

115TH CONGRESS
2D SESSION

S. 3686

To promote minimum State requirements for the prevention and treatment of concussions caused by participation in school sports, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 29, 2018

Mr. DURBIN introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To promote minimum State requirements for the prevention and treatment of concussions caused by participation in school sports, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Protecting Student
5 Athletes from Concussions Act of 2018”.

6 **SEC. 2. MINIMUM STATE REQUIREMENTS.**

7 (a) MINIMUM REQUIREMENTS.—Each State that re-
8 ceives funds under the Elementary and Secondary Edu-
9 cation Act of 1965 (20 U.S.C. 6301 et seq.) and does not

1 meet the requirements described in this section, as of the
 2 date of enactment of this Act, shall, not later than the
 3 last day of the fifth full fiscal year after the date of enact-
 4 ment of this Act (referred to in this Act as the “compli-
 5 ance deadline”), enact legislation or issue regulations es-
 6 tablishing the following minimum requirements:

7 (1) LOCAL EDUCATIONAL AGENCY CONCUSSION
 8 SAFETY AND MANAGEMENT PLAN.—Each local edu-
 9 cational agency in the State, in consultation with
 10 members of the community in which such agency is
 11 located, shall develop and implement a standard plan
 12 for concussion safety and management that—

13 (A) educates students, parents, and school
 14 personnel about concussions, through activities
 15 such as—

16 (i) training school personnel, including
 17 coaches, teachers, athletic trainers, related
 18 services personnel, and school nurses, on
 19 concussion safety and management, includ-
 20 ing training on the prevention, recognition,
 21 and academic consequences of concussions
 22 and response to concussions; and

23 (ii) using, maintaining, and dissemi-
 24 nating to students and parents—

1 (I) release forms and other ap-
 2 propriate forms for reporting and
 3 record keeping;

4 (II) treatment plans; and

5 (III) prevention and post-injury
 6 observation and monitoring fact
 7 sheets about concussion;

8 (B) encourages supports, where feasible,
 9 for a student recovering from a concussion (re-
 10 gardless of whether or not the concussion oc-
 11 curred during school-sponsored activities, dur-
 12 ing school hours, on school property, or during
 13 an athletic activity), such as—

14 (i) guiding the student in resuming
 15 participation in athletic activity and aca-
 16 demic activities with the help of a multi-
 17 disciplinary concussion management team,
 18 which may include—

19 (I) a health care professional, the
 20 parents of such student, a school
 21 nurse, relevant related services per-
 22 sonnel, and other relevant school per-
 23 sonnel; and

24 (II) an individual who is assigned
 25 by a public school to oversee and

1 manage the recovery of such student;
 2 and

3 (ii) providing appropriate academic
 4 accommodations aimed at progressively re-
 5 introducing cognitive demands on the stu-
 6 dent; and

7 (C) encourages the use of best practices
 8 designed to ensure, with respect to concussions,
 9 the uniformity of safety standards, treatment,
 10 and management, such as—

11 (i) disseminating information on con-
 12 cussion safety and management to the
 13 public; and

14 (ii) applying uniform best practice
 15 standards for concussion safety and man-
 16 agement to all students enrolled in public
 17 schools.

18 (2) POSTING OF INFORMATION ON CONCUS-
 19 SIONS.—Each public elementary school and each
 20 public secondary school shall post on school grounds,
 21 in a manner that is visible to students and school
 22 personnel, and make publicly available on the school
 23 website, information on concussions that—

24 (A) is based on peer-reviewed scientific evi-
 25 dence (such as information made available by

1 the Centers for Disease Control and Preven-
2 tion);

3 (B) shall include information on—

4 (i) the risks posed by sustaining a
5 concussion;

6 (ii) the actions a student should take
7 in response to sustaining a concussion, in-
8 cluding the notification of school personnel;
9 and

10 (iii) the signs and symptoms of a con-
11 cussion; and

12 (C) may include information on—

13 (i) the definition of a concussion;

14 (ii) the means available to the student
15 to reduce the incidence or recurrence of a
16 concussion; and

17 (iii) the effects of a concussion on
18 academic learning and performance.

19 (3) RESPONSE TO CONCUSSION.—If an indi-
20 vidual designated from among school personnel for
21 purposes of this Act, one of whom must be in at-
22 tendance at every school-sponsored activity, suspects
23 that a student has sustained a concussion (regard-
24 less of whether or not the concussion occurred dur-

1 ing school-sponsored activities, during school hours,
2 on school property, or during an athletic activity)—

3 (A) the student shall be—

4 (i) immediately removed from partici-
5 pation in a school-sponsored athletic activ-
6 ity; and

7 (ii) prohibited from returning to par-
8 ticipate in a school-sponsored athletic ac-
9 tivity on the day that student is removed
10 from such participation; and

11 (B) the designated individual shall report
12 to the parent or guardian of such student—

13 (i) any information that the des-
14 ignated school employee is aware of re-
15 garding the date, time, and type of the in-
16 jury suffered by such student (regardless
17 of where, when, or how a concussion may
18 have occurred); and

19 (ii) any actions taken to treat such
20 student.

21 (4) RETURN TO ATHLETICS.—If a student has
22 sustained a concussion (regardless of whether or not
23 the concussion occurred during school-sponsored ac-
24 tivities, during school hours, on school property, or
25 during an athletic activity), before such student re-

1 assumes participation in school-sponsored athletic ac-
2 tivities, the school shall receive a written release
3 from a health care professional, that—

4 (A) states that the student is capable of
5 resuming participation in such activities; and

6 (B) may require the student to follow a
7 plan designed to aid the student in recovering
8 and resuming participation in such activities in
9 a manner that—

10 (i) is coordinated, as appropriate, with
11 periods of cognitive and physical rest while
12 symptoms of a concussion persist; and

13 (ii) reintroduces cognitive and phys-
14 ical demands on such student on a pro-
15 gressive basis only as such increases in ex-
16 ertion do not cause the reemergence or
17 worsening of symptoms of a concussion.

18 (b) NONCOMPLIANCE.—

19 (1) FIRST YEAR.—If a State described in sub-
20 section (a) fails to comply with subsection (a) by the
21 compliance deadline, the Secretary of Education
22 shall reduce by 5 percent the amount of funds the
23 State receives under the Elementary and Secondary
24 Education Act of 1965 (20 U.S.C. 6301 et seq.) for

1 the first fiscal year following the compliance dead-
 2 line.

3 (2) SUCCEEDING YEARS.—If the State fails to
 4 so comply by the last day of any fiscal year following
 5 the compliance deadline, the Secretary of Education
 6 shall reduce by 10 percent the amount of funds the
 7 State receives under that Act for the following fiscal
 8 year.

9 (3) NOTIFICATION OF NONCOMPLIANCE.—Prior
 10 to reducing any funds that a State receives under
 11 the Elementary and Secondary Education Act of
 12 1965 (20 U.S.C. 6301 et seq.) in accordance with
 13 this subsection, the Secretary of Education shall
 14 provide a written notification of the intended reduc-
 15 tion of funds to the State and to the appropriate
 16 committees of Congress.

17 **SEC. 3. RULE OF CONSTRUCTION.**

18 Nothing in this Act shall be construed to affect civil
 19 or criminal liability under Federal or State law.

20 **SEC. 4. DEFINITIONS.**

21 In this Act:

22 (1) CONCUSSION.—The term “concussion”
 23 means a type of mild traumatic brain injury that—

1 (A) is caused by a blow, jolt, or motion to
 2 the head or body that causes the brain to move
 3 rapidly in the skull;

4 (B) disrupts normal brain functioning and
 5 alters the mental state of the individual, caus-
 6 ing the individual to experience—

7 (i) any period of observed or self-re-
 8 ported—

9 (I) transient confusion, dis-
 10 orientation, or impaired consciousness;

11 (II) dysfunction of memory
 12 around the time of injury; or

13 (III) loss of consciousness lasting
 14 less than 30 minutes; or

15 (ii) any 1 of 4 types of symptoms, in-
 16 cluding—

17 (I) physical symptoms, such as
 18 headache, fatigue, or dizziness;

19 (II) cognitive symptoms, such as
 20 memory disturbance or slowed think-
 21 ing;

22 (III) emotional symptoms, such
 23 as irritability or sadness; or

24 (IV) difficulty sleeping; and

25 (C) can occur—

1 (i) with or without the loss of con-
2 sciousness; and

3 (ii) during participation in any orga-
4 nized sport or recreational activity.

5 (2) HEALTH CARE PROFESSIONAL.—The term
6 “health care professional”—

7 (A) means an individual who has been
8 trained in diagnosis and management of trau-
9 matic brain injury in a pediatric population;
10 and

11 (B) includes a physician (M.D. or D.O.) or
12 certified athletic trainer who is registered, li-
13 censed, certified, or otherwise statutorily recog-
14 nized by the State to provide such diagnosis
15 and management.

16 (3) LOCAL EDUCATIONAL AGENCY; STATE.—
17 The terms “local educational agency” and “State”
18 have the meanings given such terms in section 8101
19 of the Elementary and Secondary Education Act of
20 1965 (20 U.S.C. 7801).

21 (4) RELATED SERVICES PERSONNEL.—The
22 term “related services personnel” means individuals
23 who provide related services, as defined under sec-
24 tion 602 of the Individuals with Disabilities Edu-
25 cation Act (20 U.S.C. 1401).

1 (5) SCHOOL-SPONSORED ATHLETIC ACTIVITY.—

2 The term “school-sponsored athletic activity”
3 means—

4 (A) any physical education class or pro-
5 gram of a school;

6 (B) any athletic activity authorized during
7 the school day on school grounds that is not an
8 instructional activity;

9 (C) any extra-curricular sports team, club,
10 or league organized by a school on or off school
11 grounds; and

12 (D) any recess activity.

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