

AN ACT

To prevent and reduce the use of restraint and seclusion in schools, and keep each student safe.

SECTION 1. SHORT TITLE.

This Act may be cited as the "xxxxx Act."

SEC. 2. FINDINGS.

- (1) Restraint and seclusion have resulted in physical injury, psychological trauma, and death to students in public and private schools. National research shows students have been subjected to restraint and seclusion in schools as a means of discipline, to force compliance, or as a substitute for appropriate educational support.
- (2) Behavioral interventions for students must promote the right of all students to be treated with dignity. All students have the right to be free from physical or mental abuse, aversive behavioral interventions that compromise health and safety, and any restraint or seclusion imposed solely for purposes of discipline or convenience, or as a substitute for appropriate educational or behavioral support.
- (3) Safe, effective, evidence-based strategies are available to support students who display challenging behaviors in school or other educational program or activity settings. Staff training focused on the dangers of restraint and seclusion as well as training in evidence-based positive behavior supports, functional behavioral assessments, de-escalation techniques, and restraint and seclusion prevention, can reduce the incidence of injury, trauma, and death.
- (4) School personnel have the right to work in a safe environment and should be provided training and support to prevent injury and trauma to themselves and others.
- (5) Despite the widely recognized risks of restraint and seclusion, a substantial disparity exists among many States and localities with regard to the

protection and oversight of the rights of students and school personnel to a safe learning environment.

- (6) Children are subjected to restraint and seclusion at higher rates than adults. Physical restraint which restricts breathing or causes other body trauma, as well as seclusion in the absence of continuous face-to-face monitoring, have resulted in the deaths of students in schools and other facilities providing education services to children and youth.
- (7) Children are protected from inappropriate restraint and seclusion in other settings, such as hospitals, health facilities, and non-medical community-based facilities. Similar protections are needed, yet such protections must acknowledge the differences of the school or other educational program environment.
- (8) Research confirms that –
 - (A) restraint and seclusion are not therapeutic;
 - (B) these practices are not effective means to calm or teach students, and have a demonstrated opposite effect while simultaneously decreasing a student's ability to learn.
- (9) The effective implementation of school-wide positive behavior supports is linked to greater academic achievement, significantly fewer disciplinary problems, increased instruction time, and staff perception of a safer teaching environment.
- (10) Perspectives of all stakeholders, including parents, students, and relevant community and advocacy organizations are important when developing and implementing strategies, policies, and procedures to prevent or reduce seclusion and restraint in schools and other educational programs or activities.

SEC. 3. PURPOSES.

The purposes of this Act are to—

- (1) prevent the use of seclusion in schools, programs and activities;
- (2) prevent and reduce the use of restraint in schools, programs and activities;

- (3) ensure the safety of all students and school personnel in schools, programs and activities and promote a positive culture and climate;
- (4) protect students from—
 - (A) physical or mental abuse;
 - (B) aversive behavioral interventions that compromise health and safety;
 - and
 - (C) any restraint or seclusion imposed solely for purposes of discipline, convenience, or as a substitute for educational or behavioral support;
- (5) ensure that restraint is a method of last resort and imposed only when a student’s behavior poses an imminent danger of serious bodily injury to the student, school personnel, or others; and
- (6) assist local educational agencies, and schools in—
 - (A) establishing policies and procedures to keep all students, including students with the most complex and intensive behavioral needs, and school personnel safe;
 - (B) providing school personnel with the necessary tools, training, and support to ensure the safety of all students and school personnel;
 - (C) collecting and analyzing data on restraint and seclusion in schools; and
 - (D) identifying and implementing effective evidence-based models to prevent and reduce restraint and seclusion in schools.

Title I – Prevention of Seclusion and Restraint in Schools

SEC. 101. DEFINITIONS.

In this Act:

(1) **CHEMICAL RESTRAINT.** — The term “chemical restraint” means a drug or medication used on a student to control behavior or restrict freedom of movement that is not—

- (A) prescribed by a licensed physician, or other qualified health professional acting under the scope of the professional’s authority under State law, for the standard treatment of a student’s medical or psychiatric condition; and

(B) administered as prescribed by the licensed physician or other qualified health professional acting under the scope of the professional's authority under State law.

(2) EDUCATIONAL SERVICE AGENCY. — The term “educational service agency” has the meaning given such term in section 9101(17) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801(17))

(3) ELEMENTARY SCHOOL. — The term “elementary school” has the meaning given the term in section 9101(18) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801(18)).

(4) EMERGENCY SITUATION— the term emergency situation means spontaneous unpredictable events posing an imminent threat of serious bodily injury.

(5) FREE APPROPRIATE PUBLIC EDUCATION—For those students eligible for special education and related services under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), the term “free appropriate public education” or has the meaning given such term in section 602 of such Act (20 U.S.C. 1401).

(6) LOCAL EDUCATIONAL AGENCY. — The term “local educational agency” has the meaning given the term in section 9101(26) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801(26)).

(7) MECHANICAL RESTRAINT. — The term “mechanical restraint” has the meaning given the term in section 595(d) (1) of the Public Health Service Act [42 U.S.C. 290jj(d)(1)], except that the meaning shall be applied by substituting “student’s” for “resident’s”. The term mechanical restraint does not mean

(1) devices implemented by trained school personnel, or utilized by a student, for the specific and approved therapeutic or safety purposes for which such devices were designed and, if applicable, prescribed, including—

(A) restraints for medical immobilization;

(B) adaptive devices or mechanical supports used to achieve proper body position, balance, or alignment to allow greater freedom of mobility than would be possible without the use of such devices or mechanical supports; or

(C) vehicle safety restraints when used as intended during the transport of a student in a moving vehicle;

(8) PARENT.—The term “parent” has the meaning given the term in section 9101(31) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801(31)).

(9) PHYSICAL ESCORT.— The term `physical escort' means the temporary touching or holding of the hand, wrist, arm, shoulder, or back for the purpose of inducing a student who is acting out, and able to respond to such physical prompt, to move to a safe location.

(10) PHYSICAL RESTRAINT.— The term `physical restraint' means a personal restriction that immobilizes or reduces the ability of an individual to move the individual's arms, legs, body, or head freely. Such term does not include a physical escort.

(11) POSITIVE BEHAVIOR SUPPORTS.—The term “positive behavior supports” means a systematic approach to embed evidence-based practices and data-driven decision making to improve school climate and culture, including a range of systemic and individualized strategies to reinforce desired behaviors and diminish reoccurrence of problem behaviors, in order to achieve improved academic and social outcomes, and increase learning for all students, including those with the most complex and intensive behavioral needs.

(12) PROGRAM OR ACTIVITY

For the purposes of this section, the term “program or activity” means all of the operations of—

- (A) a department, agency, school, special purpose district, or other instrumentality of a State or of a local government; or
 - (i) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;
- (B) a local educational agency (as defined in section 701 of title 20), system of vocational education, or other school system;
- (C) an entire corporation, partnership, or other private organization, or an entire sole proprietorship—
 - (i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(ii) which is principally engaged in the business of providing education; or

(iii) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(D) any other entity which is established by two or more of the entities described in paragraph (A), (B), or (C) any part of which receives financing from the United States Department of Education.

(13) PROTECTION AND ADVOCACY SYSTEM.— IN GENERAL.— The term “protection and advocacy system” means <the State> protection and advocacy system established under subtitle C of title I of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15041 et seq.).

(14) RESTRAINT – The term ‘restraint’ means a chemical restraint, mechanical restraint or physical restraint as defined in this Act.

(15) SCHOOL The term ‘school’ means an entity that--

(A) is public or private--

(i) day or residential elementary school or secondary school; or

(ii) early childhood, elementary school, or secondary school program that is under the jurisdiction of a school, local educational agency, educational service agency, or other educational institution or program; and

(B) is a participant in any program or activity receiving financial assistance from the United States Department of Education or

(C) that is a school funded or operated by the Department of the Interior or the Department of Defense.

(16) SCHOOL PERSONNEL. — The term “school personnel” has the meaning—

(A) given the term in section 4151(10) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7161(10)); and

(B) given the term “school resource officer” in section 4151(11) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7161(11)).

(17) SECONDARY SCHOOL. — The term “secondary school” has the meaning given the term in section 9101(38) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801(38)).

(18) SECLUSION. — The term “seclusion” means the involuntary confinement of a student in a room, enclosure, or space which is locked or from which the student is physically prevented from leaving. Such term does not include time-out.

(19) SECRETARY.—The term “Secretary” means the Secretary of Education.

(20) SERIOUS BODILY INJURY- The term `serious bodily injury' has the meaning given the term in section 1365(h) of title 18, United States Code.

(21) STATE-APPROVED CRISIS INTERVENTION TRAINING PROGRAM. — The term “State-approved crisis intervention training program” means a training program approved by the State Education Agency that, at a minimum, provides—

(A) training in evidence-based practices shown to be effective in the prevention of physical restraint and seclusion;

(B) training in evidence-based practices shown to be effective in keeping both school personnel and students safe when imposing physical restraint or seclusion;

(C) evidence-based skills training related to positive behavior supports, safe physical escort, conflict prevention, understanding antecedents, de-escalation, and conflict management;

(D) training in first aid (which includes recognizing the signs of medical distress) and cardiopulmonary resuscitation;

(E) information describing the dangers of physical restraint and seclusion, State policies and procedures that meet the minimum standards established by regulations promulgated pursuant to section 5(a) and any applicable Local Educational Agency or school safety plans; and

(F) certification for school personnel in the practices and skills described in subparagraphs (A) through (D), which shall be required to be renewed on a periodic basis.

(22) STUDENT.—The term “student” means a individual enrolled in a school defined in section 12, except that in the case of a private school or private program, such term means a individual enrolled in such school or program who receives support in any form from any program supported, in whole or in part, with funds appropriated to the

Department of Education.

(23) TIME OUT — The term “time out” means a behavior management technique that is part of an approved positive program based on a comprehensive functional assessment and may involve the short term or temporary separation of the student from the group, in a non locked setting, for the purpose of calming. Time out is not seclusion.

SEC. 102. MINIMUM STANDARDS; RULE OF CONSTRUCTION.

(1) MINIMUM STANDARDS.—Not later than 180 days after the date of the enactment of this Act, in order to protect each student from physical or mental abuse, aversive behavioral interventions that compromise student health and safety, or any restraint or seclusion imposed solely for purposes of discipline, convenience, or as a substitute for or in a manner otherwise inconsistent with this Act, the State Superintendent shall promulgate regulations establishing the following minimum standards:

(A) School personnel shall be prohibited from imposing on any student the following:

- (i) Seclusion
- (ii) Mechanical restraints.
- (iii) Chemical restraints.
- (iv) Physical restraint or physical escort that restricts breathing.
- (v) Aversive behavioral interventions that compromise health and safety.
- (vi) Restraint when contraindicated based on the students disability, health care needs, medical, or psychiatric condition as documented in a health care directive/medical management plan, an Individualized Education Program or 504 Plan, or other relevant record made available to the Local Education Agency.

(B) School personnel shall be prohibited from imposing physical restraint on a student unless—

- (i) the student’s behavior poses an imminent danger of serious bodily injury to the student, school personnel, or others;
- (ii) less restrictive interventions
 - (I) have been ineffective in stopping the imminent danger of serious bodily injury, or

(II) in the case of a rare and clearly unavoidable emergency circumstance posing imminent danger of serious bodily injury, would be ineffective;

(iii) such physical restraint is imposed by school personnel who—

(I) continuously monitor the student face-to-face; or

(II) if school personnel safety is significantly compromised by such face-to-face monitoring, are in continuous direct visual contact with the student;

(iv) such physical restraint is imposed by—

(I) school personnel trained and certified by a State-approved crisis intervention training program (as defined in section 4(16));

or

(II) other school personnel in the case of a rare and clearly unavoidable emergency circumstance when school personnel trained and certified as described in clause (i) are not immediately available due to the unforeseeable nature of the emergency circumstance; and

(v) such physical restraint shall end

(I) when a medical condition occurs putting the students at risk of harm;

(II) when the student's behavior no longer poses an imminent danger of serious bodily injury to the student, school personnel or others; or

(III) when less restrictive interventions would be effective in stopping such imminent danger of serious bodily injury.

(vi) The degree of force used and the duration of the physical restraint do not exceed the degree and duration that are reasonable and necessary to resolve the risk.

(vii) The physical restraint imposed upon the student shall not interfere with the student's ability to communicate in his or her primary language or mode of communication. At all times during physical restraint or seclusion there shall be school personnel present who can communicate with the student in the students' primary language or mode of communication for health or safety purposes.

(C) Local educational agencies and private school officials, shall ensure that a sufficient number of school and program personnel are trained and certified by

a State-approved crisis intervention training program (as defined in section 4(16)) to meet the needs of the specific student population in each school and program providing educational services to students.

(D) The use of physical restraint as a planned intervention shall not be written into a student's education plan, individual safety plan, behavioral plan, or individualized education program (as defined in section 602 of the Individuals with Disabilities Education Act (20 U.S.C. 1401)). Local educational agencies, schools or programs may establish policies and procedures for use of physical restraint in school safety or crisis plans, provided that such school plans are consistent with the standards in this Act and not specific to any individual student or group of students.

(E) Schools and other educational programs covered under this Act shall establish procedures to be followed after each incident involving the imposition of physical restraint or seclusion upon a student, including—

(i) procedures to provide to the parent of the student, with respect to each such incident—

(I) an immediate verbal or electronic communication on the same day as each such incident; and

(F) within 24 hours of each such incident, written notification; and (B) After the imposition of physical restraint or seclusion upon a student, all school personnel involved in the physical restraint or seclusion, appropriate supervisory and administrative staff, parents, appropriate IEP team members (for students eligible under IDEA), and when appropriate the student, shall participate in a debriefing session.

(i) The debriefing session shall occur as soon as practicable, but not later than 5 school days following the imposition of physical restraint or seclusion, unless

(I) the debriefing session is delayed at the request of a student's parent so that the parent, and whenever appropriate the student, can attend, or

(II) unless it is delayed by written mutual agreement of the parents and the public agency.

(ii) The debriefing session shall include—

(I) documentation of antecedents to the physical restraint;

(II) consideration of relevant information in the student's records, any teacher or other professional observations and relevant information provided by the parent or student;

(III) planning to prevent and reduce reoccurrence of the use of physical restraint, including considering the results of any Functional Behavioral Assessments, determination if existing positive behavior plans have been implemented with fidelity, and recommendation of appropriate positive behavioral interventions and supports --

(IV) personnel responsible for the student's educational plan and the parent and whenever appropriate, the student;

(a) for students deemed eligible under the Individuals with Disabilities Education Act, to the IEP team for consideration for inclusion in the IEP;
or

(b) for students deemed eligible for accommodations under Section 504 of the Rehabilitation Act, the persons responsible for considering reasonable accommodations, including the parent and whenever appropriate, the student;

(V) a plan to have a functional behavioral assessment conducted, reviewed, or revised by qualified professionals, the parent, and whenever appropriate, the student; and

(VI) considering whether to refer the student for an evaluation under Section 504 or the IDEA if the student has not been identified as eligible for a disability accommodation plan under Section 504 of the Rehabilitation Act, or an individualized education program under the Individuals with Disabilities Education Act, and promptly making the referral or documenting in the student's records the basis for declining to refer the student.

(VII) When a student attends and participates in a debriefing session, nothing the student says may be used against him or her in any ancillary disciplinary, criminal, or civil proceeding.

(G) In a case in which serious bodily injury or death of a student occurs from the use of seclusion or physical, mechanical or chemical restraint, procedures to notify, in writing, within 24 hours after such injury or death occurs—

- (i) the State educational agency and local educational agency;
- (ii) a protection and advocacy system, in the case of a student who is eligible for services from the protection and advocacy system.

(H) any other procedures the LEA determines appropriate.

(2) Standards for Use of Exclusion Timeout

(A) Time-out may only be used in conjunction with an array of positive behavior

(B) intervention strategies and techniques based upon a comprehensive functional behavioral assessment and must be included in the student's BIP if it is utilized on a recurrent basis to increase or decrease a targeted behavior.

Physical force or threat of physical force shall not be used to place a student in timeout.

(C) Use of time-out shall not be implemented in a fashion that precludes the ability of a student to be involved in and progress in the general curriculum and advance appropriately toward attaining the annual goals specified in a student's IEP.

(D) A student who is subject to time out must be supervised at all times; the use of locked doors is prohibited. Trained personnel must have a line of sight with the student at all times during the process, and must be in the room with the student.

(E) Time out must end as soon as the supervisor can determine that the student is sufficiently calm and under control such that the student can safely return to class without presenting a danger to himself, other students, or any others. No instance of timeout may last longer than one hour.

(F) A room used for timeout must be a minimum of ten feet wide and ten feet long, and it must be of normal height. The room must have adequate light, heat, and ventilation and be free of all hazardous material and objects with which a student could inflict self-injury.

(G) All timeout -regardless of duration, must be documented. Time must be recorded, consistent with the requirements of the documentation section of this Act.

(H) Timeout shall not be imposed as a means of coercion, discipline, convenience, or retaliation.

(3) INTERACTION WITH MINIMUM SAFETY STANDARDS

(A) Any implementation of this Act shall be subject to all rights, remedies, and procedures contained in the Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act for students covered there under. This includes, but is not limited to, identification, assessment, procedural safeguards, and provision of free appropriate public education. Failure to meet the minimum student safety standards of this Act as applied to an individual child eligible under IDEA may constitute a denial of free appropriate public education.

(B) If the local educational agency or school establishes policies and procedures for use of physical restraint pursuant to Section 102(a)(4), those policies and procedures shall be applied so as not to discriminate against children and youth with disabilities under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act for students covered there under.

SEC. 103. STATE PLAN AND REPORT REQUIREMENTS AND ENFORCEMENT.

(1) LOCAL PLAN.—Not later than 2 years after promulgation of regulations pursuant to section 5(a), and each year thereafter, each Local Education Agency (LEA) shall submit to the State Superintendent of Education a plan that provides—

(A) assurances that the LEA has in effect—

- (i) policies and procedures that meet the minimum standards, including the standards with respect to State-approved crisis intervention training programs, established by regulations promulgated pursuant to section 5(a);
- (ii) mechanism to ensure the recording of any incident involving restraint imposed upon a student or use of timeout for longer than 30 minutes. Incidents shall be recorded on a standardized incident report developed by the Department of Education. Such reports shall be completed no later than the school day following the incident; and,

(iii) mechanism to effectively monitor and enforce the minimum standards;

(B) a description of the State policies and procedures, including a description of the State-approved crisis intervention training programs in such State; and

(C) a description of the plans to ensure school personnel and parents, including private school personnel and parents, are aware of the policies and procedures.

(2) REPORTING.—

(A) REPORTING REQUIREMENTS.—Each year each local educational agency shall (in compliance with the requirements of section 444 of the General Education Provisions Act (commonly known as the “Family Educational Rights and Privacy Act of 1974”) (20 U.S.C. 1232g)) prepare and submit to the State Educational Agency, and make available to the public, a report with respect to each local educational agency, and each school not under the jurisdiction of a local educational agency, located in the same State as such State educational agency that includes the information described in paragraph (2).

(3) INFORMATION REQUIREMENTS.—

(A) GENERAL INFORMATION REQUIREMENTS.—The report described in paragraph

(i) shall include information on—

- (a) the total number of incidents in the preceding full-academic year in which restraint was imposed upon a student; and
- (b) the total number of incidents in the preceding full-academic year in which seclusion was imposed upon a student.

(B) DISAGGREGATION.—

(i) GENERAL DISAGGREGATION REQUIREMENTS. — The information described in subparagraph (A) shall be disaggregated by—

(ii) the total number of incidents in which restraint or seclusion was imposed upon a student—

- (a) that resulted in injury;
- (b) that resulted in death; and
- (c) in which the school personnel imposing physical restraint or seclusion were not trained and certified as described in section 5(a)(2)(D)(i); and

(iii) the demographic characteristics of all students upon whom physical restraint or seclusion was imposed, including—

(a) the categories identified in section 1111(h)(1)(C)(i) of the Elementary and Secondary Education Act of 1965 [20 U.S.C.

6311(h)(1)(C)(i)];

(b) age; and

(c) disability status (which has the meaning given the term “individual with a disability” in section 7(20) of the Rehabilitation Act of 1973 (29 U.S.C. 705(20)).

(4) UNDUPLICATED COUNT; EXCEPTION.—The disaggregation required under clause (B) shall—

(A) be carried out in a manner to ensure an unduplicated count of the—

(i) total number of incidents in the preceding full-academic year in which physical restraint was imposed upon a student; and

(ii) total number of incidents in the preceding full-academic year in which seclusion was imposed upon a student; and

(B) not be required in a case in which the number of students in a category would reveal personally identifiable information about an individual student.

Source: The Alliance to Prevent Restraint, Aversive Interventions and Seclusion

www.stophurtingkids.com