STATE OF NEW YORK

6213

2023-2024 Regular Sessions

IN ASSEMBLY

April 3, 2023

Introduced by M. of A. JEAN-PIERRE -- read once and referred to the Committee on Education

AN ACT to amend the education law, in relation to prohibiting the use of certain restraints and aversive interventions against students and including policies and procedures for responding to students having mental health crises in school safety plans

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

Section 1. Short title. This act shall be known and may be cited as the "Protect Our Students In School Act".

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

ARTICLE 2-A

CONDITIONS ON USE OF CERTAIN FORMS OF DISCIPLINE

Section 24. Definitions.

25. Prohibition of corporal punishment and aversive interventions.

26. Limitations on use of seclusion and restraint.

27. Parental notification and duties of the department.

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

1. "Corporal punishment" shall mean any act of physical force upon a student for the purpose of punishing that student or as a means of discipline. The definition of such term includes, but is not limited to, paddling, pinching, slapping, shoving, spanking, strangling, and hitting.

2. "Aversive intervention" shall mean an intervention that is intended to induce pain or discomfort to a student for the purpose of eliminating or reducing maladaptive behaviors. The definition of such term does not include such interventions as voice control, limited to loud, firm commands; time-limited ignoring of a specific behavior; token fines as

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

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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 the student; or other similar interventions. The definition of such term includes, but is not limited to, such interventions as:

a. Use of ice applications, deep muscle squeezes, an automated aversive conditioning device, or other contingent application of noxious, painful, or intrusive stimuli or activities;

b. Conditional food programs that include the denial or unreasonable delay of the provision of meals or intentionally altering staple food or drink in order to make it distasteful;

c. Withholding of sleep, shelter, bedding, or bathroom facilities; and

d. Other stimuli or actions similar to the interventions described in paragraphs a, b and c of this subdivision.

3. "Chemical restraint" means a drug or medication used on a student to control behavior or restrict freedom of movement that is either not medically prescribed for the standard treatment of a student's medical or psychiatric condition or not administered as prescribed. The definition of such term includes, but is not limited to, use of sedatives and any form of noxious, painful, or intrusive spray, inhalant, or tastes.

4. "Mechanical restraint" shall mean the application of any device or object that restricts a student's freedom of movement or normal access to a portion of the body that the student cannot easily remove, whether such application is used as a means of discipline, to control behavior, to punish such student, or any other purpose. The definition of such term includes, but is not limited to, use of duct tape, handcuffs, helmets, anklets, chair straps, and other movement limitation devices. The definition of such term does not include devices or objects used by trained school personnel, or used by a student, for the specific and approved therapeutic or safety purposes for which they were designed and, if applicable, prescribed, including the following:

a. Restraints for medical immobilization;

b. Adaptive devices or mechanical supports used to allow greater freedom of movement stability than would be possible without use of such devices or mechanical supports;

c. Vehicle safety restraints when used as intended during the transport of a student in a moving vehicle;

d. Instruction and use of restraints as part of a criminal justice or other course; and

e. Notwithstanding their design for other purposes, adaptive use of benign devices or objects, including mittens and caps, to deter self-injury.

5. "Physical restraint" shall mean a restriction imposed by a person that immobilizes or reduces the ability of a student to freely move arms, legs, body, or head. "Physical restraint" does not include physical contact that:

a. Helps a student respond or complete a task;

b. Is needed to administer an authorized health-related service or procedure; or

c. Is needed to physically escort a student when the student does not resist or the student's resistance is minimal.

6. "Seclusion" shall mean the involuntary confinement of a student alone in a room, enclosure, or space that is either locked or, while unlocked, physically disallows egress. The use of a "timeout" procedure

during which a staff member remains accessible to the student shall not be considered "seclusion".

7. "Timeout" shall mean a behavior management technique in which, to provide a student with the opportunity to reflect or regain self-control, a student is separated from others for a limited period in a setting that is not locked and the exit is not physically blocked by furniture, closed door held shut from outside, or other inanimate object.

8. "Employee" shall mean an employee as defined in subdivision three of section eleven hundred twenty-five of this title.

9. "School property" shall mean a school property as defined in subdivision one of section eleven of this title.

10. "School function" shall mean a school function as defined in subdivision two of section eleven of this title.

§ 25. Prohibition of corporal punishment and aversive interventions. 1. No student shall be subjected to corporal punishment on school property, including, but not limited to, a board of cooperative educational services (BOCES) school, an approved preschool program, a state-operated or state-supported public school, or at any school function, by any employee.

2. In situations in which alternative procedures and methods not involving the use of physical force cannot reasonably be employed, nothing contained in this section shall be construed to prohibit the use of reasonable physical force for the following purposes:

(i) to protect oneself from physical injury; or

(ii) to protect another student or teacher or any person from physical injury.

3. No student shall be subjected to an aversive intervention on school property, including, but not limited to, a board of cooperative educational services (BOCES) school, an approved preschool program, a state-operated or state-supported public school, or at any school function, by any employee. No child-specific exception shall be granted for any student or provided for by an individualized education program (IEP).

4. No employee shall use corporal punishment or aversive interventions to protect the property of the school, school district, or others, to restrain or remove a student whose behavior is interfering with the orderly exercise and performance of school or school district functions, powers and duties, or in other non-emergency situations if the potential for property damage or the refusal of the student to comply with a request to refrain from further disruptive acts does not endanger the safety, health, or welfare of other students, employees, or any other person on school property, including, but not limited to, a board of cooperative educational services (BOCES) school, an approved preschool program, a state-operated or state-supported public school, or at any school function, by any employee.

5. No school district, including, but not limited to, a public elementary or secondary school, a board of cooperative educational services (BOCES) school, an approved preschool program, or a state-operated or state-supported public school, shall permit parents or legal guardians of enrolled students to sign a waiver permitting the use of corporal punishment or aversive interventions against such students.

§ 26. Limitations on use of seclusion and restraint. 1. No student shall be subjected to chemical restraint, mechanical restraint, or seclusion practices on school property or at any school function by any employee.

2. An employee may impose physical restraint against a student on school property or at a school function only when such use of force is reasonable, moderate, in conformity with all of the following standards, and including, but not be limited to:

a. The student's behavior presents a significant and imminent risk of bodily harm to their self or others;

b. The physical restraint does not interfere with the student's ability to communicate in the student's primary language or primary mode of communication;

c. The physical restraint does not interfere with the student's ability to breathe or place weight or pressure on the student's head, throat, or neck, or otherwise involve the use of a prone or supine restraint;

d. The physical restraint does not recklessly exacerbate a medical or physical condition of the student;

e. Less restrictive interventions have been ineffective in stopping the imminent risk of bodily harm to the student or others, except in case of a rare and clearly unavoidable emergency circumstance posing imminent risk of bodily harm, including, without limitation, intervening in a student-initiated physical assault or altercation;

f. For a student with a disability, the physical restraint does not contravene provisions in an individualized education program (IEP), behavior intervention plan, accommodation plan, or any other planning document for the individual student;

g. Employees use only the amount of force necessary to protect the student or others from the threatened harm, and the physical restraint is not prolonged beyond the period of time necessary to contain or avert the evident threat;

h. The physical restraint ends when a medical condition occurs putting the student at risk of harm or the student's behavior no longer presents an imminent risk of bodily harm to the student or others;

i. The physical restraint is solely within the scope of force necessary to further the special purpose for which the engaging employees are employed at the school or otherwise entrusted with the care and supervision of a student, including the maintenance of reasonable discipline in a school, class or other group, and is consistent with the welfare of the student; and

j. The physical restraint conforms to applicable regulations promulgated by the state education department.

§ 27. Parental notification and duties of the department. 1. The board of education or trustees of each public school and school district shall develop a procedure to notify the parent or legal guardian of a student on the same day a physical restraint is applied on such student, such student is placed in a timeout room, or such student is subjected to a prohibited form of discipline, including but not limited to those involving chemical restraints, mechanical restraints, seclusion, aversive interventions, or corporal punishment. When the student's parent or legal guardian cannot be contacted after reasonable attempts are made, the principal shall record and report such attempts and use of such practices to the department.

2. The department shall promulgate regulations implementing this section. Such regulations shall include, but not be limited to, the following:

a. Requirement of uniform public school data collection on each use of physical restraint, by school, which includes demographic information on affected students such as age, gender, race, ethnicity, and disability category, if any;

b. Requirement of timely parental notice in event of use of physical restraint;

c. Special procedures and safeguards applicable to use of physical restraint for students with disabilities; and

d. Recommended or required training of employees to support the implementation of this section.

3. To facilitate data collection and analysis, the department may adopt a uniform reporting document and may require reporting of data in a standardized electronic or nonelectronic format.

4. The department shall issue an annual report on use of physical restraint which includes rates of usage by school and by subcategories identified in paragraphs a, b, c and d of subdivision two of this section, identifies trends, and analyzes significant results.

§ 3. Paragraphs l and m of subdivision 2 of section 2801-a of the education law, as amended by chapter 30 of the laws of 2021, are amended to read as follows:

l. the designation of the superintendent, or superintendent's designee, as the district chief emergency officer responsible for coordinating communication between school staff and law enforcement and first responders, and ensuring staff understanding of the district-level safety plan. The chief emergency officer shall also be responsible for ensuring the completion and yearly updating of building-level emergency response plans; [~~and~~]

m. protocols for responding to a declared state disaster emergency involving a communicable disease that are substantially consistent with the provisions of section twenty-seven-c of the labor law; and

n. policies and procedures for responding to students having mental health crises in a manner that does not include contacting law enforcement unless an implied or direct threat of violence or other criminal activity is involved.

§ 4. This act shall take effect immediately.