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3 Councilmember Mary M. Cheh

Chairman Vincent C. Gray

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6 A BILL

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11 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
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16 Councilmember Cheh introduced the following bill, which was referred to the Committee
17 on _____.

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19 To amend the Placement of Students with Disabilities in Nonpublic Schools Amendment
20 Act of 2006 to require that the State Education Agency develop and administer a
21 Certificate of Approval process for nonpublic special education schools and
22 programs by January 1, 2009; to prohibit the State Education Agency from
23 placing students in nonpublic special education schools or programs that use
24 aversive intervention techniques; to require a site visit and evaluation of the
25 school or program and determine if the school or program uses aversive
26 intervention techniques before a Certificate of Approval is issued; fast-track the
27 appeal process if a Certificate of Approval is revoked, suspended, or denied for a
28 school or program based on the use of aversive intervention techniques; and to
29 require the State Education Agency to report to the Council annually about all the
30 nonpublic special education schools and programs that pertain to District students
31 and publicize the report on the DCPS and State Education Agency websites.

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33 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA,

34 That this act may be cited as the “Protection of Students with Disabilities Amendment
35 Act of 2008”.

36 Sec. 2. The Placement of Students with Disabilities in Nonpublic Schools
37 Amendment Act of 2006, effective October 18, 2007 (D.C. LAW 17-41, D.C. Code § 38-
38 2501), is amended as follows:

39 (a) Section 101 (D.C. Code § 38-2561.01) is amended by adding a new paragraph
40 (4a) to read as follows:

1 “(4a) “Aversive intervention” means specific strategies within the context of
2 behavioral treatment interventions including the following:

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

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

5 “(c) Electric shock;

6 “(d) Pinches and deep muscle squeezes;

7 “(e) Withholding adequate sleep, shelter, bedding or bathroom facilities;

8 “(f) Withholding meals, essential nutrition or hydration; and

9 “(g) Use of chemical restraints instead of positive programs or medical
10 treatments.”.

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

12 (1) By rewriting paragraph (b)(1) as follows:

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

18 “(A) Supports the use of aversive intervention techniques through policy
19 or practice; and

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

22 (2) By adding new subsection (d) to read as follows:

23 “(d) If the SEA has reason to believe a child is being abused or neglected (D.C.

1 Code § 16-2301) in an out-of-state nonpublic special education school or program, the
2 SEA must immediately notify the relevant state’s child welfare agency and the parent or
3 guardian of the child. Upon notification and with parental or guardian consent, the SEA
4 shall work with the parent or guardian to take immediate steps to ensure the safety and
5 health of the child.”.

6 (c) Section 107(a) (D.C. Code § 38-2561.07) is amended to read as follows:

7 “(a) The SEA shall develop and administer a Certificate of Approval process for
8 nonpublic special education schools or programs that serve District of Columbia students
9 with disabilities with funding from the District of Columbia government by January 1st
10 2009. The Certificate of Approval process shall include an evaluation of the nonpublic
11 special education school or program, including an on-site inspection of the operations and
12 facilities of the school or program. The SEA shall issue a Certificate of Approval to a
13 nonpublic special education school or program after determining that:

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

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

19 “(3) The school or program prohibits by policy and practice aversive
20 intervention techniques.”.

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

22 “Subsection (a) is amended by adding new paragraph (4A) to read as follows:

23 “(4A) Supports aversive intervention techniques through policy or practice”;

1 “(2) Paragraph (b)(2) is amended to read as follows:

2 “(2)(A) Except as set forth in subparagraph (B) of this paragraph, a nonpublic
3 special education school or program determined to be in violation of subsection (a) of this
4 section may request a hearing before an independent panel of the SEA. The request shall
5 be in writing and submitted to the SEA within 30 days of receipt of the written notice
6 required under paragraph (1). The panel that reviews the SEA decision shall not contain
7 any individual who participated in the decision to issue the original notice.

8 “(B) A nonpublic special education school or program determined to be in
9 violation of subsection (4A) may request a hearing before an independent panel of the
10 SEA. The request shall be in writing and submitted to the SEA within 10 days of receipt
11 of the written notice required under paragraph (1) of this subsection. The panel that
12 reviews the SEA decision shall not contain any individual who participated in the
13 decision to issue the original notice.”.

14 “(3) Paragraph (b)(3) is amended to read as follows:

15 “(3)(A) Except as set forth in subparagraph (B) of this section, the SEA shall hold
16 a hearing within 30 days of receiving a written request, and shall issue its decision no
17 later than 10 days after the hearing. The decision of the SEA panel shall be final and not
18 appealable.”

19 “(B) The SEA shall hold a hearing within 15 days of receiving a written request,
20 and shall issue its decision not later than 10 days after the hearing, if the school or
21 program appealing the SEA’s decision to revoke, refuse to renew, deny, or suspend the
22 Certificate of Approval is due to a violation of subsection (4A). The decision of the SEA
23 panel shall be final and not appealable.”.

1 (d) A new Section 116 is added to read as follows:

2 “Sec. 116. Reporting Requirements.

3 “ (a) The SEA shall report to the Council annually, on or before the 1st day of the
4 school year, information concerning students placed in nonpublic special education
5 schools or programs as follows:

6 “(1) The name and location of each nonpublic special education school or
7 program issued or denied, a certificate of approval with the SEA, including the status of
8 each, and the number of children assigned to each school or program by the SEA;

9 “(2) For each nonpublic special education school or program listed in
10 paragraph (1) of this subsection, information concerning whether:

11 “(A) Any enforcement action has been taken with respect to the
12 license, certificate or charter held by the school or program, and if the school or program
13 has taken or is taking any action with respect to such enforcement;

14 “(B) Any report of abuse or neglect occurring in the school or
15 program regarding any student placed by the SEA in the facility;

16 “(C) Any investigation taken as a result of such report by the
17 school or program, including the time it took to complete the investigation and whether
18 the parents or persons in a parental relationship to the student and the SEA have been
19 informed of the report;

20 “(D) The progress and outcomes of such investigation; and

21 “(E) Any action taken as a result of such investigation by the
22 facility; provided that the information shall not be reported in a manner that violates any

1 applicable provision of federal, state, or local law relating to the privacy of student
2 information.

3 “(b) The report shall be available to the public on the Internet sites of the SEA and
4 the District of Columbia Public Schools.”.

5 Sec. 3. Fiscal impact statement.

6 The Council adopts the fiscal impact statement in the committee report as the
7 fiscal impact statement required by section 602(c)(3) of the District of Columbia Home
8 Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-
9 206.02(c)(3)).

10 Sec. 4. Effective date.

11 This act shall take effect following approval by the Mayor (or in the event of veto
12 by the Mayor, action by the Council to override the veto), a 30-day period of
13 Congressional review as provided in section 602(c)(1) of the District of Columbia Home
14 Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-
15 206.02(c)(1)), and publication in the District of Columbia Register.