STATE OF NEW YORK

3311

2023-2024 Regular Sessions

IN ASSEMBLY

February 2, 2023

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

AN ACT to amend the education law, in relation to prohibiting the use of restraints and seclusion in schools; and to providing for more rapid notice to parents if restraints or seclusion is used

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

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

ARTICLE 2-A

PROHIBITIONS ON RESTRAINT AND SECLUSION

Section 20. Legislative intent.
21. Short title.
22. Definitions.
23. Prohibitions on restraint and seclusion.
24. Program requirements.
25. Enforcement.
26. Private right of action.
27. Grants.
28. Assessment and reporting.
29. Protection and advocacy systems.
30. Construction.
31. Applicability to private schools and home schools.

§ 20. Legislative intent. It is the policy of the state of New York to promote safety and prevent harm to all students, staff, and visitors in the public schools and to treat all school students with dignity and respect in the delivery of discipline, use of physical restraints or seclusion, and use of reasonable force as permitted by law.

To accomplish such policy, it is the intention of the legislature to provide school staff with clear guidelines about what constitutes use of reasonable force permissible in New York schools with the goal of improving student achievement, attendance, promotion, and graduation rates by employing positive behavioral interventions to address student behavior in a positive and safe manner while promoting the retention of

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

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valuable teachers and other school personnel by providing appropriate training in prescribed procedures, which address student behavior in a positive and safe manner.

§ 21. Short title. This article shall be known and may be cited as the "Keeping All New York Students Safe Act".

§ 22. Definitions. As used in this article:

1. "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.

2. "Commissioner" means the commissioner of education.

3. "Early childhood education program", "educational service agency", "elementary school", "local educational agency", "other staff", "paraprofessional", "parent", "school leader", "secondary school", "specialized instructional support personnel", "state", and "state educational agency" have the meanings given the terms in section 8101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

4. "Head Start program" means a program that serves children who receive services for which financial assistance is provided in accordance with the Head Start Act (42 U.S.C. 9831 et seq.).

5. "Law enforcement officer" means any person who:

(a) (i) is a state or local law enforcement officer; and

(ii) is assigned by the employing law enforcement agency to a program, who is contracting with a program, or who is employed by a program; and

(b) includes a "school resource officer" if such person meets the definition in paragraph (a) of this subdivision.

6. "Mechanical restraint" means the use of devices as a means of restricting a student's freedom of movement.

7. "Physical escort" means the temporary touching or holding of the hand, wrist, arm, shoulder, or back for the purpose of inducing a student who is acting out to walk to a safe location.

8. "Physical restraint" means a personal restriction that immobilizes or reduces the ability of an individual to move the individual's arms, legs, torso, or head freely, except that such term does not include a physical escort, mechanical restraint, or chemical restraint.

9."Positive behavioral interventions and supports":

(a) means a schoolwide, systematic approach that embeds evidence-based practices and data-driven decision making to improve school climate and culture in order to achieve improved academic and social outcomes and increase learning for all students (including students with the most complex and intensive behavioral needs); and

(b) encompasses a range of systemic and individualized positive strategies to teach and reinforce school-expected behaviors, while discouraging and diminishing undesirable behaviors.

10. "Program" means:

(a) all of the operations of a local educational agency, system of vocational education, or other school system;

(b) a program that serves children who receive services for which financial assistance is provided in accordance with the Head Start Act (42 U.S.C. 9831 et seq.); or

(c) an elementary school or secondary school that is not a public school that enrolls a student who receives special education and related services under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.).

11. "Program personnel" means any agent of a program, including an individual who is employed by a program, or who performs services for a program on a contractual basis, including school leaders, teachers, specialized instructional support personnel, paraprofessionals and other staff. "Program personnel" does not include a law enforcement officer or a school security guard.

12. "Protection and advocacy system" means a protection and advocacy system established under section 143 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15043).

13. "School" means an elementary school, secondary school, or special education school.

14. "School security guard" means an individual who is not a sworn law enforcement officer and who is responsible for addressing one or more of the following safety and crime prevention activities in and around a program:

(a) Assisting program personnel in safety incidents.

(b) Educating students in crime and illegal drug use prevention and safety.

(c) Developing or expanding community justice initiatives for students.

(d) Training students in conflict resolution and supporting restorative justice programs.

(e) Serving as a liaison between the program and outside agencies, including other law enforcement agencies.

(f) Screening students or visitors to the program for prohibited items.

15. "Seclusion" means the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving, except that such term does not include a time out.

16. "Special education school" means a school that focuses primarily on serving the needs of students with disabilities under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) or section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

17. "State-approved crisis intervention training program" means a training program approved by the commissioner that, at a minimum, provides:

(a) training in evidence-based techniques shown to be effective in the prevention of physical restraint;

(b) evidence-based skills training related to positive behavioral interventions and supports, safe physical escort, conflict prevention, understanding antecedents, deescalation, and conflict management;

(c) training in evidence-based techniques shown to be effective in keeping both school personnel and students safe when imposing physical restraint;

(d) training in first aid and cardiopulmonary resuscitation;

(e) information describing state policies and procedures to ensure compliance with section twenty-three of this article; and

(f) certification for school personnel, law enforcement officers, and school security guards in the techniques and skills described in paragraphs (a) through (d) of this subdivision, which shall be required to be renewed on a periodic basis.

18. "Student" includes:

(a) a student enrolled in a program; and

(b) a student enrolled in an elementary school or secondary school.

19. "Time out" means a behavior management technique that may involve the separation of the student from the group or classroom in a non-locked setting. "Time out" does not include seclusion or a separation of the student from which such student is physically or otherwise prohibited from leaving.

§ 23. Prohibitions on restraint and seclusion. 1. No student shall be subjected to unlawful seclusion or restraint by program personnel, a law enforcement officer, or a school security guard, while attending any program that receives state financial assistance.

2. (a) As used in this article "unlawful seclusion or restraint" means:

(i) seclusion;

(ii) mechanical restraint;

(iii) chemical restraint;

(iv) physical restraint or physical escort that is life threatening, that restricts breathing, or that restricts blood flow to the brain, including prone and supine restraint;

(v) physical restraint that is contraindicated based on the student's disability, health care needs, or medical or psychiatric condition, as documented in:

(A) a health care directive or medical management plan;

(B) a behavior intervention plan;

(C) an individualized education program or an individualized family service plan (as defined in section 602 of the Individuals with Disabilities Education Act (20 U.S.C. 1401));

(D) a plan developed pursuant to section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) or title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131 et seq.); or

(E) another relevant record made available to the state or the program involved; or

(F) any physical restraint that is not in compliance with the student's health care directive or medical management plan.

(b) "Unlawful seclusion or restraint" does not include:

(i) a time out; or

(ii) a device implemented by trained school personnel, or utilized by a student, for the specific and approved therapeutic or safety purposes for which such devices were designed and, if applicable, prescribed, provided that such devices are not used to purposefully cause a student pain as a means of behavioral modification, including:

(A) restraints for medical immobilization;

(B) 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; or

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

§ 24. Program requirements. The commissioner shall ensure that each program that receives state financial assistance complies with the following requirements:

1. The use of physical restraint by any program personnel, a school security guard, or a law enforcement officer shall be considered in compliance with the requirements of this subsection only if each of the following requirements are met:

(a) The student's behavior poses an imminent danger of serious physical injury to the student, program personnel, a school security guard, a law enforcement officer, or another individual.

(b) Before using physical restraint, less restrictive interventions would be ineffective in stopping such imminent danger of serious physical injury.

(c) Such physical restraint is imposed by:

(i) program personnel, a school security guard, or a law enforcement officer trained and certified by a state-approved crisis intervention training program; or

(ii) program personnel, a school security guard, or a law enforcement officer not trained and certified as described in subparagraph (i) of this paragraph, in the case of a rare and clearly unavoidable emergency circumstance when program personnel, a school security guard, or a law enforcement officer trained and certified as described in subparagraph (i) of this paragraph is not immediately available due to the unforeseeable nature of the emergency circumstance.

(d) Such physical restraint ends immediately upon the cessation of the imminent danger of serious physical injury to the student, any program personnel, a school security guard, a law enforcement officer, or another individual.

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

(f) During the physical restraint, the least amount of force necessary is used to protect the student or others from the threatened injury.

2. The commissioner, in consultation with program officials and the Head Start Collaboration Program, shall ensure that a sufficient number of program personnel are trained and certified by a crisis intervention training program approved by the commissioner to meet the needs of the specific student population in each program.

3. The use of physical restraint as a planned intervention shall not be written into a student's education plan, individual safety plan, behavioral intervention plan, or individualized education program (as defined in section 602 of the Individuals with Disabilities Education Act (20 U.S.C. 1401)), except that a program may establish policies and procedures for use of physical restraint in program safety or crisis plans, provided that such a plan is not specific to any individual student.

4. Each program shall establish procedures to be followed after an incident involving the imposition of physical restraint upon a student, which shall include each of the following:

(a) Procedures to provide to the parent of the student, with respect to such incident:

(i) an immediate verbal or electronic communication, as soon as is practicable and not later than two hours after the incident; and

(ii) written notification, as soon as is practicable, and not later than twenty-four hours after the incident that shall include, at minimum:

(A) a description of the incident, including precipitating events;

(B) positive interventions used prior to restraint;

(C) the length of time of restraint; and

(D) a description of the serious physical injury of the student or others that occurred or was about to occur that necessitated the use of restraint.

(b) A meeting between parents of the student and the program, as soon as is practicable, and not later than five school days following the incident (unless such meeting is delayed by written mutual agreement of the parent and the program):

(i) which meeting shall include, at a minimum:

(A) the parent of such student;

(B) the student involved (if appropriate);

(C) the program personnel, law enforcement officer, or school security guard who imposed the restraint;

(D) a teacher of such student;

(E) a program leader of such student; and

(F) an expert on behavior interventions, who may be a special education teacher;

(ii) the purpose of which shall be to discuss the incident, as described by both the student and the program personnel, law enforcement officer, or school security guard involved, including:

(A) any precipitating events;

(B) how the incident occurred; and

(C) prior positive behavioral interventions and supports used to deescalate the situation; and

(iii) which meeting shall include:

(A) the discussion of proactive strategies to prevent future need for the use of physical restraint;

(B)(1) for a student identified as eligible to receive accommodations under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) or title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131 et seq.), or accommodations or special education or related services under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), a discussion of the need for a functional behavioral assessment and a behavior intervention plan; or

(2) for a student not identified as eligible to receive accommodations under the provisions of law described in item one of this clause, evidence of a referral for such accommodations or special education or related services, or documentation of the basis for declining to make such a referral for the student; and

(C) providing to the parent, for use during the meeting, a written statement from each adult witness who was in the proximity of the student immediately before and during the time of the physical restraint, but was not directly involved in such restraint.

§ 25. Enforcement. 1. The commissioner shall address any complaints alleging a violation of section twenty-three of this article for an appropriate investigation.

2. The commissioner may withhold up to one-half of all state moneys from any program, which, in his or her judgment, willfully omits and refuses to enforce the provisions of this article, after due notice, so often and so long as such willful omission and refusal shall, in his or her judgment, occur, or continue. If the provisions of this article are complied with at any time within one year from the date on which said moneys were withheld, the money so withheld shall be paid over by the commissioner to such program, otherwise forfeited to the state.

§ 26. Private right of action. 1. A student who has been subjected to unlawful seclusion or restraint in violation of section twenty-three of this article, or the parent of such student, may file a civil action against the program under which the violation is alleged to have occurred in an appropriate district court of the United States or in

state court for declaratory judgment, injunctive relief, compensatory relief, attorneys' fees, or expert fees.

2. Program personnel shall not be liable to any person in a proceeding described in subdivision one of this section or in an arbitration proceeding for a violation of section twenty-three of this article.

3. No program shall be immune under the Eleventh Amendment of the Constitution of the United States from suit in Federal or state court for a violation of subsection (a) of this section.

§ 27. Grants. 1. (a) From the amounts appropriated to carry out this section for a fiscal year, the commissioner shall award grants to school districts with an application approved under subdivision two of this section, on the basis of their relative need, as determined with the commissioner in accordance with paragraph (b) of this subdivision, to assist the school districts in:

(i) establishing, implementing, and enforcing the policies and procedures that ensure compliance with section twenty-three of this article;

(ii) improving state and local capacity to collect and analyze data related to physical restraint; and

(iii) improving school climate and culture by implementing schoolwide positive behavioral interventions and supports, mental health supports, restorative justice programs, trauma-informed care, and crisis and de-escalation interventions.

(b) In determining the relative need of a school district under paragraph (a) of this section, the commissioner shall consider:

(i) the physical restraint and seclusion incidents that occurred at a school served by the school district for the most recent academic year for which data is available;

(ii) the capacity needs of the school district to collect and analyze the data described in subparagraph (ii) of paragraph (a) of this subdivision; and

(iii) whether the school district has been carrying out the activities described in subparagraph (iii) of paragraph (a) of this subdivision and, if so, how the activities are being implemented.

(c) A grant under this section shall be awarded to a state educational agency for a three-year period.

2. (a) To be eligible to receive a grant under this section, each school district desiring a grant shall submit an application to the commissioner at such time, in such manner, and accompanied by such information as the commissioner may require.

(b) Each application submitted under paragraph (a) of this subdivision shall include:

(i) the total number of incidents in which physical restraint was imposed upon students for the most recent school year;

(ii) the total number of incidents in which seclusion was imposed upon students for the most recent school year;

(iii) a description of the school district's data collection policies and procedures;

(iv) a description of crisis intervention or prevention trainings used in the school district to prevent or reduce physical restraint and seclusion (if applicable);

(v) a description of school district initiatives regarding school climate and culture (if applicable), such as schoolwide positive behavioral interventions and supports, mental health supports, restorative justice programs, trauma-informed care, and crisis and de-escalation interventions;

(vi) a description of activities to be funded under the grant and the goals of such activities, including how the activities will eliminate seclusion and reduce and prevent physical restraint; and

(vii) a description of how the activities under the grant will coordinate and align with current federal, state, and local policies, programs, or activities regarding seclusion and physical restraint, crisis intervention, and school climate or culture.

3. A school district receiving a grant under this section may use such grant funds to award subgrants, in the manner determined by the school district, to local schools within the school district. A school desiring to receive a subgrant under this section shall submit an application to the applicable school district at such time, in such manner, and containing such information as the school district may require.

4. A school district receiving funds under this section shall ensure that educators working in an early childhood education program, as defined in section 103 of the Higher Education Act of 1965 (20 U.S.C. 1003), may participate, to the extent practicable, on an equitable basis in activities supported by subgrant funds under this section that are trainings on developmentally appropriate practices for meeting the needs of young children.

5. A school district receiving funds under this section shall, after timely and meaningful consultation with appropriate private school officials, ensure that private school personnel may participate, on an equitable basis, in activities supported by grant funds under this section.

6. A school district receiving a grant, or a school receiving a subgrant, under this section shall use such grant or subgrant funds to carry out the following:

(a) Establishing and implementing policies to prohibit seclusion, mechanical restraint, chemical restraint, and other forms of prohibited restraint in schools, consistent with section twenty-three of this article.

(b) Implementing and evaluating strategies and procedures to prevent seclusion and to prevent and reduce physical restraint in schools, consistent with such policies.

(c) Providing professional development, training, and certification for school personnel to comply with such policies.

(d) Analyzing the information included in a report prepared under this section to identify student, school personnel, and school needs related to preventing seclusion, and preventing and reducing the use of physical restraint.

(e) Providing training to school security guards and, as appropriate, school personnel, on how to comply with education and civil rights laws, including the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) and the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), when interacting with students with disabilities, including, when conducting disciplinary actions involving students with disabilities.

7. In addition to the required activities described in subdivision six of this section, a school district receiving a grant, or a school receiving a subgrant, under this section may use such grant or subgrant funds for one or more of the following:

(a) Developing and implementing high-quality professional development and training programs to implement evidence-based systematic approaches to schoolwide positive behavioral interventions and supports, including improving coaching, facilitation, and training capacity for administra-

tors, school leaders, teachers, specialized instructional support personnel, paraprofessionals, and other staff.

(b) Providing technical assistance to implement evidence-based systematic approaches to schoolwide positive behavioral interventions and supports, including technical assistance for data-driven decision making related to behavioral supports and interventions in the classroom.

(c) Researching, evaluating, and disseminating high-quality evidence-based programs and activities that implement schoolwide positive behavioral interventions and supports with fidelity.

(d) Supporting other local positive behavioral interventions and supports implementation activities consistent with this subsection.

(e) Developing, implementing, and providing technical assistance to support evidence-based programs that reduce the likelihood of physical restraint, such as mental health supports, restorative justice programs, trauma-informed care, and crisis and de-escalation interventions.

8. Each school district receiving a grant under this section shall, at the end of the three-year grant period for such grant:

(a) evaluate the school district's progress toward the elimination of seclusion and the prevention and reduction of physical restraint in the schools located in the school district, consistent with section twenty-three of this article;

(b) submit to the commissioner a report on such progress; and

(c) publish such report on the school district's website in an accessible format.

9. The commissioner shall include in the department's annual budget a request for an appropriation of such sums as may be necessary to carry out this section for each fiscal year commencing on and after the effective date of this section.

§ 28. Assessment and reporting. 1. The commissioner shall carry out a national assessment to determine the effectiveness of this article, which shall include:

(a) analyzing data related to incidents of physical restraint in schools and programs that serve children who receive services for which financial assistance is provided in accordance with the Head Start Act (42 U.S.C. 9831 et seq.) (referred to in this title as "Head Start programs");

(b) analyzing the effectiveness of state, and local efforts to eliminate seclusion and prevent and reduce the number of physical restraint incidents in schools and Head Start programs;

(c) identifying the types of programs and services that have demonstrated the greatest effectiveness in eliminating and preventing seclusion and preventing and reducing the number of physical restraint incidents in schools and Head Start programs; and

(d) identifying evidence-based personnel training models with demonstrated success in preventing seclusion and preventing and reducing the number of physical restraint incidents in schools and Head Start programs, including models that emphasize positive behavioral interventions and supports and de-escalation techniques over physical intervention.

2. The commissioner shall submit to the legislature and the governor:

(a) not later than three years after the date of the effective date of this article, an interim report that summarizes the preliminary findings of the assessment described in subdivision one of this section; and

(b) not later than five years after the date of the effective date of this article, a final report of the findings of the assessment.

§ 29. Protection and advocacy systems. 1. In a case in which physical injury or death of a student or of a child enrolled in a Head Start program occurs in conjunction with the use of seclusion or physical restraint or any intervention used to control behavior at a school or Head Start program, the local educational agency serving such school or the agency administering a Head Start program under the Head Start Act (42 U.S.C. 9801 et seq.) shall have procedures to:

(a) notify, in writing, not later than twenty-four hours after such injury or death occurs:

(i) the department;

(ii) the local law enforcement agency; and

(iii) the relevant protection and advocacy system; and

(b) provide any information that the protection and advocacy system may require.

2. Protection and advocacy systems shall have the same authorities and rights provided under subtitle C of title I of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15041 et seq.) with respect to protections provided for students or children enrolled in Head Start programs under this article when such students or children are otherwise eligible to be clients of the protection and advocacy system, including investigating, monitoring, and enforcing such protections.

§ 30. Construction. Subject to section twenty-four of this article, nothing in this article shall be construed to prohibit a sworn law enforcement officer with probable cause from arresting a student for violating a federal or state criminal law.

§ 31. Applicability to private schools and home schools. 1. Nothing in this article shall be construed to affect any private school that does not receive, or does not serve students who receive, support in any form from any program or activity supported, in whole or in part, with state funds.

2. Nothing in this article shall be construed to:

(a) affect a home school, whether or not a home school is treated as a private school or home school under state law; or

(b) consider parents who are schooling a child at home as program personnel.

§ 2. Subdivision 9 of section 4402 of the education law, as added by chapter 516 of the laws of 2022, is amended to read as follows:

9. The board of education or trustees of each school district shall develop a procedure to notify the parent or person in parental relation of a student with a disability [~~on the same day~~] within two hours of the time when a physical or mechanical restraint is applied on such student or such student is placed in a time out room. When the student's parent or person in parental relation cannot be contacted after reasonable attempts are made, the principal shall record and report such attempts to the committee on special education.

§ 3. Severability. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 4. This act shall take effect on the first of July next succeeding the date upon which it shall have become a law.