

CHAPTER 54  
FORMERLY  
SENATE BILL NO. 100

AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO USE OF SECLUSION AND RESTRAINT IN PUBLIC SCHOOLS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 7, Title 14 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§701. Authority of teachers and administrators to control the disruptive behavior of students.

(b) While a student is entrusted in their care or supervision, public school teachers and administrators have the same authority to control the behavior of the student and to discipline or punish the student as a parent, custodian, guardian or other person similarly responsible for the care and supervision of the student except as provided in §702 and §4112F of this title. The authority includes removing a student from a classroom or school-sponsored activity.

§702. Corporal punishment.

(a) “Corporal punishment” means the intentional infliction of physical pain which is used as a means of discipline. “Corporal punishment” includes, but is not limited to, paddling and slapping, when used as a means of discipline.

(b) No public school teacher, administrator, official employee or agent of the School Board may subject a student enrolled in the school district to corporal punishment.

(c) Subsection (b) of this section does not prohibit a public school teacher, administrator, official employee or agent of a school board from:

(1) Using reasonable and necessary force to quell a disturbance, including but not limited to a physical altercation, or prevent an act that threatens ~~physical injury~~ imminent bodily harm to any person;

(2) Using reasonable and necessary force to obtain possession of a weapon, or other dangerous object within a ~~pupil's~~ student's control;

(3) Using reasonable and necessary force for the purpose of self-defense or the defense of others under §§464 and 465 of Title 11;

(4) Using reasonable and necessary force for the protection of property under §466 of Title 11;

(5) Using reasonable and necessary force to prevent a ~~pupil-student~~ from imminently inflicting bodily harm on that ~~pupil's-student's~~ own self;

(6) Using reasonable and necessary force to protect the bodily safety of others; or

(7) Using incidental, ~~or minor or reasonable~~ physical contact ~~designed necessary~~ to maintain order and control.

(d) In determining whether or not a person was acting within the exceptions in subsection (c) of this section, deference shall be given to reasonable, good faith judgments made by the teacher, administrator, official employee or agent.

(e) Nothing in this section shall prohibit, permit or otherwise affect any action taken by the teacher, administrator, official employee or agent of the School Board with regard to a person who is not a ~~pupil~~ student enrolled in the school district.

(f) For purposes of this section, the term “reasonable and necessary” shall be interpreted in conformity with applicable limitations established by §4112F of this title.

Section 2. Amend Chapter 41, Title 14 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§4112F. Limitations on use of seclusion and restraint.

(a) Definitions. The following words, terms, and phrases when used in this section, shall have the meaning ascribed to them except where the context clearly indicates a different meaning:

(1) “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.

(2) “Mechanical restraint” means 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. “Mechanical restraint” 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 or 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; or
- e. notwithstanding their design for other purposes, adaptive use of benign devices or objects, including mittens and caps, to deter self-injury.

(3) “Physical restraint” means 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.

(4) “Public school personnel” means an employee or contractor of a public school district or charter school. “Public school personnel” does not include the following:

- a. A law enforcement officer as defined in §9200(b) of Title 11; or
- b. an employee or contractor providing educational services within a Department of Correction or Division of Youth Rehabilitative Services facility.

(5) “Seclusion” means 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”.

(6) “Timeout” means 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.

(b) Prohibition and restriction on use.

(1) Public school personnel are prohibited from imposing on any student the following:

- a. Chemical restraint; and
- b. Subject to waiver authorized pursuant to subsection (c)(4) of this section, mechanical restraint and seclusion.

(2) Public school personnel may impose physical restraint only in conformity with all of the following standards:

- a. The student’s behavior presents a significant and imminent risk of bodily harm to self or others;
- b. The physical restraint does not interfere with the student’s ability to communicate in the student’s primary language or 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;

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 as defined in Chapter 31 of this title or 34 C.F.R. Part 104, 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. Personnel use only the amount of force necessary to protect the student or others from the threatened harm;

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 within the scope of force authorized by §468 of Title 11; and

j. The physical restraint conforms to applicable regulations promulgated by the Department of Education.

(c) Department of Education Role; Regulations.

(1) The Department of Education 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 as defined in Chapter 31 of this title or 34 C.F.R. Part 104; and

d. Recommended or required training of public school personnel in implementing this section.

(2) To facilitate data collection and analysis, the Department of Education may adopt a uniform reporting document and may require reporting of data in a standardized electronic or non-electronic format.

(3) The Department of Education shall issue an annual report on use of physical restraint which includes rates of usage by school and by subcategories identified in paragraph (1)(a), identifies trends, and analyzes significant results.

(4) Unless proscribed by federal law, the Secretary of Education may issue a waiver of the prohibition on mechanical restraint and seclusion for an individual student based on compelling justification and subject to specific conditions and safeguards which must include a requirement of continuous visual staff monitoring and parental notice of each use of mechanical restraint or seclusion.

(d) Effect on other laws. The limitations and prohibitions described in this section are in addition to, and not in derogation of, any other constitutional, statutory, or regulatory rights otherwise conferred by federal or state law or regulation.

Section 3. If any provision of this Act, or the application thereof to any person, thing, or circumstance is held invalid, such invalidity shall not affect the provisions of this Act that can be given effect without the invalid provisions or application, and to this end the provisions of this Act are declared to be severable.

Section 4. This Act shall become effective on July 1, 2014 or one year after its enactment, whichever is later.

Approved June 26, 2013