

By: Senator(s) Tollison, Ward

To: Education

SENATE BILL NO. 2594

1 AN ACT ENTITLED THE "MISSISSIPPI STUDENT SAFETY ACT"; TO
2 PREVENT AND REDUCE THE USE OF CERTAIN STUDENT RESTRAINT AND
3 SECLUSION PROCEDURES IN PUBLIC AND PRIVATE SCHOOLS; TO PROVIDE
4 DEFINITIONS; TO PROVIDE MINIMUM STANDARDS TO PROHIBIT SCHOOL
5 PERSONNEL FROM CERTAIN ACTIONS; TO PROVIDE STANDARDS FOR USE OF
6 EXCLUSION TIME-OUT; TO PROVIDE FOR A STATE PLAN AND TO PROVIDE
7 REPORTING REQUIREMENTS; AND FOR RELATED PURPOSES.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

9 **SECTION 1.** This act may be cited as the "Mississippi Student
10 Safety Act."

11 **SECTION 2. Findings.** (1) Restraint and seclusion have
12 resulted in physical injury, psychological trauma and death to
13 students in public and private schools. National research shows
14 students have been subjected to restraint and seclusion in schools
15 as a means of discipline, to force compliance, or as a substitute
16 for appropriate educational support.

17 (2) Behavioral interventions for students must promote the
18 right of all students to be treated with dignity. All students
19 have the right to be free from physical or mental abuse, aversive
20 behavioral interventions that compromise health and safety, and



21 any restraint or seclusion imposed solely for purposes of
22 discipline or convenience, or as a substitute for appropriate
23 educational or behavioral support.

24 (3) Safe, effective, evidence-based strategies are available
25 to support students who display challenging behaviors in school or
26 other educational program or activity settings. Staff training
27 focused on the dangers of restraint and seclusion as well as
28 training in evidence-based positive behavior supports, functional
29 behavioral assessments, de-escalation techniques, and restraint
30 and seclusion prevention can reduce the incidence of injury,
31 trauma and death.

32 (4) School personnel have the right to work in a safe
33 environment and should be provided training and support to prevent
34 injury and trauma to themselves and others.

35 (5) Despite the widely recognized risks of restraint and
36 seclusion, a substantial disparity exists among many states and
37 localities with regard to the protection and oversight of the
38 rights of students and school personnel to a safe learning
39 environment.

40 (6) Children are subjected to restraint and seclusion at
41 higher rates than adults. Physical restraint which restricts
42 breathing or causes other body trauma, as well as seclusion in the
43 absence of continuous face-to-face monitoring, have resulted in
44 the deaths of students in schools and other facilities providing
45 education services to children and youth.



46 (7) Children are protected from inappropriate restraint and
47 seclusion in other settings, such as hospitals, health facilities,
48 and nonmedical community-based facilities. Similar protections
49 are needed, yet such protections must acknowledge the differences
50 of the school or other educational program environment.

51 (8) Research confirms that:

52 (a) Restraint and seclusion are not therapeutic;

53 (b) These practices are not effective means to calm or
54 teach students, and have a demonstrated opposite effect while
55 simultaneously decreasing a student's ability to learn.

56 (9) The effective implementation of school-wide positive
57 behavior supports is linked to greater academic achievement,
58 significantly fewer disciplinary problems, increased instruction
59 time, and staff perception of a safer teaching environment.

60 (10) Perspectives of all stakeholders, including parents,
61 students and relevant community and advocacy organizations are
62 important when developing and implementing strategies, policies
63 and procedures to prevent or reduce seclusion and restraint in
64 schools and other educational programs or activities.

65 **SECTION 3. Purposes.** The purposes of this act are to:

66 (a) Prevent the use of seclusion in schools, programs
67 and activities;

68 (b) Prevent and reduce the use of restraint in schools,
69 programs and activities;



70 (c) Ensure the safety of all students and school
71 personnel in schools, programs and activities and promote a
72 positive culture and climate;

73 (d) Protect students from:

74 (i) Physical or mental abuse;

75 (ii) Aversive behavioral interventions that
76 compromise health and safety; and

77 (iii) Any restraint or seclusion imposed solely
78 for purposes of discipline, convenience, or as a substitute for
79 educational or behavioral support;

80 (e) Ensure that restraint is a method of last resort
81 and imposed only when a student's behavior poses an imminent
82 danger of serious bodily injury to the student, school personnel,
83 or others;

84 (f) Assist local school districts and schools in:

85 (i) Establishing policies and procedures to keep
86 all students, including students with the most complex and
87 intensive behavioral needs, and school personnel safe;

88 (ii) Providing school personnel with the necessary
89 tools, training, and support to ensure the safety of all students
90 and school personnel;

91 (iii) Collecting and analyzing data on restraint
92 and seclusion in schools; and



93 (iv) Identifying and implementing effective
94 evidence-based models to prevent and reduce restraint and
95 seclusion in schools.

96 **SECTION 4. Definitions.** In this act:

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

100 (i) Prescribed by a licensed physician, or other
101 qualified health professional acting under the scope of the
102 professional's authority under state law, for the standard
103 treatment of a student's medical or psychiatric condition; and

104 (ii) Administered as prescribed by the licensed
105 physician or other qualified health professional acting under the
106 scope of the professional's authority under state law.

107 (b) "Elementary school" has the meaning given the term
108 in Section 9101(18) of the Elementary and Secondary Education Act
109 of 1965 (20 USC 7801(18)).

110 (c) "Emergency situation" means spontaneous
111 unpredictable events posing an imminent threat of serious bodily
112 injury.

113 (d) Free appropriate public education. For those
114 students eligible for special education and related services under
115 the Individuals with Disabilities Education Act (20 USC 1400 et
116 seq.), the term "free appropriate public education" or has the
117 meaning given such term in Section 602 of such act (20 USC 1401).



118 (e) "Local school district" means a Mississippi public
119 school district governed by a local school board or a nonpublic
120 school governed by its board of trustees.

121 (f) "Mechanical restraint" has the meaning given the
122 term in Section 595(d)(1) of the Public Health Service Act [42 USC
123 149 290jj(d)(1)], except that the meaning shall be applied by
124 substituting "student's" for "resident's." The term mechanical
125 restraint does not mean devices implemented by trained school
126 personnel, or utilized by a student, for the specific and approved
127 therapeutic or safety purposes for which such devices were
128 designed and, if applicable, prescribed, including:

129 (i) Restraints for medical immobilization;

130 (ii) Adaptive devices or mechanical supports used
131 to achieve proper body position, balance or alignment to allow
132 greater freedom of mobility than would be possible without the use
133 of such devices or mechanical supports; or

134 (iii) Vehicle safety restraints when used as
135 intended during the transport of a student in a moving vehicle.

136 (g) "Parent" has the meaning given the term in Section
137 9101(31) of the Elementary and Secondary Education Act of 1965 (20
138 USC 7801(31)).

139 (h) "Physical escort" means the temporary touching or
140 holding of the hand, wrist, arm, shoulder or back for the purpose
141 of inducing a student who is acting out, and able to respond to
142 such physical prompt, to move to a safe location.



143 (i) "Physical restraint" means a personal restriction
144 that immobilizes or reduces the ability of an individual to move
145 the individual's arms, legs, body or head freely. Such term does
146 not include a physical escort.

147 (j) "Positive behavior supports" means a systematic
148 approach to embed evidence-based practices and data-driven
149 decision making to improve school climate and culture, including a
150 range of systemic and individualized strategies to reinforce
151 desired behaviors and diminish reoccurrence of problem behaviors,
152 in order to achieve improved academic and social outcomes, and
153 increase learning for all students, including those with the most
154 complex and intensive behavioral needs.

155 (k) "Program or activity" means all of the operations
156 of:

157 (i) A local school district system of vocational
158 education, or other school system;

159 (ii) A department, agency, school, special purpose
160 district, or other instrumentality of a state or of a local
161 government; or the entity of such state or local government that
162 distributes such assistance and each such department or agency
163 (and each other state or local government entity) to which the
164 assistance is extended, in the case of assistance to a state or
165 local government;

166 (iii) An entire corporation, partnership, or other
167 private organization, or an entire sole proprietorship:



168 1. If assistance is extended to such
169 corporation, partnership, private organization, or sole
170 proprietorship as a whole; or
171 2. Which is principally engaged in the
172 business of providing education; or
173 3. The entire plant or other comparable,
174 geographically separate facility to which federal financial
175 assistance is extended, in the case of any other corporation,
176 partnership, private organization, or sole proprietorship;
177 (iv) Any other entity which is established by two
178 (2) or more of the entities described in paragraph (i), (ii) or
179 (iii) any part of which receives financing from the United States
180 Department of Education.

181 (1) "Protection and advocacy system" means the
182 Mississippi protection and advocacy system established under
183 subtitle C of Title I of the Developmental Disabilities Assistance
184 and Bill of Rights Act of 2000 (42 USC 15041 et seq.).

185 (m) "Restraint" means a chemical restraint, mechanical
186 restraint or physical restraint as defined in this act.

187 (n) "School" means an entity that:

188 (i) Is public or private:

189 1. Day or residential elementary school or
190 secondary school; or

191 2. Early childhood, elementary school or
192 secondary school program that is under the jurisdiction of a



193 school, local educational agency, educational service agency, or
194 other educational institution or program; and

195 (ii) Is a participant in any program or activity
196 receiving financial assistance from the United States Department
197 of Education.

198 (o) "School personnel" has the meaning:

199 (i) Given the term in Section 4151(10) of the
200 Elementary and Secondary Education Act of 1965 (20 USC 7161(10));
201 and

202 (ii) Given the term "school resource officer" in
203 Section 4151(11) of the Elementary and Secondary Education Act of
204 1965 (20 USC 7161(11)).

205 (p) "Secondary school" has the meaning given the term
206 in Section 9101(38) of the Elementary and Secondary Education Act
207 of 1965 (20 USC 7801(38)).

208 (q) "Seclusion" means the involuntary confinement of a
209 student in a room, enclosure or space which is locked or from
210 which the student is physically prevented from leaving. Such term
211 does not include time-out.

212 (r) "Board" means the State Board of Education acting
213 through the State Superintendent of Education.

214 (s) The term "serious bodily injury" has the meaning
215 given the term in Section 1365(h) of Title 18, United States Code.



216 (t) "State-approved crisis intervention training
217 program" means a training program approved by the State Board of
218 Education that, at a minimum, provides:

219 (i) Training in evidence-based practices shown to
220 be effective in the prevention of physical restraint and
221 seclusion;

222 (ii) Training in evidence-based practices shown to
223 be effective in keeping both school personnel and students safe
224 when imposing physical restraint or seclusion;

225 (iii) Evidence-based skills training related to
226 positive behavior supports, safe physical escort, conflict
227 prevention, understanding antecedents, de-escalation, and conflict
228 management;

229 (iv) Training in first aid (which includes
230 recognizing the signs of medical distress) and cardiopulmonary
231 resuscitation;

232 (v) Information describing the dangers of physical
233 restraint and seclusion, state policies and procedures that meet
234 the minimum standards established by regulations promulgated
235 pursuant to Section 5(1) and any applicable local school district
236 or school safety plans; and

237 (vi) Certification for school personnel in the
238 practices and skills described in subparagraphs (i) through (iv)
239 of this paragraph, which shall be required to be renewed on a
240 periodic basis.



241 (u) "Student" means an individual enrolled in a school
242 defined in this section, except that in the case of a private
243 school or private program, such term means an individual enrolled
244 in such school or program who receives support in any form from
245 any program supported, in whole or in part, with funds
246 appropriated to the Department of Education.

247 (v) "Time-out" means a behavior management technique
248 that is part of an approved positive program based on a
249 comprehensive functional assessment and may involve the short term
250 or temporary separation of the student from the group, in a
251 nonlocked setting, for the purpose of calming. Time-out is not
252 seclusion.

253 **SECTION 5. Minimum standards; rule of construction.** (1)

254 Minimum standards. Not later than one hundred eighty (180) days
255 after the date of the enactment of this act, in order to protect
256 each student from physical or mental abuse, aversive behavioral
257 interventions that compromise student health and safety, or any
258 restraint or seclusion imposed solely for purposes of discipline,
259 convenience, or as a substitute for or in a manner otherwise
260 inconsistent with this act, the State Board of Education shall
261 promulgate regulations establishing the following minimum
262 standards:

263 (a) School personnel shall be prohibited from imposing
264 on any student the following:

265 (i) Seclusion;



266 (ii) Mechanical restraints;
267 (iii) Chemical restraints;
268 (iv) Physical restraint or physical escort that
269 restricts breathing;
270 (v) Aversive behavioral interventions that
271 compromise health and safety;
272 (vi) Restraint when contraindicated based on the
273 students' disability, health care needs, medical, or psychiatric
274 condition as documented in a health care directive/medical
275 management plan, an Individualized Education Program or 504 Plan,
276 or other relevant record made available to the Local Education
277 Agency.

278 (b) School personnel shall be prohibited from imposing
279 physical restraint on a student unless:

280 (i) The student's behavior poses an imminent
281 danger of serious bodily injury to the student, school personnel,
282 or others;

283 (ii) Less restrictive interventions have been
284 ineffective in stopping the imminent danger of serious bodily
285 injury, or in the case of a rare and clearly unavoidable emergency
286 circumstance posing imminent danger of serious bodily injury,
287 would be ineffective;

288 (iii) Such physical restraint is imposed by school
289 personnel who:



290 1. Continuously monitor the student
291 face-to-face; or
292 2. If school personnel safety is
293 significantly compromised by such face-to-face monitoring, are in
294 continuous direct visual contact with the student;
295 (iv) Such physical restraint is imposed by:
296 1. School personnel trained and certified by
297 a state-approved crisis intervention training program (as defined
298 in Section 4(t)); or
299 2. Other school personnel in the case of a
300 rare and clearly unavoidable emergency circumstance when school
301 personnel trained and certified as described in Section 4(t) are
302 not immediately available due to the unforeseeable nature of the
303 emergency circumstance; and
304 (v) Such physical restraint shall end:
305 1. When a medical condition occurs putting
306 the students at risk of harm;
307 2. When the student's behavior no longer
308 poses an imminent danger of serious bodily injury to the student,
309 school personnel or others; or
310 3. When less restrictive interventions would
311 be effective in stopping such imminent danger of serious bodily
312 injury.



313 (vi) The degree of force used and the duration of
314 the physical restraint do not exceed the degree and duration that
315 are reasonable and necessary to resolve the risk.

316 (vii) The physical restraint imposed upon the
317 student shall not interfere with the student's ability to
318 communicate in his or her primary language or mode of
319 communication. At all times during physical restraint or
320 seclusion there shall be school personnel present who can
321 communicate with the student in the students' primary language or
322 mode of communication for health or safety purposes.

323 (c) Local school districts and private school
324 officials, shall ensure that a sufficient number of school and
325 program personnel are trained and certified by a state-approved
326 crisis intervention training program (as defined in Section 4(t)
327 to meet the needs of the specific student population in each
328 school and program providing educational services to students.

329 (d) The use of physical restraint as a planned
330 intervention shall not be written into a student's education plan,
331 individual safety plan, behavioral plan, or Individualized
332 Education Program (as defined in Section 602 of the Individuals
333 with Disabilities Education Act (20 USC 1401)). Local school
334 districts, schools or programs may establish policies and
335 procedures for use of physical restraint in school safety or
336 crisis plans, provided that such school plans are consistent with



337 the standards in this act and not specific to any individual
338 student or group of students.

339 (e) Schools and other educational programs covered
340 under this act shall establish procedures to be followed after
341 each incident involving the imposition of physical restraint or
342 seclusion upon a student, including procedures to provide to the
343 parent of the student, with respect to each such incident an
344 immediate verbal or electronic communication on the same day as
345 each such incident;

346 (f) Within twenty-four (24) hours of each such
347 incident, written notification; and after the imposition of
348 physical restraint or seclusion upon a student, all school
349 personnel involved in the physical restraint or seclusion,
350 appropriate supervisory and administrative staff; parents,
351 appropriate IEP team members (for students eligible under IDEA),
352 and when appropriate the student, shall participate in a
353 debriefing session.

354 (i) The debriefing session shall occur as soon as
355 practicable, but not later than five (5) school days following the
356 imposition of physical restraint or seclusion, unless the
357 debriefing session is delayed at the request of a student's parent
358 so that the parent, and whenever appropriate the student, can
359 attend, or unless it is delayed by written mutual agreement of the
360 parents and the public agency;

361 (ii) The debriefing session shall include:



- 362 1. Documentation of antecedents to the
363 physical restraint;
- 364 2. Consideration of relevant information in
365 the student's records, any teacher or other professional
366 observations and relevant information provided by the parent or
367 student;
- 368 3. Planning to prevent and reduce
369 reoccurrence of the use of physical restraint, including
370 considering the results of any Functional Behavioral Assessments,
371 determination if existing positive behavior plans have been
372 implemented with fidelity, and recommendation of appropriate
373 positive behavioral interventions and supports;
- 374 4. Personnel responsible for the student's
375 educational plan and the parent and whenever appropriate, the
376 student;
- 377 a. For students deemed eligible under
378 the Individuals with Disabilities Education Act, to the IEP team
379 for consideration for inclusion in the IEP; or
- 380 b. For students deemed eligible for
381 accommodations under Section 504 of the Rehabilitation Act, the
382 persons responsible for considering reasonable accommodations,
383 including the parent and whenever appropriate, the student;
- 384 5. A plan to have a functional behavioral
385 assessment conducted, reviewed or revised by qualified



386 professionals, the parent, and whenever appropriate, the student;
387 and

388 6. Considering whether to refer the student
389 for an evaluation under Section 504 or the IDEA if the student has
390 not been identified as eligible for a disability accommodation
391 plan under Section 504 of the Rehabilitation Act, or an
392 Individualized Education Program under the Individuals with
393 Disabilities Education Act, and promptly making the referral or
394 documenting in the student's records the basis for declining to
395 refer the student.

396 7. When a student attends and participates in
397 a debriefing session, nothing the student says maybe used against
398 him or her in any ancillary disciplinary, criminal or civil
399 proceeding.

400 (g) In a case in which serious bodily injury or death
401 of a student occurs from the use of seclusion or physical,
402 mechanical or chemical restraint, procedures to notify, in
403 writing, within twenty-four (24) hours after such injury or death
404 occurs:

405 (i) The state educational agency and local
406 educational agency;

407 (ii) A protection and advocacy system, in the case
408 of a student who is eligible for services from the protection and
409 advocacy system.



410 (h) Any other procedures the LEA determines
411 appropriate.

412 (2) Standards for use of exclusion time-out. (a) Time-out
413 may only be used in conjunction with an array of positive
414 behavior.

415 (b) Intervention strategies and techniques based upon a
416 comprehensive Functional Behavioral Assessment (FBA) and must be
417 included in the student's Behavioral Intervention Plan (BIP) if it
418 is utilized on a recurrent basis to increase or decrease a
419 targeted behavior. Physical force or threat of physical force
420 shall not be used to place a student in time-out.

421 (c) Use of timeout shall not be implemented in a
422 fashion that precludes the ability of a student to be involved in
423 and progress in the general curriculum and advance appropriately
424 toward attaining the annual goals specified in a student's IEP.

425 (d) A student who is subject to time out must be
426 supervised at all times; the use of locked doors is prohibited.
427 Trained personnel must have a line of sight with the student at
428 all times during the process, and must be in the room with the
429 student.

430 (e) Time-out must end as soon as the supervisor can
431 determine that the student is sufficiently calm and under control
432 such that the student can safely return to class without
433 presenting a danger to himself, other students, or any others. No
434 instance of time-out may last longer than one (1) hour.



435 (f) A room used for time-out must be a minimum of ten
436 (10) feet wide and ten (10) feet long, and it must be of normal
437 height. The room must have adequate light, heat and ventilation
438 and be free of all hazardous material and objects with which a
439 student could inflict self-injury.

440 (g) All time-out, regardless of duration, must be
441 documented. Time must be recorded, consistent with the
442 requirements of the documentation section of this act.

443 (h) Time-out shall not be imposed as a means of
444 coercion, discipline, convenience or retaliation.

445 (3) Interaction with minimum safety standards. (a) Any
446 implementation of this act shall be subject to all rights,
447 remedies and procedures contained in the Individuals with
448 Disabilities Education Act and Section 504 of the Rehabilitation
449 Act, and the Americans with Disabilities Act for students covered
450 thereunder. This includes, but is not limited to, identification,
451 assessment, procedural safeguards, and provision of free
452 appropriate public education. Failure to meet the minimum student
453 safety standards of this act as applied to an individual child
454 eligible under IDEA may constitute a denial of free appropriate
455 public education.

456 (b) If the local educational agency or school
457 establishes policies and procedures for use of physical restraint
458 pursuant to Section 102(a)(4), those policies and procedures shall
459 be applied so as not to discriminate against children and youth



460 with disabilities under the Individuals with Disabilities
461 Education Act, Section 504 of the Rehabilitation Act, and the
462 Americans with Disabilities Act for students covered thereunder.

463 **SECTION 6. State plan and report requirements and**

464 **enforcement.** (1) Local plan. Not later than two (2) years after
465 promulgation of regulations pursuant to Section 5(1), and each
466 year thereafter, each local school board and nonpublic school
467 board of trustees shall submit to the State Superintendent of
468 Education a plan that provides:

469 (a) Assurances that the school district or appropriate
470 nonpublic school has in effect:

471 (i) Policies and procedures that meet the minimum
472 standards, including the standards with respect to state-approved
473 crisis intervention training programs, established by regulations
474 promulgated by the State Board of Education;

475 (ii) Mechanism to ensure the recording of any
476 incident involving restraint imposed upon a student or use of
477 time-out for longer than thirty (30) minutes. Incidents shall be
478 recorded on a standardized incident report developed by the State
479 Department of Education. Such reports shall be completed no later
480 than the school day following the incident; and

481 (iii) Mechanism to effectively monitor and enforce
482 the minimum standards;



483 (b) A description of the state policies and procedures,
484 including a description of the state-approved crisis intervention
485 training programs in Mississippi; and

486 (c) A description of the plans to ensure school
487 personnel and parents, including private school personnel and
488 parents, are aware of the policies and procedures.

489 (2) Reporting. Reporting requirements. Each year each
490 local school district and nonpublic school shall (in compliance
491 with the requirements of Section 444 of the General
492 Education Provisions Act (commonly known as the "Family
493 Educational Rights and Privacy Act of 1974") (20 USC 1232g))
494 prepare and submit to the State Board of Education and make
495 available to the public, a report with respect to each local
496 school district, and each nonpublic school that includes the
497 information described in this subsection (2).

498 (3) Information requirements. (a) General information
499 requirements. The report described in subsection (2) shall
500 include information on:

501 (a) The total number of incidents in the preceding full
502 academic year in which restraint was imposed upon a student; and

503 (b) The total number of incidents in the preceding full
504 academic year in which seclusion was imposed upon a student.

505 (b) Disaggregation.



506 (i) General disaggregation requirements. The
507 information described in subsections (2) and (3) shall be
508 disaggregated by:

509 (ii) The total number of incidents in which
510 restraint or seclusion was imposed upon a student:

- 511 1. That resulted in injury;
- 512 2. That resulted in death; and
- 513 3. In which the school personnel imposing
514 physical restraint or seclusion were not trained and certified as
515 described in Section 5(1); and

516 (iii) The demographic characteristics of all
517 students upon whom physical restraint or seclusion was imposed,
518 including:

- 519 1. The categories identified in Section
520 1111(h)(1)(C)(i) of the Elementary and Secondary Education Act of
521 1965 [20 USC 6311(h)(1)(C)(i)];
- 522 2. Age; and
- 523 3. Disability status (which has the meaning
524 given the term "individual with a disability" in Section 7(20) of
525 the Rehabilitation Act of 1973 (29 USC 705(20)).

526 (4) Unduplicated count; exception. The disaggregation
527 required under paragraph (b) of this subsection shall:

528 (a) Be carried out in a manner to ensure an
529 unduplicated count of the:



530 (i) Total number of incidents in the preceding
531 full academic year in which physical restraint was imposed upon a
532 student; and

533 (ii) Total number of incidents in the preceding
534 full-academic year in which seclusion was imposed upon a student;
535 and

536 (b) Not be required in a case in which the number of
537 students in a category would reveal personally identifiable
538 information about an individual student.

539 **SECTION 7.** This act shall take effect and be in force from
540 and after July 1, 2014.

