

ACT 206

H.B. NO. 1796

A Bill for an Act Relating to Education.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to:

- (1) Prohibit the use of seclusion and reduce and prevent the use of restraint in public schools;
- (2) Ensure the safety of all students and personnel in public schools and promote a positive school culture and climate;
- (3) Protect students from:
 - (A) Physical and mental abuse;
 - (B) Aversive behavioral interventions that compromise health and safety; and
 - (C) Any restraint imposed solely for purposes of discipline or convenience;
- (4) Ensure that restraint is imposed in public schools only when a student's behavior poses an imminent danger of property damage or physical injury to the student, school personnel, or others and only for so long as the danger persists; and
- (5) Assist public schools by:
 - (A) Establishing policies and procedures to keep all students and school personnel safe, including students with the most complex and intense behavioral needs;
 - (B) Providing school personnel with the necessary tools, training, and support to ensure the safety of all students and all school personnel;
 - (C) Collecting and analyzing data on the use of restraint in schools; and
 - (D) Identifying and implementing effective evidence-based models to prevent and reduce restraint in schools.

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

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

§302A-B Use of physical restraint limited; notification; policies and procedures; training; review. (a) The use of physical restraint shall be prohibited in public schools unless a student's behavior poses an imminent danger of property damage or physical injury to the student, school personnel, or others and only for so long as the danger persists; provided that other less intrusive interventions have failed or been determined to be inappropriate for the student.

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

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

- (1) An immediate verbal or electronic communication on the same day as each incident; and
- (2) Written notification within twenty-four hours of each incident.

(d) All parents and legal guardians of students shall receive, upon the student's entry into public school, written information issued by the department about policies and procedures for restraint. This written information shall include:

- (1) A brief summary describing the training received by public school staff in using restraint in facilities or programs;
 - (2) Information describing board policy;
 - (3) Information on the procedures for determining when restraint can and cannot be properly used in public school settings;
 - (4) Definitions of restraint;
 - (5) Information on the procedural safeguards that are in place to protect the rights of children and their parents or legal guardians;
 - (6) A description of the alignment of policies and procedures on restraint with applicable state laws or department rules;
 - (7) Information on the procedures for notifying parents and legal guardians when restraint has been used with their child; and
 - (8) Information on the procedures for notifying parents and legal guardians about any changes to policies and procedures on restraint.
- (e) The department shall make information relating to policies and procedures available on the department's website.
- (f) If policy or procedural changes related to restraint are made during the school year, the department shall post the changes on its website immediately.
- (g) All public schools shall ensure that staff who use restraint in facilities or programs are trained, recertified, or trained and recertified on a periodic basis no less frequently than annually. Training shall include:
- (1) Evidence-based techniques shown to be effective in the prevention of restraint;
 - (2) Evidence-based techniques shown to be effective in keeping school personnel and students safe when imposing restraint;
 - (3) Evidence-based skills related to positive behavioral supports and interventions, safe physical escort, conflict prevention, understanding antecedents, de-escalation, and conflict management;
 - (4) A wide array of prevention and intervention modalities; and
 - (5) Information describing state policies and procedures that meet the minimum standards established by state statutes and administrative rules.
- (h) No less than annually, there shall be a review of data on students at each public school who were restrained, which shall be conducted as directed by each complex area superintendent. The review shall determine whether:
- (1) There are strategies in place to address the students with dangerous behaviors at issue;
 - (2) The strategies in place are effective in increasing appropriate behaviors of students with dangerous behaviors; and
 - (3) New strategies need to be developed or current strategies need to be revised or changed to prevent the reoccurrence of dangerous behaviors.

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

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

(j) The department shall review policies and procedures on the use of restraint, including by reviewing available data on such use, outcomes, settings, individual staff involvement, and programs, and the frequency of use for student populations categorized by: individual students; groups of students; gender; race; national origin; disability status and type of disability; and limited English proficiency, for the purposes of determining:

- (1) Whether policies for restraint are being applied consistently;

- (2) The accuracy and consistency with which restraint data is being collected, as well as the extent to which this data is being used to plan behavioral interventions and staff training;
- (3) Whether policies and procedures are being implemented with fidelity;
- (4) Whether policies and procedures continue to protect students; and
- (5) Whether policies and procedures remain properly aligned with applicable state statutes and administrative rules and consistent with privacy laws.

(k) As used in this section:

“Behavior intervention plan” means a proactive plan designed to address problem behaviors exhibited by a student in the educational setting through the use of positive behavioral supports and interventions.

“Chemical restraint” means a drug or medication used on a student to control behavior or restrict freedom of movement; provided that the term does not include a drug or medication that is:

- (1) 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
- (2) Administered as prescribed by a licensed physician or other qualified health professional acting under the scope of the professional’s authority under state law.

“Emergency situation” means a student’s behavior that poses an imminent danger of property damage or physical injury to the student, school personnel, or others and only for so long as the danger persists.

“Mechanical restraint” means the use of devices as a means of restricting a student’s freedom of movement or the ability to communicate in the student’s primary language or mode of communication.

“Physical restraint” means a personal restriction, other than a chemical or mechanical restraint, that immobilizes or reduces the ability of a student to move the student’s arms, legs, or head freely.

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

“Restraint” means:

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

“Seclusion” means the confinement of a student alone in a room or structure from which the student is physically denied voluntary egress.”

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

~~“[§302A-1141] Punishment of pupils limited. No physical punishment of any kind may be inflicted upon any pupil, [but reasonable force may be used by a teacher in order to restrain a pupil in attendance at school from hurting oneself or any other person or property, and reasonable force may be used as defined in section 703-309(2) by a principal or the principal’s agent only with~~

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~~another teacher present and out of the presence of any other student but only for the purposes outlined in section 703-309(2)(a)-] except as provided for under sections 302A-B and 703-309(2).”~~

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

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

SECTION 5. The department of education shall update the senate committee on education and the house of representatives committee on education no later than twenty days prior to the convening of the regular session of 2017 on the department of education's policy and procedures on the use of restraint in public schools.

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

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

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

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

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

- (1) Sections 2 and 3 shall take effect on August 1, 2016; and
- (2) Section 6 shall take effect on July 1, 2014.

(Approved July 2, 2014.)

Note

1. Edited pursuant to HRS §23G-16.5.