

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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To amend the Placement of Students with Disabilities in Nonpublic Schools Amendment Act of 2006 to require that the state education agency develop and administer a Certificate of Approval process for nonpublic special education schools and programs by January 1, 2009, to prohibit the state education agency from placing students in nonpublic special education schools or programs that use aversive-intervention techniques, to require a site visit and evaluation of each school or program and a determination of whether the school or program uses aversive-intervention techniques before a Certificate of Approval may be issued, to expedite the appeal process if a notice of violation is issued due to the use of aversive-intervention techniques, and to require the state education agency to report to the Council annually on the nonpublic special education schools and programs serving District students and to publicize the report on the District of Columbia Public Schools and the Office of State Superintendent of Education websites.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Protection of Students with Disabilities Amendment Act of 2008”.

Sec. 2. The Placement of Students with Disabilities in Nonpublic Schools Amendment Act of 2006, effective March 14, 2007 (D.C. Law 16-269; D.C. Official Code § 38-2561.01 *et seq.*), is amended as follows:

(a) Section 101 (D.C. Official Code § 38-2561.01) is amended as follows:

(1) Designate the existing paragraph (1) as paragraph (1A).

(2) A new paragraph (1) is added to read as follows:

“(1) “Aversive intervention” means specific strategies for behavioral-treatment intervention, including:

“(A) Noxious, painful, intrusive stimuli or activities that result in pain;

“(B) Any form of noxious, painful, or intrusive spray or inhalant;

“(C) Electric shock or use of a graduated electronic decelerator;

“(D) Pinches and deep muscle squeezes;

“(E) Withholding adequate sleep, shelter, clothing, bedding, or bathroom

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facilities;

“(F) Withholding meals, essential nutrition, or hydration, or intentionally altering staple food or drink to make it distasteful; or

“(G) The use of chemical restraints, instead of positive programs or medical treatments.”.

(3) Paragraph (13) is amended by striking the phrase “District of Columbia Public Schools,” and inserting the phrase “Office of the State Superintendent of Education,” in its place.

(b) Section 103 (D.C. Official Code § 38-2561.03) is amended as follows:

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(1) Subsection (b)(1) is amended to read as follows:

“(b)(1) Unless the placement of a student has been ordered by a District of Columbia court, federal court, or a hearing officer pursuant to IDEA, no student whose education, including special education or related services, is funded by the District of Columbia government shall be placed in a nonpublic special education school or program that:

“(A) Allows the use of aversive intervention in its policy or practice; or

“(B) Has not received and maintained a valid Certificate of Approval from the SEA in accordance with section 107.”.

(2) A new subsection (d) is added to read as follows:

“(d) If the SEA has reason to believe that a child is a neglected child or is being abused, as those terms are defined in D.C. Official Code § 16-2301(9) and (23), respectively, in an out-of-state nonpublic special education school or program, the SEA shall immediately notify the relevant state’s child welfare agency and the parent or guardian of the child. Upon notification, and with parental or guardian consent, the SEA shall work with the parent or guardian to take immediate steps to ensure the safety and health of the child.”.

(c) Section 107 (D.C. Official Code § 38-2561.07) is amended as follows:

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(1) Subsection (a) is amended to read as follows:

“(a) The SEA shall develop and administer a Certificate of Approval process for nonpublic special education schools or programs that serve District of Columbia students with disabilities with funding from the District of Columbia government by January 1, 2009. The Certificate of Approval process shall include an evaluation of the nonpublic special education school or program, including an onsite inspection of the operations and facilities of the school or program. The SEA shall issue a Certificate of Approval to a nonpublic special education school or program after determining that:

“(1) The school or program complies with the regulations set forth in Chapters 22, 25, 30, and 38 of Title 5 of the District of Columbia Municipal Regulations, the requirements of this act, and any applicable fire safety, building code, health, and sanitation requirements;

“(2) The types of care being provided by the school or program are consistent with the applicable laws and regulations of the District of Columbia; and

“(3) The school or program prohibits by policy and practice aversive

intervention.”.

(2) Subsection (h) is repealed.

(d) Section 111 (D.C. Official Code § 38-2561.11) is amended as follows:

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(1) Subsection (a) is amended as follows:

(A) Paragraph (5) is amended by striking the word “and” at the end.

(B) Paragraph (6) is amended by striking the phrase “of Approval.” and inserting the phrase “of Approval; and” in its place.

(C) A new paragraph (7) is added to read as follows:

“(7) Allowing aversive intervention in its policy or practice.”.

(2) Subsection (b) is amended as follows:

(A) Paragraph (2) is amended as follows:

(i) Strike the phrase “(2) A nonpublic” and insert the phrase “(2)(A) Except as provided in subparagraph (B) of this paragraph, a nonpublic” in its place.

(ii) A new subparagraph (B) is added to read as follows:

“(B) A nonpublic special education school or program determined to be in violation of subsection (a)(7) of this section may request a hearing before an independent panel of the SEA. The request shall be in writing and submitted to the SEA within 10 days of receipt of the written notice required under paragraph (1) of this subsection. The panel that reviews the SEA decision shall not contain any individual who participated in the decision to issue the original notice.”.

(B) Paragraph (3) is amended as follows:

(i) Strike the phrase “(3) The SEA” and insert the phrase “(3)(A) Except as provided in subparagraph (B) of this paragraph, the SEA” in its place.

(ii) A new subparagraph (B) is added to read as follows:

“(B) If the notice of violation is due to a violation of subsection (a)(7) of this section, the SEA shall hold a hearing within 15 days of receiving a written request, and shall issue its decision no later than 10 days after the hearing. The decision of the SEA panel shall be final and not appealable.”.

(e) A new section 116 is added to read as follows:

“Sec. 116. Reporting requirements.

“(a) The SEA shall report to the Council annually, on or before the 1st day of the school year, for each nonpublic special education school or program:

“(1) The name and location of each nonpublic special education school or program issued or denied a Certificate of Approval by the SEA, including the status of each;

“(2) The number of children assigned to each school or program;

“(3) Any enforcement action that has been taken with respect to the license, Certificate of Approval, or charter of the school or program;

“(4) Any action the school or program has taken, or is taking, with respect to an enforcement action;

“(5) All incident reports, including any report of abuse, neglect, or use of

aversive intervention regarding any student placed by the SEA;

“(6) Any investigation taken by the school or program as a result of an incident, including:

“(A) The time it took to complete the investigation;

“(B) Whether the parents or guardian of the student and the SEA have been informed of the report; and

“(C) The progress and outcomes of the investigation, including any action taken by the facility; provided, that the information shall not be reported in a manner that violates any applicable provision of federal, state, or local law relating to the privacy of student information.

“(b) The report shall be made available to the public on the SEA and DCPS Internet sites.”.

Sec. 3. Fiscal impact statement.

The Council adopts the October 6, 2008 fiscal impact statement of the Chief Financial Officer as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia