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BILL ANALYSIS

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Senate Bill 1443 (as introduced 9-30-04)
Sponsor: Senator Tom George
Committee: Health Policy

Date Completed: 10-4-04

CONTENT

The bill would amend the Revised School Code to do the following:

- Allow the use of personal restraint in schools.**
- Prohibit the use of seclusion or chemical or mechanical restraint.**
- Provide that a school employee, volunteer, or contractor who used personal restraint on a pupil would not be civilly liable.**
- Require a school district or public school academy to develop and implement a plan regarding the use of emergency interventions.**
- Require school staff to undergo training in the use of personal restraint.**

The bill would define "personal restraint" as any touching or holding of a pupil by another person causing a personal restriction that immobilized a pupil or reduced a pupil's freedom of movement. The term would not include physically escorting a pupil. "Mechanical restraint" would mean a device, material, or equipment attached or adjacent to an individual's body that he or she could not remove easily and that restricted freedom of movement or normal access to his or her body. Neither "personal restraint" nor "mechanical restraint" would include the use of a device, such as an orthopedically prescribed device, surgical dressings or bandages, a protective helmet, or another device, that involved the physical holding of an individual to permit him or her to participate in activities without the risk of physical harm.

"Chemical restraint" would mean a drug or medication that was used as a restraint to control behavior or restrict an individual's freedom of movement. The term would not include the use of a drug or medication that was standard treatment for the individual's medical or psychiatric condition.

"Seclusion" would mean a behavior control technique involving confinement of an individual alone in an area from which he or she physically was prevented from leaving. The term would not include a time out.

Prohibited Restraint

The Code prohibits the use of corporal punishment. The bill also would prohibit the use of chemical or mechanical restraint, or seclusion. The Code provides that any resolution, bylaw, rule, policy, ordinance, or other authority permitting corporal punishment is void. Under the bill, this provision also would apply to any authority permitting personal restraint, seclusion, or chemical or mechanical restraint.

Use of Personal Restraint

The Code permits a person employed by or engaged as a volunteer or contractor by a local or intermediate school board or public school academy to use reasonable physical force upon a pupil as necessary to maintain order and control in a school or school-related setting for the purpose of providing an environment conducive to safety and learning. Under the bill, a school employee, volunteer, or contractor also could use reasonable personal restraint for this purpose.

In addition, the bill would allow a school employee, volunteer, or contractor to use reasonable physical force or personal restraint in a situation in which a pupil's behavior threatened imminent physical harm to himself or herself or others, or to property, and the use of physical force or personal restraint was necessary to ensure the safety of the pupil, another person, or property.

If a school volunteer, employee, or contractor used personal restraint, he or she could use only that reasonable force as was necessary to accomplish the personal restraint in the situation. The person would have to ensure that the pupil's safety and comfort were maintained during the use of personal restraint, and would have to discontinue the intervention as soon as the situation no longer existed. Throughout the personal restraint, a school staff member would have to monitor the pupil in person to assess, monitor, and reevaluate his or her condition. The school staff member could not otherwise be directly involved in the administration of the intervention. If the personal restraint lasted for more than 30 minutes, school officials would have to contract emergency personnel to respond to handle the situation.

The school district or public school academy would have to report the incident to the Superintendent of Public Instruction in an annual report of incidents involving personal restraint. The Superintendent would have to prescribe the form and manner of the report.

Emergency Intervention Plan

The Revised School Code requires a local or intermediate school district or public school academy to develop and implement a code of student conduct, and enforce it with regard to pupil misconduct in a classroom, elsewhere on school premises, on a school bus or other school-related vehicle, or at a school sponsored activity or event whether or not it is held on school premises. Under the bill, a school district or public school academy also would have to develop and implement a plan regarding the use of emergency interventions, and enforce it with respect to pupil misconduct. The code of student conduct would have to include the school district's or public school academy's policy regarding the use of emergency interventions and personal restraint. The district or academy would have to give pupils and parents the code of student conduct and emergency intervention plan.

Protection from Civil Liability

The Code provides that a school employee, volunteer, or contractor who exercises necessary reasonable physical force upon a pupil, or upon another person of school age in a school-related setting, is not liable in a civil action for damages arising from the use of that physical force and is presumed not to have violated the Code's prohibition against the use of corporal punishment. In determining whether an employee, volunteer, or contractor has acted in accordance with the Code, deference must be given to reasonable good-faith judgments made by that person. Under the bill, these provisions also would apply to a person who exercised necessary reasonable personal restraint. Deference would have to be given to reasonable good-faith judgments if the person's actions were consistent with the school district's or public school academy's plan regarding the use of emergency interventions.

Staff Training

Before the start of the next school year beginning after the bill's effective date, and at least annually after that, at least one member of the staff of each school operated by a local or intermediate school district or public school academy would have to attend a nationally recognized training program on the use of personal restraint. The Department of Education would have to identify at least one suitable program and notify the school districts and public school academies of the programs.

Within the first 30 days after the beginning of each school year, training on the use of personal restraint would have to be provided to every staff member who was employed in a position in which he or she might be required to implement personal restraint on a pupil. The training would have to be conducted by a staff member who had attended the training described above.

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Legislative Analyst: Julie Koval

FISCAL IMPACT

The Department of Education would face minimal increased costs related to the identification of nationally recognized personal restraint programs, and the notification of such programs to local and intermediate school districts and public school academies.

Local and intermediate districts and public school academies would face increased costs in three areas: 1) providing pupils and parents with a code of student conduct and a plan regarding the use of emergency interventions; 2) sending at least one member of the staff of each school to a nationally recognized training program on the use of personal restraint; and 3) providing training on the use of personal restraint to all staff members who are in positions in which personal restraint might be required.

Fiscal Analyst: Kathryn Summers-Coty

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.