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DELAWARE STATE SENATE  
147th GENERAL ASSEMBLY

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:

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

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

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

8 §702. Corporal punishment.

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

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

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

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

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

19 (3) Using reasonable and necessary force for the purpose of self-defense or the defense of others under  
20 §§464 and 465 of Title 11;

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

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

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

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

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

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

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

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

36 §4112F. Limitations on use of seclusion and restraint.

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

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

42 (2) "Mechanical restraint" means the application of any device or object that restricts a student's freedom  
43 of movement or normal access to a portion of the body that the student cannot easily remove. "Mechanical  
44 restraint" does not include devices or objects used by trained school personnel, or used by a student, for the  
45 specific and approved therapeutic or safety purposes for which they were designed and, if applicable, prescribed,  
46 including the following:

47 a. restraints for medical immobilization;

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

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

- 52 d. instruction and use of restraints as part of a criminal justice or other course; or
- 53 e. notwithstanding their design for other purposes, adaptive use of benign devices or objects,
- 54 including mittens and caps, to deter self-injury.
- 55 (3) “Physical restraint” means a restriction imposed by a person that immobilizes or reduces the ability of
- 56 a student to freely move arms, legs, body, or head. “Physical restraint” does not include physical contact that:
- 57 a. helps a student respond or complete a task;
- 58 b. is needed to administer an authorized health-related service or procedure; or
- 59 c. is needed to physically escort a student when the student does not resist or the student’s
- 60 resistance is minimal.
- 61 (4) “Public school personnel” means an employee or contractor of a public school district or charter
- 62 school. “Public school personnel” does not include the following:
- 63 a. A law enforcement officer as defined in §9200(b) of Title 11; or
- 64 b. an employee or contractor providing educational services within a Department of Correction
- 65 or Division of Youth Rehabilitative Services facility.
- 66 (5) “Seclusion” means the involuntary confinement of a student alone in a room, enclosure, or space that
- 67 is either locked or, while unlocked, physically disallows egress. The use of a “timeout” procedure during which a
- 68 staff member remains accessible to the student shall not be considered “seclusion”.
- 69 (6) “Timeout” means a behavior management technique in which, to provide a student with the
- 70 opportunity to reflect or regain self-control, a student is separated from others for a limited period in a setting that
- 71 is not locked and the exit is not physically blocked by furniture, closed door held shut from outside, or other
- 72 inanimate object.
- 73 (b) Prohibition and restriction on use.
- 74 (1) Public school personnel are prohibited from imposing on any student the following:
- 75 a. Chemical restraint; and
- 76 b. Subject to waiver authorized pursuant to subsection (c)(4) of this section, mechanical
- 77 restraint and seclusion.
- 78 (2) Public school personnel may impose physical restraint only in conformity with all of the following
- 79 standards:
- 80 a. The student’s behavior presents a significant and imminent risk of bodily harm to self or
- 81 others;

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

84 c. The physical restraint does not interfere with the student's ability to breathe or place weight or  
85 pressure on the student's head, throat, or neck;

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

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

92 f. For a student with a disability as defined in Chapter 31 of this title or 34 C.F.R. Part 104, the  
93 physical restraint does not contravene provisions in an individualized education program (IEP), behavior  
94 intervention plan, accommodation plan, or any other planning document for the individual student;

95 g. Personnel use only the amount of force necessary to protect the student or others from the  
96 threatened harm;

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

100 i. The physical restraint is within the scope of force authorized by §468 of Title 11; and

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

103 (c) Department of Education Role; Regulations.

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

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

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

110 c. Special procedures and safeguards applicable to use of physical restraint for students with  
111 disabilities as defined in Chapter 31 of this title or 34 C.F.R. Part 104; and

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

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

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

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

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

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

129 Section 4. This Act shall become effective on July 1, 2014 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. In 2012, the U.S. Department of Education issued authoritative guidance encouraging states to adopt written standards deterring use of seclusion and restraint in public schools. This bill is the product of research and deliberations of an interagency committee formed by the Governor's Advisory Council for Exceptional Citizens (GACEC) to identify best practices and develop standards for Delaware public schools.

Author: Senator Sokola