



SECTION BY SECTION

House Committee on Education and Labor
Chairman Robert C. "Bobby" Scott

Keeping All Students Safe Act (H.R.3474)

Section 1. Short Title, Table of Contents

The Act may be cited as the "Keeping All Students Safe Act".

Section 2. Definitions

Definitions in this Act include:

- Chemical Restraint
- ESEA Terms: early childhood education program, educational service agency, elementary school, local educational agency, other staff, paraprofessional, parent, school leader, secondary school, specialized instructional support personnel, State, and State educational agency
- Law Enforcement Officer
- Mechanical Restraint
- Physical Escort
- Physical Restraint
- Positive Behavioral Interventions and Supports
- Program
- Program Personnel
- Protection and Advocacy System
- School Security Guard
- Seclusion
- Secretary
- Special Education School
- State-Approved Crisis Intervention Training Program
- Student
- Time Out

Title I - Prohibitions on Restraint and Seclusion and Additional Requirements

Section 101. Prohibition, additional requirements

Subsection (a) Provides that no student shall be subjected to unlawful seclusion or restraint by program personnel, a law enforcement officer or school security guard while attending any program that receives Federal financial assistance.

Subsection (b) defines prohibited "unlawful seclusion or restraint" to mean:

- Seclusion
- Mechanical restraint
- Chemical restraint

- Physical restraint or physical escort that is life threatening, that restricts breathing, or that restricts blood flow to the brain, including prone and supine restraint
- Physical restraint that is contraindicated based on the student's disability, health care needs, medical or psychiatric condition, or interferes with a student's ability to communicate.
- Physical restraint that doesn't comply with Section 101(e)

Subsection (c) a student who has been subjected to unlawful seclusion or restraint, or the parent of such student, may file a civil action against the program where the violation occurred in an appropriate federal or state court for declaratory, injunctive or compensatory relief as well as attorneys' fees or expert fees; however program personnel shall not be liable under this act and no program shall be immune under the 11th Amendment to the United States Constitution.

Subsection (d) requires the Secretary of Education to address complaints of violations of the prohibition against unlawful seclusion and restraint with an appropriate investigation and to withhold payments accordingly. The Secretary of the Department of Health and Human Services will promulgate regulations regarding Head Start and withhold payments to Head Start programs that violate the Act.

Subsection (e) outlines the requirements to comply with act when conducting a physical restraint. The use of physical restraint by any program personnel, school security guard or law enforcement officer will be considered in compliance with the Act only if:

- The student's behavior poses an imminent danger of serious physical injury to the student or others;
- Less restrictive interventions would be ineffective in mitigating the danger
- Physical restraint is imposed by program personnel, school security guard or law enforcement officer trained and certified by a state-approved crisis-intervention program
- Such physical restraint ends immediately when the imminent danger ceases
- Such physical restraint does not interfere with the student's ability to communicate in their primary language or mode of communication.
- During the restraint, the least amount of force necessary to protect the student or others from the threatened injury is used.

Each state shall ensure that a sufficient number of program personnel are trained and certified in the State-approved crisis intervention training program to meet the needs of the student population in each program. Additionally, the use of physical restraint as a planned intervention shall not be written into a student's education plan, individual safety plan, behavioral intervention plan or individualized education plan under the IDEA, programs may establish policies and procedures that are not specific to any individual student. Further, each program shall establish procedures to be followed after an incident involving the imposition of physical restraint upon a student that shall include the following:

- Immediate verbal or electronic communication with the parent within the same day
- Written notification not later than 24 hours after the incident that includes a description of the incident, positive interventions used prior to restraint, the duration of the restraint, a description of the serious physical injury of the student or others that occurred to was about to occur that necessitated the restraint.
- A meeting between the parents of the student and the program not later than 5 school days following the incident

Title II – State Plan, Reporting Requirements, and Grants for State Educational Agencies

Section 201. Definition of school

Under Title II, the term school is defined as an elementary school, secondary school, or special education school.

Section 202. State Plan

Requires states submit plans to implement policies and procedures to comply with Sec. 101 within two years of the enactment of the Act that includes a description of state policies and procedures, including state-approved crisis intervention programs, plans for reducing aversive behavioral interventions generally and improving school climate; as well as assurances regarding accurate and timely reporting. Additionally, the plan must outline how personnel, students and parents will be made aware of the State's policies and procedures.

Subsection (b) requires state to report information on physical restraint, including the total number of incidents, total number of students, number of times each a student was restrained, and the total number of incidents where the use of physical restraint is referred to law enforcement. Requires all incidence data to be disaggregated by restraints that resulted in injury, restraints that resulted in death, the incidents conducted by person who was not trained and certified as required in the act, by demographic characteristics of the student (each major racial and ethnic group, disability status, English language proficiency status, and whether a student is economically disadvantaged), by the number of incidents involving a school security guard or school resource officer, and by the type of school (general education school, special education school, etc.)

Section 203. Grants for State Educational Agencies

Provides that the Secretary may award grants to states to: (a) establish, implement, and enforce the procedures and policies described in the Act; (b) improve State and local capacity to collect and analyze data; and (c) improve school climate and culture. The grants will be awarded based on relative need based on set criteria. These grants are awarded for 3 years and may be sub-granted to local educational agencies.

Subsection (c) describes what must be included in a grant application including, the total number of incidents of restraint and seclusion in the most recent school year, description of data collection procedures, description of crisis intervention or prevention trainings used in the state and of school climate initiatives, description of the activities that will be funded by the grant and how those activities will align with Federal, State and local policies.

Subsection (d) provides that a state educational agencies receiving a grant under this section may use grant funds to award subgrants to local education agencies and early childhood education programs must have an opportunity to participate in activities supported by such subgrants.

Subsection (e) outlines requirements for private school personnel to participate in activities supported by subgrants to local education agencies with funds that remain in control of public agencies.

Subsection (f) provides that grant funds as well as subgrants shall be used for: establishing and implementing policies to prohibit seclusion, other forms of prohibited restraint, and other prohibited actions described in Sec. 101; implementing and evaluating strategies and procedures to prevent seclusion and prevent and reduce physical restraint; providing professional development to school personnel; carrying out the reporting requirements and analyzing the data and information included in the report; and providing training to school security guards and school personnel on legal obligations under the Individuals with Disabilities Education Act and Americans with Disabilities Act and how to interact with students with disabilities. States or local educational agencies may engage in other authorized activities described in Subsection (g).

Subsection (h) requires and describes the grant evaluation and report. After the three year grant, the State agency must evaluate progress toward implementation and submit the report to the Secretary.

Title III – General Provisions

Section 301. National Assessment

Requires the Secretary of Education to conduct a national assessment to determine the effectiveness of the Act. The national assessment will include: (a) analyzing data related to the incidents of physical restraint; (b) analyzing the effectiveness of Federal, State, and local efforts to prevent seclusion and prevent and reduce physical restraint; (c) identifying programs that are effective in preventing seclusion and physical restraint; and (d) identifying evidence-based personnel training models with demonstrated success. At the end of the assessment, the Secretary will submit a report to Congress.

Section 302. Protection and Advocacy Systems

Requires a local educational agency or Head Start program to provide the Protection and Advocacy System with information related to any incident of physical injury or death of a student from the use of seclusion or restraint. The Protection and Advocacy Systems will have the same authorities and rights provided under the Developmental Disabilities Assistance and Bill of Rights Act of 2000, with respect to protections for students under this Act.

Section 303. Schools operated or funded by the Department of the Interior or the Department of Defense

Requires the Secretaries of the Interior and Defense to promulgate regulations ensuring that schools operated or funded by these Departments comply with the requirements of Title I and Section 202(b) of this Act.

Section 304. Rule of Construction

Provides that subject to section 101(e), nothing in this Act shall be construed to prohibit sworn law enforcement with probable cause from arresting a student for violating a federal or state criminal law.

Section 305. Applicability to Private Schools and Home Schools

The Act does not apply to private schools that do not receive federal funds, in whole or in part. Nothing in the Act affects a child who is home schooled.

Section 306. Severability

Provides that if any provision of this Act is found unconstitutional the remainder of the Act shall not be affected.

Section 307. Authorization of Appropriations

There are authorized to be appropriated such sums as may be necessary to carry out this Act for fiscal year 2021 and each succeeding fiscal year.