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MEMORANDUM

To: Chairman Abrams
Members of the Senate Committee on Education

From: Jason B. Long, Senior Assistant Revisor

Date: March 11, 2015

Subject: Sub for HB 2170 – Creating the freedom from unsafe restraint and seclusion act.

Substitute for House Bill No. 2170 creates the Freedom from Unsafe Restraint and Seclusion Act (Act). The primary purpose of this Act is to provide limitations on the use of restraint and seclusion practices in schools.

Section 2 of the bill provides key definitions used throughout the Act. These includes definitions of “altercation,” “chemical restraint,” “emergency safety intervention,” “mechanical restraint,” and “physical restraint.”

Section 3 of HB 2170 establishes limitations on the use of various means of restraint and seclusion. First, the bill would prohibit the use of any physical restraint that: (1) forces a student into a prone or supine position; (2) obstructs the airway of a student; or (3) impacts a student’s primary mode of communication.

Second, the bill would prohibit the use of any chemical restraint except as prescribed by a licensed physician or psychiatrist as treatment for a medical or psychiatric condition. “Chemical restraint” is defined as the use of medication to control violent physical behavior or restrict a student’s freedom of movement.

Third, this section of the bill would prohibit the use of mechanical restraints except for the following: (1) protective or stabilizing devices used in accordance with an order issued by a person licensed to order the use of such devices; (2) any device used by a law enforcement officer is the performance of such officer’s duties; or (3) seatbelts or other safety equipment used when transporting students. “Mechanical restraints” is defined as any object or device used to limit a student’s movement.

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Finally, the bill limits to the use of a seclusion room such that the room must: (1) be designed so that school personnel can see and hear the student at all times; (2) be equipped with automatically disengaging locks that disengage when school personnel leaves the vicinity or in cases of emergency; and (3) be a safe place that is proportional in size and has similar characteristics of other rooms where students frequent. Additionally, a seclusion room cannot be used if the student has a documented medical condition which would put the student in mental or physical danger if secluded.

Section 3 of the bill also allows limited use of seclusion and physical restraint, referred together as “emergency safety intervention,” when a student’s behavior creates an immediate and impending threat of causing serious physical harm to the student or to others. Only trained school personnel are permitted to use emergency safety interventions unless such action is needed because the student is involved in a fight with another student.

Section 4 of HB 2170 requires documentation by school personnel of the use of seclusion or physical restraint. The school must attempt to notify the parents of the student the day the emergency safety intervention was used, and shall provide the documentation to the parent by the following school day. The documentation is to include a copy of the standards for use of emergency safety interventions, a flyer describing the parent’s rights to file a complaint, and information describing how the complaint process works.

Each school is to submit information on the use of emergency safety intervention to the Department of Education. The Department is to compile these reports and provide the results to the public, the governor, and the committees on education by January 20 of each year.

Section 5 requires the State Board of Education to adopt rules and regulations establishing an independent complaint process by January 1, 2016. This complaint process is to afford parents the ability to file a complaint if the parent believes any provision of the Act was violated. The process is to also provide for an investigation of the complaint, ensure equal treatment of the parents and schools, completion of a written report of findings and conclusions, and sanctions if a school district fails to comply with any corrective actions.

If enacted, the Act would become effective on July 1, 2015.