

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 968 Session of
2009INTRODUCED BY DINNIMAN, FONTANA, O'PAKE, RAFFERTY, STOUT,
WILLIAMS, ORIE AND BOSCOLA, JUNE 17, 2009

SENATOR PICCOLA, EDUCATION, AS AMENDED, JUNE 30, 2009

AN ACT

1 Amending the act of March 10, 1949 (P.L.30, No.14), entitled "An
2 act relating to the public school system, including certain
3 provisions applicable as well to private and parochial
4 schools; amending, revising, consolidating and changing the
5 laws relating thereto," providing for use of restraints,
6 seclusion or other aversive techniques. ←

7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 Section 1. The act of March 10, 1949 (P.L.30, No.14), known
10 as the Public School Code of 1949, is amended by adding a
11 section to read:

12 Section 1320. Use of Restraints, Seclusion or Other Aversive ←
13 Techniques. (a) Restraints to control acute or episodic
14 aggressive or self-injurious behavior may be used only when the
15 student is acting in a manner as to be a clear and present
16 danger to himself, to other students or to employees, and only
17 when less restrictive measures and techniques have proven to be
18 or are less effective.

19 (1) The school entity or agency shall notify the parent of
20 the use of restraints to control the aggressive behavior of an

~~individual student or eligible young child.~~

~~(2) The use of restraints may only be included in a student's or eligible young child's IEP when the following conditions apply:~~

~~(i) The restraint is utilized with specific component elements of positive behavior support.~~

~~(ii) The restraint is used in conjunction with the teaching of socially acceptable alternative skills to replace problem behavior.~~

~~(iii) Staff are authorized to use the procedure and have received the staff training required.~~

~~(iv) There is a plan in place for eliminating the use of restraint through the application of positive behavior support.~~

~~(3) The use of prone restraints is prohibited in educational programs. Prone restraints are those in which a student or eligible young child is held face down on the floor.~~

~~(4) The use of restraints may not be included in the IEP for the convenience of staff, as a substitute for an educational program, or employed as punishment.~~

~~(5) School entities and agencies shall maintain and report data on the use of restraints as prescribed by the secretary. The report shall be reviewed during cyclical compliance monitoring conducted by the department.~~

~~(b) Mechanical restraints, which are used to control involuntary movement or lack of muscular control of students when due to organic causes or conditions, may be employed only when specified by an IEP and as determined by a medical professional qualified to make the determination, and as agreed to by the student's parents. Mechanical restraints shall prevent a student from injuring himself or others or promote normative~~

~~body positioning and physical functioning.~~

~~(c) The use of seclusion is prohibited in school entities or agencies unless:~~

~~(1) there is an emergency situation, and seclusion is necessary to protect a student or another person after other less intrusive interventions have failed or been determined to be inappropriate;~~

~~(2) the student's IEP or positive behavioral support plan describes the specific behaviors and circumstances in which seclusion may be used, and the parents have provided written consent for the use of seclusion; or~~

~~(3) the parents of a nondisabled student have otherwise provided written consent for the use of seclusion while a positive behavior support plan is being developed.~~

~~(d) At a minimum, a room used for seclusion shall:~~

~~(1) Be free of objects and fixtures with which a student could self-inflict bodily harm.~~

~~(2) Provide school personnel an adequate view of the student from an adjacent area.~~

~~(3) Provide adequate lighting and ventilation.~~

~~(e) School personnel shall:~~

~~(1) View a student placed in seclusion at all times.~~

~~(2) Provide a student placed in seclusion with:~~

~~(i) An explanation of the behavior that resulted in the removal.~~

~~(ii) Instructions on the behavior required to return to the learning environment.~~

~~(f) Seclusion shall only be applied by school personnel trained in the appropriate use of seclusion.~~

~~(g) At a minimum, school personnel shall reassess a student~~

~~in seclusion every thirty minutes.~~

~~(h) Each time a student is placed in seclusion, school personnel shall document:~~

~~(1) Other less intrusive interventions that have failed or been determined inappropriate.~~

~~(2) The precipitating event immediately preceding the behavior that prompted the use of seclusion.~~

~~(3) The behavior that prompted the use of seclusion.~~

~~(4) The names and signatures of the staff members implementing and monitoring the seclusion.~~

~~(5) The documentation shall include a description of the seclusion event, including:~~

~~(i) Justification for initiating the use of seclusion.~~

~~(ii) The length of time in seclusion.~~

~~(iii) The student's behavior and reaction during the seclusion.~~

~~(iv) The name and signature of the administrator informed of the use of seclusion.~~

~~(6) The documentation shall be maintained in the student's educational record and available for inspection by the student's parent or legal guardian.~~

~~(i) Unless otherwise provided for in the student's positive behavior support plan or IEP, each time seclusion is used, school personnel shall provide the student's parent with verbal notification or send written notice within twenty four (24) hours.~~

~~(j) (1) If restraint or seclusion is used for a student who has not been identified as a student with a disability, the student shall immediately be referred to the school's IEP team.~~

~~(2) If restraint or seclusion is used for a student with a~~

~~disability, and the student's IEP or positive behavior support plan does not include the use of restraint or seclusion, the IEP team shall meet within ten (10) business days of the incident to consider:~~

~~(i) The need for a functional behavioral assessment.~~

~~(ii) Developing appropriate positive behavioral supports.~~

~~(iii) Implementing a positive behavior support plan.~~

~~(3) If restraint or seclusion is used for a student with a~~

~~disability, and the IEP or positive behavior support plan~~

~~includes the use of restraint or seclusion, the student's IEP or~~

~~positive behavior support plan shall specify how often the IEP~~

~~team shall meet to review or revise, as appropriate, the~~

~~student's IEP or positive behavior support plan.~~

~~(k) The following aversive techniques of handling behavior~~

~~are considered inappropriate and shall not be used by school~~

~~entities or agencies in educational programs:~~

~~(1) Corporal punishment.~~

~~(2) Punishment for a manifestation of a student's~~

~~disability.~~

~~(3) Locked rooms, locked boxes or other structures or spaces~~

~~from which the student cannot readily exit.~~

~~(4) Noxious substances.~~

~~(5) Deprivation of basic human rights, such as withholding~~

~~meals, water or fresh air.~~

~~(6) Suspensions constituting a pattern under 22 Pa. Code §~~

~~14.143(a) (relating to disciplinary placements).~~

~~(7) Treatment of a demeaning nature.~~

~~(8) Electric shock.~~

~~(1) School entities have the primary responsibility for~~

~~ensuring that positive behavior support programs are in~~

~~accordance with 22 Pa. Code Ch. 14 (relating to special
education services and programs), including the training of
personnel for the use of specific procedures, methods and
techniques, and for having a written policy and procedures on
the use of positive behavior support techniques and obtaining
parental consent prior to the use of restraints or intrusive
procedures as provided in subsection (a) or the use of seclusion
as provided in subsection (c).~~

~~(m) In accordance with their plans, school entities and
agencies may convene a review, including the use of human rights
committees, to oversee the use of restrictive or intrusive
procedures or restraints.~~

~~(n) Subsequent to a referral to law enforcement, for
students with disabilities who have positive behavior support
plans, an updated functional behavior assessment and positive
behavior support plan shall be required.~~

~~(o) The State Board of Education shall promulgate any
regulations necessary to carry out the provisions of this act
pursuant to the act of June 25, 1982 (P.L.633, No.181), known as
the Regulatory Review Act. SECLUSION.--(A) THE STATE BOARD OF
EDUCATION SHALL, WITHIN ONE YEAR OF THE EFFECTIVE DATE OF THIS
SECTION, ADOPT REGULATIONS ESTABLISHING STANDARDS RELATING TO
THE USE OF SECLUSION, INCLUDING, BUT NOT LIMITED TO, THE
APPROPRIATENESS OF USE FOR ALL STUDENTS, TRAINING FOR PERSONNEL,
PARENTAL CONSENT AND NOTIFICATION, BY A SCHOOL ENTITY OR AGENCY.
THE REGULATIONS SHALL BE CONSISTENT WITH EXISTING FEDERAL OR
STATE REGULATIONS AND SHALL NOT ALTER ANY PROVISION OF 22 PA.
CODE § 14.133 (RELATING TO POSITIVE BEHAVIOR SUPPORT).~~

~~(B) IN ADOPTING THE REGULATIONS, THE STATE BOARD OF
EDUCATION SHALL FOLLOW THE PROCEDURES SET FORTH IN THE ACT OF~~

1 JULY 31, 1968 (P.L.769, NO.240), REFERRED TO AS THE COMMONWEALTH
2 DOCUMENTS LAW, AND THE ACT OF JUNE 25, 1982 (P.L.633, NO.181),
3 KNOWN AS THE "REGULATORY REVIEW ACT," FOR THE PROMULGATION AND
4 REVIEW OF FINAL-OMITTED REGULATIONS.

5 (C) THE STATE BOARD OF EDUCATION SHALL DEVELOP REGULATIONS
6 UNDER THIS SECTION IN CONSULTATION WITH THE DEPARTMENT OF
7 EDUCATION, EDUCATION AND SPECIAL EDUCATION STAKEHOLDERS, PARENTS
8 AND OTHER INTERESTED PARTIES.

9 ~~(p)~~ (D) As used in this section, the following words and ←
10 phrases shall have the meanings given to them in this subsection
11 unless the context clearly indicates otherwise:

12 "Agency" shall mean a school entity, approved private school,
13 State-operated program or facility or other public or private
14 organization providing educational services to children with
15 disabilities or providing early intervention services.

16 ~~"Aversive techniques" shall mean deliberate activities~~ ←
17 ~~designed to establish a negative association with a specific~~
18 ~~behavior.~~

19 ~~"Behavior support" shall mean the development, change and~~
20 ~~maintenance of selected behaviors through the systematic~~
21 ~~application of behavior change techniques.~~

22 ~~"IEP" shall mean an individualized education program.~~

23 ~~"Positive behavior support plans" shall mean a plan for~~
24 ~~students with disabilities and eligible young children who~~
25 ~~require specific intervention to address behavior that~~
26 ~~interferes with learning. A positive behavior support plan shall~~
27 ~~be developed by the individualized education program team, be~~
28 ~~based on a functional behavior assessment, and become part of~~
29 ~~the individual eligible young child's or student's IEP. These~~
30 ~~plans must include methods that utilize positive reinforcement~~

~~and other positive techniques to shape a student's or eligible young child's behavior, ranging from the use of positive verbal statements as a reward for good behavior to specific tangible rewards.~~

~~"Restraints" shall mean:~~

~~(1) The application of physical force, with or without the use of any device, for the purpose of restraining the free movement of a student's or eligible young child's body.~~

~~(2) The term does not include briefly holding, without force, a student or eligible young child to calm or comfort him, guiding a student or eligible young child to an appropriate activity or holding a student's or eligible young child's hand to safely escort the child from one area to another.~~

~~(3) The term does not include hand over hand assistance with feeding or task completion and techniques prescribed by a qualified medical professional for reasons of safety or for therapeutic or medical treatment, as agreed to by the student's or eligible young child's parents and specified in the individualized education program. Devices used for physical or occupational therapy, seatbelts in wheelchairs or on toilets used for balance and safety, safety harnesses in buses and functional positioning devices are examples of mechanical restraints which are excluded from this definition and governed by subsection (b).~~

~~"School entity" shall mean a local public education provider such as a school district, area vocational-technical school or intermediate unit, including charter schools.~~

~~"Seclusion" shall mean the confinement of a student alone in a room from which the student is physically prevented from leaving.~~



~~(g) Nothing in this section shall be construed to supersede
any Federal regulations or requirements under 34 C.F.R. 300.34
(relating to related services), 300.324 (relating to
development, review, and revision of IEP) and 300.530 (relating
to authority of school personnel).~~

Section 2. This act shall take effect in 60 days.