PHYSICAL RESTRAINT IN SCHOOLS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Carol Spackman Moss

Senate Sponsor: Evan J. Vickers

LONG TITLE

General Description:

This bill amends provisions related to the use of physical restraint in schools.

Highlighted Provisions:

This bill:

- defines terms;
- amends provisions related to the infliction of corporal punishment on a student;
- amends provisions related to the use of physical restraint in schools;
- amends provisions related to a student who willfully defaces or otherwise damages school property; and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53A-11-801, as enacted by Laws of Utah 1992, Chapter 251
53A-11-802, as enacted by Laws of Utah 1992, Chapter 251
53A-11-806, as last amended by Laws of Utah 2008, Chapter 3
53A-11-902, as last amended by Laws of Utah 2015, Chapter 442
62A-4a-1002, as last amended by Laws of Utah 2008, Chapters 45 and 299
Be it enacted by the Legislature of the state of Utah:

Section 1. Section 53A-11-801 is amended to read:


As used in this part:

(1) "Child" or "minor child" means a person:

(a) under the age of 18; or

(b) under the age of 23 who is receiving educational services as an individual with a disability.

(2) "Corporal punishment" means the intentional infliction of physical pain upon the body of a student as a disciplinary measure.

(3) "School" means any public or private elementary or secondary school, pre-school, care center, nursery school, or business which receives compensation for supervising or educating a child.

(2) "Physical escort" means a temporary touching or holding of the hand, wrist, arm, shoulder, or back for the purpose of guiding a student to another location.

(3) "Physical restraint" means a personal restriction that immobilizes or significantly reduces the ability of a student to move the student's arms, legs, body, or head freely.

(4) "School" means a public or private elementary school, secondary school, or preschool.

(5) "Student" means an individual who is:

(a) under the age of 19 and receiving educational services; or

(b) under the age of 23 and receiving educational services as an individual with a disability.

Section 2. Section 53A-11-802 is amended to read:

53A-11-802. Prohibition of corporal punishment -- Use of reasonable and necessary physical restraint.

(1) A school employee may not inflict or cause the infliction of corporal punishment upon a student who is receiving educational services from the school, unless written permission has been
given by the student's parent or guardian to do so.] student.

(2) [This section does not prohibit the use of] A school employee may use reasonable and necessary physical restraint [or force] in self defense or when otherwise appropriate to the circumstances to:

(a) obtain possession of a weapon or other dangerous object in the possession or under the control of a [child] student;
(b) protect [the child] a student or another [person] individual from physical injury;
(c) remove from a situation a [child] student who is violent [or disruptive]; or
(d) protect property from being damaged, when physical safety is at risk.

(3) Nothing in this section prohibits a school employee from using less intrusive means, including a physical escort, to address circumstances described in Subsection (2).

[(3) (4) (a) Any rule, ordinance, policy, practice, or directive which purports to direct or permit the commission of an act prohibited by this part is void and unenforceable.
(b) An employee may not be subjected to any sanction for failure or refusal to commit an act prohibited under this part.
[(4)] (5) A parochial or private school that does not receive state funds to provide for the education of a student may exempt itself from the provisions of this section by adopting a policy to that effect and notifying the parents or guardians of [children] students in the school of the exemption.

(6) This section does not apply to a law enforcement officer as defined in Section 53-13-103.

Section 3. Section 53A-11-806 is amended to read:

53A-11-806. Defacing or damaging school property -- Student's liability -- Work program alternative.

(1) [Any] A student who willfully defaces or otherwise [injures] damages any school property may be suspended or otherwise disciplined.

(2) (a) [Any school district whose] If a school's property has been lost or willfully cut, defaced, or otherwise [injured] damaged, the school may withhold the issuance of an
official written grade [reports] report, diploma, [and transcripts] or transcript of the student responsible for the damage or loss until the student or the student's parent or guardian has paid for the damages.

(b) The student's parent or guardian is liable for damages as otherwise provided in Section 78A-6-1113.

(3) (a) If the student and the student's parent or guardian are unable to pay for the damages or if it is determined by the school in consultation with the student's [parents] parent or guardian that the student's interests would not be served if the [parents] parent or guardian were to pay for the damages, [then,] the school [district] shall provide for a program of [voluntary] work [for] the student may complete in lieu of the payment.

(b) The [district] school shall release the official grades, diploma, and transcripts of the student upon completion of the [voluntary] work.

(4) Before any penalties are assessed under this section, the [local school board] school shall adopt procedures to [insure] ensure that the student's right to due process is protected.

(5) No penalty may be assessed for damages which may be reasonably attributed to normal wear and tear.

(6) If the Department of Human Services or a licensed child-placing agency has been granted custody of the student, [that] the student's records, if requested by the department or agency, may not be withheld from the department or agency for nonpayment of damages under this section.

Section 4. Section 53A-11-902 is amended to read:

53A-11-902. Conduct and discipline policies and procedures.

The conduct and discipline policies required under Section 53A-11-901 shall include:

(1) provisions governing student conduct, safety, and welfare;

(2) standards and procedures for dealing with students who cause disruption in the classroom, on school grounds, on school vehicles, or in connection with school-related activities or events;

(3) procedures for the development of remedial discipline plans for students who cause
a disruption at any of the places referred to in Subsection (2);

(4) procedures for the use of reasonable and necessary physical restraint [or force] in dealing with [ disruptive] students posing a danger to themselves or others, consistent with Section 53A-11-802;

(5) standards and procedures for dealing with student conduct in locations other than those referred to in Subsection (2), if the conduct threatens harm or does harm to:

(a) the school;

(b) school property;

(c) a person associated with the school; or

(d) property associated with a person described in Subsection (5)(c);

(6) procedures for the imposition of disciplinary sanctions, including suspension and expulsion;

(7) specific provisions, consistent with Section 53A-15-603, for preventing and responding to gang-related activities in the school, on school grounds, on school vehicles, or in connection with school-related activities or events;

(8) standards and procedures for dealing with habitual disruptive or unsafe student behavior in accordance with the provisions of this part; and

(9) procedures for responding to reports received through the School Safety and Crisis Line under Subsection 53A-11-1503(3).

Section 5.  Section 62A-4a-1002 is amended to read:

62A-4a-1002. Definitions.

As used in this part:

(1) (a) Except as provided in Subsection (1)(b), "severe type of child abuse or neglect" means:

(i) if committed by a person 18 years of age or older:

(A) chronic abuse;

(B) severe abuse;

(C) sexual abuse;
(D) sexual exploitation;
(E) abandonment;
(F) chronic neglect; or
(G) severe neglect; or
(ii) if committed by a person under the age of 18:
(A) serious physical injury, as defined in Subsection 76-5-109(1), to another child
which indicates a significant risk to other children; or
(B) sexual behavior with or upon another child which indicates a significant risk to
other children.
(b) "Severe type of child abuse or neglect" does not include:
(i) the use of reasonable and necessary physical restraint [or force] by an educator in
accordance with Subsection 53A-11-802(2) or Section 76-2-401;
(ii) a person's conduct that:
(A) is justified under Section 76-2-401; or
(B) constitutes the use of reasonable and necessary physical restraint or force in
self-defense or otherwise appropriate to the circumstances to obtain possession of a weapon or
other dangerous object in the possession or under the control of a child or to protect the child or
another person from physical injury; or
(iii) a health care decision made for a child by the child's parent or guardian, unless,
subject to Subsection 62A-4a-1004(2), the state or other party to the proceeding shows, by
clear and convincing evidence, that the health care decision is not reasonable and informed.
(2) "Significant risk" means a risk of harm that is determined to be significant in
accordance with risk assessment tools and rules established by the division that focus on:
(a) age;
(b) social factors;
(c) emotional factors;
(d) sexual factors;
(e) intellectual factors;
(f) family risk factors; and
(g) other related considerations.