SENATE, No. 3554

STATE OF NEW JERSEY

220th LEGISLATURE

INTRODUCED FEBRUARY 2, 2023

Sponsored by:
Senator VIN GOPAL
District 11 (Monmouth)

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

CURRENT VERSION OF TEXT
As introduced.
AN ACT concerning mental health clearances for public school students and supplementing chapter 37 of Title 18A of the New Jersey Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. As used in this act:

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

   “Mental health clearance” means 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.

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

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

   (1) removal for a mental health clearance is used only 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. In the case of a student classified as eligible for special education programs and services, the school district, educational services commission, or approved private school for students with disabilities shall consult with the child study team prior to removal;

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

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

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

(5) 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 504 plan, the instruction shall be consistent with that plan;

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

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

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

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

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

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

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

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

c. Any communication with a student’s parent or guardian concerning the student’s removal from school and required mental health clearance, including the provision of information provided pursuant to this section, shall be documented in writing.
d. A school district, an educational services commission, and an approved private school for students with disabilities shall minimize the use of the removal of students from school for mental health clearance through the use of other available student intervention programs.

3. a. A school district, an educational services commission, and an approved private school for students with disabilities shall provide the parent or guardian of a student removed from school for a mental health clearance with the Statewide list of licensed mental health clinicians available to conduct the evaluation of the student as developed by the State Board of Education pursuant to subsection d. of section 7 of this act. The school district, educational services commission, and approved private school for students with disabilities shall also provide a student’s parent or guardian with a list of licensed mental health clinicians who are employed by, or under contract with, the school district, educational services commission, or approved private school for students with disabilities who are also available to conduct the evaluation of the student.

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

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

4. The Department of Education shall post on its website training materials and resources available to the employees of school districts, educational services commissions, and approved private schools for students with disabilities who are involved in
determining if a student requires to be removed from school for a mental health clearance. The training materials shall address, at a minimum, the issues of adverse childhood experiences, childhood trauma, cultural competency, and implicit bias which may impact student behavior.

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

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

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

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

a. a definition of what constitutes cause for the removal of a student from school for a mental health clearance, provided that the definition limits those causes to emergencies in which the student is exhibiting behavior at the time that the decision for removal is made that places the student or others in immediate physical danger;
b. any limitations on the use of removal of a student from school for mental health clearance, including other interventions that are required prior to removal, and that the removal is consistent with the provisions of the “Individuals with Disabilities Education Act” (IDEA), 20 U.S.C. §1400 et seq., as applicable, and the notification, home instruction, and mental health clearance cost requirements established pursuant to sections 2 and 3 of this act.

c. the maximum period of time that a student may be removed from school awaiting a mental health clearance before the student is returned to school or provided with an alternate educational placement;

d. the establishment of criteria that a mental health clearance is required to meet and that a school district, an educational services commission, and an approved private school for students with disabilities is required to accept as an appropriate evaluation for clearance to return to school. The regulations shall provide that a school district, educational services commission, and approved private school for students with disabilities shall accept a mental health clearance that meets the established criteria and allows for the immediate return of the student from school if the mental health clearance indicates that return;

e. the development of a Statewide list of licensed mental health clinicians available to conduct mental health clearances that meet the criteria established pursuant to subsection d. of this section;

f. the actions to be taken by a school district, an educational services commission, and an approved private school for students with disabilities if a student’s mental health clearance indicates that at the time of the mental health clearance, the student is substantially likely to injure themselves or others and should not return to school. The regulations shall include the standards for a hearing that will provide the student and the student’s parent or guardian an opportunity to challenge a decision to continue the student’s removal from school based on the evaluation. Nothing shall preclude a classified student from pursuing an expedited hearing under the “Individuals with Disabilities Education Act” (IDEA), 20 U.S.C. §1400 et seq. and its implementing regulations; and

g. the actions to be taken by a school district, an educational services commission, and an approved private school for student’s with disabilities upon the return of the student to school, and the resources to be provided by the school district, educational services commission, and approved private school for students with disabilities to the student and the student’s parent or guardian upon the student’s return.

8. This act shall take effect immediately.
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;

4) 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;

5) 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;

6) the family will bear no cost for the mental health clearance except in certain circumstances; and

7) 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
private school for students with disabilities. The website also is to include a list of employees who will serve as a point of contact on the removal of students for mental health clearance.

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

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

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

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

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

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

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

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

A school district, educational services commission, and approved private school for students with disabilities is required to provide the parent or guardian of a student removed from school for mental health clearance with the Statewide list of licensed mental health clinicians available to conduct the evaluation of the student as developed by the State board under its regulations. The school district, educational services commission, and approved private school for students with disabilities is to also provide the parent or guardian with a list of licensed mental health clinicians employed by, or under contract with, the school district, educational services commission, or approved private school for students with disabilities available to conduct the mental health clearance. A parent or guardian may select a licensed mental health clinician who is not on either of these lists to conduct the student’s mental
health clearance, but in this case the parent or guardian will bear the cost of the clearance.

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