

ASSEMBLY, No. 5411

STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED MAY 8, 2023

Sponsored by:

Assemblywoman SHANIQUE SPEIGHT

District 29 (Essex)

Assemblyman REGINALD W. ATKINS

District 20 (Union)

SYNOPSIS

Establishes requirements for removal of students from public school pending mental health clearance.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/8/2023)

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2

1 AN ACT concerning mental health clearances for public school
2 students and supplementing chapter 37 of Title 18A of the New
3 Jersey Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. As used in this act:

9 “Licensed mental health clinician” means a licensed clinical
10 social worker, licensed psychologist, licensed professional
11 counselor, psychiatric advanced practice nurse, or psychiatrist.

12 “Mental health clearance” means an assessment conducted by a
13 licensed mental health clinician to determine, at the time of the
14 assessment, whether a student is substantially likely to injure
15 themselves or others if returned to school.

16 “School district” means a local or regional school district, county
17 special services school district, county vocational school district,
18 charter school, and renaissance school project.

19
20 2. a. A school district, an educational services commission,
21 and an approved private school for students with disabilities that
22 removes a student from school and requires the student to undergo a
23 mental health clearance shall adopt a policy that complies with the
24 regulations adopted by the State Board of Education pursuant to
25 section 7 of this act and also provides that:

26 (1) removal for a mental health clearance is used only in an
27 emergency in which the student is exhibiting behavior at the time of
28 removal that places the student or others in immediate physical
29 danger. In the case of a student classified as eligible for special
30 education programs and services, the school district, educational
31 services commission, or approved private school for students with
32 disabilities shall consult with the child study team prior to removal;

33 (2) the removal is documented in writing in sufficient detail to
34 enable the information to be used in the mental health clearance and
35 by staff to address student behavior;

36 (3) upon the student’s return to school, in the case of a classified
37 student, the child study team shall review and update the student’s
38 Individual Education Program (IEP), and in the case of a student
39 with a plan prepared pursuant to section 504 of the federal
40 “Rehabilitation Act of 1973,” (504) 29 U.S.C. s.794, the 504 team
41 shall review and update the student’s 504 plan. In the case of a
42 general education student, the school district, educational services
43 commission, or approved private school for students with
44 disabilities shall evaluate the student in accordance with the
45 provisions of the “Individuals with Disabilities Education Act,”
46 (IDEA) 20 U.S.C. s.1400 et seq. If the evaluation determines that
47 the student is not eligible for classification under the IDEA, the

1 student shall be referred for evaluation under the federal
2 “Rehabilitation Act of 1973,” 29 U.S.C. s.794;

3 (4) the student’s parent or guardian is immediately notified
4 when the decision is made to remove a student from school for a
5 mental health clearance, which notification may be by telephone or
6 electronic communication. A full written report of the incident
7 leading to the student’s removal shall be provided to the parent or
8 guardian within 48 hours of when the decision was made;

9 (5) appropriate instruction is provided to a student who is
10 removed from school for more than five days. In the case of a
11 student with an IEP or 504 plan, the instruction shall be consistent
12 with that plan;

13 (6) the family bears no cost for the mental health clearance
14 necessary for the student’s return to school, except as otherwise
15 provided pursuant to subsection a. of section 3 of this act; and

16 (7) every reasonable effort is made to ensure a student’s prompt
17 return to school.

18 The school district, educational services commission, and
19 approved private school for students with disabilities shall post the
20 policy on its website. The website shall also include a list of
21 employees who serve as a point of contact on the removal of
22 students for a mental health clearance.

23 b. A school district, an educational services commission, and
24 an approved private school for students with disabilities shall
25 provide the parent or guardian of a student who is removed from
26 school for a mental health clearance with:

27 (1) a copy of the policy developed pursuant to subsection a. of
28 this section;

29 (2) the New Jersey Department of Education’s “Parental Rights
30 in Special Education” document; and

31 (3) any other information and resources necessary to support the
32 student’s mental and behavioral health.

33 The school district, educational services commission, and
34 approved private school for students with disabilities shall also
35 provide the parent or guardian with information on the return of the
36 student to school following the mental health clearance. The school
37 district, educational services commission, and approved private
38 school for students with disabilities shall not impose any conditions
39 other than the mental health clearance on the student’s return to
40 school, and other than any actions required under the “Individuals
41 with Disabilities Education Act” (IDEA) 20 U.S.C. s.1400 et seq.,
42 the federal “Rehabilitation Act of 1973,” 29 U.S.C. s.794, or State
43 law and regulations concerning student discipline.

44 c. Any communication with a student’s parent or guardian
45 concerning the student’s removal from school and required mental
46 health clearance, including the provision of information provided
47 pursuant to this section, shall be documented in writing.

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1 d. A school district, an educational services commission, and
2 an approved private school for students with disabilities shall
3 minimize the use of the removal of students from school for mental
4 health clearance through the use of other available student
5 intervention programs.

6
7 3. a. A school district, an educational services commission,
8 and an approved private school for students with disabilities shall
9 provide the parent or guardian of a student removed from school for
10 a mental health clearance with the Statewide list of licensed mental
11 health clinicians available to conduct the evaluation of the student
12 as developed by the State Board of Education pursuant to
13 subsection d. of section 7 of this act. The school district,
14 educational services commission, and approved private school for
15 students with disabilities shall also provide a student's parent or
16 guardian with a list of licensed mental health clinicians who are
17 employed by, or under contract with, the school district, educational
18 services commission, or approved private school for students with
19 disabilities who are also available to conduct the evaluation of the
20 student.

21 A student's parent or guardian may select a licensed mental
22 health clinician who is not included on the lists provided by the
23 school district, educational services commission, or approved
24 private schools for students with disabilities to conduct the
25 student's mental health clearance, and the school district,
26 educational services commission, or approved private school for
27 students with disabilities shall accept the mental health clearance
28 provided that it meets the criteria established by the State Board of
29 Education pursuant to subsection d. of section 7 of this act. In the
30 event that a parent or guardian selects a licensed mental health
31 clinician who is not included on the lists, the parent or guardian
32 shall bear the cost of the mental health clearance.

33 b. A school district, educational services commission, and
34 approved private school for students with disabilities shall provide
35 the parent or guardian of a student removed from school for a
36 mental health clearance with the contact information of an
37 employee who shall be available to provide information to the
38 parent or guardian on the process for removal and return to school,
39 and to address any questions the parent or guardian may have in
40 regard to that process. The employee shall work with the family to
41 expedite the scheduling of the mental health clearance and to make
42 any documentation necessary to conduct the clearance promptly
43 available to the licensed mental health clinician.

44
45 4. The Department of Education shall post on its website
46 training materials and resources available to the employees of
47 school districts, educational services commissions, and approved
48 private schools for students with disabilities who are involved in

1 determining if a student requires to be removed from school for a
2 mental health clearance. The training materials shall address, at a
3 minimum, the issues of adverse childhood experiences, childhood
4 trauma, cultural competency, and implicit bias which may impact
5 student behavior.

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7 5. A student shall not be removed from school for a mental
8 health clearance without proper documentation of the reason for the
9 removal. Nothing in this act shall be construed as affecting any
10 requirements established in State and federal law concerning
11 students with disabilities.

12
13 6. a. The Department of Education shall annually collect data
14 from school districts, educational services commissions, and
15 approved private schools for students with disabilities on the
16 number of students that were removed from school for a mental
17 health clearance, the duration of the student's removals, the number
18 of students who were returned to school with a mental health
19 clearance, and the number of students who were not cleared for
20 return to school. For any students who were removed from school
21 more than once for a mental health clearance during the reporting
22 period, the number of those students shall be reported and
23 disaggregated by the number of times each was removed in addition
24 to the disaggregation required by subsection b. of this section.

25 b. The department shall annually publish the data collected
26 pursuant to subsection a. of this section on its website in a manner
27 that protects student privacy and each school district, educational
28 services commission, and approved private school for students with
29 disabilities shall annually publish its own data on its website in the
30 same manner. The data published on the websites shall be
31 disaggregated by general education students and students with
32 disabilities, by school district, and by race, gender, and age of the
33 student.

34
35 7. The State Board of Education, in consultation with the
36 Division of Mental Health and Addiction Services in the
37 Department of Human Services, and the Department of Children
38 and Families, shall adopt rules and regulation pursuant to the
39 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
40 seq.), to implement the provisions of this act. The rules and
41 regulations shall include, but not be limited to, the following:

42 a. a definition of what constitutes cause for the removal of a
43 student from school for a mental health clearance, provided that the
44 definition limits those causes to emergencies in which the student is
45 exhibiting behavior at the time that the decision for removal is
46 made that places the student or others in immediate physical
47 danger;

- 1 b. any limitations on the use of removal of a student from
2 school for mental health clearance, including other interventions
3 that are required prior to removal, and that the removal is consistent
4 with the provisions of the “Individuals with Disabilities Education
5 Act” (IDEA), 20 U.S.C. 1400 et seq., as applicable, and the
6 notification, home instruction, and mental health clearance cost
7 requirements established pursuant to sections 2 and 3 of this act.
- 8 c. the maximum period of time that a student may be removed
9 from school awaiting a mental health clearance before the student is
10 returned to school or provided with an alternate educational
11 placement;
- 12 d. the establishment of criteria that a mental health clearance is
13 required to meet and that a school district, an educational services
14 commission, and an approved private school for students with
15 disabilities is required to accept as an appropriate evaluation for
16 clearance to return to school. The regulations shall provide that a
17 school district, educational services commission, and approved
18 private school for students with disabilities shall accept a mental
19 health clearance that meets the established criteria and allows for
20 the immediate return of the student from school if the mental health
21 clearance indicates that return;
- 22 e. the development of a Statewide list of licensed mental health
23 clinicians available to conduct mental health clearances that meet
24 the criteria established pursuant to subsection d. of this section;
- 25 f. the actions to be taken by a school district, an educational
26 services commission, and an approved private school for students
27 with disabilities if a student’s mental health clearance indicates that
28 at the time of the mental health clearance, the student is
29 substantially likely to injure themselves or others and should not
30 return to school. The regulations shall include the standards for a
31 hearing that will provide the student and the student’s parent or
32 guardian an opportunity to challenge a decision to continue the
33 student’s removal from school based on the evaluation. Nothing
34 shall preclude a classified student from pursuing an expedited
35 hearing under the “Individuals with Disabilities Education Act”
36 (IDEA), 20 U.S.C. s.1400 et seq. and its implementing regulations;
37 and
- 38 g. the actions to be taken by a school district, an educational
39 services commission, and an approved private school for student’s
40 with disabilities upon the return of the student to school, and the
41 resources to be provided by the school district, educational services
42 commission, and approved private school for students with
43 disabilities to the student and the student’s parent or guardian upon
44 the student’s return.
- 45
- 46 8. This act shall take effect immediately.

STATEMENT

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This bill requires that school districts, educational services commissions, and approved private schools for students with disabilities follow specific procedures when the district, educational services commission, or approved private school for students with disabilities makes a determination to remove a student from school for mental health clearance by a licensed mental health clinician in order to return to school. A mental health clearance is defined as an assessment conducted by a licensed mental health clinician to determine, at the time of the assessment, whether a student is substantially likely to injure themselves or others if returned to school.

Under the bill, school districts, educational services commissions, and approved private schools for students with disabilities are required to adopt a policy that complies with the regulations promulgated by the State Board of Education under the bill, and also includes the following:

- 1) removal for mental health clearance is only used in an emergency in which the student is exhibiting behavior at the time of removal that places the student or others in immediate physical danger;
- 2) the removal is documented in writing in sufficient detail to be used in the mental health clearance and to enable staff to address student behavior. In the case of a classified student, consultation with the child study team will occur prior to removal;
- 3) upon the student's return to school, in the case of a classified student, the child study team is to review and update the student's Individualized Education Program (IEP), and in the case of a student with a 504 plan, the 504 team is to review and update the 504 plan. In the case of a general education student, the student is to be evaluated to determine if the student is eligible for special education programs and services or a 504 plan;
- 3) the student's parent or guardian is immediately notified by telephone or electronically when the decision is made to remove the student. A full written report of the incident is to be provided to the parent or guardian within 48 hours of the removal decision;
- 4) appropriate instruction is provided to a student who is removed from school for more than five days. In the case of a student with an IEP or a 504 plan, the instruction is to be consistent with that plan;
- 5) the family will bear no cost for the mental health clearance except in certain circumstances; and
- 6) every reasonable effort is made to ensure the student's prompt return to school.

The policy is to be provided to the parent or guardian of a student who is removed from school, and be posted on the website of the school district, educational services commission, or approved

1 private school for students with disabilities. The website also is to
2 include a list of employees who will serve as a point of contact on
3 the removal of students for mental health clearance.

4 The State Board of Education, in consultation with the Division
5 of Mental Health and Addiction Services in the Department of
6 Human Services and the Department of Children and Families, is
7 directed to promulgate regulations that are to include:

8 1) a definition of what constitutes cause for the removal of a
9 student for mental health clearance;

10 2) any limitations on the use of removal of a student for mental
11 health clearance, including other interventions that are required
12 before removal, and that the removal is consistent with the IDEA;

13 3) the maximum period of time that a student may be removed
14 from school awaiting the mental health clearance before the student
15 is returned to school or an alternate educational placement is
16 provided;

17 4) the establishment of criteria that a mental health clearance is
18 to meet and the school district, educational services commission,
19 and approved school for students with disabilities is required to
20 accept as an appropriate evaluation;

21 5) the development of a Statewide list of licensed mental health
22 clinicians available to conduct mental health clearances that meet
23 the criteria;

24 6) the actions to be taken by the school district, educational
25 services commission, and approved private school for students with
26 disabilities if the student's evaluation indicates that the student
27 should not return to school, including the standards for a hearing
28 that will provide the student and the student's parent or guardian
29 with an opportunity to challenge the decision; and

30 7) the actions to be taken by the school district, educational
31 services commission, and approved private school for students with
32 disabilities upon the return of the student to school, and the
33 resources to be provided to the student and the parent or guardian.

34 A school district, educational services commission, and approved
35 private school for students with disabilities is required to provide
36 the parent or guardian of a student removed from school for mental
37 health clearance with the Statewide list of licensed mental health
38 clinicians available to conduct the evaluation of the student as
39 developed by the State board under its regulations. The school
40 district, educational services commission, and approved private
41 school for students with disabilities is to also provide the parent or
42 guardian with a list of licensed mental health clinicians employed
43 by, or under contract with, the school district, educational services
44 commission, or approved private school for students with
45 disabilities available to conduct the mental health clearance. A
46 parent or guardian may select a licensed mental health clinician
47 who is not on either of these lists to conduct the student's mental

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1 health clearance, but in this case the parent or guardian will bear the
2 cost of the clearance.

3 The bill directs the department to annually collect data on the
4 number of students that were removed from school for a mental
5 health clearance, the duration of the student's removals, the number
6 of students who were returned to school with a mental health
7 clearance, and the number of students who were not cleared for
8 return to school. The department is required to publish the data on
9 its website in a manner that protects student privacy. The data is to
10 be disaggregated by general education students and students with
11 disabilities, by county, and by race, gender, and age of the student.