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DELAWARE STATE SENATE  
146th GENERAL ASSEMBLY

SENATE BILL NO. 242

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:

1 Section 1. Amend §701(b), Title 14 of the Delaware Code by making insertions as shown by underlining and  
2 deletions as shown by strike through as follows:

3 (b) While a student is entrusted in their care or supervision, public school teachers and administrators have the  
4 same authority to control the behavior of the student and to discipline or punish the student as a parent, custodian,  
5 guardian or other person similarly responsible for the care and supervision of the student except as provided in  
6 §702 and §4112E of this title. The authority includes removing a student from a classroom or school-sponsored  
7 activity.

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

10 §4112E. Limitations on use of seclusion and restraint.

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

13 (1) "Chemical restraint" means a drug or medication used on a student to control behavior or restrict  
14 freedom of movement that is either not medically prescribed for the standard treatment of a student's  
15 medical or psychiatric condition or not administered as prescribed.

16 (2) Mechanical restraint" means the application of any device or object that restricts a student's freedom  
17 of movement or normal access to a portion of the body that the student cannot easily remove.

18 "Mechanical restraint" does not include devices or objects used by trained school personnel, or used by a  
19 student, for the specific and approved therapeutic or safety purposes for which they were designed and, if  
20 applicable, prescribed, including the following:

21 a. restraints for medical immobilization;

22 b. adaptive devices or mechanical supports used to allow greater freedom of movement  
23 or stability than would be possible without use of such devices or mechanical supports; or  
24 c. vehicle safety restraints when used as intended during the transport of a student in a  
25 moving vehicle.

26 (3) “Physical restraint” means a restriction imposed by a person that immobilizes or reduces the ability of  
27 a student to freely move arms, legs, body, or head. “Physical restraint” does not include physical contact  
28 that:

29 a. helps a student respond or complete a task;  
30 b. is needed to administer an authorized health-related service or procedure; or  
31 c. is needed to physically escort a student when the student does not resist or the student’s  
32 resistance is minimal.

33 (4) “Public school personnel” means an employee or contractor of a public school district or charter  
34 school.

35 (5) “Seclusion” means the involuntary confinement of a student alone in a room, enclosure, or space that  
36 is either locked or, while unlocked, physically disallows egress.

37 (b) Prohibition and restriction on use.

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

39 a. Chemical restraint;  
40 b. Mechanical restraint; and  
41 c. Subject to waiver authorized pursuant to subsection ( c)(1) of this section, seclusion.

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

44 a. The student’s behavior presents a significant and imminent risk of serious bodily injury to self  
45 or others;  
46 b. The physical restraint does not interfere with the student’s ability to communicate in the  
47 student’s primary language or mode of communication;  
48 c. The physical restraint does not interfere with the student’s ability to breathe or place weight or  
49 pressure on the student’s throat, neck, lungs, chest, sternum, diaphragm, or back;  
50 d. The physical restraint does not exacerbate a known medical or physical condition of the  
51 student;

- 52 e. Less restrictive interventions have been ineffective in stopping the immediate danger of  
53 serious bodily injury to the student or others, except in case of a rare and clearly unavoidable  
54 emergency circumstance posing immediate danger of serious bodily injury;  
55 f. For a student with a disability as defined in Chapter 31 of this title or 34 C.F.R. Part 104, the  
56 physical restraint does not contravene provisions in an individualized education program (IEP),  
57 behavior intervention plan, accommodation plan, or any other planning document for the  
58 individual student;  
59 g. Personnel use only the amount of force necessary to protect the student or others from the  
60 threatened injury;  
61 h. The physical restraint ends when a medical condition occurs putting the student at risk of  
62 harm or the student's behavior no longer presents an immediate danger of serious bodily injury  
63 to the student or others;  
64 i. The physical restraint is within the scope of force authorized by §468 of Title 11; and  
65 j. The physical restraint conforms to applicable regulations promulgated by the Department of  
66 Education.

67 (c) Department of Education Role; Regulations.

68 (1) The Department of Education shall promulgate regulations implementing this section. Such  
69 regulations shall include, but not be limited to, the following:

- 70 a. Requirement of uniform public school data collection on each use of physical restraint, by  
71 school, which includes demographic information on affected students such as age, gender, race,  
72 ethnicity, and disability category, if any;  
73 b. Requirement of timely parental notice in event of use of physical restraint;  
74 c. Special procedures and safeguards applicable to use of physical restraint for students with  
75 disabilities as defined in Chapter 31 of this title or 34 C.F.R. Part 104; and  
76 d. Recommended or required training of public school personnel in implementing this section.  
77 e. Unless proscribed by federal law, authorization and procedure for approval of a waiver of the  
78 prohibition on seclusion for an individual student based on compelling justification and subject  
79 to specific conditions and safeguards which must include a requirement of continuous visual  
80 staff monitoring.

81 (2) To facilitate data collection and analysis, the Department of Education may adopt a uniform reporting

82 document and may require reporting of data in a standardized electronic or non-electronic format.  
83 (3) The Department of Education shall issue an annual report on use of physical restraint which includes  
84 rates of usage by school and by subcategories identified in paragraph (1)(a), identifies trends, and  
85 analyzes significant results.

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

89 Section 2. If any provision of this Act, or the application thereof to any person, thing, or circumstance is held  
90 invalid, such invalidity shall not affect the provisions of this Act that can be given effect without the invalid provisions or  
91 application, and to this end the provisions of this Act are declared to be severable.

92 Section 3. This Act shall become effective on July 1, 2013 or one year after its enactment, whichever is later.

SYNOPSIS

Based on national reports documenting misuse of seclusion and restraint within public schools, many states are adopting remedial statutory or regulatory standards. This bill is the product of research and deliberations of an interagency committee formed by the Governor’s Advisory Council for Exceptional Citizens (GACEC) in 2010 to identify best practices and develop standards for Delaware public schools.

Author: Senator Sokola