



**WALSH GALLEGOS**  
TREVINO KYLE & ROBINSON P.C.

# Today's Agenda

- **New Laws: 2021**
- **What Did the Supreme Court Just Do???**






*Jim Walsh*

## Top Seven:

1. Homeschoolers and the UIL.
2. Special Education Discipline.
3. COVID Recovery for Special Ed Students.
4. Let the Counselors Counsel.
5. Sex Ed and SHAC.
6. Social Studies Curriculum.
7. Parent Control Over Promotion.



## Number One: HB 547: Homeschoolers and the UIL

- ❑ The Tim Tebow Bill!
- ❑ A homeschool student MAY be allowed to participate in UIL activities representing the public school.
- ❑ It's the school's choice—this is not an entitlement. It's permissive.
- ❑ Student is eligible to participate at the school "that the student would be eligible to attend based on the student's residential address." Proof of residency must be provided.
- ❑ Student must comply with school policies re: registration, age eligibility, fees, insurance, transportation, physical condition, qualifications, responsibilities, event schedules, behavior and performance standards, and immunization.



## What About Grades?

- ❑ To be eligible in the first six weeks of the school year the student must show grade level proficiency via a "nationally recognized, norm-referenced assessment instrument, such as the Iowa Test of Basic Skills, Stanford Achievement Test, California Achievement Test, or Comprehensive Test of Basic Skills."
- ❑ Student must have a "composite, core, or survey score" that is average or better as per the testing service.
- ❑ Test must have been administered in the current or immediately preceding school year. For 2021-22, this means it must have been taken in the 2020-21 or 2021-22 school year.



## After First Six Weeks?

- ❑ After first six weeks, the parent must “provide written verification...indicating that the student is receiving a passing grade in each course or subject being taught.”
- ❑ This should be done as per coach’s request and in accordance with the school’s grading calendar (six weeks; nine weeks).
- ❑ “The parent...is responsible for oversight of academic standards relating to the student’s participation in a league activity.”



## What if Student Leaves Mid-Year?

- ❑ Homeschooled student is not authorized to participate “during the remainder of any school year during which the student was previously enrolled in a public school.”
- ❑ Notice: previously enrolled in ANY public school.



## A Few Other Things....

- ❑ UIL may not prohibit participation by homeschoolers.
- ❑ This law does not give school officials any authority to exercise control, supervision, or regulatory authority over home school programs, nor to require any changes.
- ❑ HB 547 also requires UIL to enter into a Memorandum of Understanding re: UIL participation of students being served by the Juvenile Justice Department.



## Number Two: HB 785: Special Education Discipline

- ❑ This bill addresses four components of special education discipline: BIPs, Restraint, Time Out, and Disciplinary Changes of Placement.
- ❑ BIPs: If a student's IEP includes a BIP, it must be reviewed by the ARDC annually or more often.
- ❑ The review must consider changes in circumstances that may impact the student's behavior, as well as safety of student and others.
- ❑ These "circumstances" include changes of placement, an increase or persistence in disciplinary actions for similar behaviors, a pattern of unexcused absences, or an unauthorized departure from school.



## HB 785: Restraint. Time-Out.

- ❑ The Commissioner will develop rules that require written notice to the parent of each instance of restraint, with a copy to be included in the student's records.
- ❑ For students with a BIP, each use of time-out that is prompted by a behavior that is specified in the BIP must be documented. The documentation must include a description of the behavior that prompted the use of time-out.



## HB 785: Disciplinary Change of Placement

- ❑ If the school makes a disciplinary change of placement the school must 1) seek consent from the parent to conduct a FBA, unless one was done within the past year; 2) review any previous FBAs and/or BIPs; and 3) develop a BIP or revise the existing one, as necessary.
- ❑ Timeline: this all to happen within 10 school days after the change of placement.
- ❑ That's the same timeline for manifestation determination.



## Number Three: SB 89: COVID Recovery for Special Ed Students

- Requires an "IEP supplement" for students served in special education during either of the COVID years: 2019-20 and 2020-21.
- Was the initial FIE done during this timeframe? If so, was it on time?
- Was the initial IEP developed during this timeframe? If so, was it done on time?
- Were special services "interrupted, reduced, delayed, suspended, or discontinued" during this timeframe?
- Based on these three factors, "or any other factors" are compensatory services appropriate?



## More on SB 89

- This IEP supplement is not required if the student's IEP for 2020-21 already addresses these four factors.
- The provisions in the Education Code that limit what can be required to be included in an IEP do not apply to this IEP supplement.
- These supplements must be completed by May 1, 2022.



## Number Four: SB 179: Let the Counselors Counsel!

- ❑ Requires a board policy to require that counselors spend at least 80% of their time on “duties that are components of a counseling program.”
- ❑ Time spent on administering assessment instruments does not count toward the 80%. Time spent interpreting data from the assessment does count.
- ❑ If the board determines that staffing needs require a counselor to spend less than 80% the board policy must include the reasons for this, the non-counseling duties that need to be done, and must set the percentage of work time the counselor will counsel.

WG

## A Few Points About SB 179

- ❑ Notice that these decisions are to be made by the board, not the superintendent or principal or the lead counselor.
- ❑ Schools may not override this law via contract language.
- ❑ Administrators may not require counselors to “generally perform” duties not related to counseling unless those duties are set out in board policy.
- ❑ District’s must annually assess their compliance with this and be ready to provide a written copy of the assessment to the Commissioner upon request.

WG

## Number Five: HB 1525: Sex Ed and SHAC

- ❑ Public notice of meetings of the SHAC (School Health Advisory Committee) similar to TOMA requirements.
- ❑ Board policy must address the process for adoption of materials for human sexuality instruction. Must include at least two public meetings of the SHAC.
- ❑ SHAC makes recommendations to the board. Board takes action to adopt materials.
- ❑ Any materials must be 1) based on SHAC advice; 2) suitable for subject and grade level; and 3) reviewed by academic experts.



## HB 1525: Sex Ed and Parents

- ❑ Before each school year, written notice to the parents about the board's decision re: human sexuality instruction. The district is not required to provide such instruction.
- ❑ If it will be provided, written consent from each parent is required. The request for consent must be given to parents at least 14 days prior to beginning instruction, and cannot be included with any other request or notification.
- ❑ Notice must include a detailed description of the content of instruction and a "general schedule." Parents can review materials or purchase a copy, remove student from any part, and file complaints.





## HB 1525: Sex Ed Materials

- ❑ Materials to be used that are in the public domain must be posted on the district's website and provided to parents upon request.
- ❑ Materials that are copyrighted may be reviewed by parents, purchased from the publisher, or reviewed online.
- ❑ The district's contract with the publisher must ensure that parents can purchase a copy at a cost per unit no more than what the school paid.



## Number Six: HB 3979: Social Studies Curriculum

- ❑ SBOE is to revise social studies TEKS to make sure it covers the writings of George Washington, Ona Judge, Thomas Jefferson, Sally Hemings, Frederick Douglas, Martin Luther King and Abigail Adams. Also the Chicano movement, Cesar Chavez, Dolores Huerta, Dr. Hector Garcia, American GI Forum, women's suffrage movement, Susan B. Anthony, Brown v. Board of Education, Hernandez v. Texas, Mendez v. Westminster, Native American History, the Indian Removal Act, "the history of white supremacy...slavery, the eugenics movement...the KKK, and the ways in which it was morally wrong." Also the Fugitive Slave Acts and Underground Railroad.



## HB 3979: Required Curriculum Courses

- ❑ "In the required curriculum" for social studies teachers may not be compelled to discuss a particular current event or "widely debated and currently controversial issue of public policy or social affairs."
- ❑ Schools may not require, make part of the course, or give credit for a student's political activism, lobbying, efforts to persuade public officials, or any internship, practicum, or similar activity involving social or public policy advocacy.
- ❑ Schools cannot accept private funding for course development or training that includes such things.

WG

## HB 3979: Thou Shall Nots

- ❑ No employee of a district, open enrollment charter, or state agency may:
- ❑ Be required to engage in training, orientation, or therapy that presents any form of race or sex stereotyping or blame on the basis of race or sex; or
- ❑ Require an understanding of The 1619 Project.

WG

## HB 3979: Ten Forbidden Concepts

- ❑ No employee of a district, charter school or state agency may require or make part of a course the following ten "concepts":
  1. That one race or sex is inherently superior to another race or sex.
  2. That an individual, by virtue of the person's race or sex is inherently racist, sexist, or oppressive, whether consciously or unconsciously.
  3. That an individual should be discriminated against or receive adverse treatment solely or partly because of race.
  4. That members of one race cannot and should not attempt to treat others without respect to race or sex.

WG

## HB 3979: Ten Forbidden Concepts, Continued

5. That an individual's moral character, worth, or standing is necessarily determined by the person's race or sex.
6. That an individual, by virtue of their race or sex, bears responsibility for actions committed in the past by members of that race or sex.
7. That an individual should feel discomfort, guilt, anguish, or any other form of psychological distress due to the person's race or sex.
8. That meritocracy or traits like a hard work ethic are racist, sexist, or were created by one race to oppress members of another race.

WG

## HB 3979: Last Two Forbidden Concepts

9. That the advent of slavery in the territory that is now the U.S. constituted the true founding of the United States.
10. That with respect to their relationship to American values, slavery and racism are anything other than deviations from, betrayals of, or failures to live up to, the authentic founding principles of the United States, which include liberty and equality.



## HB 3979: What About the Kids?

- ❑ Schools may not “implement, interpret, or enforce any rules or student code of conduct in a manner that would result in the punishment of a student for discussing, or have a chilling effect on student discussion of” the Ten Forbidden Concepts.



## Number Seven: SB 1697: Parents and Promotion

- ❑ Parents of students in traditional or charter schools may choose to have their child 1) repeat Pre-K; 2) enroll in Pre-K if the student would have been eligible in the previous year as a three-year old; 3) repeat kindergarten; 4) enroll in kindergarten if the student could have enrolled in kindergarten in the previous year, and has not enrolled in first grade; or
- ❑ 5) Repeat any grade from 1-8.
- ❑ For high school, parents may require the student to repeat any course, unless the student has met all graduation requirements.
- ❑ This is COVID-related. For grades 4 and up, it all expires on September 1, 2022.



## SB 1697: How It Works

- ❑ Parents make their election in writing.
- ❑ If the school disagrees, it must convene a "retention committee." Committee must meet in person, unless parent agrees otherwise.
- ❑ If parent does not show up, child cannot be retained or retake the course.
- ❑ If parent does meet with the committee, the school must "abide by the decision of the parent."
- ❑ Retention by parental option is treated as retention by the school. There will be ADA funding for a grade or course being repeated.



## There's More!

- ❑ We will be reviewing these, as well as a number of other important new bills at our Back to School program this year!
- ❑ Kilgore on September 15.
- ❑ Arlington September 27.
- ❑ New Braunfels October 5.
- ❑ Lubbock October 12.
- ❑ Sign up at [www.ed311.com](http://www.ed311.com).



**JIM WALSH**

Austin Office

P.O. Box 2156

Austin, Texas 78768

Phone: 512-454-6864

Email: [jwalsh@wabsa.com](mailto:jwalsh@wabsa.com)Web: [www.WalshGallegos.com](http://www.WalshGallegos.com)Blog: [www.edlawdawg.com](http://www.edlawdawg.com)Twitter: <https://twitter.com/JWalshtxlawdawg>WALSH GALLEGOS  
TREVINO KYLE & ROBINSON P.C.

The information in this presentation was prepared by Walsh Gallegos Treviño Kyle & Robinson P.C. It is intended to be used as general information only and is not to be considered specific legal advice. If specific legal advice is sought, consult an attorney.

WG | WALSH GALLEGOS  
TREVINO KYLE & ROBINSON P.C.