

1 H.400

2 Introduced by Representatives Donahue of Northfield, Andrews of Rutland

3 City, Fisher of Lincoln and French of Randolph

4 Referred to Committee on

5 Date:

6 Subject: Education; positive behavioral intervention and supports; restraint;

7 seclusion

8 Statement of purpose: This bill proposes to promote positive behavioral

9 intervention and supports in schools, reduce the use of physical restraint, and

10 prohibit the use of mechanical, chemical, and prone physical restraint and

11 seclusion as methods of addressing challenging student behavior.

12 An act relating to promoting positive behavioral intervention and supports
13 in schools, reducing the use of physical restraint, and prohibiting the use of
14 other behavioral interventions

15 It is hereby enacted by the General Assembly of the State of Vermont:

16 Sec. 1. POLICY

17 It is the policy of the state of Vermont:

18 (1) To ensure that behavioral interventions used in public schools and

19 approved independent schools to address challenging student behavior:

20 (A) Preserve the dignity, self-esteem, and privacy of the student.

21 (B) Prevent physical and psychological trauma.

1 (C) Represent the least restrictive means necessary to ensure the
2 safety of the student or others.

3 (2) To promote a common understanding and implementation of
4 evidence-based positive behavioral interventions in schools when staff is
5 addressing challenging student behavior.

6 (3) To ensure training in the use of positive behavioral interventions for
7 staff who work with students.

8 (4) To ensure that physical restraint is used only:

9 (A) In an emergency when there is a probable, imminent risk of harm
10 to the student or others.

11 (B) By trained personnel using extreme caution.

12 (C) As a last resort when all other interventions have failed or have
13 been deemed inappropriate.

14 (5) To prohibit the use of mechanical, chemical, and prone physical
15 restraint and the use of seclusion in schools.

16 (6) To ensure that students who demonstrate a pattern of challenging
17 behavior are referred for a functional behavioral assessment to determine the
18 cause of the behavior and to identify the positive behavioral intervention and
19 supports needed to teach the student the skills necessary to replace the
20 challenging behavior and promote effective communication and positive social
21 relationships.

1 (7) To ensure that functional behavioral assessments are performed by
2 qualified evaluators.

3 (8) To monitor the use of restraint, seclusion, and time-out rooms in
4 schools through documentation and reporting, and to provide additional
5 training where needed.

6 (9) To ensure notification of parents and guardians when restraint or
7 time-out rooms are used to address student behavior.

8 Sec. 2. 16 V.S.A. §§ 2959c and 2959d are added to read:

9 § 2959c. DEFINITIONS

10 As used in this chapter:

11 (1) “Behavioral intervention plan” means a plan that details strategies to
12 address a student’s behavior before, during, and after rule-breaking or other
13 inappropriate behavior.

14 (2) “Chemical restraint” means the use of any substance to restrict a
15 student’s movement or limit a student’s sensory or motor functions.

16 (3) “Functional behavioral assessment” means the analysis of a student’s
17 behavior patterns before, during, and after rule-breaking or other inappropriate
18 behavior for the purpose of guiding the development of a behavioral
19 intervention plan.

20 (4) “Mechanical restraint” means the use of any device or object,
21 including tape, blankets, tie-downs, and body carriers, that restricts a student’s

1 movement or limits a student’s sensory or motor functions. The term does not
2 include devices used pursuant to the direction of a health professional to
3 maintain body alignment or support or to limit sensory stimuli, when used in
4 the manner prescribed.

5 (5) “Physical restraint” means the use of physical force to prevent
6 serious, probable, and imminent threat of bodily harm to the student or others.

7 Physical restraint does not include:

8 (A) Brief periods of physical restriction by person-to-person contact,
9 without the aid of chemical or mechanical restraints, accomplished with
10 minimal force and designed either to prevent a student from completing an act
11 that potentially would result in physical harm to himself or herself or to
12 another person, or to remove a disruptive student who is unwilling to leave an
13 area voluntarily.

14 (B) Holding a student’s hand or arm to escort the student safely from
15 one area to another.

16 (6) “Positive behavioral intervention and supports” means an approach
17 to preventing and responding to challenging behavior that:

18 (A) Is proactive and instructional, rather than reactive.

19 (B) Can operate on individual, group, classroom, or schoolwide
20 levels.

21 (C) Includes a system of continual data collection.

1 (D) Relies on data-driven decisions.

2 (7) “Prone physical restraint” means holding a student, usually on the
3 floor, by physical or mechanical restraint for the purpose of controlling the
4 student’s movement. These are commonly referred to as four- or five-point
5 restraints that immobilize all four extremities and, in a five-point restraint, the
6 head, face down.

7 (8) “Seclusion” means the involuntary confinement of a person in a
8 room or area from which the person is physically prevented from leaving by
9 use of a lock or other means. The use of a time-out room for brief periods of
10 time is not seclusion.

11 (9) “Time-out room” means a designated room used to separate a
12 student from others for a brief period of time for the purpose of preventing or
13 stopping harmful behavior or limiting its intensity or to enable a student to
14 regain composure and return to a class or other activity.

15 § 2959d. POSITIVE BEHAVIORAL INTERVENTION AND SUPPORTS;

16 PHYSICAL RESTRAINT, SECLUSION, AND TIME OUT

17 (a) Prohibition. The mechanical, chemical, or prone physical restraint of a
18 student and the seclusion of a student are prohibited in the public schools,
19 approved independent schools, and approved tutorial programs of the state.

20 (b) Limited use of restraint. Physical restraint shall be used only when
21 there is a probable, imminent risk of harm to the student or others. It shall be

1 used only by trained personnel using extreme caution when all other
2 interventions have failed or have been deemed inappropriate.

3 (c) Time-out rooms. A time-out room may be used to help a student gain
4 composure. It shall not be used for convenience or as a punishment. Time-out
5 rooms shall not be locked in a way that would prevent a student from leaving
6 of his or her own volition.

7 (d) Training. Each school board and board of directors shall ensure that all
8 staff who have the potential for direct interaction with students are trained in
9 the use of evidence-based positive behavioral intervention and supports,
10 including instruction in:

11 (1) A continuum of prevention techniques.

12 (2) A continuum of de-escalation techniques.

13 (3) Environmental management strategies.

14 (4) Nationally recognized methods of physical management and
15 restraint.

16 (5) Appropriate documentation, notification, and reporting procedures.

17 (e) Notification and consent.

18 (1) Annually, before the beginning of the academic year, each school
19 shall inform all parents and legal guardians of students enrolled in the school
20 of the school's emphasis on the use of positive behavioral intervention and

1 supports and its intention to avoid the use of physical restraint to address
2 challenging student behavior.

3 (2) Each time a school uses physical restraint or a time-out room or both
4 to address a student's challenging behavior, the school shall notify the
5 student's parents or legal guardians on the same day the interventions were
6 used, or as soon after as is reasonable, and shall document each instance of
7 notification.

8 (3) Except in an emergency, the school shall obtain the informed written
9 consent of a student's parents or legal guardians before using physical restraint
10 or time-out rooms. A program or placement serving students at public expense
11 shall not require consent to the use of these interventions as a condition of
12 participation or enrollment.

13 (f) Evaluation of behavior. A student who demonstrates a pattern of
14 challenging behavior shall be referred for a functional behavioral assessment to
15 determine the cause of the behavior and to lead to the development of a
16 behavioral intervention plan to identify the positive behavioral intervention and
17 supports needed to teach the student the skills necessary to replace the
18 challenging behavior and promote effective communication and positive social
19 relationships.

20 (g) Monitoring and corrective action. No less than annually, the
21 commissioner shall monitor, through the review of school-reported data, the

1 use of physical restraint and time-out rooms in schools. The commissioner
2 shall identify those schools in need of additional training and, when the data
3 reflect an over-use of these interventions, shall direct the school to work with
4 the department to develop a corrective action plan.

5 (h) Complaints and investigations. Complaints and investigations of a
6 school's use of restraint, seclusion, or time out may occur as provided by board
7 of education rule.

8 Sec. 3. RULEMAKING

9 On or before July 1, 2010, the state board of education shall adopt rules
10 pursuant to chapter 25 of Title 3 designed to promote the use of positive
11 behavioral intervention and supports and to restrict the use of physical restraint
12 and the use of time-out rooms to address challenging student behavior that
13 shall include:

14 (1) Provisions to ensure that all reasonable and appropriate measures
15 consistent with public safety are made:

16 (A) To prevent physical and emotional trauma.

17 (B) To respect the privacy of the child.

18 (C) To use the least restrictive measures necessary to protect the
19 safety of the child and others.

20 (2) Criteria for the use and physical structure of time-out rooms.

1 (3) A procedure for obtaining the consent of a student's parents of
2 school policies regarding the use of physical restraint and time-out rooms.

3 (4) Criteria and a procedure for annually reporting data on the use of
4 physical restraint and time-out rooms to the commissioner.

5 (5) A procedure for submitting complaints and requiring investigation of
6 the use of physical restraint, seclusion, and time-out rooms.

7 Sec. 4. EFFECTIVE DATES

8 (a) This section and Secs. 1 and 3 of this act shall take effect on passage.

9 (b) Sec. 2 of this act shall take effect on July 1, 2010.