S T A T E O F N E W Y O R K

4158

2011-2012 Regular Sessions

I N A S S E M B L Y

February 1, 2011

Introduced by M. of A. NOLAN -- Multi-Sponsored by -- M. of A. ENGLEBRIGHT -- read once and referred to the Committee on Education

AN ACT to amend the education law and the mental hygiene law, in relation to establishing standards, procedures and protocol for the use of restraints in schools

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The legislature finds and declares that the current lack of statewide standards, procedures and protocols for the use of restraints in public schools to control inappropriate and dangerous behavior of public school students by trained personnel has led to serious injury to students. In particular, those students at risk are students with disabilities whose actions are not a result of malicious intent but rather an inherent consequence of their disability. The legislature further finds that the deaths of such students in other states have led to the passage of laws establishing statewide standards, procedures and protocols for the appropriate and safe use of various methods of restraint and strategies to avoid restraint. Therefore, it is the aim of the legislature to minimize the chances of serious injury and death to New York state students by enacting legislation establishing statewide standards, procedures and protocols promoting minimal use of physical restraint by trained personnel. The legislature believes that such a restraint policy is consistent with widely accepted principles emphasizing least restrictive environments and represents an optimal approach for promoting the safe and appropriate behavior of students. Furthermore, the legislature finds that the lack of any meaningful statewide requirement for reporting instances of restraint to parents constitutes a glaring omission by our state's educational system. Critically, such omission is an obstacle to bringing parents and school personnel together to promote each student's appropriate and safe behavior. The legislature finds that along with training, parental involve-

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD08713-01-1

ment is essential in fostering behavior that will maximize each student's potential to grow and learn within our state's public schools.

S 2. The education law is amended by adding a new section 3214-a to read as follows:

S 3214-A. PHYSICAL RESTRAINTS IN PUBLIC EDUCATION PROGRAMS. 1. DEFINITIONS. AS USED IN THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

A. "PHYSICAL RESTRAINT" SHALL MEAN THE USE OF BODILY FORCE TO LIMIT A STUDENT'S FREEDOM OF MOVEMENT OR ACTION. CONSENSUAL, SOLICITED OR UNINTENTIONAL TOUCHING SHALL NOT BE CONSTRUED TO BE A PHYSICAL RESTRAINT. PHYSICAL RESTRAINT SHALL INCLUDE FORCIBLE OR INVOLUNTARY SECLUSION OF A STUDENT AS IN ORDER TO LIMIT HIS OR HER FREEDOM OF MOVEMENT.

B. "PUBLIC EDUCATION PROGRAMS" MEANS PUBLIC SCHOOLS, INCLUDING CHARTER SCHOOLS, PUBLIC SPECIAL EDUCATION SCHOOLS, OTHER PROGRAMS SUPPORTED OR FUNDED BY ANY PUBLIC SCHOOL, AND SCHOOL EVENTS AND ACTIVITIES SPONSORED BY SUCH PROGRAMS.

C. "PHYSICAL ESCORT" MEANS TOUCHING OR HOLDING A STUDENT WITHOUT THE USE OF FORCE FOR THE PURPOSE OF DIRECTING THE STUDENT.

D. "LEAST RESTRICTIVE RESTRAINT" MEANS ONLY THAT DEGREE OF PHYSICAL RESTRAINT, OR PREFERABLY PASSIVE RESTRAINT, WHICH IS ABSOLUTELY NECESSARY TO INHIBIT A STUDENT'S MOVEMENT IN ORDER TO ACCOMPLISH THE PURPOSES OF THIS SECTION.

E. "MECHANICAL RESTRAINT" MEANS THE USE OF A PHYSICAL DEVICE TO RESTRICT THE MOVEMENT OF A STUDENT OR THE MOVEMENT OR NORMAL FUNCTION OF A PORTION OF THE BODY. A PROTECTIVE OR STABILIZING DEVICE ORDERED BY A PHYSICIAN SHALL NOT BE CONSIDERED A MECHANICAL RESTRAINT.

F. "CHEMICAL RESTRAINT" MEANS THE ADMINISTRATION OF MEDICATION FOR THE PURPOSE OF RESTRAINT. A MEDICATION ORDERED BY A STUDENT'S PHYSICIAN SHALL NOT BE CONSIDERED A CHEMICAL RESTRAINT.

G. "PASSIVE RESTRAINT" SHALL INCLUDE METHODS OF RESTRAINT APPROVED BY THE OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES WHICH DO NOT REQUIRE DIRECT PHYSICAL FORCE.

2. USE OF PHYSICAL RESTRAINT IN PUBLIC SCHOOLS. A. THE USE OF PHYSICAL RESTRAINT MAY ONLY BE USED IN THE FOLLOWING CIRCUMSTANCES:

(1) AS A LAST RESORT, WHEN NON-PHYSICAL INTERVENTIONS HAVE BEEN TRIED AND DEEMED INEFFECTIVE; AND

(2) WHEN THE STUDENT'S BEHAVIOR POSES A THREAT OF IMMINENT AND SERIOUS PHYSICAL HARM TO SELF AND/OR OTHERS.

B. PHYSICAL RESTRAINT SHALL BE USED WITH EXTREME CAUTION AND ONLY AS LONG AS A STUDENT POSES A THREAT OF IMMINENT AND SERIOUS PHYSICAL HARM TO HIMSELF, HERSELF OR OTHERS.

3. PROHIBITIONS. A. THE USE OF PHYSICAL RESTRAINT SHALL BE PROHIBITED IN THE FOLLOWING CIRCUMSTANCES:

(1) AS A MEANS OF PUNISHMENT; OR

(2) AS A RESPONSE TO PROPERTY DESTRUCTION, DISRUPTION OF SCHOOL ORDER, A STUDENT'S REFUSAL TO COMPLY WITH A SCHOOL RULE OR DIRECTIVE, OR VERBAL THREATS THAT DO NOT CONSTITUTE A THREAT OF IMMINENT, SERIOUS, PHYSICAL HARM.

B. THE USE OF THE FOLLOWING SHALL BE PROHIBITED:

(1) THE USE OF MECHANICAL RESTRAINTS, OTHER THAN A PROTECTIVE OR STABILIZING DEVICE ORDERED BY A PHYSICIAN;

(2) THE USE OF CHEMICAL RESTRAINTS;

(3) THE USE OF RESTRAINTS NOT DEEMED TO BE LEAST RESTRICTIVE;

(4) THE USE OF FLOOR AND PRONE RESTRAINTS; AND

(5) THE USE OF ANY FORM OF PHYSICAL RESTRAINT WHEN A STUDENT CEASES TO CONSTITUTE A RISK OF CAUSING SERIOUS PHYSICAL HARM TO HIMSELF, HERSELF OR OTHERS.

4. CONSTRUCTION. A. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO LIMIT THE PROTECTION AUTHORIZED, AFFORDED OR REQUIRED TO STUDENTS BY STATE AND FEDERAL LAW OR REGULATION, INCLUDING THOSE PROVISIONS THAT PROVIDE FOR THE RIGHTS OF STUDENTS WHO HAVE BEEN FOUND ELIGIBLE TO RECEIVE SPECIAL EDUCATION PROGRAMS AND SERVICES.

B. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PRECLUDE ANY TEACHER OR OTHER PERSONNEL OF A PUBLIC EDUCATION PROGRAM FROM USING REASONABLE FORCE TO PROTECT STUDENTS, OTHER PERSONS OR THEMSELVES FROM ASSAULT OR IMMINENT, SERIOUS PHYSICAL HARM.

C. CONSENSUAL, SOLICITED OR UNINTENTIONAL TOUCHING SHALL NOT BE CONSTRUED TO BE PHYSICAL RESTRAINT. NOR SHALL THE USE OF A PHYSICAL ESCORT, TOUCHING OR HOLDING A STUDENT BE CONSIDERED A PHYSICAL RESTRAINT FOR PURPOSES OF THIS SECTION.

5. MANDATORY REPORTING. A. MANDATORY WRITTEN REPORTING OF THE USE OF EACH INSTANCE OF PHYSICAL RESTRAINT IN PUBLIC SCHOOLS SHALL BE REQUIRED. SCHOOL PERSONNEL WHO ADMINISTER THE RESTRAINT SHALL IMMEDIATELY INFORM THE SCHOOL PRINCIPAL, ASSISTANT OR SCHOOL ADMINISTRATOR OF THE RESTRAINT AND BY WRITTEN REPORT NO LATER THAN THE NEXT SCHOOL DAY.

B. THE PRINCIPAL, ASSISTANT OR SCHOOL ADMINISTRATOR SHALL IMMEDIATELY INFORM THE PARENT OF THE STUDENT OR THE PERSON IN A PARENTAL RELATION TO THE STUDENT OF THE RESTRAINT INCIDENT AND BY WRITTEN REPORT NO LATER THAN FORTY-EIGHT HOURS AFTER THE RESTRAINT WAS ADMINISTERED. THE PRINCIPAL, ASSISTANT OR SCHOOL ADMINISTRATOR SHALL MAINTAIN AN ON-GOING RECORD OF ALL REPORTED INSTANCES OF PHYSICAL RESTRAINT WHICH SHALL BE REVIEWED ANNUALLY BY THE DEPARTMENT.

C. THE REPORT MADE TO PARENTS OF THE STUDENT OR PERSONS IN A PARENTAL RELATION TO THE STUDENT REQUIRED BY PARAGRAPH B OF THIS SUBDIVISION SHALL BE MADE IN SUCH FORM AND MANNER THAT IT IS READILY COMPREHENSIBLE AND IN THE LANGUAGE WHICH THE SCHOOL CUSTOMARILY USES TO COMMUNICATE TO SUCH PERSONS.

D. ALL SUCH REPORTS SHALL CONTAIN PERTINENT DETAILS WITH RESPECT TO THE TYPE OF BEHAVIOR REQUIRING THE RESTRAINT INCLUDING, BUT NOT LIMITED TO, LEAST RESTRICTIVE AND NON-PHYSICAL INTERVENTIONS WHICH WERE TRIED AND DEEMED INAPPROPRIATE TO ADDRESS THE BEHAVIOR, CIRCUMSTANCES RELEVANT TO THE CORRECTION OF SUCH BEHAVIOR, NAMES AND IDENTITY OF KEY PERSONNEL APPLYING PHYSICAL RESTRAINT, ANY INVOLVEMENT BY LAW ENFORCEMENT PERSONNEL, AND ANY INJURY ASSOCIATED WITH THE USE OF PHYSICAL RESTRAINT.

E. WHEN A RESTRAINT HAS RESULTED IN AN INJURY TO A STUDENT OR SCHOOL PERSONNEL, THE PRINCIPAL, ASSISTANT OR SCHOOL ADMINISTRATOR SHALL PROVIDE A COPY OF THE WRITTEN REPORT, REQUIRED IN THIS SUBDIVISION, TO THE DEPARTMENT WITHIN FIVE SCHOOL DAYS OF THE ADMINISTRATION OF THE RESTRAINT. THE PRINCIPAL, ASSISTANT OR SCHOOL ADMINISTRATOR SHALL INCLUDE WITH THE WRITTEN REPORT A COPY OF THE RECORDS OF ALL PHYSICAL RESTRAINTS MAINTAINED FOR USE BY SUCH SCHOOL WITHIN A THIRTY DAY PERIOD PRIOR TO THE DATE OF THE REPORTED RESTRAINT. THE DEPARTMENT SHALL INVESTIGATE THE RESTRAINT WHICH LED TO AN INJURY AND DETERMINE IF ADDITIONAL PERSONNEL TRAINING, POLICY OR PROCEDURE CHANGES ARE REQUIRED ON THE PART OF THE PUBLIC EDUCATION PROGRAM. IF CHANGES ARE REQUIRED THE DEPARTMENT SHALL NOTIFY THE PUBLIC EDUCATION PROGRAM OF THE REQUIRED ACTION WITHIN THIRTY CALENDAR DAYS OF RECEIPT OF THE REQUIRED WRITTEN REPORTS.

6. TRAINING. A. THE DEPARTMENT IS AUTHORIZED AND DIRECTED TO ESTABLISH TRAINING REQUIREMENTS FOR THE USE OF RESTRAINTS. SUCH TRAINING FOR

SCHOOL PERSONNEL SHALL BE REQUIRED TO EMPHASIZE KNOWLEDGE AND TECHNIQUES TO PRECLUDE THE USE OF PHYSICAL RESTRAINT, DE-ESCALATE BEHAVIOR WHICH MAY REQUIRE PHYSICAL RESTRAINT, IDENTIFY ANY RISK ASSOCIATED WITH VARIOUS TYPES OF RESTRAINT, ASSESS ANY SIGNS INDICATING PHYSICAL DANGER RESULTING FROM THE USE OF RESTRAINTS, UTILIZE THE MINIMAL USE OF PHYSICAL RESTRAINT TO ACHIEVE THE PURPOSES OF THIS SECTION AND UTILIZE THE SAFEST POSSIBLE MEANS OF RESTRAINT IN THE CONTEXT OF A STUDENT'S BEHAVIOR AND OTHER RELEVANT CIRCUMSTANCES.

B. PHYSICAL RESTRAINTS SHALL NOT BE USED BY ANY SCHOOL PERSONNEL UNLESS HE OR SHE HAS COMPLETED THE REQUIRED TRAINING, IN ACCORDANCE WITH THIS SUBDIVISION, IN THE USE OF SUCH RESTRAINT.

7. APPROVED PROGRAMS. A PROGRAM OF BEHAVIORAL INTERVENTION OR PASSIVE RESTRAINT ESTABLISHED AND IMPLEMENTED IN ACCORDANCE WITH REGULATIONS PROMULGATED BY THE COMMISSIONER OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES OR THE COMMISSIONER OF MENTAL HEALTH SHALL BE DEEMED TO COMPLY WITH THIS SECTION.

8. INDIVIDUALIZED EDUCATION PROGRAM. IN THE EVENT THAT A STUDENT WITH AN INDIVIDUALIZED EDUCATION PROGRAM IS SUBJECT TO A RESTRAINT, SUCH STATE DEPARTMENT OR AGENCY RESPONSIBLE FOR DEVELOPING THE STUDENT'S INDIVIDUALIZED EDUCATION PROGRAM SHALL BE REVIEWED TO ENSURE THAT IT REQUIRES THE NECESSARY SERVICES TO ENCOURAGE APPROPRIATE BEHAVIOR AND PREEMPT OR MINIMIZE THE NEED FOR FUTURE RESTRAINT. IN THE EVENT THAT A STUDENT WITH AN INDIVIDUALIZED EDUCATION PROGRAM IS THE SUBJECT OF A REPORT PURSUANT TO THIS SECTION, SUCH INDIVIDUALIZED EDUCATION PROGRAM SHALL BE REVIEWED WITHIN TEN SCHOOL DAYS TO ENSURE THAT IT IS APPROPRIATE TO THE STUDENT'S BEHAVIORAL NEEDS.

9. HIGH RISK STUDENTS. STUDENTS FOR WHOM RESTRAINT POSES A RISK OF SERIOUS INJURY OR DEATH BECAUSE OF A PHYSICAL OR MENTAL HEALTH CONDITION OR PHYSICAL, MENTAL OR DEVELOPMENTAL DISABILITY, OR ANY OTHER REASON, SHALL BE IDENTIFIED BY SCHOOL OFFICIALS WHO SHALL INFORM SCHOOL PERSONNEL LIKELY TO COME INTO CONTACT WITH SUCH STUDENT OF SUCH RISK.

10. ANNUAL REPORT. ON AN ANNUAL BASIS THE DEPARTMENT SHALL REVIEW ALL REPORTS WRITTEN TO COMPLY WITH THIS SECTION AND DETERMINE WHAT ADDITIONAL MEASURES, INCLUDING TRAINING AND REPORTING, ARE REQUIRED. THE DEPARTMENT SHALL COMPILE A REPORT SUMMARIZING SUCH REVIEW AND SHALL SUBMIT A COPY OF SUCH REPORT TO THE TEMPORARY PRESIDENT OF THE SENATE AND SPEAKER OF THE ASSEMBLY EACH MARCH FIFTEENTH FOLLOWING THE EFFECTIVE DATE OF THIS SECTION.

11. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, FOR PURPOSES OF THIS SECTION, A PUBLIC SCHOOL OR PUBLIC EDUCATION PROGRAM SHALL NOT INCLUDE ANY STATE OR VOLUNTARY OPERATED PROGRAM, SERVICE OR SCHOOL THE PRIMARY PURPOSE OF WHICH IS TO CARE FOR, TREAT OR SERVE ADULTS OR CHILDREN WITH MENTAL RETARDATION OR DEVELOPMENTAL DISABILITIES.

S 3. Section 13.17 of the mental hygiene law is amended by adding a new subdivision (e) to read as follows:

(E) THE COMMISSIONER, IN CONSULTATION WITH PARENTS, FAMILY MEMBERS, CONSUMERS AND PROVIDERS SHALL ESTABLISH POLICY AND PROCEDURES FOR THE USE OF RESTRICTIVE OR INTRUSIVE INTERVENTIONS OR RESTRAINTS INCLUDING, BUT NOT LIMITED TO, PERSONAL INTERVENTIONS, TIME-OUT ROOM USE, MECHANICAL RESTRAINING DEVICES, CHEMICAL RESTRAINTS, AND ANY OTHER TECHNIQUES OR INTERVENTIONS TO FACILITATE POSITIVE BEHAVIOR. THIS POLICY SHALL ENSURE THAT POSITIVE BEHAVIORAL APPROACHES, CONSISTENT WITH THE STANDARDS OF PROFESSIONAL PRACTICE, ALWAYS BE THE PREFERRED METHOD FOR ADDRESSING MALADAPTIVE OR INAPPROPRIATE BEHAVIOR. THE COMMISSIONER SHALL

SUBMIT TO THE GOVERNOR AND LEGISLATURE THE PROPOSED POLICY AND PROCEDURE WHICH SHALL INCORPORATE THE FOLLOWING PRINCIPLES AND GOALS:

(1) TO DEVELOP OR INCREASE ADAPTIVE BEHAVIOR WHEN MALADAPTIVE OR INAPPROPRIATE BEHAVIOR IS DISPLAYED;

(2) TO ENSURE THAT RESTRICTIVE OR INTRUSIVE INTERVENTIONS OR RESTRAINTS ARE NEVER USED FOR THE CONVENIENCE OF STAFF OR AS PUNISHMENT OR AS RETRIBUTION OR AS A SUBSTITUTE FOR TREATMENT OR SUPERVISION;

(3) WITH SUFFICIENT SAFEGUARDS AND SUPERVISION TO ENSURE THAT THE DIGNITY, SAFETY, HEALTH, WELFARE, AND CIVIL RIGHTS OF A PERSON HAVE BEEN ADEQUATELY PROTECTED;

(4) WITH ASSURANCE THAT RESTRICTIVE OR INTRUSIVE INTERVENTIONS OR RESTRAINTS ARE ONLY USED AFTER THERE IS DOCUMENTATION THAT POSITIVE APPROACHES HAVE BEEN TRIED AND HAVE NOT BEEN SUFFICIENTLY SUCCESSFUL;

(5) TO ENSURE, WHENEVER PRACTICABLE, THAT PRIOR NOTIFICATION BE GIVEN TO AND PERMISSION OBTAINED FROM A PARENT OR PERSON IN A PARENTAL RELATIONSHIP TO AN INDIVIDUAL WHO MAY REQUIRE RESTRICTIVE OR INTRUSIVE INTERVENTION OR RESTRAINTS AND, AT ALL TIMES, WRITTEN NOTIFICATION BE GIVEN TO A PARENT, IF ANY, OR PERSON IN A PARENTAL RELATIONSHIP, IF ANY, WHENEVER A RESTRICTIVE OR INTRUSIVE INTERVENTION OR RESTRAINT HAS BEEN APPLIED;

(6) TO ENSURE THAT ALL PERSONNEL WHO MAY BE REQUIRED TO UTILIZE RESTRAINT TECHNIQUES RECEIVE REGULAR TRAINING IN THE PROPER USE OF SUCH TECHNIQUES AND IN ALTERNATIVE STRATEGIES DESIGNED TO PROMOTE APPROPRIATE BEHAVIOR AND CONTROL INAPPROPRIATE BEHAVIOR.

S 4. This act shall take effect on the one hundred eightieth day after it shall have become a law. Provided, however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date.