helpful to use the data collected during the functional behavioral assessment to develop the behavior intervention plan or strategies and to determine the discrepancy between the child's actual and expected behavior.

The input of the general education teacher, as appropriate (i.e., if the student is, or may be participating in the regular education environment), is especially crucial at this point. He or she will be able to relay to the team not only his or her behavioral expectations, but also valuable information about how the existing classroom environment and/or general education curriculum can be modified to support the student.

Intervention plans and strategies emphasizing skills students need in order to behave in a more appropriate manner, or plans providing motivation to conform to required standards, will be more effective than plans that simply serve to *control* behavior. Interventions based upon *control* often fail to generalize (i.e., continue to be used for long periods of time, in many settings, and in a variety of situations) — and many times they serve only to *suppress* behavior — resulting in a child manifesting unaddressed needs in alternative, inappropriate ways. Positive plans for behavioral intervention, on the other hand, will address both the source of the problem and the problem itself.

IEP teams may want to consider the following techniques when designing behavior intervention plans, strategies, and supports:

- Manipulate the antecedents and/or consequences of the behavior;
- Teach more acceptable replacement behaviors that serve the same function as the inappropriate behavior;
- Implement changes in curriculum and instructional strategies; and
- Modify the physical environment.

Preparation of a Psycho-educational Evaluation Report

By Margaret Kay, Ed.D.

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Tests of Social and Emotional Status, Personality Functioning

Understanding the child's personality orientation is critical to determining the variables that may affect the child's academic performances at school. Evaluation of a child's social and emotional status may include teacher and parent observation forms, direct self-reports completed by the child, clinical personality inventories, and projective tests.

The Children's Personality Questionnaire provides an assessment of the child's personality traits and predicts how social, emotional and personality orientation functioning affects the child's academic performance. The Million Adolescent Personality Inventory determines the nature and degree of social/emotional problem that may adversely affect the child's performance at school and elsewhere.

When evaluating social and emotional concerns, the psychologist must determine whether the child's social or emotional problems represent the primary obstacle that is interfering with the child's educational progress, or are secondary symptoms that evolved in response to the child's frustration at school.

State and Federal laws prohibit diagnosing a child with a serious emotional disturbance when the child's inability to learn *can* be explained by intellectual, sensory or other health factors.

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Special Ed Advocacy: Mistakes Parents Make

by Robert K. Crabtree

This article was first published by the Family Education Network at www.familyeducation.com .

Because the stakes are so high, it is difficult for parents of children with special educational needs to advocate calmly and objectively for the educational and related services their children need.

Here are some common mistakes that undermine parents' ability to obtain appropriate services:

1. Viewing the special education process as the moral equivalent of war, fighting that war with a "scorched earth" approach, and letting personal animosity toward administrators and/or teachers distort one's judgment about what is best for the child and what is realistic to accept;
2. The opposite mistake: trusting administrators and teachers too uncritically; assuming that if they are "nice" they are also competent and interested in serving the child's best interest; not questioning slow, or nonexistent progress as long as the child, parent and teacher have a cordial relationship;
3. Taking an "all or nothing" approach: waiting too long before getting good independent advice, then insisting on instant delivery of needed services rather than steady progress toward the right program;
4. Failing to understand that the special education process sometimes requires that the parent educate the child's special education team about the child's disabilities and needs (the school system may not be willfully refusing to meet the child's needs; they may simply not understand those needs);
5. Not trying a program or added services, even on a temporary basis, when they are offered by the school system -- holding out for an alternative program only to have a hearing officer decide the untried program might have worked.
6. Attempting to "micro-manage" the details of a child's life in school; even if parents don't feel things are going well, their efforts to control the child's day usually backfire when the hearing officer concludes that the parents were over-protective and didn't let the school professionals do their job;
7. Focusing on minor, nonprejudicial procedural missteps by the school (e.g., the parent who already knows her rights who says, "Aha! Gotcha! School district forgot to give me the rights brochure!") in stead of focusing on the substantial issues in the case;
8. Not consenting to school evaluations;
9. Choosing the wrong independent evaluators: e.g., "hired guns" who only say what the parents want them to say, and have a reputation for doing so; those who will not follow through by observing programs, attending team meetings, etc.; those who do not have training or experience to evaluate a child like yours;
10. Not providing copies of independent evaluations to the school, or not providing them in a timely way;
11. Not responding in a timely way to proposed IEPs;

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12. Not documenting issues with the school; not sending letters to confirm agreements with the school or to record important conversations with school personnel.

13. Seeing the school system as a monolith ("All those teachers are incompetent [or wonderful!]); failing to look carefully at alternatives within the system for this year and at next year's teacher possibilities

A special thanks to Robert K. Crabtree of Robert K. Crabtree, Kotin, Crabtree & Strong, LLP, One Bowdoin Square, Boston, MA 02114-2925 email: rcrabtree@kcslegal.com website: kcslegal.com for permission to use this article

Mistakes People Make - School Systems by Robert K. Crabtree

This article was first published by the Family Education Network at www.familyeducation.com

Ananything a school system does that undermines parents' trust creates a climate that is costly in dollars, time, peace of mind, and the quality and success of services given to the child.

Here are the most significant school system mistakes, according to persons at every level of the system:

1. Refusing to let parents or parents' experts see programs, either within or outside of the school system. When school systems tightly restrict the parents' access to their own programs, the parents wonder what they are hiding and assume the worst; when they refuse to clear the way for parents to see an outside program, the parents will assume that the grass is greener over there;
2. Failing or refusing to communicate and actively coordinate with outside experts working with the child, such as the child's therapist or a tutor;
3. Ignoring reports from independent evaluators; failing to speak to those evaluators to clarify ambiguous information or recommendations; failing to add the evaluator's recommendations to the IEP when reasonable;
4. Failing to respond to parents in writing or at a meeting when a problem arises;
5. Taking a patronizing and/or antagonistic and/or insulting attitude toward parents; personalizing issues between school and parents; attempting to blame parents for their children's educational failures rather than looking for solutions (school system professionals need to treat parents with respect even if those parents are insulting and belligerent themselves);

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6. Sweating the small stuff (e.g., spending twenty minutes at a team meeting arguing about whether the meeting can be tape-recorded);
7. Failing to observe procedural timelines and notice requirements (e.g., scheduling timely meetings, getting evaluations to the parents before the team meeting, notifying the parents who will attend the meeting, providing clear written explanations of parent rights).
8. Writing careless and sloppy IEPs. Parents, evaluators, and hearing officers all look first at the extent to which the written IEP reflects a thorough and logically coherent view of the child, the goals and objectives for that child's program, and a clear and understandable description of what will be provided, how, by whom, and when; and how the child's program will be evaluated;
9. Failing to implement an IEP and, worse, trying to cover up that failure;
10. Failing to modify an IEP that is not working and waiting, instead, for the program - and the child - to collapse;
11. Failing to provide additional or different services as a way to avoid having to make more restrictive (and expensive) outside placements;
12. Failing to call in expert consultants from outside the school system with good reputations among both school and parent communities who can help develop or monitor a program for a child with unusual needs;
13. Losing contact with families who have placed their child unilaterally. Some school systems forget or ignore their continuing responsibility to evaluate, review, and propose IEPs for children when they are attending outside placements at their parents' expense;
14. Botching the required procedures around suspension or expulsion of students with identified or suspected special education needs (e.g., failing to convene the team, failing to make a manifestation determination, failing to re-examine the IEP to see if services are appropriate and have actually been provided, failure to provide FAPE to suspended or expelled students with special education needs);
15. Failing to ensure that non-special education administrators - particularly building principals - are fully informed about and are following the required special education policies and procedures.

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Helpful Techniques to Aid the Student with in the Completion of Written Assignments in the Classroom and at Home

Following are some suggestions given by Jacqueline Favish, M.Ed., TSA Chair for Patient/Family Services. Mrs. Favish, who has a master's degree in Special Education, teaches learning disabled and emotionally disturbed adolescents in a self-contained classroom.

For Standardized Tests

1. In multiple-choice tests, where a word has to be written in, the student may have great difficulty in writing out the words. Assign numbers to each of the possible answers, so that the student can simply write in a number for what he believes to be the correct answer.
2. On matching graded tests, where a student is to fill in boxes or color in a slot, the student may have difficulty in staying on the line of the question he is working on. Have him use a ruler or a straightedge to help carry his eye across the page to whichever answer he chooses. He will then color in that slot or box.
3. In tests where several lines or a paragraph must be read, the student may have a problem in focusing visually on a question (this will vary a great deal, depending on the extent of the student's disability). Use an index card that has a "window" cut out, so that the student will see only the one question he is dealing with at a time. Then he can use the straightedge as a guide for writing in the answer. This technique eliminates the distraction created by seeing other questions or reading material on the rest of the page. As he works, he slides his "window" down the page progressing from question to question.

For Non-Standardized Tests Problems in Math Computations

1. Problems in dealing with space on the paper being used: Each problem can be isolated on a section of the student's work paper. To promote this, fold an 8-1/2 x 11 sheet into quarters or eighths. The student can then work on one problem in each section. This allows him to attend to one specific problem at a time and will help separate each unit of work so that distractions are minimized.
2. Problems with use of space in working math problems: For division and multiplication problems, use lined paper with the lines turned vertically, so that each transaction can more easily be kept in the appropriate columns. (Graph paper also works well for this.)

Timed Tests

1. For the student who must have unrestricted time tests: No matter what the standardized tests state, the student with special problems (Tourette Syndrome is recognized as a Developmental Disability and therefore qualifies for this exception) is entitled by PL-94-142 to an adjustment of time limits in the test-taking situation. When unrestricted time has been allowed, this can be so noted on the test paper by the teacher, perhaps in the following manner: "Because of this student's confirmed diagnosis of a handicap, this test was completed without time limitations."

Note-Taking

When a student has a visual-motor problem, note taking can be very difficult. In addition, many Tourette Syndrome students have arm and hand movements, which interfere with writing, thus creating additional problems. The teacher can select one of the more capable, reliable students in the class and supply carbon paper to enable that student to make a simultaneous copy of his notes. It is sometimes wise to tell this student that the teacher needs a copy of the notes, rather than identify the student with the visual-motor problems for whom they are really intended.

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