

Enrolled
House Bill 2939

Sponsored by Representative GELSER, Senator EDWARDS; Representatives BARNHART, DEMBROW, FREDERICK, KOMP, MATTHEWS, TOMEI (Pre-session filed.)

CHAPTER

AN ACT

Relating to safety in public education programs; creating new provisions; and amending ORS 161.205 and 339.250.

Be It Enacted by the People of the State of Oregon:

SECTION 1. As used in sections 1 to 6 of this 2011 Act:

(1)(a) "Physical restraint" means the restriction of a student's movement by one or more persons holding the student or applying physical pressure upon the student.

(b)(A) "Physical restraint" does not include the touching or holding of a student without the use of force for the purpose of directing the student or assisting the student in completing a task or activity.

(B) "Physical restraint" does not include prone restraint as defined in section 2 of this 2011 Act.

(2) "Public education program" means a program that:

(a) Is for students in early childhood education, elementary school or secondary school;

(b) Is under the jurisdiction of a school district, an education service district or another educational institution or program; and

(c) Receives, or serves students who receive, support in any form from any program supported, directly or indirectly, with funds appropriated to the Department of Education.

(3)(a) "Seclusion" means the involuntary confinement of a student alone in a room from which the student is physically prevented from leaving.

(b) "Seclusion" does not include the removal of a student for a short period of time to provide the student with an opportunity to regain self-control if the student is in a setting from which the student is not physically prevented from leaving.

(4) "Serious bodily injury" means any significant impairment of the physical condition of a person, as determined by qualified medical personnel, whether self-inflicted or inflicted by someone else.

SECTION 2. (1) The use of a mechanical restraint, chemical restraint or prone restraint on a student in a public education program in this state is prohibited.

(2) The use of physical restraint or seclusion on a student in a public education program in this state is prohibited unless used as provided in section 3 of this 2011 Act.

(3) As used in this section:

(a) "Chemical restraint" means a drug or medication that is used on a student to control behavior or restrict freedom of movement and that is not:

(A) Prescribed by a licensed physician or other qualified health professional acting under the professional's scope of practice for standard treatment of the student's medical or psychiatric condition; and

(B) Administered as prescribed by a licensed physician or other qualified health professional acting under the professional's scope of practice.

(b)(A) "Mechanical restraint" means a device used to restrict the movement of a student or the movement or normal function of a portion of the body of a student.

(B) "Mechanical restraint" does not include:

(i) A protective or stabilizing device ordered by a licensed physician; or

(ii) A vehicle safety restraint when used as intended during the transport of a student in a moving vehicle.

(c) "Prone restraint" means a restraint in which a student is held face down on the floor.

SECTION 3. (1)(a) Physical restraint or seclusion may be used on a student in a public education program only if:

(A) The student's behavior imposes a reasonable threat of imminent, serious bodily injury to the student or others; and

(B) Less restrictive interventions would not be effective.

(b) Physical restraint or seclusion may not be used for discipline, punishment or convenience of personnel of the public education program.

(2) If physical restraint or seclusion is used on a student, the physical restraint or seclusion must be:

(a) Used only for as long as the student's behavior poses a reasonable threat of imminent, serious bodily injury to the student or others;

(b) Imposed by personnel of the public education program who are:

(A) Trained to use physical restraint or seclusion through programs described in section 6 of this 2011 Act; or

(B) Otherwise available in the case of an emergency circumstance when personnel described in subparagraph (A) of this paragraph are not immediately available due to the unforeseeable nature of the emergency circumstance; and

(c) Continuously monitored by personnel of the public education program for the duration of the physical restraint or seclusion.

(3) In addition to the requirements described in subsection (2) of this section, if physical restraint or seclusion continues for more than 30 minutes:

(a) The student must be provided with adequate access to the bathroom and water every 30 minutes;

(b) Personnel of the public education program must immediately attempt to verbally or electronically notify a parent or guardian of the student; and

(c) Every 15 minutes after the first 30 minutes of the physical restraint or seclusion, an administrator for the public education program must provide written authorization for the continuation of the physical restraint or seclusion, including providing documentation for the reason the physical restraint or seclusion must be continued.

SECTION 4. (1) Each entity that has jurisdiction over a public education program must establish procedures for the public education program to follow after an incident involving the use of physical restraint or seclusion.

(2) Following an incident involving the use of physical restraint or seclusion, the following must be provided to a parent or guardian of the student:

(a) Verbal or electronic notification of the incident by the end of the school day when the incident occurred.

(b) Written documentation of the incident within 24 hours of the incident that provides:

(A) A description of the physical restraint or seclusion, including:

(i) The date of the physical restraint or seclusion;

(ii) The times when the physical restraint or seclusion began and ended; and

(iii) The location of the physical restraint or seclusion.

(B) A description of the student's activity that prompted the use of physical restraint or seclusion.

(C) The efforts used to de-escalate the situation and the alternatives to physical restraint or seclusion that were attempted.

(D) The names of the personnel of the public education program who administered the physical restraint or seclusion.

(E) A description of the training status of the personnel of the public education program who administered the physical restraint or seclusion, including any information that may need to be provided to the parent or guardian under subsection (3) of this section.

(c) Timely notification of a debriefing meeting to be held as provided by subsection (4) of this section and the parent's or guardian's right to attend the meeting.

(3) If the personnel of the public education program who administered the physical restraint or seclusion had not received training as provided by section 6 of this 2011 Act, the administrator of the public education program shall ensure that a parent or guardian of the student and the district superintendent receive written notification of:

(a) The lack of training; and

(b) The reason the physical restraint or seclusion was administered by a person without training.

(4)(a) A debriefing meeting related to the use of physical restraint or seclusion must be held within two school days of the incident and must include all personnel of the public education program who were involved in the incident and any other appropriate personnel.

(b) Written notes must be taken of the debriefing meeting, and a copy of the written notes must be provided to a parent or guardian of the student.

(5) If a student is involved in five incidents in a school year involving physical restraint or seclusion, a team consisting of personnel of the public education program and a parent or guardian of the student must be formed for the purposes of reviewing and revising the student's behavior plan and ensuring the provision of any necessary behavioral supports.

(6) If serious bodily injury or death of a student occurs in relation to the use of physical restraint or seclusion, written notification of the incident must be provided within 24 hours of the incident to the Department of Human Services.

(7) If serious bodily injury or death of personnel of the public education program occurs in relation to the use of physical restraint or seclusion, written notification of the incident must be provided within 24 hours of the incident to the district superintendent and, if applicable, to the union representative for the affected party.

(8) Each public education program must maintain a record of each incident in which injuries or death occurs in relation to the use of physical restraint or seclusion.

SECTION 5. (1) Each entity that has jurisdiction over a public education program must prepare an annual report detailing the use of physical restraint and seclusion for the preceding school year, including, at a minimum:

(a) The total number of incidents involving physical restraint.

(b) The total number of incidents involving seclusion.

(c) The total number of seclusions in a locked room.

(d) The total number of students placed in physical restraint.

(e) The total number of students placed in seclusion.

(f) The total number of incidents that resulted in injuries or death to students or personnel as a result of the use of physical restraint or seclusion.

(g) The number of students who were placed in physical restraint or seclusion more than 10 times in the course of a school year and an explanation of what steps have been taken by the public education program to decrease the use of physical restraint and seclusion for each student.

(h) The number of incidents in which the personnel of the public education program administering physical restraint or seclusion were not trained as provided by section 6 of this 2011 Act.

(i) The demographic characteristics of all students upon whom physical restraint or seclusion was imposed, including race, ethnicity, gender, disability status, migrant status, English proficiency and status as economically disadvantaged, unless the demographic information would reveal personally identifiable information about an individual student.

(2)(a) Each entity that has jurisdiction over a public education program shall make its annual report about physical restraint and seclusion available to:

(A) The public at the entity's main office and the website of the entity;

(B) The board or governing body overseeing the entity;

(C) If the entity is an education service district, the component school districts of the education service district; and

(D) If the entity is a public charter school, the sponsor of the public charter school.

(b) Parents and guardians of students in a public education program shall be advised at least once each school year about how to access the report.

SECTION 6. The Department of Education shall approve training programs in physical restraint and seclusion that:

(1) Teach evidence-based techniques that are shown to be effective in the prevention and safe use of physical restraint or seclusion;

(2) Provide evidence-based skills training related to positive behavior support, conflict prevention, de-escalation and crisis response techniques; and

(3) Are consistent with the philosophies, practices and techniques for physical restraint and seclusion that are established by rule or policy of the Department of Human Services.

SECTION 7. Sections 1 to 6 of this 2011 Act are repealed on June 30, 2017.

SECTION 8. ORS 339.250 is amended to read:

339.250. (1) Public school students shall comply with rules for the government of such schools, pursue the prescribed course of study, use the prescribed textbooks and submit to the teachers' authority.

(2) Pursuant to the written policies of a district school board, an individual who is a teacher, administrator, school employee or school volunteer may use reasonable physical force upon a student when and to the extent the [*individual reasonably believes it necessary to maintain order in the school or classroom or at a school activity or event, whether or not it is held on school property*] **application of force is consistent with section 3 of this 2011 Act.** The district school board shall adopt written policies to implement this subsection and shall inform such individuals of the existence and content of these policies.

(3) The district school board may authorize the discipline, suspension or expulsion of any refractory student and may suspend or expel any student who assaults or menaces a school employee or another student. The age of a student and the past pattern of behavior of a student shall be considered prior to a suspension or expulsion of a student. As used in this subsection "menace" means by word or conduct the student intentionally attempts to place a school employee or another student in fear of imminent serious physical injury.

(4)(a) Willful disobedience, willful damage or injury to school property, use of threats, intimidation, harassment or coercion against any fellow student or school employee, open defiance of a teacher's authority or use or display of profane or obscene language is sufficient cause for discipline, suspension or expulsion from school.

(b) District school boards shall develop policies on managing students who threaten violence or harm in public schools. The policies adopted by a school district shall include staff reporting methods and shall require an administrator to consider:

(A) Immediately removing from the classroom setting any student who has threatened to injure another person or to severely damage school property.

(B) Placing the student in a setting where the behavior will receive immediate attention, including, but not limited to, the office of the school principal, vice principal, assistant principal or counselor or a school psychologist licensed by the Teacher Standards and Practices Commission or the office of any licensed mental health professional.

(C) Requiring the student to be evaluated by a licensed mental health professional before allowing the student to return to the classroom setting.

(c) The administrator shall notify the parent or legal guardian of the student's behavior and the school's response.

(d) District school boards may enter into contracts with licensed mental health professionals to perform the evaluations required under paragraph (b) of this subsection.

(e) District school boards shall allocate any funds necessary for school districts to implement the policies adopted under paragraph (b) of this subsection.

(5) Expulsion of a student shall not extend beyond one calendar year and suspension shall not extend beyond 10 school days.

(6)(a) Notwithstanding subsection (5) of this section, a school district shall have a policy that requires the expulsion from school for a period of not less than one year of any student who is determined to have:

(A) Brought a weapon to a school, to school property under the jurisdiction of the district or to an activity under the jurisdiction of the school district;

(B) Possessed, concealed or used a weapon in a school or on school property or at an activity under the jurisdiction of the district; or

(C) Brought to or possessed, concealed or used a weapon at an interscholastic activity administered by a voluntary organization approved by the State Board of Education under ORS 339.430.

(b) The policy shall allow an exception for courses, programs and activities approved by the school district that are conducted on school property, including but not limited to hunter safety courses, Reserve Officer Training Corps programs, weapons-related sports or weapons-related vocational courses. In addition, the State Board of Education may adopt by rule additional exceptions to be included in school district policies.

(c) The policy shall allow a superintendent to modify the expulsion requirement for a student on a case-by-case basis.

(d) The policy shall require a referral to the appropriate law enforcement agency of any student who is expelled under this subsection.

(e) For purposes of this subsection, "weapon" includes a:

(A) "Firearm" as defined in 18 U.S.C. 921;

(B) "Dangerous weapon" as defined in ORS 161.015; or

(C) "Deadly weapon" as defined in ORS 161.015.

(7) The Department of Education shall collect data on any expulsions required pursuant to subsection (6) of this section including:

(a) The name of each school;

(b) The number of students expelled from each school; and

(c) The types of weapons involved.

(8) Notwithstanding ORS 336.010, a school district may require a student to attend school during nonschool hours as an alternative to suspension.

(9) Unless a student is under expulsion for an offense that constitutes a violation of a school district policy adopted pursuant to subsection (6) of this section, a school district board shall consider and propose to the student prior to expulsion or leaving school, and document to the parent, legal guardian or person in parental relationship, alternative programs of instruction or instruction combined with counseling for the student that are appropriate and accessible to the student in the following circumstances:

(a) When a student is expelled pursuant to subsection (4) of this section;

(b) Following a second or subsequent occurrence within any three-year period of a severe disciplinary problem with a student;

(c) When it has been determined that a student's attendance pattern is so erratic that the student is not benefiting from the educational program; or

(d) When a parent or legal guardian applies for a student's exemption from compulsory attendance on a semiannual basis as provided in ORS 339.030 (2).

(10) A school district board may consider and propose to a student who is under expulsion or to a student prior to expulsion for an offense that constitutes a violation of a school district policy adopted pursuant to subsection (6) of this section, and document to the parent, legal guardian or person in parental relationship, alternative programs of instruction or instruction combined with counseling for the student that are appropriate and accessible to the student.

(11) Information on alternative programs provided under subsections (9) and (10) of this section shall be in writing. The information need not be given to the student and the parent, guardian or person in parental relationship more often than once every six months unless the information has changed because of the availability of new programs.

(12)(a) The authority to discipline a student does not authorize the infliction of corporal punishment. Every resolution, bylaw, rule, ordinance or other act of a district school board, a public charter school or the Department of Education that permits or authorizes the infliction of corporal punishment upon a student is void and unenforceable.

(b) As used in this subsection, "corporal punishment" means the willful infliction of, or willfully causing the infliction of, physical pain on a student.

(c) As used in this subsection, "corporal punishment" does not mean:

(A) The use of physical force authorized by ORS 161.205 for the reasons specified therein; or

(B) Physical pain or discomfort resulting from or caused by participation in athletic competition or other such recreational activity, voluntarily engaged in by a student.

SECTION 9. ORS 339.250, as amended by section 8 of this 2011 Act, is amended to read:

339.250. (1) Public school students shall comply with rules for the government of such schools, pursue the prescribed course of study, use the prescribed textbooks and submit to the teachers' authority.

(2) Pursuant to the written policies of a district school board, an individual who is a teacher, administrator, school employee or school volunteer may use reasonable physical force upon a student when and to the extent the [*application of force is consistent with section 3 of this 2011 Act*] **individual reasonably believes it necessary to maintain order in the school or classroom or at a school activity or event, whether or not it is held on school property.** The district school board shall adopt written policies to implement this subsection and shall inform such individuals of the existence and content of these policies.

(3) The district school board may authorize the discipline, suspension or expulsion of any refractory student and may suspend or expel any student who assaults or menaces a school employee or another student. The age of a student and the past pattern of behavior of a student shall be considered prior to a suspension or expulsion of a student. As used in this subsection "menace" means by word or conduct the student intentionally attempts to place a school employee or another student in fear of imminent serious physical injury.

(4)(a) Willful disobedience, willful damage or injury to school property, use of threats, intimidation, harassment or coercion against any fellow student or school employee, open defiance of a teacher's authority or use or display of profane or obscene language is sufficient cause for discipline, suspension or expulsion from school.

(b) District school boards shall develop policies on managing students who threaten violence or harm in public schools. The policies adopted by a school district shall include staff reporting methods and shall require an administrator to consider:

(A) Immediately removing from the classroom setting any student who has threatened to injure another person or to severely damage school property.

(B) Placing the student in a setting where the behavior will receive immediate attention, including, but not limited to, the office of the school principal, vice principal, assistant principal or

counselor or a school psychologist licensed by the Teacher Standards and Practices Commission or the office of any licensed mental health professional.

(C) Requiring the student to be evaluated by a licensed mental health professional before allowing the student to return to the classroom setting.

(c) The administrator shall notify the parent or legal guardian of the student's behavior and the school's response.

(d) District school boards may enter into contracts with licensed mental health professionals to perform the evaluations required under paragraph (b) of this subsection.

(e) District school boards shall allocate any funds necessary for school districts to implement the policies adopted under paragraph (b) of this subsection.

(5) Expulsion of a student shall not extend beyond one calendar year and suspension shall not extend beyond 10 school days.

(6)(a) Notwithstanding subsection (5) of this section, a school district shall have a policy that requires the expulsion from school for a period of not less than one year of any student who is determined to have:

(A) Brought a weapon to a school, to school property under the jurisdiction of the district or to an activity under the jurisdiction of the school district;

(B) Possessed, concealed or used a weapon in a school or on school property or at an activity under the jurisdiction of the district; or

(C) Brought to or possessed, concealed or used a weapon at an interscholastic activity administered by a voluntary organization approved by the State Board of Education under ORS 339.430.

(b) The policy shall allow an exception for courses, programs and activities approved by the school district that are conducted on school property, including but not limited to hunter safety courses, Reserve Officer Training Corps programs, weapons-related sports or weapons-related vocational courses. In addition, the State Board of Education may adopt by rule additional exceptions to be included in school district policies.

(c) The policy shall allow a superintendent to modify the expulsion requirement for a student on a case-by-case basis.

(d) The policy shall require a referral to the appropriate law enforcement agency of any student who is expelled under this subsection.

(e) For purposes of this subsection, "weapon" includes a:

(A) "Firearm" as defined in 18 U.S.C. 921;

(B) "Dangerous weapon" as defined in ORS 161.015; or

(C) "Deadly weapon" as defined in ORS 161.015.

(7) The Department of Education shall collect data on any expulsions required pursuant to subsection (6) of this section including:

(a) The name of each school;

(b) The number of students expelled from each school; and

(c) The types of weapons involved.

(8) Notwithstanding ORS 336.010, a school district may require a student to attend school during nonschool hours as an alternative to suspension.

(9) Unless a student is under expulsion for an offense that constitutes a violation of a school district policy adopted pursuant to subsection (6) of this section, a school district board shall consider and propose to the student prior to expulsion or leaving school, and document to the parent, legal guardian or person in parental relationship, alternative programs of instruction or instruction combined with counseling for the student that are appropriate and accessible to the student in the following circumstances:

(a) When a student is expelled pursuant to subsection (4) of this section;

(b) Following a second or subsequent occurrence within any three-year period of a severe disciplinary problem with a student;

(c) When it has been determined that a student's attendance pattern is so erratic that the student is not benefiting from the educational program; or

(d) When a parent or legal guardian applies for a student's exemption from compulsory attendance on a semiannual basis as provided in ORS 339.030 (2).

(10) A school district board may consider and propose to a student who is under expulsion or to a student prior to expulsion for an offense that constitutes a violation of a school district policy adopted pursuant to subsection (6) of this section, and document to the parent, legal guardian or person in parental relationship, alternative programs of instruction or instruction combined with counseling for the student that are appropriate and accessible to the student.

(11) Information on alternative programs provided under subsections (9) and (10) of this section shall be in writing. The information need not be given to the student and the parent, guardian or person in parental relationship more often than once every six months unless the information has changed because of the availability of new programs.

(12)(a) The authority to discipline a student does not authorize the infliction of corporal punishment. Every resolution, bylaw, rule, ordinance or other act of a district school board, a public charter school or the Department of Education that permits or authorizes the infliction of corporal punishment upon a student is void and unenforceable.

(b) As used in this subsection, "corporal punishment" means the willful infliction of, or willfully causing the infliction of, physical pain on a student.

(c) As used in this subsection, "corporal punishment" does not mean:

(A) The use of physical force authorized by ORS 161.205 for the reasons specified therein; or

(B) Physical pain or discomfort resulting from or caused by participation in athletic competition or other such recreational activity, voluntarily engaged in by a student.

SECTION 10. ORS 161.205 is amended to read:

161.205. The use of physical force upon another person that would otherwise constitute an offense is justifiable and not criminal under any of the following circumstances:

(1)(a) A parent, guardian or other person entrusted with the care and supervision of a minor or an incompetent person may use reasonable physical force upon such minor or incompetent person when and to the extent the person reasonably believes it necessary to maintain discipline or to promote the welfare of the minor or incompetent person.

(b) *[A teacher]* **Personnel of a public education program, as that term is defined in section 1 of this 2011 Act,** may use reasonable physical force upon a student when and to the extent the *[teacher reasonably believes it necessary to maintain order in the school or classroom or at a school activity or event, whether or not it is held on school property]* **application of force is consistent with section 3 of this 2011 Act.**

(2) An authorized official of a jail, prison or correctional facility may use physical force when and to the extent that the official reasonably believes it necessary to maintain order and discipline or as is authorized by law.

(3) A person responsible for the maintenance of order in a common carrier of passengers, or a person acting under the direction of the person, may use physical force when and to the extent that the person reasonably believes it necessary to maintain order, but the person may use deadly physical force only when the person reasonably believes it necessary to prevent death or serious physical injury.

(4) A person acting under a reasonable belief that another person is about to commit suicide or to inflict serious physical self-injury may use physical force upon that person to the extent that the person reasonably believes it necessary to thwart the result.

(5) A person may use physical force upon another person in self-defense or in defending a third person, in defending property, in making an arrest or in preventing an escape, as hereafter prescribed in chapter 743, Oregon Laws 1971.

SECTION 11. ORS 161.205, as amended by section 10 of this 2011 Act, is amended to read:

161.205. The use of physical force upon another person that would otherwise constitute an offense is justifiable and not criminal under any of the following circumstances:

(1)*[(a)]* A parent, guardian or other person entrusted with the care and supervision of a minor or an incompetent person may use reasonable physical force upon such minor or incompetent person

when and to the extent the person reasonably believes it necessary to maintain discipline or to promote the welfare of the minor or incompetent person.

*[(b) Personnel of a public education program, as that term is defined in section 1 of this 2011 Act,] A teacher may use reasonable physical force upon a student when and to the extent the [application of force is consistent with section 3 of this 2011 Act] **teacher reasonably believes it necessary to maintain order in the school or classroom or at a school activity or event, whether or not it is held on school property.***

(2) An authorized official of a jail, prison or correctional facility may use physical force when and to the extent that the official reasonably believes it necessary to maintain order and discipline or as is authorized by law.

(3) A person responsible for the maintenance of order in a common carrier of passengers, or a person acting under the direction of the person, may use physical force when and to the extent that the person reasonably believes it necessary to maintain order, but the person may use deadly physical force only when the person reasonably believes it necessary to prevent death or serious physical injury.

(4) A person acting under a reasonable belief that another person is about to commit suicide or to inflict serious physical self-injury may use physical force upon that person to the extent that the person reasonably believes it necessary to thwart the result.

(5) A person may use physical force upon another person in self-defense or in defending a third person, in defending property, in making an arrest or in preventing an escape, as hereafter prescribed in chapter 743, Oregon Laws 1971.

SECTION 12. (1) Sections 1 to 5 of this 2011 Act and the amendments to ORS 161.205 and 339.250 by sections 8 and 10 of this 2011 Act become operative on July 1, 2012.

(2) The amendments to ORS 161.205 and 339.250 by sections 9 and 11 of this 2011 Act become operative on June 30, 2017.

Passed by House April 18, 2011

Received by Governor:

Repassed by House June 22, 2011

.....M.,....., 2011

Approved:

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Ramona Kenady Line, Chief Clerk of House

.....M.,....., 2011

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Bruce Hanna, Speaker of House

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John Kitzhaver, Governor

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Arnie Roblan, Speaker of House

Filed in Office of Secretary of State:

Passed by Senate June 20, 2011

.....M.,....., 2011

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Peter Courtney, President of Senate

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Kate Brown, Secretary of State