

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 1032*
Committee Substitute Favorable 4/18/05

Short Title: Placing Students in Seclusion.

(Public)

Sponsors:

Referred to:

March 31, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY THE PERMISSIBLE USE OF SECLUSION AND
3 RESTRAINT IN PUBLIC SCHOOLS AND TO PROVIDE FOR TRAINING IN
4 MANAGEMENT OF STUDENT BEHAVIOR.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. Chapter 115C of the General Statutes is amended by adding a
7 new section to read:

8 **"§ 115C-391.1. Permissible use of seclusion and restraint.**

9 (a) It is the policy of the State of North Carolina to:

- 10 (1) Promote safety and prevent harm to all students, staff, and visitors in
11 the public schools.
12 (2) Treat all public school students with dignity and respect in the delivery
13 of discipline, use of physical restraints or seclusion, and use of
14 reasonable force as permitted by law.
15 (3) Provide school staff with clear guidelines about what constitutes use of
16 reasonable force permissible in North Carolina public schools.
17 (4) Improve student achievement, attendance, promotion, and graduation
18 rates by employing positive behavioral interventions to address student
19 behavior in a positive and safe manner.
20 (5) Promote retention of valuable teachers and other school personnel by
21 providing appropriate training in prescribed procedures, which address
22 student behavior in a positive and safe manner.

23 (b) The following definitions apply in this section:

- 24 (1) "Aversive procedure" means a systematic physical or sensory
25 intervention program for modifying the behavior of a student with a
26 disability which causes or reasonably may be expected to cause one or
27 more of the following:
28 a. Significant physical harm, such as tissue damage, physical
29 illness, or death.

- 1 b. Serious, foreseeable long-term psychological impairment.
2 c. Obvious repulsion on the part of observers who cannot
3 reconcile extreme procedures with acceptable, standard
4 practice, for example: electric shock applied to the body;
5 extreme loud auditory stimuli; forcible introduction of foul
6 substances to the mouth, eyes, ears, nose, or skin; placement in
7 a tub of cold water or shower; slapping, pinching, hitting, or
8 pulling hair; blindfolding or other forms of visual blocking;
9 unreasonable withholding of meals; eating one's own vomit; or
10 denial of reasonable access to toileting facilities.
- 11 (2) "IEP" means a student's Individualized Education Plan.
12 (3) "Isolation" means a behavior management technique in which a
13 student is placed alone in an enclosed space from which the student is
14 not prevented from leaving.
15 (4) "Law enforcement officer" means a sworn law enforcement officer
16 with the power to arrest.
17 (5) "Mechanical restraint" means the use of any device or material
18 attached or adjacent to a student's body that restricts freedom of
19 movement or normal access to any portion of the student's body and
20 that the student cannot easily remove.
21 (6) "Physical restraint" means the use of physical force to restrict the free
22 movement of all or a portion of a student's body.
23 (7) "School personnel" means:
24 a. Employees of a local board of education.
25 b. Any person working on school grounds or at a school function
26 under a contract or written agreement with the public school
27 system to provide educational or related services to students.
28 c. Any person working on school grounds or at a school function
29 for another agency providing educational or related services to
30 students.
- 31 (8) "Seclusion" means the confinement of a student alone in an enclosed
32 space from which the student is:
33 a. Physically prevented from leaving by locking hardware or other
34 means.
35 b. Not capable of leaving due to physical or cognitive incapacity.
36 (9) "Time-out" means a behavior management technique in which a
37 student is separated from other students for a limited period of time in
38 a monitored setting.
- 39 (c) Physical Restraint:
40 (1) Physical restraint of students by school personnel shall be considered a
41 reasonable use of force when used in the following circumstances:
42 a. As reasonably needed to obtain possession of a weapon or other
43 dangerous objects on a person or within the control of a person.

- 1 b. As reasonably needed to maintain order or prevent or break up a
2 fight.
- 3 c. As reasonably needed for self-defense.
- 4 d. As reasonably needed to ensure the safety of any student,
5 school employee, volunteer, or other person present, to teach a
6 skill, to calm or comfort a student, or to prevent self-injurious
7 behavior.
- 8 e. As reasonably needed to escort a student safely from one area to
9 another.
- 10 f. If used as provided for in a student's IEP or Section 504 plan or
11 behavior intervention plan.
- 12 g. As reasonably needed to prevent imminent destruction to school
13 or another person's property.
- 14 (2) Except as set forth in subdivision (1) of this subsection, physical
15 restraint of students shall not be considered a reasonable use of force,
16 and its use is prohibited.
- 17 (3) Physical restraint shall not be considered a reasonable use of force
18 when used solely as a disciplinary consequence.
- 19 (4) Nothing in this subsection shall be construed to prevent the use of
20 force by law enforcement officers in the lawful exercise of their law
21 enforcement duties.
- 22 (d) Mechanical Restraint:
- 23 (1) Mechanical restraint of students by school personnel is permissible
24 only in the following circumstances:
- 25 a. When properly used as an assistive technology device included
26 in the student's IEP or Section 504 plan or behavior intervention
27 plan or as otherwise prescribed for the student by a medical or
28 related service provider.
- 29 b. When using seat belts or other safety restraints to secure
30 students during transportation.
- 31 c. As reasonably needed to obtain possession of a weapon or other
32 dangerous objects on a person or within the control of a person.
- 33 d. As reasonably needed for self-defense.
- 34 e. As reasonably needed to ensure the safety of any student,
35 school employee, volunteer, or other person present.
- 36 (2) Except as set forth in subdivision (1) of this subsection, mechanical
37 restraint, including the tying, taping, or strapping down of a student,
38 shall not be considered a reasonable use of force, and its use is
39 prohibited.
- 40 (3) Nothing in this subsection shall be construed to prevent the use of
41 mechanical restraint devices, such as handcuffs by law enforcement
42 officers in the lawful exercise of their law enforcement duties.
- 43 (e) Seclusion:

- 1 (1) Seclusion of students by school personnel may be used in the
2 following circumstances:
3 a. As reasonably needed to respond to a person in control of a
4 weapon or other dangerous object.
5 b. As reasonably needed to maintain order or prevent or break up a
6 fight.
7 c. As reasonably needed for self-defense.
8 d. As reasonably needed when a student's behavior poses a threat
9 of imminent physical harm to self or others or imminent
10 substantial destruction of school or another person's property.
11 e. When used as specified in the student's IEP, Section 504 plan,
12 or behavior intervention plan; and
13 1. The student is monitored while in seclusion by an adult
14 in close proximity who is able to see and hear the student
15 at all times.
16 2. The student is released from seclusion upon cessation of
17 the behaviors that led to the seclusion or as otherwise
18 specified in the student's IEP or Section 504 plan.
19 3. The space in which the student is confined has been
20 approved for such use by the local education agency.
21 4. The space is appropriately lighted.
22 5. The space is appropriately ventilated and heated or
23 cooled.
24 6. The space is free of objects that unreasonably expose the
25 student or others to harm.
26 (2) Except as set forth in subdivision (1) of this subsection, the use of
27 seclusion is not considered reasonable force, and its use is not
28 permitted.
29 (3) Seclusion shall not be considered a reasonable use of force when used
30 solely as a disciplinary consequence.
31 (4) Nothing in this subsection shall be construed to prevent the use of
32 seclusion by law enforcement officers in the lawful exercise of their
33 law enforcement duties.
34 (f) Isolation. – Isolation is permitted as a behavior management technique
35 provided that:
36 (1) The space used for isolation is appropriately lighted, ventilated, and
37 heated or cooled.
38 (2) The duration of the isolation is reasonable in light of the purpose of the
39 isolation.
40 (3) The student is reasonably monitored while in isolation.
41 (4) The isolation space is free of objects that unreasonably expose the
42 student or others to harm.
43 (g) Time-Out. – Nothing in this section is intended to prohibit or regulate the use
44 of time-out as defined in this section.

1 (h) Aversive Procedures. – The use of aversive procedures as defined in this
2 section is prohibited in public schools.

3 (i) Nothing in this section modifies the rights of school personnel to use
4 reasonable force as permitted under G.S. 115C-390 or modifies the rules and procedures
5 governing discipline under G.S. 115C-391(a).

6 (1) Notice, Reporting, and Documentation. – Each board of education
7 shall provide copies of this section and all local board policies
8 developed to implement this section to school personnel and parents or
9 guardians at the beginning of each school year.

10 (2) Notice of specified incidents:

11 a. School personnel shall promptly notify the principal or
12 principal's designee of:

13 1. Any use of aversive procedures.

14 2. Any prohibited use of mechanical restraint.

15 3. Any use of physical restraint resulting in observable
16 physical injury to a student.

17 4. Any prohibited use of seclusion or seclusion that exceeds
18 10 minutes or the amount of time specified on a student's
19 behavior intervention plan.

20 b. When a principal or principal's designee has personal
21 knowledge or actual notice of any of the events described in this
22 subdivision, the principal or principal's designee shall promptly
23 notify the student's parent or guardian and will provide the
24 name of a school employee the parent or guardian can contact
25 regarding the incident.

26 (3) As used in subdivision (2) of this subsection, "promptly notify" means
27 by the end of the workday during which the incident occurred when
28 reasonably possible, but in no event later than the end of following
29 workday.

30 (4) The parent or guardian of the student shall be provided with a written
31 incident report for any incident reported under this section within a
32 reasonable period of time, but in no event later than 30 days after the
33 incident. The written incident report shall include:

34 a. The date, time of day, location, duration, and description of the
35 incident and interventions.

36 b. The events or events that led up to the incident.

37 c. The nature and extent of any injury to the student.

38 d. The name of a school employee the parent or guardian can
39 contact regarding the incident.

40 (5) No local board of education or employee of a local board of education
41 shall discharge, threaten, or otherwise retaliate against another
42 employee of the board regarding that employee's compensation, terms,
43 conditions, location, or privileges of employment because the
44 employee makes a report alleging a prohibited use of physical

1 restraint, mechanical restraint, aversive procedure, or seclusion, unless
2 the employee knew or should have known that the report was false.

3 (j) Nothing in this section shall be construed to create a private cause of action
4 against any local board of education, its agents or employees, or any institutions of
5 teacher education or their agents or employees."

6 **SECTION 2.** G.S. 115C-296 reads as rewritten:

7 "**§ 115C-296. Board sets certification requirements.**

8 ...

9 (b) It is the policy of the State of North Carolina to maintain the highest quality
10 teacher education programs and school administrator programs in order to enhance the
11 competence of professional personnel certified in North Carolina. To the end that
12 teacher preparation programs are upgraded to reflect a more rigorous course of study,
13 the State Board of Education, as lead agency in coordination and cooperation with the
14 University Board of Governors, the Board of Community Colleges and such other
15 public and private agencies as are necessary, shall continue to refine the several
16 certification requirements, standards for approval of institutions of teacher education,
17 standards for institution-based innovative and experimental programs, standards for
18 implementing consortium-based teacher education, and standards for improved
19 efficiencies in the administration of the approved programs. The certification program
20 shall provide for initial certification after completion of preservice training, continuing
21 certification after three years of teaching experience, and certificate renewal every five
22 years thereafter, until the retirement of the teacher. The last certificate renewal received
23 prior to retirement shall remain in effect for five years after retirement.

24 The State Board of Education, as lead agency in coordination with the Board of
25 Governors of The University of North Carolina and any other public and private
26 agencies as necessary, shall continue to raise standards for entry into teacher education
27 programs.

28 The State Board of Education, in consultation with the Board of Governors of The
29 University of North Carolina, shall evaluate and develop enhanced requirements for
30 continuing certification. The new requirements shall reflect more rigorous standards for
31 continuing certification and to the extent possible shall be aligned with quality
32 professional development programs that reflect State priorities for improving student
33 achievement.

34 The State Board of Education, in consultation with local boards of education and the
35 Board of Governors of The University of North Carolina, shall reevaluate and enhance
36 the requirements for renewal of teacher certificates. The State Board shall consider
37 modifications in the certificate renewal achievement and to make it a mechanism for
38 teachers to renew continually their knowledge and professional skills. The State Board
39 shall adopt new standards for the renewal of teacher certificates by May 15, 1998.

40 The standards for approval of institutions of teacher education shall require that
41 teacher education programs for all students who do not major in special education
42 include demonstrated competencies in (i) the identification and education of children
43 with ~~learning disabilities~~ disabilities and (ii) positive management of student behavior
44 and effective communication techniques for defusing and deescalating disruptive or

1 dangerous behavior. The State Board of Education shall incorporate the criteria
2 developed in accordance with G.S. 116-74.21 for assessing proposals under the School
3 Administrator Training Program into its school administrator program approval
4 standards.

5 All North Carolina institutions of higher education that offer teacher education
6 programs, masters degree programs in education, or masters degree programs in school
7 administration shall provide performance reports to the State Board of Education. The
8 performance reports shall follow a common format, shall be submitted according to a
9 plan developed by the State Board, and shall include the information required under the
10 plan developed by the State Board.

11 ...

12 (c) It is the policy of the State of North Carolina to encourage lateral entry into
13 the profession of teaching by skilled individuals from the private sector. To this end,
14 before the 1985-86 school year begins, the State Board of Education shall develop
15 criteria and procedures to accomplish the employment of such individuals as classroom
16 teachers. Beginning with the 2006-2007 school year, the criteria and procedures shall
17 include preservice training in (i) the identification and education of children with
18 disabilities and (ii) positive management of student behavior, effective communication
19 for defusing and deescalating disruptive or dangerous behavior, and safe and
20 appropriate use of seclusion and restraint. Regardless of credentials or competence, no
21 one shall begin teaching above the middle level of differentiation. Skilled individuals
22 who choose to enter the profession of teaching laterally may be granted a provisional
23 teaching certificate for no more than five years and shall be required to obtain
24 certification before contracting for a sixth year of service with any local administrative
25 unit in this State.

26 It is further the policy of the State of North Carolina to ensure that local boards of
27 education can provide the strongest possible leadership for schools based upon the
28 identified and changing needs of individual schools. To this end, before the 1994-95
29 school year begins, the State Board of Education shall carefully consider a lateral entry
30 program for school administrators to ensure that local boards of education will have
31 sufficient flexibility to attract able candidates.

32"

33 **SECTION 3.** G.S. 115C-105.47(b)(9) reads as rewritten:

34 "(b) Each plan shall include each of the following components:

35 ...

36 (9) Professional development clearly matched to the goals and objectives
37 of the plan. This professional development shall include a component
38 to train appropriate school personnel in the management of disruptive
39 or dangerous student behavior. Appropriate school personnel may
40 include, but is not limited to, teachers, teacher assistants, school
41 administrators, bus drivers, school resource officers, school
42 psychologists, and school counselors. The training shall include
43 instruction in positive management of student behavior, effective
44 communication for defusing and deescalating disruptive or dangerous

1 behavior, and safe and appropriate use of seclusion and restraint. The
2 appropriate personnel with priority for the training shall include those
3 staff members who are most likely to be called upon to prevent or
4 address disruptive or dangerous student behavior. Each local board of
5 education shall include in this component of its safe school plan
6 procedures to evaluate the effectiveness of this training in preventing
7 or addressing disruptive or dangerous student behavior. Local boards
8 of education are encouraged to use available sources of discretionary
9 revenue to implement the plan to train personnel in the management of
10 disruptive or dangerous student behavior. Local boards may only be
11 required to implement the behavior management training component
12 of the plan to the extent that funds have been appropriated for this
13 purpose by the General Assembly or by local units of government. By
14 January 1, 2006, local boards of education shall amend their safe
15 school plans to include this training component."

16 **SECTION 4.** G.S. 115C-47 is amended by adding a new subdivision to read:

17 **"§ 115C-47. Powers and duties generally.**

18 In addition to the powers and duties designated in G.S. 115C-36, local boards of
19 education shall have the power or duty:

20 ...

21 (45) To Report Certain Incidents of Seclusion and Restraint. – Local boards
22 of education shall maintain a record of incidents reported under
23 G.S. 115C-391.1(i)(4) and shall provide this information annually to
24 the State Board of Education."

25 **SECTION 5.** G.S. 143-138(b) reads as rewritten:

26 "(b) Contents of the Code. – The North Carolina State Building Code, as adopted
27 by the Building Code Council, may include reasonable and suitable classifications of
28 buildings and structures, both as to use and occupancy; general building restrictions as
29 to location, height, and floor areas; rules for the lighting and ventilation of buildings and
30 structures; requirements concerning means of egress from buildings and structures;
31 requirements concerning means of ingress in buildings and structures; rules governing
32 construction and precautions to be taken during construction; rules as to permissible
33 materials, loads, and stresses; rules governing chimneys, heating appliances, elevators,
34 and other facilities connected with the buildings and structures; rules governing
35 plumbing, heating, air conditioning for the purpose of comfort cooling by the lowering
36 of temperature, and electrical systems; and such other reasonable rules pertaining to the
37 construction of buildings and structures and the installation of particular facilities
38 therein as may be found reasonably necessary for the protection of the occupants of the
39 building or structure, its neighbors, and members of the public at large.

40 In addition, the Code may regulate activities and conditions in buildings, structures,
41 and premises that pose dangers of fire, explosion, or related hazards. Such fire
42 prevention code provisions shall be considered the minimum standards necessary to
43 preserve and protect public health and safety, subject to approval by the Council of
44 more stringent provisions proposed by a municipality or county as provided in

1 G.S. 143-138(e). These provisions may include regulations requiring the installation of
2 either battery-operated or electrical smoke detectors in every dwelling unit used as
3 rental property, regardless of the date of construction of the rental property. For
4 dwelling units used as rental property constructed prior to 1975, smoke detectors shall
5 have an Underwriters' Laboratories, Inc., listing or other equivalent national testing
6 laboratory approval, and shall be installed in accordance with either the standard of the
7 National Fire Protection Association or the minimum protection designated in the
8 manufacturer's instructions, which the property owner shall retain or provide as proof of
9 compliance.

10 The Code may contain provisions regulating every type of building or structure,
11 wherever it might be situated in the State.

12 Provided further, that nothing in this Article shall be construed to make any building
13 rules applicable to farm buildings located outside the building-rules jurisdiction of any
14 municipality.

15 Provided further, that no building permit shall be required under the Code or any
16 local variance thereof approved under subsection (e) for any construction, installation,
17 repair, replacement, or alteration costing five thousand dollars (\$5,000) or less in any
18 single family residence or farm building unless the work involves: the addition, repair,
19 or replacement of load bearing structures; the addition (excluding replacement of same
20 size and capacity) or change in the design of plumbing; the addition, replacement or
21 change in the design of heating, air conditioning, or electrical wiring, devices,
22 appliances, or equipment, the use of materials not permitted by the North Carolina
23 Uniform Residential Building Code; or the addition (excluding replacement of like
24 grade of fire resistance) of roofing.

25 Provided further, that no building permit shall be required under such Code from any
26 State agency for the construction of any building or structure, the total cost of which is
27 less than twenty thousand dollars (\$20,000), except public or institutional buildings.

28 For the information of users thereof, the Code shall include as appendices

- 29 (1) Any rules governing boilers adopted by the Board of Boiler and
30 Pressure Vessels Rules,
- 31 (2) Any rules relating to the safe operation of elevators adopted by the
32 Commissioner of Labor, and
- 33 (3) Any rules relating to sanitation adopted by the Commission for Health
34 Services which the Building Code Council believes pertinent.

35 In addition, the Code may include references to such other rules of special types,
36 such as those of the Medical Care Commission and the Department of Public Instruction
37 as may be useful to persons using the Code. No rule issued by any agency other than the
38 Building Code Council shall be construed as a part of the Code, nor supersede that
39 Code, it being intended that they be presented with the Code for information only.

40 Nothing in this Article shall extend to or be construed as being applicable to the
41 regulation of the design, construction, location, installation, or operation of (1)
42 equipment for storing, handling, transporting, and utilizing liquefied petroleum gases
43 for fuel purposes or anhydrous ammonia or other liquid fertilizers, except for liquefied
44 petroleum gas from the outlet of the first stage pressure regulator to and including each

1 liquefied petroleum gas utilization device within a building or structure covered by the
2 Code, or (2) equipment or facilities, other than buildings, of a public utility, as defined
3 in G.S. 62-3, or an electric or telephone membership corporation, including without
4 limitation poles, towers, and other structures supporting electric or communication
5 lines.

6 In addition, the Code may contain rules concerning minimum efficiency
7 requirements for replacement water heaters, which shall consider reasonable availability
8 from manufacturers to meet installation space requirements.

9 No State, county, or local building code or regulation shall prohibit the use of special
10 locking mechanisms for seclusion rooms in the public schools approved under
11 G.S. 115C-391.1(e)(1)e., provided that the special locking mechanism shall be
12 constructed so that it will engage only when a key, knob, handle, button, or other similar
13 device is being held in position by a person, and provide further that, if the mechanism
14 is electrically or electronically controlled, it automatically disengages when the
15 building's fire alarm is activated. Upon release of the locking mechanism by a
16 supervising adult, the door must be able to be opened readily."

17 **SECTION 6.** Except as otherwise provided, this act becomes effective July
18 1, 2006.