

# 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 Assem-  
bly, do enact as follows:

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

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

### ARTICLE 2-A

#### CONDITIONS ON USE OF CERTAIN FORMS OF DISCIPLINE

##### Section 24. Definitions.

##### 25. Prohibition of corporal punishment and aversive inter- ventions.

##### 26. Limitations on use of seclusion and restraint.

##### 27. Parental notification and duties of the department.

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

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

19 2. "Aversive intervention" shall mean an intervention that is intended  
20 to induce pain or discomfort to a student for the purpose of eliminating  
21 or reducing maladaptive behaviors. The definition of such term does not  
22 include such interventions as voice control, limited to loud, firm  
23 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.

LBD09619-02-3

1 part of a token economy system; brief physical prompts to interrupt or  
2 prevent a specific behavior; interventions medically necessary for the  
3 treatment or protection of the student; or other similar interventions.  
4 The definition of such term includes, but is not limited to, such inter-  
5 ventions as:

6 a. Use of ice applications, deep muscle squeezes, an automated aver-  
7 sive conditioning device, or other contingent application of noxious,  
8 painful, or intrusive stimuli or activities;

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

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

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

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

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

33 a. Restraints for medical immobilization;

34 b. Adaptive devices or mechanical supports used to allow greater free-  
35 dom of movement stability than would be possible without use of such  
36 devices or mechanical supports;

37 c. Vehicle safety restraints when used as intended during the trans-  
38 port of a student in a moving vehicle;

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

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

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

48 a. Helps a student respond or complete a task;

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

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

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

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

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

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

11 9. "School property" shall mean a school property as defined in subdi-  
12 vision one of section eleven of this title.

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

15 § 25. Prohibition of corporal punishment and aversive interventions.

16 1. No student shall be subjected to corporal punishment on school prop-  
17 erty, including, but not limited to, a board of cooperative educational  
18 services (BOCES) school, an approved preschool program, a state-operated  
19 or state-supported public school, or at any school function, by any  
20 employee.

21 2. In situations in which alternative procedures and methods not  
22 involving the use of physical force cannot reasonably be employed, noth-  
23 ing contained in this section shall be construed to prohibit the use of  
24 reasonable physical force for the following purposes:

25 (i) to protect oneself from physical injury; or

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

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

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

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

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

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

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

7 b. The physical restraint does not interfere with the student's abili-  
8 ty to communicate in the student's primary language or primary mode of  
9 communication;

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

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

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

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

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

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

31 i. The physical restraint is solely within the scope of force neces-  
32 sary to further the special purpose for which the engaging employees are  
33 employed at the school or otherwise entrusted with the care and super-  
34 vision of a student, including the maintenance of reasonable discipline  
35 in a school, class or other group, and is consistent with the welfare of  
36 the student; and

37 j. The physical restraint conforms to applicable regulations promul-  
38 gated by the state education department.

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

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

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

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

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

5 d. Recommended or required training of employees to support the imple-  
6 mentation of this section.

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

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

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

17 l. the designation of the superintendent, or superintendent's desig-  
18 nee, as the district chief emergency officer responsible for coordinat-  
19 ing communication between school staff and law enforcement and first  
20 responders, and ensuring staff understanding of the district-level safe-  
21 ty plan. The chief emergency officer shall also be responsible for  
22 ensuring the completion and yearly updating of building-level emergency  
23 response plans; ~~and~~

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

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

31 § 4. This act shall take effect immediately.