STATE OF NEW YORK

10644

IN ASSEMBLY

July 22, 2024

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Solages) -- read once and referred to the Committee on Education

AN ACT to amend the education law, in relation to prohibiting certain punishments and interventions in schools

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The education law is amended by adding a new article 2-A to read as follows:

ARTICLE 2-A

PROHIBITION OF CERTAIN PUNISHMENTS AND INTERVENTIONS

Section 20. Purpose of article.
21. Definitions.
22. Prohibition of certain punishments and interventions.
23. Authorized limited use of timeouts and physical restraints.
24. Annual reporting.
25. Private right of action.

§ 20. Purpose of article. The purpose of this article shall be to establish uniform guidelines that prohibit the use of corporal punishment, chemical restraints, aversive interventions, and seclusion and to authorize limited use of timeout and physical restraint in schools to address student behaviors.

§ 21. Definitions. For the purposes of this article, the following terms shall have the following meanings:

1. (a) "Aversive intervention" means an intervention that is intended to induce pain or discomfort for the purpose of eliminating or reducing student behavior, including but not limited to the following:

(i) contingent application of noxious, painful, intrusive stimuli or activities, or strangling, shoving, deep muscle squeezes, or other stimuli;

(ii) any form of noxious, painful or intrusive spray, inhalant or tastes;

(iii) contingent food programs that include the denial or delay of the provision of meals or intentionally altering staple food or drink in order to make it distasteful;

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

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(iv) movement limitation used as a punishment, including, but not limited to, helmets and mechanical restraints;

(v) chemical restraints; or

(vi) other similar stimuli or actions.

(b) The term "aversive intervention" shall not include interventions such as voice control, limited to loud, firm commands; time-limited ignoring of a specific behavior; token fines as part of a token economy system; brief physical prompts to interrupt or prevent a specific behavior; interventions medically necessary for the treatment or protection of a student; or other similar interventions.

2. "Corporal punishment" means any act of physical force upon a student for the purpose of punishing such student.

3. "Chemical restraint" means a drug or medication used on a student to control behavior or restrict freedom of movement that is not:

(a) prescribed by a licensed physician, or other qualified health professional acting under the scope of the professional's authority under state law, for the standard treatment of a student's medical or psychiatric condition; and

(b) administered as prescribed by the licensed physician or other qualified health professional acting under the scope of the professional's authority under state law.

4. "De-escalation" means the use of a behavior management technique that helps a student increase control over their emotions and behavior and results in a reduction of a present or potential level of danger to such student or others.

5. "Mechanical restraint" means the use of any device or equipment to restrict a student's freedom of movement. The term "mechanical restraint" shall not include devices implemented by trained school personnel, or utilized by a student, that have been prescribed by an appropriate medical or related services professional and are used for the specific and approved purposes for which such devices were designed, such as:

(a) adaptive devices or mechanical supports used to achieve proper body position, balance, or alignment to allow greater freedom of mobility than would be possible without the use of such devices or mechanical supports;

(b) vehicle safety restraints when used as intended during the transport of a student in a moving vehicle;

(c) restraints for medical immobilization; or

(d) orthopedically prescribed devices that permit a student to participate in activities without risk of harm.

6. "Multi-tiered system of supports" means a proactive and preventative framework that utilizes data to inform instruction and the allocation of services to maximize achievement for all students and support students' social, emotional and behavioral needs from a culturally responsive and strength-based perspective.

7. "Physical escort" means a temporary, voluntary touching or holding of the hand, wrist, arm, shoulder or back to induce a student to walk to a safe location.

8. "Physical restraint" means a personal restriction that immobilizes or reduces the ability of a student to move their arms, legs, body, or head freely. The term "physical restraint" shall not include a physical escort or brief physical contact and/or redirection to promote student safety, calm or comfort a student, prompt or guide a student when teaching a skill or assisting a student in completing a task, or for other similar purposes.

9. "Prone restraint" means physical or mechanical restraint while the student is in the face down position.

10. "School" means a public school district, board of cooperative educational services, charter school, state-operated and state-supported school pursuant to articles eighty-five, eighty-seven and eighty-eight of this chapter, in-state and out-of-state private residential or non-residential school for the education of students with disabilities approved pursuant to article eighty-nine of this chapter or operating under article eighty-one of this chapter, state-administered prekindergarten program directly operated by a school district, board of cooperative educational services, or an eligible agency, as defined by the commissioner, or operated by a school district in collaboration with an eligible agency, preschool special education program approved pursuant to section forty-four hundred ten of this chapter, and registered nonpublic nursery school, kindergarten, and high school, and a nonpublic school serving grades one through eight that has a registered high school, in this state. Such term as used in this article shall also include school buses, as defined by section one hundred forty-two of the vehicle and traffic law.

11. "Seclusion" means the involuntary confinement of a student alone in a room or space that they are physically prevented from leaving or they may perceive that they cannot leave at will. The term "seclusion" shall not include timeout.

12. "Timeout" means a behavior management technique that involves the monitored separation of a student in a non-locked setting, accompanied by school staff, where the student complies with a request to leave and is implemented for the purpose of de-escalating, regaining control, and preparing the student to meet expectations to return to their education program in accordance with section twenty-three of this article. The term "timeout" shall not include:

(a) a student-initiated or student-requested break to utilize coping skills, sensory input, or self-regulation strategies;

(b) use of a room or space containing coping tools or activities to assist a student to calm and self-regulate, or the use of such intervention strategies consistent with a student with a disability's behavioral intervention plan as defined by the commissioner; or

(c) a teacher removal, in-school suspension, or any other appropriate disciplinary action.

§ 22. Prohibition of certain punishments and interventions. 1. No teacher, administrator, officer, employee or agent of a school shall use the following against a student:

(a) corporal punishment;

(b) aversive interventions; or

(c) seclusion.

2. For purposes of this section the term "agent" shall include, but not be limited to, school resource officers, except when a student is under arrest and handcuffs are necessary for the safety of such student and others.

§ 23. Authorized limited use of timeouts and physical restraints. 1. Multi-tiered systems of supports. Positive, proactive, evidence- and research-based strategies through a multi-tiered system of supports shall be used to reduce the occurrence of challenging behaviors, eliminate the need for the use of timeout and physical restraint, and improve school climate and the safety of all students. Problem-solving interventions, proactive, evidence- and research-based models that are problem-solving focused and work collaboratively with the student shall be

used to eliminate the need for the use of timeout and physical restraint. Timeout and physical restraint shall be used only when: other less restrictive and intrusive interventions and de-escalation techniques would not prevent imminent danger of serious physical harm to a student or others; there is no known medical contraindication to its use on a student; and school staff using such interventions have been trained in its safe and appropriate application in accordance with the requirements of subdivision eight of this section. Timeout and physical restraints shall not be used as discipline or punishment, retaliation, or as a substitute for positive, proactive intervention strategies that are designed to eliminate the need for the use of timeout and physical restraint.

2. Use of timeout. (a) Except as otherwise specifically provided by the commissioner pursuant to rule or regulation, timeout shall only be used in a situation that poses an immediate concern for the physical safety of a student or others. Staff shall return such student to their educational program as soon as such student has safely de-escalated, regained control and is prepared to meet expectations.

(b) A room or physical space used for purposes of timeout shall be located within a classroom or outside of such classroom and shall comply with the following requirements:

(i) Such room or physical space shall:

(1) be unlocked, and any door shall be able to be opened from the inside. The use of locked rooms or physical spaces is prohibited;

(2) provide a means for continuous visual and auditory monitoring of the student;

(3) be of adequate width, length and height to allow the student to move about and recline comfortably;

(4) be clean and free of objects and fixtures that could be potentially dangerous to a student; and

(5) meet all local fire and safety codes;

(ii) Wall and floor coverings shall, to the extent practicable, be designed to prevent injury to the student and there shall be adequate lighting and ventilation; and

(iii) The temperature of the room or physical space shall be within the normal comfort range and consistent with the rest of the building.

(c) Staff shall continuously monitor a student in a timeout room or space. Staff functioning as timeout monitors shall be trained in accordance with subdivision eight of this section, and shall be physically present in the timeout room or space for the entirety of a student's time in such room or space.

3. Use of physical restraint. (a) Physical restraint shall only be used in a situation in which immediate intervention involving the use of reasonable physical force is necessary to prevent imminent danger of serious physical harm to the student or others.

(b) The type of physical restraint used shall be the least restrictive technique necessary and be discontinued as soon as the imminent danger of serious physical harm has resolved.

(c) Physical restraint shall never be used in a manner that restricts the student's ability to breathe or communicate or harms the student.

(d) The use of prone restraint is prohibited.

(e) Physical restraint shall not be used as a planned intervention on a student's individualized education program, accommodation plan, behavioral intervention plan, or other plan developed for a student by the school.

(f) Physical restraint shall not be used to prevent property damage except in situations where there is imminent danger of serious physical harm to the student or others and the student has not responded to positive, proactive intervention strategies.

(g) Physical restraint shall be administered only by staff who have received training in accordance with subdivision eight of this section.

(h) Following a physical restraint, if an injury has been sustained or believed to have been sustained, the school nurse, pursuant to section nine hundred two of this chapter or other medical personnel shall evaluate the student to determine and document if any injuries were sustained during the incident.

4. Parental notification. Each school shall develop a procedure to:

(a) ensure same day notification to a parent or person in parental relation to a student following the use of timeout, including timeout used in conjunction with such student's behavioral intervention plan, or use of a physical restraint. When the student's parent or person in parental relation cannot be contacted, after reasonable attempts are made, the school principal or building administrator shall record such attempts. For students with disabilities, the school principal or building administrator shall report such attempts to the student's committee on preschool special education or committee on special education. Such notification shall offer the parent or person in parental relation the opportunity to meet regarding the incident; and

(b) provide the parent or person in parental relation to the student a copy of the documentation of the incident within three school days of the use of timeout or a physical restraint.

5. Documentation. (a) A school shall maintain documentation of each incident involving the use of timeout, including timeout used in conjunction with a student's behavioral intervention plan consistent with rules or regulations promulgated by the commissioner, and/or physical restraint on each student, which shall include:

(i) the name and date of birth of the student;

(ii) the setting and location of the incident;

(iii) the name of the staff who participated in the implementation, monitoring and supervision of the use of timeout and/or physical restraint and any other persons involved;

(iv) a description of the incident including duration, and for a physical restraint, the type of restraint used;

(v) whether the student has an individualized education program, accommodation plan, behavioral intervention plan, or other plan developed for the student by the school;

(vi) a list of all positive, proactive intervention strategies utilized prior to the use of timeout and/or physical restraint; and for students with disabilities, whether those strategies were consistent with a student's behavioral intervention plan, if applicable;

(vii) the details of any injuries sustained by the student or staff during the incident and whether the student was evaluated by the school nurse or other medical personnel;

(viii) the date and method of notification to the parent or person in parental relation pursuant to subdivision four of this section and whether a meeting was held; and

(ix) the date of the debriefing held consistent with the requirements of subdivision six of this section.

(b) Documentation of the incident shall be reviewed by supervisory personnel and, as necessary, the school nurse or other medical personnel.

(c) Documentation of each incident shall be maintained by the school and made available for review by the department upon request.

6. Debriefing. As soon as practicable, and after every incident in which timeout and/or physical restraint is used on a student, a school administrator or designee shall:

(a) meet with the school staff who participated in the use of timeout and/or physical restraint to discuss:

(i) the circumstances leading to the use of timeout and/or physical restraint;

(ii) the positive, proactive intervention strategies that were utilized prior to the use of timeout and/or physical restraint; and

(iii) planning for the prevention and reduction of the future need for timeout and/or physical restraint with the student including, if applicable, whether a referral should be made for special education programs and/or other support services or, for a student with a disability, whether a referral for review of the student's individualized education program and/or behavioral intervention plan is needed; and

(b) direct a school staff member to debrief the incident with the student in a manner appropriate to the student's age and developmental ability and to discuss the behavior or behaviors, if any, that precipitated the use of timeout and/or physical restraint.

7. Review of documentation. The school administrator or designee shall regularly review documentation on the use of timeout and physical restraint to ensure compliance with a school's policy and procedures. When there are multiple incidents within the same classroom or involving the same staff, the school administrator or designee shall take appropriate steps to address the frequency and pattern of use.

8. Staff training. (a) All staff shall receive annual training on the school's policies and procedures related to the use of timeout and physical restraint; evidence-based positive, proactive problem-solving interventions; crisis intervention and prevention procedures and de-escalation techniques.

(b) In addition to the training requirements for all staff in paragraph (a) of this subdivision, any staff who may be called upon to implement timeout or physical restraint, shall receive annual, evidence-based training in safe and effective developmentally appropriate timeout and physical restraint procedures.

9. Written policy. (a) Each school shall adopt a written policy that establishes administrative practices and procedures regarding the use of timeout and physical restraint consistent with this subdivision. Such policy and procedures shall at a minimum include:

(i) factors which may precipitate the use of the timeout or physical restraint;

(ii) developmentally appropriate time limitations for the use of timeout and physical restraint;

(iii) prohibiting placing a student in a locked room or space or in a room where the student cannot be continuously observed and supervised;

(iv) prohibiting the use of prone restraint;

(v) any requirements promulgated by the commissioner relating to students with disabilities whose behavioral intervention plan includes the use of timeout as a behavioral consequence;

(vi) staff training provided in accordance with the requirements of subdivision eight of this section;

(vii) information to be provided to the parent or person in parental relation, including a copy of the timeout and physical restraint policy;

(viii) notifying the parent or person in parental relation on the same day when a student is placed in a timeout or a physical restraint is used in accordance with the requirements of subdivision four of this section; and

(ix) data collection to monitor patterns of use of timeout and physical restraint.

(b) The written policy shall be made publicly available for review at the district or school administrative office or offices and each school building, and posted on the school's website, if one exists.

§ 24. Annual reporting. Beginning with the two thousand twenty-five -- two thousand twenty-six school year, each public school district, board of cooperative educational services, charter school, state-operated school pursuant to articles eighty-seven and eighty-eight of this chapter, and private residential school operated pursuant to article eighty-one of this chapter, shall submit an annual report on the use of physical restraint and timeout and substantiated and unsubstantiated allegations of use of corporal punishment, mechanical restraint and other aversive interventions, prone physical restraint, and seclusion to the department, on a form and at a time prescribed by the commissioner by rule or regulation. In addition, public school districts shall report such data for students for whom they are the district of residence, and who are otherwise not reported, including students attending a state-supported school pursuant to article eighty-five of this chapter, in-state and out-of-state private residential or non-residential school for the education of students with disabilities approved pursuant to article eighty-nine of this chapter, or preschool special education program approved pursuant to section forty-four hundred ten of this chapter.

§ 25. Private right of action. The parent or person in parental relation of any student who is injured resulting from a violation of this article may bring an action to recover damages suffered by reason of such violation.

§ 2. Subdivision 1 of section 1125 of the education law, as amended by chapter 551 of the laws of 2023, is amended to read as follows:

1. "Child abuse" shall mean any of the following acts committed in an educational setting by an employee or volunteer against a child: (a) intentionally or recklessly inflicting physical injury, serious physical injury or death, or (b) intentionally or recklessly engaging in conduct which creates a substantial risk of such physical injury, serious physical injury or death, or (c) any child sexual abuse as defined in this section, or (d) the commission or attempted commission against a child of the crime of disseminating indecent materials to minors pursuant to article two hundred thirty-five of the penal law, or (e) using corporal punishment as defined by [~~the commissioner~~] section twenty-one of this chapter.

§ 3. This act shall take effect immediately.