
OLR Bill Analysis

sSB 1200

AN ACT CONCERNING SPECIAL EDUCATION.

SUMMARY

This bill makes the following unrelated changes in the special education laws relating to, among other things, funding, due process, choice school enrollment, and disciplinary interventions:

1. prohibits the State Department of Education (SDE) from calculating specified pandemic relief funds received by school districts when determining their special education excess cost grant amount (see COMMENT) (§ 1);
2. allows dual instruction as part of remote learning when needed to implement a student's individualized education program (IEP) or 504 plan (see BACKGROUND) (§ 2);
3. expands the charge and membership of the task force studying special education services and funding, and also extends its reporting deadline and termination date (§ 3);
4. grants parents, guardians, students, and surrogate parents the right to have translation services at planning and placement team (PPT) meetings (§ 4);
5. prohibits charter schools from asking about or considering an applicant student's need for or receipt of special education and related services, including as part of enrollment lottery criteria (§ 5);
6. creates new restrictions on the use of physical restraint, seclusion, and time out on students and imposes new monitoring, documentation, reporting, training, and parental notice requirements (§ 6);

7. limits the circumstances under which a psychopharmacologic agent may be used on a student non-consensually (§ 6);
8. removes a reference to an obsolete pilot program that required SDE to examine incidents of physical restraint and seclusion in schools (§ 6);
9. extends the school-based health center (SBHC) expansion grant program for two additional fiscal years, through FY 25, and broadens applicant eligibility (§ 7);
10. requires SDE, beginning July 1, 2023, to post on its website (a) all special education due process decision documents and (b) any corrective actions taken in response to a complaint about a board of education or other entity's provision of special education and related services (§ 8); and
11. prohibits local and regional boards of education from punishing a school employee for discussing or making recommendations about services or accommodations for a student's 504 plan (see BACKGROUND) (§ 9).

The bill also makes technical and conforming changes.

EFFECTIVE DATE: July 1, 2023, except the provisions on the special education excess cost grant calculation (§ 1) and the special education task force (§ 3) take effect upon passage.

§ 1 — SPECIAL EDUCATION EXCESS COST GRANT CALCULATION

By law, boards of education may receive state special education grants, within available appropriations, under the following circumstances:

1. when the reasonable costs of special education for a child exceeds 4.5 times the board's average per pupil educational costs (CGS § 10-76g(b)),
2. when the town's ratio of (a) net special education costs for the

prior fiscal year to the (b) product of its total need students and the average regular program expenditures exceeds the statewide average for all of these ratios (CGS § 10-76g(c)), and

3. when the total amount of state special education grants payable to a board in a fiscal year exceeds the amount appropriated (CGS § 10-76g(d)).

The bill prohibits SDE from including federal COVID-19 relief funds when calculating a board's "net current expenditures per pupil" for determining the amount of these three special education grants (see COMMENT). Specifically, SDE must exclude from the calculation any funds received by a board under the following federal acts: the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136); the Coronavirus Response and Relief Supplemental Appropriations (CRRSA) Act (P.L. 116-260); and the American Rescue Plan Act of 2021 (ARPA) (P.L. 117-2).

§ 2 — REMOTE LEARNING USING DUAL INSTRUCTION

Existing law allows local and regional boards of education to authorize remote learning, limited by various conditions, for grades nine through 12 in the 2022-23 and 2023-24 school years. "Remote learning" is instruction using one or more internet-based software platforms as part of a remote learning model.

Current law prohibits boards that authorize remote learning from providing dual instruction as part of it. "Dual instruction" is simultaneous instruction by a teacher to students in-person in the classroom and students engaged in remote learning. The bill adds an exception to this prohibition, allowing dual instruction when it is required in, or necessary to implement, a student's IEP or 504 plan (see BACKGROUND). It also applies the exception beginning in the 2024-25 school year, when current law allows boards to authorize remote instruction for students in grades kindergarten through 12.

§ 3 — SPECIAL EDUCATION TASK FORCE

Expanded Scope

By law, the task force must study the provision and funding of special education during the 2016-17 through 2020-21 school years. The bill adds the following to the scope of the task force's study:

1. the provision of services to gifted and talented students;
2. the cost of providing gifted and talented services and its effect on a board of education's minimum budget requirement;
3. the level of state reimbursement to boards for gifted and talented services;
4. school districts' methods for identifying students who are gifted and talented, including the criteria they are using and whether they are over- or under-identifying them;
5. the feasibility of authorizing independent special education evaluators, from either SDE or hired by a student's parent or guardian, to observe special education services being provided in the classroom;
6. delaying the age when a child requiring special education and related services receives a classification category for the services;
7. special education student-to-teacher ratios prescribed by case load policies, regulations, and formulas in effect in other states, focusing on the student numbers and intensity of services required; and
8. any other issues or topics relating to special education that the task force finds necessary.

Membership

The bill also adds the following members to the 15-member task force, bringing the total membership to 17: the Advisory Council for Special Education chairperson and a representative of the Connecticut Association of Private Special Education Facilities.

Reporting and Termination

The bill extends the deadline by which the task force must report its findings and recommendations to the Education Committee by one month, from January to February 1, 2024. It also extends the task force’s termination date from January to July 1, 2024, or when it submits the report, whichever is later.

§ 4 — TRANSLATION SERVICES

By law, parents, guardians, students, and surrogate parents have the right to attend PPT meetings, where the student’s educational program is developed, reviewed, or revised. The bill grants them the right to have translation services provided at the meeting if their primary language is not English. The services may be provided by either (1) a certified interpreter who attends the meeting in-person or is available by phone or through an online platform or (2) an internet website or other electronic application.

§ 6 — PHYSICAL RESTRAINT, SECLUSION, AND TIME OUT

State law limits the types of allowable physical restraints or seclusion that may be used on students. The bill alters these terms’ and related terms’ definitions; creates new restrictions on using these interventions; and imposes new monitoring, documentation, reporting, training, and parental notice requirements.

Physical Restraint

Definition. The bill removes “mechanical restriction” from the definition of “physical restraint” in current law, limiting the definition to personal restriction that immobilizes or reduces the free movement of a person’s arms, legs, or head, including carrying or forcibly moving a person from one location to another, with a list of exceptions.

Use. The bill adds two new restrictions to the one in current law that prohibits the use of physical restraint except as an emergency intervention under very specific circumstances involving a risk of injury. Under the bill, school employees may not use physical restraint (1) that is contraindicated based on a student’s disability, health care needs, or medical or psychiatric condition or (2) as a planned behavioral intervention in a student’s behavioral intervention plan, IEP, or 504 plan

(see BACKGROUND).

Monitoring. By law and unchanged by the bill, any student who is physically restrained must be continually monitored by a school employee, either through direct observation or by video monitoring from a location close enough to provide aid if needed.

Current law also requires a school employee to (1) regularly evaluate the restrained student for signs of physical distress and (2) enter each evaluation in the student's educational record. The bill requires a school mental health specialist to perform these evaluative tasks instead. (Presumably, the school mental health specialist can perform both the monitoring and the evaluating for physical distress.) Under the bill, a "school mental health specialist" is a school social worker, school psychologist, trauma specialist, behavior technician, board-certified behavior analyst, school counselor, licensed professional counselor, licensed marriage and family therapist, or any other person employed to provide mental health services to students.

Seclusion

Definition. As under existing law, the bill defines "seclusion" as involuntary confinement of a student in a room where the student is physically prevented from leaving, except for a "time out" (see below).

Monitoring. By law, any student who is involuntarily placed in seclusion must be frequently monitored, using either direct observation or observation by video monitoring from a location close enough to provide aid if needed. The bill requires that a school mental health specialist, rather than a school employee, perform this monitoring.

It also requires a school mental health specialist to regularly evaluate the student in seclusion for signs of physical distress. The specialist must enter this evaluation into the student's educational record.

Time Out

Definition. Current law identifies an "exclusionary time out" as a type of intervention that is not a form of physical restraint or seclusion, defining it as a temporary, continuously monitored separation of a

student from an ongoing activity in a non-locked setting to calm or deescalate the student's behavior. The bill removes the word "exclusionary" and instead defines "time out" as a behavior management technique that may involve the separation of the student from the group or classroom in a non-locked setting.

Use. The bill requires boards of education to make a policy about the use of time outs by January 1, 2024. This policy must contain the following elements, which are the same as current law requires for an "exclusionary time out" policy:

1. a prohibition against using time outs as a form of discipline;
2. a requirement that at least one school employee remain with the student or be immediately available to communicate verbally with the student throughout the time out;
3. a requirement that a clean, safe, sanitary, and appropriate space be used to calm or deescalate the student's behavior;
4. a requirement that the time out period end as soon as possible; and
5. if the student requires special education or is being evaluated for it, a requirement that the student's PPT convene as soon as practicable to determine alternative interventions or strategies.

Documentation. The bill requires local or regional boards of education and special education providers that contract with boards of education, including private providers, to document the use of time outs in the following ways:

1. record each instance when a student is placed in a time out,
2. specify the nature of the emergency that required using the time out, and
3. include this information in an annual compilation on its use of time out on students, which it must provide to SDE and the State

Board of Education (SBE).

Additionally, the bill requires that any use of time out be documented in the student's educational record, similar to current law's requirement for physical restraint and seclusion. Specifically, the bill requires the following information to be documented:

1. the nature of the emergency;
2. any other steps, including attempts at verbal de-escalation, taken to prevent the emergency from arising if there were indications that it was likely to arise; and
3. a detailed description of the time out's nature, duration, and effect on the student's established educational plan.

Injury Reporting. The bill requires boards of education and contracted special education providers to report to SBE any time out that results in physical injury to a student. This mirrors the requirement in existing law for injuries resulting from restraint or seclusion. By law, SBE must report any incidence of serious injury or death to the nonprofit entity that serves as the Connecticut protection and advocacy system, as required under federal disability law, and, if appropriate, to the state's Office of the Child Advocate.

Monitoring and Internal Reporting. The bill requires boards of education to develop policies and procedures for monitoring and internally reporting the use of time outs on students. Boards must also make them available on their website and in their procedures manual, just as current law requires for their physical restraint and seclusion monitoring and reporting policies and procedures.

Notice and Meeting Requirements

The bill removes the 24-hour deadline that boards of education must meet when notifying a student's parent or guardian that the student was placed in physical restraint or seclusion. Instead, it maintains current law's requirement that boards make a reasonable effort to provide notification immediately after the placement begins. The bill also adds

student placements in time out to this notice requirement.

In addition to the above notice requirement, the bill adds a new meeting requirement when a student (1) is placed in physical restraint or seclusion once or (2) has been placed in timeout three times over the past 30 days. When either of these placements occur, the board of education must meet with the student's parents or guardians in person, online, or by telephone within five days. The board must give them a detailed summary of events leading up to and during the placement, including the names of any witnesses; the witnesses' accounts of the events; and reasons for using the restraint, seclusion, or time outs.

Training

Current law allows boards of education to provide training about student physical restraint and seclusion to any teacher, administrator, school paraprofessional, or other school employee designated by the school principal who has direct contact with students. The bill adds any school mental health specialist to the list of optional training recipients. By law and unchanged by the bill, boards must provide this training to members of each school's crisis intervention team (see below).

Crisis Intervention Teams

By law, boards of education must require each school in their district to identify a crisis intervention team. This team must respond to any incident when physically restraining or secluding a student may be needed as an emergency intervention, specifically to prevent injury to a student or others.

The bill adds school mental health specialists to the team, which has the following members under current law: a teacher, an administrator, a school paraprofessional, or other school employee who has direct contact with students and is chosen by the principal.

SBE Summary Report

By law, SBE must review each board of education's and each contracted special education provider's annual compilation of the use of restraint or seclusion on students and then produce its own annual

summary report. The bill requires SBE to add the following data to its report: (1) the frequency of time out use on students, (2) whether any student subjected to a time out was a special education student, and (3) a disaggregation of the use of physical restraint on various student demographic subgroups. The bill requires SBE to annually include this additional data starting with the report it must submit to the Children’s and Education committees by January 15, 2024.

Psychopharmacologic Agents

By law and unchanged by the bill, a “psychopharmacologic agent” is any medication that affects the central nervous system by influencing thinking, emotion, or behavior. Current law bans the non-consensual use of a psychopharmacologic agent on a student unless it is (1) an integral part of the student’s established medical or behavioral support or education plan, (2) part of a licensed practitioner’s initial orders, or (3) an emergency intervention to prevent immediate or imminent injury to the student or others. The bill removes this third exception. It also removes a requirement that this agent only be used in therapeutically appropriate doses and not as a substitute for other appropriate treatment.

§ 7 — SCHOOL-BASED HEALTH CENTER EXPANSION GRANT

By law, the Department of Public Health (DPH) must administer a program that awards grants to SBHC operators to expand the number of centers and the services they provide. Current law limits the grant program to FY 23, but the bill extends it by two years through FY 25.

Additionally, the bill makes any SBHC operator eligible for the grants; under current law, only two categories of operators are eligible:

1. those operating a center for any of the 36 sites recommended by the SBHC Expansion Working Group for expanded mental health services and
2. those operating a center for any of the 124 schools recommended by the SBHC Expansion Working Group for expanded SBHC medical and mental health services.

By law and unchanged by the bill, when awarding grants, DPH must prioritize SBHC operators that will provide services after regular school hours.

§ 8 — DUE PROCESS TRANSPARENCY

Beginning July 1, 2023, the bill requires SDE to post on its website the following information under federal special education regulations: (1) all due process decision documents required under federal special education regulations and (2) any corrective actions taken in response to a complaint about a board of education or other entity's provision of special education and related services (see BACKGROUND). Before posting these decisions and documents online, the department must redact any personally identifiable student information.

§ 9 — 504 PLAN PARTICIPATION

The bill prohibits local or regional boards of education from disciplining, suspending, terminating, or punishing any school employee who discusses or makes recommendations about the services or accommodations for a student's 504 plan (see BACKGROUND). (The bill does not specify the circumstances or setting where the employee may discuss the 504 plan, unlike existing law, which limits the employee protection to those attending PPT meetings.)

BACKGROUND

IEP

An IEP is a written statement detailing the student's academic achievement level, goals for future achievement, and specialized educational services needed to reach the goals. Federal law requires school boards to develop IEPs for students eligible to receive special education and related services (Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq.).

504 Plan

Section 504 of the federal Rehabilitation Act of 1973 protects students with mental or physical disabilities from discrimination in public schools (29 U.S.C. § 794). Students who receive school accommodations under this law have them memorialized in a written plan, commonly

known as a “504 plan.”

Behavioral Intervention Plan

Neither state law nor regulation defines “behavioral intervention plan.” However, SDE’s current IEP guidance document instructs school districts to indicate in a student’s IEP whether a behavioral intervention plan has been developed because the student has exhibited behaviors that impede learning for self or others (*Connecticut IEP Manual*, October 2022).

Special Education Due Process and Corrective Action

Federal regulations set procedural safeguards to protect students’ and parents’ or guardians’ due process rights when seeking special education and related services. These safeguards outline the (1) due process procedures students, families, and school boards must follow in a special education dispute and (2) disciplinary procedures school boards must follow for a child with a disability who violates a code of student conduct (34 C.F.R. §§ 300.500-300.537).

Federal regulations require SDE to adopt written procedures for responding to special education complaints and addressing corrective actions when a student has been denied the appropriate services. These regulations establish the minimum complaint procedures the state must follow and the process for filing a written special education complaint against a public agency (34 C.F.R. §§ 300.151-300.153).

Related Bills

sSB 1166, favorably reported by the Education Committee, repeals CGS § 10-222d, which this bill cites to for the statutory definition of “school employee.”

sHB 6883, § 13, favorably reported by the Education Committee, requires local or regional boards of education responsible for providing special education services to provide interpreters and translated documents to students, parents, or guardians when needed or upon request.

COMMENT

Incomplete Information

The bill prohibits SDE from including federal pandemic relief funds when calculating school boards' state special education grant amounts. However, it specifies that the department must exclude the federal dollar amount from a board's "net current expenditure per pupil." Neither the bill nor existing law defines this term.

COMMITTEE ACTION

Education Committee

Joint Favorable Substitute

Yea 44 Nay 0 (03/24/2023)