



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-1898/1
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2017 SENATE BILL 876

March 22, 2018 - Introduced by Senators OLSEN, JOHNSON, BEWLEY, COWLES, DARLING and L. TAYLOR, cosponsored by Representatives QUINN, CONSIDINE, BERCEAU, BROSTOFF, CROWLEY, KOOYENGA, POPE, SARGENT, SUBECK, C. TAYLOR, TITTL, FELZKOWSKI and RODRIGUEZ. Referred to Committee on Senate Organization.

1 **AN ACT to repeal** 115.787 (2) (i), 118.305 (6) (a) 1. and 118.305 (6) (a) 3.; **to**
2 **renumber and amend** 118.305 (1) (d), 118.305 (4) (b) and 118.305 (5); **to**
3 **amend** 118.305 (1) (f), 118.305 (2) (f), 118.305 (4) (a) (intro.), 118.305 (4) (a) 2.
4 (intro.), 118.305 (4) (a) 2. d., 118.305 (4) (c) (intro.), 118.305 (4) (c) 1., 118.305 (4)
5 (c) 2., 118.305 (6) (a) (intro.), 118.305 (6) (a) 6., 118.305 (6) (b) 1. and 118.305 (6)
6 (c); and **to create** 115.38 (1) (f), 118.305 (1) (d) 2., 118.305 (1) (dm), 118.305 (1)
7 (ek), 118.305 (1) (em), 118.305 (3) (d) 4., 118.305 (4) (a) 3., 118.305 (4) (b) 2.,
8 118.305 (4) (c) 3. to 6., 118.305 (4) (d), 118.305 (4) (e), 118.305 (5) (b), 118.305 (6)
9 (a) 1f. and 118.305 (6) (a) 1m. of the statutes; **relating to:** the seclusion and
10 physical restraint of pupils.

Analysis by the Legislative Reference Bureau

This bill makes changes to the law governing physical restraint and seclusion of pupils in schools.

Under current law, individuals who work in a public school, including a charter school, or a private school participating in the Special Needs Scholarship Program (SNSP school) may only use seclusion or physical restraint on a pupil at school if

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certain conditions are met. One of the conditions under current law for using seclusion is that a door connecting the room or area in which the pupil is secluded cannot be capable of being locked. This bill further prohibits such a door from having a lock on it, even if the door is not capable of being locked. One of the conditions under current law for using physical restraint is that the individual restraining the pupil may not use certain maneuvers and techniques. This bill adds maneuvers and techniques that place the pupil in a prone position to this list of prohibited maneuvers and techniques.

In addition, under current law, an individual employed by a school (covered individual) may not use physical restraint on a pupil at a public school or a SNSP school unless the covered individual has received training that includes specific components. This bill changes these components of the training by eliminating the requirements to include 1) methods of preventing the need for physical restraint; 2) experience in administering and receiving various types of physical restraint; and 3) that the individual demonstrates proficiency in administering physical restraint and by requiring that the training include 1) evidence-based instruction related to positive behavior supports and interventions; 2) evidence-based techniques shown to prevent or reduce the use of physical restraint; and 3) that the individual demonstrates the ability to identify prohibited techniques in administering physical restraint.

Current law provides certain notification and reporting requirements whenever seclusion or physical restraint is used on a pupil at a public school or an SNSP school. This bill specifies that these notice and reporting requirements apply whenever a covered individual or law enforcement officer uses seclusion or physical restraint on a pupil at the school. In addition, the bill requires the school principal to meet with the covered individuals who participated in the incident to discuss the events that occurred before, during, and after the use of seclusion or physical restraint on a pupil, and how to prevent the need for seclusion or physical restraint in the future.

The bill also creates similar notice, reporting, and debriefing requirements that apply whenever a covered individual or law enforcement officer uses seclusion or physical restraint on an LEA placed pupil at a private school. Under the bill, an "LEA placed pupil" is a pupil who is placed by a local educational agency at a private school to satisfy state or federal special education law or under a contractual agreement that requires the pupil's resident school district to pay the pupil's tuition at the private school.

Under current law, a principal of a public school or a SNSP school must annually report to the school's governing body the number of incidents of seclusion and physical restraint and the total number of pupils involved in the incident. Under the bill, a principal of a public school, SNSP school, or private school at which an LEA placed pupil is placed must report data about incidents of seclusion and physical restraint to the governing body of the school and to the Department of Public Instruction. Additionally, under the bill, the principal's report must provide data about incidents of seclusion separately from incidents of physical restraint and must include the total number of children with disabilities who were involved in each type

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of incident. Under the bill, DPI must include the information reported by principals on incidents of seclusion and physical restraint in the annual school and school district performance report.

Finally, under current law, the first time seclusion or physical restraint is used on a child with a disability, the child's Individualized Education Program team must convene as soon as possible and review the child's IEP to ensure that it contains appropriate interventions and supports to address the behavior of concern. Under the bill, a child's IEP team is required to meet to review the child's IEP as soon as practicable but no later than ten school days after the second time seclusion or physical restraint is used on the child within the same school year.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 115.38 (1) (f) of the statutes is created to read:

2 115.38 (1) (f) Information reported under s. 118.305 (4) (c).

3 **SECTION 2.** 115.787 (2) (i) of the statutes is repealed.

4 **SECTION 3.** 118.305 (1) (d) of the statutes is renumbered 118.305 (1) (d) (intro.)

5 and amended to read:

6 118.305 (1) (d) (intro.) "Governing body" means the governing body in charge

7 of ~~a~~ any of the following:

8 1. A school.

9 **SECTION 4.** 118.305 (1) (d) 2. of the statutes is created to read:

10 118.305 (1) (d) 2. A private school at which an LEA placed pupil is placed by

11 a local educational agency.

12 **SECTION 5.** 118.305 (1) (dm) of the statutes is created to read:

13 118.305 (1) (dm) "Incident" means an occurrence of a covered individual or a

14 law enforcement officer using seclusion or physical restraint on a pupil. It is

15 considered one incident if immediately following the use of seclusion or physical

16 restraint on a pupil, the pupil's behavior presents a clear, present, and imminent risk

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1 to the physical safety of the pupil or others, and a covered individual or law
2 enforcement officer resumes the use of seclusion or physical restraint.

3 **SECTION 6.** 118.305 (1) (ek) of the statutes is created to read:

4 118.305 (1) (ek) "LEA placed pupil" means all of the following:

5 1. A pupil placed at a private school by a local educational agency under s.
6 118.15 (1) (d) 4. or 119.235.

7 2. A child with a disability placed at a private school by a local educational
8 agency to satisfy the requirements under subch. V of ch. 115 or applicable federal law.

9 **SECTION 7.** 118.305 (1) (em) of the statutes is created to read:

10 118.305 (1) (em) "Local educational agency" has the meaning given in s. 115.76
11 (10).

12 **SECTION 8.** 118.305 (1) (f) of the statutes is amended to read:

13 118.305 (1) (f) "Parent" ~~has the meaning given in s. 115.76 (12)~~ means a parent
14 of a pupil, including a natural parent, a guardian, or an individual acting as a parent
15 in the absence of a parent or guardian.

16 **SECTION 9.** 118.305 (2) (f) of the statutes is amended to read:

17 118.305 (2) (f) No door connecting the room or area in which the pupil is
18 secluded to other rooms or areas is capable of being locked or has a lock on it.

19 **SECTION 10.** 118.305 (3) (d) 4. of the statutes is created to read:

20 118.305 (3) (d) 4. Those that place the pupil in a prone position.

21 **SECTION 11.** 118.305 (4) (a) (intro.) of the statutes is amended to read:

22 118.305 (4) (a) (intro.) Whenever a covered individual or a law enforcement
23 officer uses seclusion or physical restraint ~~is used~~ on a pupil at school, the school
24 principal or his or her designee shall do all of the following:

25 **SECTION 12.** 118.305 (4) (a) 2. (intro.) of the statutes is amended to read:

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1 118.305 (4) (a) 2. (intro.) Within 2 business days after the incident and after
2 consulting with the covered individuals and any law enforcement officers present
3 during the incident, prepare a written report containing all of the following
4 information:

5 **SECTION 13.** 118.305 (4) (a) 2. d. of the statutes is amended to read:

6 118.305 (4) (a) 2. d. The names and titles of the covered individuals and any
7 law enforcement officers present during the incident.

8 **SECTION 14.** 118.305 (4) (a) 3. of the statutes is created to read:

9 118.305 (4) (a) 3. Meet with the covered individuals who participated in the
10 incident to discuss all of the following:

11 a. The events preceding, during, and following the use of the seclusion or
12 physical restraint.

13 b. How to prevent the need for seclusion or physical restraint, including the
14 factors that may have contributed to the escalation of behaviors; alternatives to
15 physical restraint, such as de-escalation techniques and possible interventions; and
16 other strategies that the school principal or designee determines are appropriate.

17 **SECTION 15.** 118.305 (4) (b) of the statutes is renumbered 118.305 (4) (b) (intro.)
18 and amended to read:

19 118.305 (4) (b) (intro.) ~~Each~~ The school principal or his or her designee shall
20 retain a report prepared under par. (a) 2. shall be retained by the school and made
21 available for review by shall within 3 business days of the incident do one of the
22 following:

23 1. Send the report to the pupil's parent within 3 business days of the incident
24 by 1st class mail or by electronic transmission.

25 **SECTION 16.** 118.305 (4) (b) 2. of the statutes is created to read:

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1 118.305 (4) (b) 2. Hand deliver the report to the pupil's parent.

2 **SECTION 17.** 118.305 (4) (c) (intro.) of the statutes is amended to read:

3 118.305 (4) (c) (intro.) Annually by ~~September 1~~ the deadline for reporting
4 information to the department under s. 115.38 (1), the principal of each school or his
5 or her designee shall submit to the governing body and the state superintendent a
6 report containing all of the following:

7 **SECTION 18.** 118.305 (4) (c) 1. of the statutes is amended to read:

8 118.305 (4) (c) 1. The number of incidents of seclusion ~~and of physical restraint~~
9 in the school during the previous school year.

10 **SECTION 19.** 118.305 (4) (c) 2. of the statutes is amended to read:

11 118.305 (4) (c) 2. The total number of pupils who were involved in the incidents
12 ~~and the number of children with disabilities who were involved in the incidents.~~ of
13 seclusion reported under subd. 1.

14 **SECTION 20.** 118.305 (4) (c) 3. to 6. of the statutes are created to read:

15 118.305 (4) (c) 3. The number of children with disabilities who were involved
16 in the incidents of seclusion reported under subd. 1.

17 4. The number of incidents of physical restraint in the school during the
18 previous school year.

19 5. The total number of pupils who were involved in the incidents of physical
20 restraint reported under subd. 4.

21 6. The number of children with disabilities who were involved in the incidents
22 of physical restraint reported under subd. 4.

23 **SECTION 21.** 118.305 (4) (d) of the statutes is created to read:

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1 118.305 (4) (d) Whenever a covered individual or a law enforcement officer uses
2 seclusion or physical restraint on an LEA placed pupil at a private school, the
3 administrator of the private school or his or her designee shall do all of the following:

4 1. As soon as practicable, but no later than one business day after the incident,
5 notify the LEA placed pupil's parent and the local educational agency of the incident
6 and of the availability of the written report under subd. 2.

7 2. Within 2 business days after the incident and after consulting with the
8 covered individuals and any law enforcement officers present during the incident,
9 prepare a written report containing all of the following information:

10 a. The LEA placed pupil's name.

11 b. The date, time, and duration of the use of seclusion or physical restraint.

12 c. A description of the incident, including a description of the actions of the
13 pupil before, during, and after the incident.

14 d. The names and titles of the covered individuals and any law enforcement
15 officers who were present during the incident.

16 **SECTION 22.** 118.305 (4) (e) of the statutes is created to read:

17 118.305 (4) (e) An administrator of a private school or his or her designee shall
18 retain a report prepared under par. (d) 2. and shall within 3 business days of the
19 incident do one of the following:

20 1. Send the report by 1st class mail or by electronic transmission to the LEA
21 placed pupil's parent and to the local educational agency.

22 2. Hand deliver the report to the LEA placed pupil's parent and to the local
23 educational agency.

24 **SECTION 23.** 118.305 (5) of the statutes is renumbered 118.305 (5) (intro.) and
25 amended to read:

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1 118.305 (5) CHILD WITH A DISABILITY. (intro.) The ~~first~~ 2nd time that seclusion
2 or physical restraint is used on a child with a disability within the same school year,
3 the child's individualized education program team shall convene in the manner
4 provided in s. 115.787 (4) as soon as ~~possible~~ practicable after the incident but no
5 later than 10 school days after the incident. The child's individualized education
6 program team shall review the child's individualized education program and revise
7 it as the individualized education program team determines necessary to ensure that
8 it contains all of the following:

9 (a) The individualized education program includes appropriate positive
10 behavioral interventions and supports and other strategies to address the behavior
11 of concern, ~~as provided in s. 115.787 (2) (i), and revise it if necessary.~~

12 **SECTION 24.** 118.305 (5) (b) of the statutes is created to read:

13 118.305 (5) (b) That the interventions, supports, and other strategies included
14 in the individualized education program related to a behavior that resulted in the use
15 of seclusion or physical restraint on the child are based on a functional behavioral
16 assessment of that behavior.

17 **SECTION 25.** 118.305 (6) (a) (intro.) of the statutes is amended to read:

18 118.305 (6) (a) (intro.) Except as provided in par. (c), no covered individual may
19 use physical restraint on a pupil at school unless he or she has received training ~~in~~
20 ~~the use of physical restraint~~ that includes all of the following components:

21 **SECTION 26.** 118.305 (6) (a) 1. of the statutes is repealed.

22 **SECTION 27.** 118.305 (6) (a) 1f. of the statutes is created to read:

23 118.305 (6) (a) 1f. Evidence-based instruction related to positive behavioral
24 supports and interventions, safe physical escort, understanding antecedents,
25 de-escalation, conflict prevention, and conflict management.

