

HOUSE BILL No. 5126

October 17, 2017, Introduced by Reps. Garcia, Hornberger, Crawford, Kelly, Roberts, Lilly, Alexander, Noble, Griffin and Reilly and referred to the Committee on Education Reform.

A bill to amend 1976 PA 451, entitled
"The revised school code,"
by amending section 1307h (MCL 380.1307h), as added by 2016 PA 402.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1307h. As used in sections 1307 to 1307h:

2 (a) "Chemical restraint" means the administration of
3 medication for the purpose of restraint.

4 (b) "De-escalation techniques" means evidence- and research-
5 based strategically employed verbal or nonverbal interventions used
6 to reduce the intensity of threatening behavior before, during, and
7 after a crisis situation occurs.

8 (c) "Documentation" means documentation developed by the
9 department that is uniform across the state.

1 (d) "Emergency physical restraint" means a last resort
2 emergency safety intervention involving physical restraint that is
3 necessitated by an ongoing emergency situation and that provides an
4 opportunity for the pupil to regain self-control while maintaining
5 the safety of the pupil and others. Emergency physical restraint
6 does not include physical restraint that is used for the
7 convenience of school personnel, as a substitute for an educational
8 program, as a form of discipline or punishment, as a substitute for
9 less restrictive alternatives, as a substitute for adequate
10 staffing, or as a substitute for school personnel training in
11 positive behavioral intervention and support. Emergency physical
12 restraint does not include a practice prohibited under section
13 1307b. Emergency physical restraint does not include physical
14 restraint when contraindicated based on a pupil's disability,
15 health care needs, or medical or psychiatric condition, as
16 documented in a record or records made available to the school.

17 (e) "Emergency seclusion" means a last resort emergency safety
18 intervention involving seclusion that is necessitated by an ongoing
19 emergency situation and that provides an opportunity for the pupil
20 to regain self-control while maintaining the safety of the pupil
21 and others. To qualify as emergency seclusion, there must be
22 continuous observation by school personnel of the pupil in
23 seclusion, and the room or area used for confinement must comply
24 with state and local fire and building codes; must not be locked;
25 must not prevent the pupil from exiting the area if school
26 personnel become incapacitated or leave that area; and must provide
27 for adequate space, lighting, ventilation, viewing, and the safety

1 and dignity of the pupil and others, in accordance with department
2 guidelines. Emergency seclusion does not include the confinement of
3 preschool children or of pupils who are severely self-injurious or
4 suicidal; seclusion that is used for the convenience of school
5 personnel, as a substitute for an educational program, as a form of
6 discipline or punishment, as a substitute for less restrictive
7 alternatives, as a substitute for adequate staffing, or as a
8 substitute for school personnel training in positive behavioral
9 intervention and support; or a practice prohibited under section
10 1307b. Emergency seclusion does not include seclusion when
11 contraindicated based on a pupil's disability, health care needs,
12 or medical or psychiatric condition, as documented in a record or
13 records made available to the school.

14 (f) "Emergency situation" means a situation in which a pupil's
15 behavior poses imminent risk to the safety of the individual pupil
16 or to the safety of others. An emergency situation requires an
17 immediate intervention.

18 (g) "Functional behavioral assessment" means an evidence- and
19 research-based systematic process for identifying the events that
20 trigger and maintain problem behavior in an educational setting. A
21 functional behavioral assessment shall describe specific
22 problematic behaviors, report the frequency of the behaviors,
23 assess environmental and other setting conditions where problematic
24 behaviors occur, and identify the factors that are maintaining the
25 behaviors over time.

26 (h) "Key identified personnel" means those individuals who
27 have received the mandatory training described in section

1 1307g(b) (i) to (xvi).

2 (I) "LAW ENFORCEMENT OFFICER" MEANS AN INDIVIDUAL LICENSED
3 UNDER THE MICHIGAN COMMISSION ON LAW ENFORCEMENT STANDARDS ACT,
4 1965 PA 203, MCL 28.601 TO 28.615.

5 (J) ~~(i)~~—"Mechanical restraint" means the use of any device,
6 article, garment, or material attached to or adjacent to a pupil's
7 body to perform restraint.

8 (K) ~~(j)~~—"Physical restraint" means restraint involving direct
9 physical contact.

10 (L) ~~(k)~~—"Positive behavioral intervention and support" means a
11 framework to assist school personnel in adopting and organizing
12 evidence-based behavioral interventions into an integrated
13 continuum of intensifying supports based on pupil need that unites
14 examination of the function of the problem behavior and the
15 teaching of alternative skill repertoires to enhance academic and
16 social behavior outcomes for all pupils.

17 (M) ~~(l)~~—"Positive behavioral intervention and support plan"
18 means a pupil-specific support plan composed of individualized,
19 functional behavioral assessment-based intervention strategies,
20 including, as appropriate to the pupil, guidance or instruction for
21 the pupil to use new skills as a replacement for problem behaviors,
22 some rearrangement of the antecedent environment so that problems
23 can be prevented and desirable behaviors can be encouraged, and
24 procedures for monitoring, evaluating, and modifying the plan as
25 necessary.

26 (N) ~~(m)~~—"Prone restraint" means the restraint of an individual
27 facedown.

1 (O) ~~(n)~~—"Regularly and continuously work under contract" means
2 that term as defined in section 1230.

3 (P) ~~(e)~~—"Restraint" means an action that prevents or
4 significantly restricts a pupil's movement. Restraint does not
5 include the brief holding of a pupil in order to calm or comfort,
6 the minimum contact necessary to physically escort a pupil from 1
7 area to another, the minimum contact necessary to assist a pupil in
8 completing a task or response if the pupil does not resist or
9 resistance is minimal in intensity or duration, or the holding of a
10 pupil for a brief time in order to prevent an impulsive behavior
11 that threatens the pupil's immediate safety, such as running in
12 front of a car. Restraint does not include the administration of
13 medication prescribed by and administered in accordance with the
14 directions of a physician, an adaptive or protective device
15 recommended by a physician or therapist when it is used as
16 recommended, or safety equipment used by the general pupil
17 population as intended, such as a seat belt or safety harness on
18 school transportation. Restraint does not include necessary actions
19 taken to break up a fight, to stop a physical assault, as defined
20 in section 1310, or to take a weapon from a pupil. Restraint does
21 not include actions that are an integral part of a sporting event,
22 such as a referee pulling football players off of a pile or a
23 similar action.

24 (Q) ~~(p)~~—"Restraint that negatively impacts breathing" means
25 any restraint that inhibits breathing, including floor restraints,
26 facedown position, or any position in which an individual is bent
27 over in such a way that it is difficult to breathe. This includes a

1 seated or kneeling position in which an individual being restrained
2 is bent over at the waist and restraint that involves sitting or
3 lying across an individual's back or stomach.

4 (R) ~~(q)~~—"School personnel" includes all individuals employed
5 in a public school or assigned to regularly and continuously work
6 under contract or under agreement in a public school, or public
7 school personnel providing service at a nonpublic school. **SCHOOL**
8 **PERSONNEL DOES NOT INCLUDE A LAW ENFORCEMENT OFFICER ASSIGNED TO**
9 **REGULARLY AND CONTINUOUSLY WORK UNDER CONTRACT OR UNDER AGREEMENT**
10 **IN A PUBLIC SCHOOL.**

11 (S) ~~(r)~~—"Seclusion" means the confinement of a pupil in a room
12 or other space from which the pupil is physically prevented from
13 leaving. Seclusion does not include the general confinement of
14 pupils if that confinement is an integral part of an emergency
15 lockdown drill required under section 19(5) of the fire prevention
16 code, 1941 PA 207, MCL 29.19, or of another emergency security
17 procedure that is necessary to protect the safety of pupils.

18 Enacting section 1. This amendatory act takes effect 90 days
19 after the date it is enacted into law.