



EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

July 2, 2014

GOV. MSG. NO. 1316

The Honorable Donna Mercado Kim,
President
and Members of the Senate
Twenty-Seventh State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

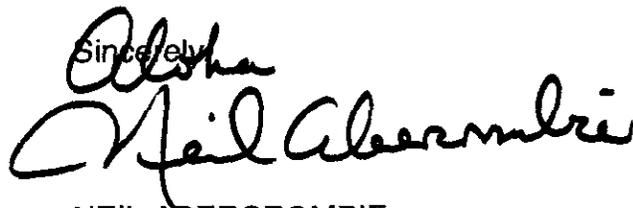
The Honorable Joseph M. Souki,
Speaker and Members of the
House of Representatives
Twenty-Seventh State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Kim, Speaker Souki, and Members of the Legislature:

This is to inform you that on July 2, 2014, the following bill was signed into law:

HB1796 HD2 SD1 CD1

RELATING TO EDUCATION
ACT 206 (14)

Sincerely,


NEIL ABERCROMBIE
Governor, State of Hawaii

A BILL FOR AN ACT

RELATING TO EDUCATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

- 1 SECTION 1. The purpose of this Act is to:
- 2 (1) Prohibit the use of seclusion and reduce and prevent
- 3 the use of restraint in public schools;
- 4 (2) Ensure the safety of all students and personnel in
- 5 public schools and promote a positive school culture
- 6 and climate;
- 7 (3) Protect students from:
- 8 (A) Physical and mental abuse;
- 9 (B) Aversive behavioral interventions that compromise
- 10 health and safety; and
- 11 (C) Any restraint imposed solely for purposes of
- 12 discipline or convenience;
- 13 (4) Ensure that restraint is imposed in public schools
- 14 only when a student's behavior poses an imminent
- 15 danger of property damage or physical injury to the
- 16 student, school personnel, or others and only for so
- 17 long as the danger persists; and
- 18 (5) Assist public schools by:



- 1 (A) Establishing policies and procedures to keep all
- 2 students and school personnel safe, including
- 3 students with the most complex and intense
- 4 behavioral needs;
- 5 (B) Providing school personnel with the necessary
- 6 tools, training, and support to ensure the safety
- 7 of all students and all school personnel;
- 8 (C) Collecting and analyzing data on the use of
- 9 restraint in schools; and
- 10 (D) Identifying and implementing effective evidence-
- 11 based models to prevent and reduce restraint in
- 12 schools.

13 SECTION 2. Chapter 302A, Hawaii Revised Statutes, is
 14 amended by adding two new sections to be appropriately
 15 designated and to read as follows:

16 **§302A-A Use of seclusion, chemical restraint, or**
 17 **mechanical restraint prohibited.** The use of seclusion, chemical
 18 restraint, or mechanical restraint shall be prohibited in public
 19 schools regardless of any consent of the student, parents, or
 20 guardians.

21 **§302A-B Use of physical restraint limited; notification;**
 22 **policies and procedures; training; review.** (a) The use of

1 physical restraint shall be prohibited in public schools unless
2 a student's behavior poses an imminent danger of property damage
3 or physical injury to the student, school personnel, or others
4 and only for so long as the danger persists; provided that other
5 less intrusive interventions have failed or been determined to
6 be inappropriate for the student.

7 (b) No physical restraint may be imposed that is life
8 threatening, including physical restraint that may restrict
9 breathing.

10 (c) The board shall establish a policy regarding the use
11 of restraint in public schools. The department shall establish
12 procedures to be followed after each incident involving the
13 imposition of restraint upon a student, including procedures to
14 provide to the parent or legal guardian of the student:

15 (1) An immediate verbal or electronic communication on the
16 same day as each incident; and

17 (2) Written notification within twenty-four hours of each
18 incident.

19 (d) All parents and legal guardians of students shall
20 receive, upon the student's entry into public school, written
21 information issued by the department about policies and



- 1 procedures for restraint. This written information shall
2 include:
- 3 (1) A brief summary describing the training received by
4 public school staff in using restraint in facilities
5 or programs;
- 6 (2) Information describing board policy;
- 7 (3) Information on the procedures for determining when
8 restraint can and cannot be properly used in public
9 school settings;
- 10 (4) Definitions of restraint;
- 11 (5) Information on the procedural safeguards that are in
12 place to protect the rights of children and their
13 parents or legal guardians;
- 14 (6) A description of the alignment of policies and
15 procedures on restraint with applicable state laws or
16 department rules;
- 17 (7) Information on the procedures for notifying parents
18 and legal guardians when restraint has been used with
19 their child; and
- 20 (8) Information on the procedures for notifying parents
21 and legal guardians about any changes to policies and
22 procedures on restraint.



1 (e) The department shall make information relating to
2 policies and procedures available on the department's website.

3 (f) If policy or procedural changes related to restraint
4 are made during the school year, the department shall post the
5 changes on its website immediately.

6 (g) All public schools shall ensure that staff who use
7 restraint in facilities or programs are trained, recertified, or
8 trained and recertified on a periodic basis no less frequently
9 than annually. Training shall include:

10 (1) Evidence-based techniques shown to be effective in the
11 prevention of restraint;

12 (2) Evidence-based techniques shown to be effective in
13 keeping school personnel and students safe when
14 imposing restraint;

15 (3) Evidence-based skills related to positive behavioral
16 supports and interventions, safe physical escort,
17 conflict prevention, understanding antecedents, de-
18 escalation, and conflict management;

19 (4) A wide array of prevention and intervention
20 modalities; and



1 (5) Information describing state policies and procedures
2 that meet the minimum standards established by state
3 statutes and administrative rules.

4 (h) No less than annually, there shall be a review of data
5 on students at each public school who were restrained, which
6 shall be conducted as directed by each complex area
7 superintendent. The review shall determine whether:

8 (1) There are strategies in place to address the students
9 with dangerous behaviors at issue;

10 (2) The strategies in place are effective in increasing
11 appropriate behaviors of students with dangerous
12 behaviors; and

13 (3) New strategies need to be developed or current
14 strategies need to be revised or changed to prevent
15 the reoccurrence of dangerous behaviors.

16 Patterns and trends in the data that are identified by the
17 review shall be reported to the department.

18 (i) Each public school shall maintain records of its
19 reviews of restraint data and any resulting decisions or actions
20 regarding the use of restraint.

21 (j) The department shall review policies and procedures on
22 the use of restraint, including by reviewing available data on



1 such use, outcomes, settings, individual staff involvement, and
2 programs, and the frequency of use for student populations
3 categorized by: individual students; groups of students; gender;
4 race; national origin; disability status and type of disability;
5 and limited English proficiency, for the purposes of
6 determining:

- 7 (1) Whether policies for restraint are being applied
8 consistently;
- 9 (2) The accuracy and consistency with which restraint data
10 is being collected, as well as the extent to which
11 this data is being used to plan behavioral
12 interventions and staff training;
- 13 (3) Whether policies and procedures are being implemented
14 with fidelity;
- 15 (4) Whether policies and procedures continue to protect
16 students; and
- 17 (5) Whether policies and procedures remain properly
18 aligned with applicable state statutes and
19 administrative rules and consistent with privacy laws.

20 (k) As used in this section:

21 "Behavior intervention plan" means a proactive plan
22 designed to address problem behaviors exhibited by a student in



1 the educational setting through the use of positive behavioral
2 supports and interventions.

3 "Chemical restraint" means a drug or medication used on a
4 student to control behavior or restrict freedom of movement;
5 provided that the term does not include a drug or medication
6 that is:

7 (1) Prescribed by a licensed physician, or other qualified
8 health professional acting under the scope of the
9 professional's authority under state law, for the
10 standard treatment of a student's medical or
11 psychiatric condition; and

12 (2) Administered as prescribed by a licensed physician or
13 other qualified health professional acting under the
14 scope of the professional's authority under state law.

15 "Emergency situation" means a student's behavior that poses
16 an imminent danger of property damage or physical injury to the
17 student, school personnel, or others and only for so long as the
18 danger persists.

19 "Mechanical restraint" means the use of devices as a means
20 of restricting a student's freedom of movement or the ability to
21 communicate in the student's primary language or mode of
22 communication.



1 "Physical restraint" means a personal restriction, other
2 than a chemical or mechanical restraint, that immobilizes or
3 reduces the ability of a student to move the student's arms,
4 legs, or head freely.

5 "Positive behavioral supports and interventions" means a
6 systematic approach to embed evidence-based practices and data-
7 driven decision making to improve public school climate and
8 culture and includes a range of systemic and individualized
9 strategies to reinforce desired behaviors and diminish the
10 reoccurrence of problem behaviors in order to achieve improved
11 academic and social outcomes and increase learning for all
12 students, including students with the most complex and intense
13 behavioral needs.

14 "Restraint" means:

- 15 (1) A mechanical restraint;
16 (2) A chemical restraint; or
17 (3) A physical restraint.

18 "Seclusion" means the confinement of a student alone in a
19 room or structure from which the student is physically denied
20 voluntary egress."

21 SECTION 3. Section 302A-1141, Hawaii Revised Statutes, is
22 amended to read as follows:



1 "~~[f]§302A-1141[f]~~ **Punishment of pupils limited.** No
2 physical punishment of any kind may be inflicted upon any pupil,
3 ~~[but reasonable force may be used by a teacher in order to~~
4 ~~restrain a pupil in attendance at school from hurting oneself or~~
5 ~~any other person or property, and reasonable force may be used~~
6 ~~as defined in section 703-309(2) by a principal or the~~
7 ~~principal's agent only with another teacher present and out of~~
8 ~~the presence of any other student but only for the purposes~~
9 ~~outlined in section 703-309(2)(a)-.] except as provided for under~~
10 sections 302A-B and 703-309(2)."

11 SECTION 4. The department of education shall submit a
12 report to the legislature no later than twenty days prior to the
13 convening of the regular sessions of 2015 and 2016. The report
14 shall include:

- 15 (1) The department of education's plan to phase in the
16 implementation of sections 2 and 3 of this Act;
17 (2) Any budgetary needs of the department of education in
18 implementing sections 2 and 3 of this Act; and
19 (3) Any proposed legislation necessary to implement
20 sections 2 and 3 of this Act.

21 SECTION 5. The department of education shall update the
22 senate committee on education and the house of representatives



1 committee on education no later than twenty days prior to the
2 convening of the regular session of 2017 on the department of
3 education's policy and procedures on the use of restraint in
4 public schools.

5 SECTION 6. There is appropriated out of the general
6 revenues of the State of Hawaii the sum of \$250,000 or so much
7 thereof as may be necessary for fiscal year 2014-2015 to provide
8 resources for training and data accountability to assist with
9 the effective implementation of this Act.

10 The sum appropriated shall be expended by the department of
11 education for the purposes of this Act.

12 SECTION 7. In codifying the new sections added by section
13 2 of this Act, the revisor of statutes shall substitute
14 appropriate section numbers for the letters used in designating
15 the new sections in this Act.

16 SECTION 8. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 9. This Act shall take effect upon its approval;
19 provided that:

20 (1) Sections 2 and 3 shall take effect on August 1, 2016;

21 and

22 (2) Section 6 shall take effect on July 1, 2014.



H.B. NO. 1796
H.D. 2
S.D. 1
C.D. 1

APPROVED this 2 day of JUL, 2014

Neil Abernethy

GOVERNOR OF THE STATE OF HAWAII