2009 DRAFTING REQUEST

Bill

Received: **11/30/2009**

Received By: **tkuczens**

Wanted: **As time permits**

Identical to LRB:

For: **Julie Lassa (608) 266-3123**

By/Representing: **Jessica Kelly**

This file may be shown to any legislator: **NO**

Drafter: **tkuczens**

May Contact:

Addl. Drafters:

Subject: **Education - school boards**

Extra Copies: **pg**

Submit via email: **YES**

Requester's email: **Sen.Lassa@legis.wisconsin.gov**

Carbon copy (CC:) to: **tracy.kuczenski@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

positive behavioral interventions and supports

Instructions:

See attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	tkuczens 11/30/2009	csicilia 12/01/2009		_____ _____			S&L
/1			phenry 12/01/2009	_____ _____	sbasford 12/01/2009	sbasford 12/01/2009	

FE Sent For: at intro 1/22/10

<END>

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/?	tkuczens	/1 gs 12/1 09	12/ pH	12/ pH			

FE Sent For:

<END>

Kuczenski, Tracy

From: Kelly, Jessica
Sent: Monday, November 30, 2009 3:21 PM
To: Kuczenski, Tracy
Cc: Ludwig, Frederic
Subject: Companion

Attachments: 09-24251.pdf

09-24251.pdf (88 KB) → Positive behavioral interventions and supports

Tracy, did I ever ask for a companion to this bill? I send out a cosponsorship notice without doing a drafting request I think! Oops!

Any way I can just get it jacketed and sent here by next Tuesday, latest?

Thanks.

Jessica Ford Kelly
Office of Senator Julie Lassa
State Capitol, Room 323 South
P.O. Box 7882
Madison, WI 53708
1-800-925-7491 tollfree
608-266-3123 local
608-267-6797 fax

From 2425/1

3915/1

State of Wisconsin
2009 – 2010 LEGISLATURE

LRB-~~2425/1~~
TKK:cjs:jf
RMNR
Stays

2009 BILL

11/30/09
No changes
by 12/1/09

Reiger Cat

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AN ACT ***to renumber*** 118.40 (5); ***to amend*** 115.797 (1) (a), 115.80 (1) (a) 2., 115.80 (2m) (a) and 115.80 (2m) (e); and ***to create*** 115.76 (13m), 115.76 (16m), 115.76 (16o), 115.7825, 115.787 (2) (i), 115.80 (1) (a) 1m., 118.305, 118.40 (5) (bm) and (cm) and 119.23 (10) (a) 8. of the statutes; **relating to:** the use of positive behavioral interventions and supports and aversive interventions in schools and requiring the exercise of rule–making authority.

Analysis by the Legislative Reference Bureau

This bill regulates the use of aversive interventions in schools. The bill defines "school" as a school operated by a school district, a charter school, a private school in which a child with a disability is enrolled following the placement or referral of that child to the private school by a local educational agency, a private school participating in the Milwaukee Parental Choice Program, and a school operated by a county children with disabilities education board. The bill defines "aversive intervention" as deliberate action, including physical restraint, seclusion, and timeout, taken by a school employee to establish a negative association between certain behaviors and the deliberate action. "Physical restraint" is defined in the bill as a restriction imposed by a person that immobilizes or reduces the ability of a pupil to freely move his or her arms, legs, or head. "Timeout" is defined in the bill as a behavioral management technique administered by a school employee that involves the separation of a pupil from his or her class and the placement of the pupil in a

timeout room. The bill defines "timeout room" as an enclosed setting or isolated area from which a pupil is capable of leaving. In contrast, "seclusion" is defined in the bill as the placement of a pupil in a setting from which the pupil is incapable of leaving.

The bill requires each school to designate an employee to serve as a school–based resource person to assist other school employees with the implementation of positive behavioral interventions and supports and to appropriately administer physical restraints and timeout. The bill defines "positive behavioral interventions and supports" as a set of evidence–based practices used to organize teaching and learning environments and experiences for a pupil which facilitate the pupil's successful self–awareness, self–management, and engagement with others and with the learning process. The bill requires the Department of Public Instruction (department) to establish a training and certification program to be completed before a person may be designated as the school–based resource person.

The bill also requires the department to establish a training program to provide instruction to school employees on the safe, effective, and appropriate use of physical restraint and timeout. The bill defines a "school employee" to include a person who is under a contract with a school. No school employee may use physical restraint or a timeout on a pupil unless the employee has completed the training and obtained certification under the program.

The bill prohibits a school employee from using seclusion on a pupil, using any physical restraint that poses certain identified risks to a pupil, or using any mechanical restraint on a pupil. The bill defines "mechanical restraint" as a device that restricts a pupil's freedom of movement or normal access to a portion of his or her body and that the pupil cannot easily remove. "Mechanical restraint" does not, however, include a protective or stabilizing device that is prescribed by a health care professional for a child with a disability. The bill also prohibits a school employee from intentionally releasing noxious, toxic, caustic, or otherwise unpleasant substances near a pupil. A school employee may use physical restraint or a timeout on a pupil only if certain requirements, established in the bill, are met.

The bill limits both the circumstances under which physical restraint or a timeout may be used on a pupil and also the period for which physical restraint or a timeout may be used on a pupil. Physical restraint may be used only in the case of an emergency, and only if other less intrusive interventions have failed and the school has provided the parent of the pupil with a description of any physical restraint that might be used. If the pupil is a child with a disability, the individualized education program (IEP) prepared for that child must have a behavioral intervention plan (BIP) and the BIP must authorize the use of physical restraint in order for physical restraint to be used. Unless the school employee obtains permission from the school principal, in the manner provided in the bill, to extend the use of physical restraint, the school employee must stop the use of physical restraint as soon as the purpose for which the physical restraint is used is achieved or within 15 minutes, whichever is sooner.

Except in the case of an emergency, a timeout may be used only if other less intrusive interventions have failed and only if the pupil's parent has seen the timeout room and consented to the use of a timeout in writing. If the pupil is a child with a

disability, the child's IEP must have a BIP and the BIP must authorize the use of timeout in order for timeout to be used. In the case of an emergency, written consent of the pupil's parent is not required for the use of a timeout on a pupil, and, if the pupil is a child with a disability, the child need not have a BIP which authorizes the use of timeout. Unless the school employee obtains permission from the school principal, in the manner provided in the bill, to extend the use of timeout, the school employee must stop the use of timeout as soon as the purpose for which the timeout is used is achieved or within 15 minutes, whichever is sooner.

Before a room may be used as a timeout room, the room must be approved for that use by the school district if the room is located in a school operated by or a charter school established by the school district, or by the state superintendent if the room is located in an independent charter school or in a private school subject to the requirements of the bill. The bill establishes requirements which a proposed timeout room must satisfy in order to be approved for use as a timeout room.

The bill requires a school to orally notify the parent of a pupil on whom physical restraint or, in certain circumstances, a timeout is used as soon as practicable but in no event later than the end of the day in which the physical restraint or timeout is used. The bill requires each school to establish procedures for the review of the use of physical restraint and timeout in the school. The bill also requires each school, annually and upon the request of the department, to submit a written report containing a summary of each use of physical restraint and certain instances in which a timeout is used. The bill establishes procedures for the parent of a pupil, including a pupil who is a child with a disability, to seek a hearing on or file a written complaint regarding the use of physical restraint or a timeout on that pupil. The bill permits the parent to appeal a determination made at a hearing or in response to the written complaint to the state superintendent.

Finally, the bill requires a local educational agency to prepare a BIP for a child with a disability who has not responded to the behavioral approaches specified in the child's IEP or if the child exhibits any of the following behaviors: 1) assaultive or self–injurious behavior; 2) behavior that causes property damage; or 3) behavior that significantly interferes with the implementation of the child's IEP. The BIP must contain certain information derived from a functional behavioral assessment of the child, including a description of the specific behaviors underlying the need for the BIP, strategies to minimize these behaviors, and recommendations for teaching and reinforcing appropriate alternative and adaptive behaviors. A BIP may authorize the use of physical restraint or timeout on the child, but only if the parent consents in writing to the use of physical restraint or a timeout, and only if the use of physical restraint or timeout is consistent with the requirements established in this bill.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 115.76 (13m) of the statutes is created to read:

2 115.76 **(13m)** "Physical restraint" has the meaning given in s. 118.305 (1) (k).

3 **SECTION 2.** 115.76 (16m) of the statutes is created to read:

4 115.76 **(16m)** "Timeout" has the meaning given in s. 118.305 (1) (p).

5 **SECTION 3.** 115.76 (16o) of the statutes is created to read:

6 115.76 **(16o)** "Timeout room" has the meaning given in s. 118.305 (1) (q).

7 **SECTION 4.** 115.7825 of the statutes is created to read:

8 **115.7825 Behavioral intervention plan and functional behavioral**
9 **assessment. (1)** BEHAVIORAL INTERVENTION PLAN. (a) The local educational agency
10 shall ensure that a behavioral intervention plan is prepared for a child with a
11 disability who has not responded to the behavioral approaches specified in the child's
12 individualized education program or who exhibits any of the following behaviors:

13 1. Assaultive or self–injurious behavior.

14 2. Behavior that causes property damage.

15 3. Behavior that significantly interferes with the implementation of the child's
16 individualized education program.

17 (b) A behavioral intervention plan prepared under this subsection shall include
18 all of the following:

19 1. Baseline information about the behaviors of the child that are of a type
20 described in par. (a) 1. to 3. obtained through the functional behavioral assessment
21 conducted under sub. (2).

22 2. Intervention strategies to be used to minimize the occurrence of each
23 behavior identified in subd. 1.

24 3. Recommendations for teaching and reinforcing appropriate alternative and
25 adaptive behaviors.

1 4. Criteria to determine the effectiveness of the interventions under subd. 2.
2 and the alternative and adaptive behaviors under subd. 3. The criteria under this
3 subdivision shall measure the frequency, duration, and intensity of each behavior
4 identified under subd. 1.

5 5. A schedule for monitoring and reporting on the implementation and
6 effectiveness of the plan prepared under this subsection. The monitoring required
7 under this subdivision shall identify any indirect or collateral effects of the use of
8 aversive interventions on the child with a disability, including increases in
9 aggressive or escape behaviors, health–related effects, and emotional reactions.

10 (c) A behavioral intervention plan may authorize the use of physical restraint
11 or timeout on a child with a disability consistent with the requirements under s.
12 118.305 if the child's parent consents in writing as provided under this paragraph.
13 The local educational agency shall provide the parent with a copy of the written
14 consent and shall retain the original written consent in its records for the child.
15 Consent under this paragraph is valid for 12 months beginning on the date on which
16 consent is given unless withdrawn by the parent of the child. A parent may withdraw
17 consent at any time for any reason. To obtain consent under this paragraph, the local
18 educational agency shall do all of the following:

19 1. Provide the parent with specific, complete, and accurate information in the
20 parent's native language about all of the following:

21 a. The purposes for which the physical restraint or timeout will be used.

22 b. The manner in which physical restraint or timeout may be administered.

23 c. Any expected side effects or risks of side effects from the use of physical
24 restraint or timeout.

1 d. Alternative behavioral management techniques that may be used prior to
2 or instead of physical restraint or timeout.
3 e. Any possible or probable consequences of withholding consent to use physical
4 restraint or timeout.
5 f. The period for which consent is effective and the fact that the parent may
6 withdraw consent at any time for any reason.
7 2. Provide the parent with a description, in the parent's native language, of
8 each physical restraint that may be used.
9 3. Provide the parent with an opportunity to see and enter the timeout room.
10 4. Provide the parent with sufficient time, but at least 24 hours, to review and
11 consider the information presented under subds. 1. to 3. and to ask questions before
12 requesting the parent to give consent.
13 **(2)** FUNCTIONAL BEHAVIORAL ASSESSMENT. (a) The local educational agency shall
14 arrange for a functional behavioral assessment to be conducted for each child with
15 a disability for whom a behavior intervention plan is required under sub. (1). The
16 functional behavioral assessment shall establish a baseline measure of the child's
17 behaviors that are of a type described in sub. (1) (a) 1. to 3. and shall contain all of
18 the following information:
19 1. A description of each behavior in concrete terms.
20 2. The frequency and duration of each behavior described in subd. 1. and the
21 manner in which the behavior changes in intensity over the course of the day or with
22 changes in variables including the child's activity or setting or the presence of others.
23 3. An identification of the significant factors, including contextual, cognitive,
24 and affective factors that contribute to each behavior described in subd. 1.

1 4. A hypothesis describing the purpose the behavior described in subd. 1. serves
2 for the child, the conditions under which the behavior described in subd. 1. usually
3 occurs, and the probable actions or inactions of others that serve to perpetuate the
4 behavior, provided in sufficient detail that the hypothesis may form the basis for
5 recommendations to be included in a behavioral intervention plan prepared under
6 sub. (1).

7 (b) A functional behavioral assessment conducted under this section shall be
8 based on multiple sources of data, including information obtained from direct
9 observation of the child with a disability by the child's teachers and related service
10 providers, information obtained from the child, the child's parent, and any relevant
11 community treatment providers of the child, and a review of the child's pupil records.

12 **SECTION 5.** 115.787 (2) (i) of the statutes is created to read:

13 115.787 **(2)** (i) If required under s. 115.7825, a behavioral intervention plan.

14 **SECTION 6.** 115.797 (1) (a) of the statutes is amended to read:

15 115.797 **(1)** (a) "Dispute" means any disagreement between parties concerning
16 the proposal or refusal to initiate or change the evaluation, individualized education
17 program or educational placement of a child with a disability or the provision of a free
18 appropriate public education to <u>or the use of physical restraint or timeout on</u> such
19 a child. "Dispute" includes any such disagreement between parties that arises before
20 the filing of a request for a hearing under s. 115.80 or in which other processes,
21 including a hearing under s. 115.80 or litigation, have been requested or commenced.

22 **SECTION 7.** 115.80 (1) (a) 1m. of the statutes is created to read:

23 115.80 **(1)** (a) 1m. A parent, or the attorney representing the child, may file a
24 written request for a hearing within one year after the parent learns of the use by
25 the local educational agency of physical restraint or timeout on the parent's child,

1 except that, if the local educational agency has not previously provided the parent
2 or the attorney representing the child with notice of the right to request a hearing
3 under this subdivision, he or she may file a request under this subdivision within one
4 year after the local educational agency provides the notice. The division shall
5 develop a model form to assist parents in filing a request under this subdivision.

6 **SECTION 8.** 115.80 (1) (a) 2. of the statutes is amended to read:

7 115.80 **(1)** (a) 2. The parent, or the attorney representing the child, shall
8 include in the request under subd. 1. or 1m. the name of the child, the address of the
9 residence of the child, the name of the school the child is attending, a description of
10 the nature of the problem of the child relating to the proposed or refused initiation
11 or change or the use of physical restraint or timeout, including facts relating to the
12 problem, and a proposed resolution of the problem to the extent known and available
13 to the parents at the time.

14 **SECTION 9.** 115.80 (2m) (a) of the statutes is amended to read:

15 115.80 **(2m)** (a) Except as provided in par. (c), within 15 days of receiving a
16 request for a hearing under sub. (1) (a) 1. or 1m. and before the hearing is conducted,
17 the local educational agency shall convene a meeting with the child's parents and the
18 relevant members of the individualized education program team who have specific
19 knowledge of the facts identified in the hearing request. At the meeting, the child's
20 parents shall discuss the hearing request and the facts that form the basis of the
21 request and the local educational agency may resolve the issues.

22 **SECTION 10.** 115.80 (2m) (e) of the statutes is amended to read:

23 115.80 **(2m)** (e) If the local educational agency does not resolve the issues
24 presented by the hearing request to the satisfaction of the child's parents within 30

1 days of receipt of the request, the hearing requested under sub. (1) (a) 1. or 1m. may
2 occur.

3 **SECTION 11.** 118.305 of the statutes is created to read:

4 **118.305 Use of positive behavioral interventions and supports and**
5 **aversive interventions. (1)** DEFINITIONS. In this section:

6 (a) "Aversive intervention" means deliberate action, including physical
7 restraint, seclusion, and timeout, taken by a school employee to establish a negative
8 association between certain behaviors and the deliberate action.

9 (b) "Behavioral intervention plan" means a plan developed under s. 115.7825
10 (1).

11 (c) "Child" has the meaning given in s. 115.76 (3).

12 (d) "Child with a disability" has the meaning given in s. 115.76 (5).

13 (e) "Emergency" means a situation in which it is necessary to control a pupil's
14 spontaneous or unpredictable behavior when that behavior poses a clear and present
15 danger of serious physical harm to the pupil or to others and cannot be immediately
16 controlled by a less restrictive technique than the one used by a school employee
17 certified under sub. (4) (c). "Emergency" does not include a situation in which a pupil
18 uses profanity or threatens physical harm to himself or herself or others unless the
19 pupil demonstrates a means of carrying out the threat.

20 (f) "High degree of negligence" means criminal negligence, as defined in s.
21 939.25 (1).

22 (g) "Individualized education program" has the meaning given in s. 115.76 (9).

23 (h) "Local educational agency" has the meaning given in s. 115.76 (10).

24 (i) "Mechanical restraint" means a device that restricts a pupil's freedom of
25 movement or normal access to a portion of his or her body and that the pupil cannot

1 easily remove. "Mechanical restraint" does not include a protective or stabilizing
2 device that is prescribed by a health care professional for a child with a disability in
3 accordance with the child's individualized education program.

4 (j) "Parent" has the meaning given in s. 115.76 (12).

5 (k) "Physical restraint" means a restriction imposed by a person that
6 immobilizes or reduces the ability of a pupil to freely move his or her arms, legs, or
7 head. "Physical restraint" does not include briefly holding a pupil to calm or comfort
8 the pupil, holding a pupil's hand or arm to escort the pupil safely from one area to
9 another, or intervening in a fight.

10 (L) "Positive behavioral interventions and supports" means a set of
11 evidence–based practices used to organize teaching and learning environments and
12 experiences for a pupil which facilitate the pupil's successful self–awareness,
13 self–management, and engagement with others and with the learning process.

14 (m) "School" means a school operated by a school district, a charter school, a
15 private school in which a child with a disability is enrolled as provided in s. 115.77
16 (1m) (d), a private school participating in the program under s. 119.23, and a school
17 operated by a county children with disabilities education board.

18 (n) "School employee" includes a person who is under contract with a school.

19 (o) "Seclusion" means a behavioral control technique that involves placing a
20 pupil in a setting from which the pupil is incapable of leaving.

21 (p) "Timeout" means a behavioral management technique administered by a
22 school employee that involves the separation of a pupil from his or her class and the
23 placement of the pupil in a timeout room.

24 (q) "Timeout room" means an enclosed setting, or other isolated area that is not
25 a classroom, that is used for timeout and from which a pupil is capable of leaving.

1 **(2)** SCHOOL-BASED RESOURCE ON POSITIVE BEHAVIORAL INTERVENTIONS AND
2 SUPPORTS. (a) Each school shall identify at the beginning of each school year at least
3 one school employee who shall serve as a school–based resource on positive
4 behavioral interventions and supports. The employee identified under this
5 paragraph shall do all of the following:

6 1. Maintain certification under sub. (4) (c).

7 2. Obtain certification under par. (b).

8 3. Assist other school employees to implement positive behavioral
9 interventions and supports and safely and appropriately administer physical
10 restraint and timeout in the manner authorized under this section.

11 (b) The department shall establish by rule an advanced, evidence–based
12 training program to be completed by the school employees identified under par. (a).
13 The department shall certify in writing a school employee who successfully
14 completes the training program under this paragraph and demonstrates proficiency
15 in the safe, effective, and appropriate use of each behavioral control technique
16 addressed by the training program. The rules promulgated under this paragraph
17 shall specify the period for which certification is valid and the requirements a person
18 must satisfy to renew certification under this paragraph.

19 **(3)** SECLUSION AND USE OF CERTAIN SUBSTANCES PROHIBITED; PROHIBITED TYPES AND
20 USES OF PHYSICAL AND MECHANICAL RESTRAINT. (a) No school employee may use
21 seclusion on a pupil.

22 (b) No school employee may intentionally release noxious, toxic, caustic, or
23 otherwise unpleasant substances near a pupil for the purpose of controlling or
24 modifying the behavior of or punishing the pupil.

1 (c) No school employee may use physical restraint on a pupil if the physical
2 restraint does any of the following:
3 1. Fails to give adequate attention and care to the pupil's head.
4 2. Places pressure or weight on, or causes the compression of, the chest, lungs,
5 sternum, diaphragm, back, or abdomen of the pupil.
6 3. Obstructs the pupil's circulation or the ability of the pupil to breathe.
7 4. Intentionally causes pain.
8 5. Subjects the pupil to ridicule, humiliation, or emotional trauma.
9 (d) No school employee may use physical restraint or timeout to punish a pupil,
10 for the convenience of the employee or another school employee, or because there is
11 an insufficient number of school employees present to enable the use of less
12 restrictive alternatives, and no school employee may threaten the use of physical
13 restraint or timeout to obtain a pupil's cooperation or otherwise obtain control over
14 a pupil's behavior.
15 (e) No school employee may use a mechanical restraint.
16 **(4)** TRAINING AND CERTIFICATION REQUIRED FOR USE OF PHYSICAL RESTRAINT OR
17 TIMEOUT. (a) No school employee may use physical restraint on a pupil or impose or
18 supervise timeout unless that employee has been certified by the department under
19 this subsection.
20 (b) The department shall establish by rule an evidence–based training program
21 that includes instruction in all of the following:
22 1. Positive behavioral interventions and supports, alternatives to the use of
23 physical restraint and timeout, and techniques for relationship building, the
24 deescalation of problem behaviors, crisis prevention, and crisis intervention.

1 2. The safe, effective, and appropriate use of timeout, including instruction in
2 all of the following:
3 a. How to identify an emergency that may indicate the need for timeout.
4 b. Methods for evaluating the risk or danger of physical harm in specific
5 situations in order to determine whether timeout is warranted.
6 c. The effect of timeout on a pupil.
7 d. Reporting requirements when timeout is used.
8 e. Procedures for investigating and resolving complaints regarding the use of
9 timeout.
10 3. The safe, effective, and appropriate administration of physical restraint,
11 including instruction in all of the following:
12 a. How to identify an emergency that may indicate the need for the use of
13 physical restraint.
14 b. Methods for evaluating the risk of harm in specific situations in order to
15 determine whether the use of physical restraint is warranted.
16 c. The effects of the use of physical restraint on a pupil.
17 d. Methods for ensuring the safety of a pupil and any school employees involved
18 in the use of physical restraint on a pupil.
19 e. Reporting requirements when physical restraint is used.
20 f. Procedures for investigating and resolving complaints regarding the use of
21 physical restraint.
22 (c) The department shall issue a certificate to a person who successfully
23 completes the training program required under this subsection and demonstrates
24 proficiency in the safe, effective, and appropriate use of each behavioral control
25 technique addressed by the training program. Certification under this subsection

1 is valid for 24 months. The department shall renew the certification of any person
2 who requests renewal and successfully recompletes the requirements for
3 certification under this subsection.

4 **(5)** USE OF PHYSICAL RESTRAINT. (a) 1. Before any school employee may use
5 physical restraint on any pupil, the school principal or his or her designee shall
6 provide the pupil's parent with a description of any physical restraint that might be
7 used.

8 2. The use of physical restraint shall require the presence of at least 2 school
9 employees certified under sub. (4) (c).

10 (b) A school employee certified under sub. (4) (c) may, after reviewing and
11 considering any known medical, developmental, or psychological limitations of a
12 child with a disability, use physical restraint on that child in an emergency if both
13 of the following apply:

14 1. Other less intrusive interventions, including positive behavioral
15 interventions and supports, constructive, non–physical deescalation, and
16 restructuring of the child's school environment, have failed or been deemed
17 inappropriate.

18 2. The individualized education program of the child includes a behavioral
19 intervention plan that permits the use of physical restraint and the child's parent has
20 consented in writing to the use of physical restraint in the circumstances under
21 which physical restraint is proposed to be used.

22 (c) A school employee certified under sub. (4) (c) may, after reviewing and
23 considering any known medical, developmental, or psychological limitations of a
24 pupil who is not a child with a disability, use physical restraint on that pupil in an
25 emergency if other less intrusive interventions, including positive behavioral

1 interventions and supports, constructive, non–physical deescalation, and
2 restructuring of the pupil's school environment, have failed or been deemed
3 inappropriate.

4 (d) 1. Except as provided in subd. 2., a school employee who uses physical
5 restraint on a pupil shall ensure that physical restraint is stopped as soon as the
6 purpose for which it is being used is achieved but is used for no more than 15 minutes
7 total in any day.

8 2. If the school employee determines that the use of physical restraint on a pupil
9 may need to exceed 15 minutes, he or she shall, before the end of the 15 minutes
10 authorized under subd. 1., communicate with the school–based resource person
11 identified under sub. (2), who shall evaluate the need for the use of physical restraint
12 on the pupil for more than 15 minutes and obtain the approval of the school principal
13 or his or her designee prior to authorizing the school employee to use physical
14 restraint for more than 15 minutes. The school employee shall comply with any
15 directives issued by the school principal or his or her designee concerning the
16 continued use of physical restraint.

17 (e) A school employee who uses physical restraint on a pupil who uses sign
18 language or an augmentative mode of communication as the pupil's primary mode
19 of communication shall permit the pupil to have his or her hands free of physical
20 restraint for brief periods throughout the duration of the use of physical restraint for
21 the purpose of communication, unless the school employee determines that such
22 freedom appears likely to result in harm to the pupil or to others.

23 **(6)** USE OF TIMEOUT. (a) Before a school employee may use a timeout on a pupil,
24 the school principal or his or her designee shall provide the pupil's parent with an
25 opportunity to see and enter the timeout room.

1 (b) Except as provided in par. (c), a school employee certified under sub. (4) (c)
2 may, after reviewing and considering any known medical, developmental, or
3 psychological limitations of a pupil, use timeout on that pupil if both of the following
4 apply:

5 1. Other less intrusive interventions, including positive behavioral
6 interventions and supports, constructive, non–physical deescalation, and
7 restructuring of the pupil's school environment, have failed or been deemed
8 inappropriate.

9 2. a. For a child with a disability, the child's individualized education program
10 includes a behavioral intervention plan, the child's individualized education
11 program permits the use of timeout, and the child's parent has consented in writing
12 to the use of timeout in the circumstances under which timeout is proposed to be
13 used.

14 b. For a pupil who is not a child with a disability, the pupil's parent has
15 consented in writing to the use of timeout in the circumstances under which timeout
16 is proposed to be used.

17 (c) A school employee certified under sub. (4) (c) may, after reviewing and
18 considering any known medical, developmental, or psychological limitations of a
19 pupil, use timeout on that pupil without the written consent of the pupil's parent in
20 an emergency if other less intrusive interventions, including positive behavioral
21 interventions and supports, constructive, non–physical deescalation, and
22 restructuring of the pupil's school environment have failed or been deemed
23 inappropriate.

24 (d) No school employee may use a room as a timeout room unless the room has
25 been approved for that use by the school district if the room is located in a school

1 operated, or a charter school established, by the school district, or the state
2 superintendent if the room is located in a charter school established under s. 118.40
3 (2r), a private school in which a child with a disability is enrolled as provided in s.
4 115.77 (1m) (d), or a private school participating in the program under s. 119.23. The
5 school district or department of public instruction shall require as a condition for
6 approval that a photograph of the room be submitted with the request for approval.
7 No room may be approved as a timeout room unless the room satisfies all of the
8 following:

9 1. It is free of fixtures, electrical outlets, exposed wiring or other objects that
10 could be used by the pupil to harm himself or herself or others and is designed so that
11 the pupil cannot climb up or upon the walls.

12 2. It has an area of at least 48 square feet and a ceiling height that is comparable
13 to the height of the surrounding room or rooms.

14 3. It complies with all state and county fire and safety codes and is equipped
15 with adequate lighting and ventilation.

16 4. It affords the school employee with the means to hear and see the pupil at
17 all times.

18 5. If the timeout room is fitted with a door, the door either has a solid, wood core
19 construction or is constructed of steel.

20 (e) 1. Except as provided in subd. 2., a school employee who uses timeout on a
21 pupil shall ensure that timeout is stopped as soon as the purpose for which it is being
22 used is achieved but is used for no more than 15 minutes total in any day.

23 2. If the school employee determines that the use of timeout on a pupil may need
24 to exceed 15 minutes, he or she shall, before the end of the 15 minutes authorized
25 under subd. 1., communicate with the school–based resource person identified under

1 sub. (2), who shall evaluate the need for the use of timeout for more than 15 minutes
2 and obtain the approval of the school principal or his or her designee prior to
3 authorizing the school employee to use a timeout for more than 15 minutes. The
4 school employee shall comply with any directives issued by the school principal or his
5 or her designee concerning continued use of the timeout.

6 **(7)** PARENTAL NOTIFICATION AND REPORTING FOLLOWING USE OF PHYSICAL RESTRAINT
7 OR TIMEOUT. (a) The school principal or his or her designee shall make reasonable
8 efforts to orally notify the parent of a pupil when any of the following occur as soon
9 as practicable but in no event later than the end of the day of the occurrence:

10 1. Physical restraint has been used on the pupil.

11 2. For a pupil who does not have an individualized education program, the pupil
12 has been placed in a timeout room.

13 3. The pupil has been placed in a timeout room for more than 15 minutes.

14 4. The pupil has been placed in a timeout room 2 or more times within any
15 3–hour period.

16 (b) The school employee who uses physical restraint or timeout in any of the
17 occurrences identified in par. (a) shall, within 24 hours after the occurrence, submit
18 a written report containing the following information to the school principal or his
19 or her designee, which report shall be retained by the school for review by the
20 department:

21 1. The date, time, and duration of the use of physical restraint or timeout.

22 2. A description of the actions of the pupil before, during, and after the
23 occurrence, including a discussion of the pupil's feelings about and reactions to the
24 occurrence.

1 3. A description of any other relevant events preceding the use of the physical
2 restraint or timeout, including the justification for initiating the use of physical
3 restraint or timeout.
4 4. The names of the school employees involved in the occurrence.
5 5. A description of the actions of the school employees under subd. 4. before,
6 during, and after the occurrence, including a discussion of the reactions of the school
7 employees to the occurrence.
8 6. A description of any interventions used prior to the use of the physical
9 restraint or timeout.
10 7. If physical restraint was used, a description of the physical restraint used,
11 including any hold used and the reason the hold was necessary.
12 8. A log of the pupil's behavior during the use of the physical restraint or
13 timeout, including a description of any interaction between the pupil and the school
14 employees.
15 9. A description of any injuries sustained by, and any medical care
16 administered to, the pupil, school employees, or others before, during, or after the use
17 of the physical restraint or timeout.
18 10. A description of any property damage associated with the occurrence.
19 11. A description of future actions to be taken to control the pupil's problem
20 behaviors.
21 12. The name and position of the school employee completing the report.
22 (c) The school principal or his or her designee shall, within 24 hours after the
23 occurrence of any of the events identified under par. (a), send or transmit by 1st class
24 mail or electronic mail or facsimile transmission to the pupil's parent the information

1 contained in the report prepared under par. (b). Each report prepared under this
2 paragraph shall be retained by the school for review by the department.
3 (d) Annually and upon the request of the department, each school district, each
4 operator of a charter school, the governing body of each private school in which a child
5 with a disability is enrolled as provided in s. 115.77 (1m) (d), the governing body of
6 each private school participating in the program under s. 119.23, each county
7 children with disabilities education board that operates a school, and each local
8 educational agency shall submit to the department a written report containing a
9 summary of the occurrences identified in par. (a) for which a report was prepared
10 under par. (b). The information reported under this paragraph shall include all of
11 the following:
12 1. The name of the school at which the occurrence occurred.
13 2. The name of the school employees present before, during, and after the
14 occurrence.
15 3. The number of occurrences involving a child with a disability.
16 4. The duration of the use of physical restraint for each occurrence involving
17 the use of physical restraint.
18 5. The number of timeouts for which a report was required and the duration
19 of each such timeout.
20 6. The number and a description of any injuries related to each occurrence.
21 7. Evidence that the parent of each pupil on whom physical restraint or timeout
22 was used was notified as required under this subsection.
23 **(8)** PROCEDURES FOR REVIEW OF USE OF PHYSICAL RESTRAINT AND TIMEOUT. (a) Each
24 school district, each local educational agency, each operator of a charter school, the
25 governing body of each private school in which a child with a disability is enrolled

1 as provided in s. 115.77 (1m) (d), each county children with disabilities education
2 board that operates a school, and the governing body of each private school
3 participating in the program under s. 119.23 shall establish a procedure for
4 reviewing each occurrence identified in sub. (7) (a). The parent of a pupil on whom
5 physical restraint or timeout was used shall be notified in writing of the date, time,
6 and location of the review at least 10 days before the review is to be held and invited
7 to attend the review.

8 (b) A review conducted under this subsection shall be attended by the
9 school–based resource person identified under sub. (2), school employees involved in
10 the occurrence, and other persons identified by the school–based resource person.
11 The review shall include all of the following:

12 1. The review by school employees involved in the occurrence of the
13 circumstances before, during, and after the use of physical restraint or timeout to
14 determine all of the following:

15 a. Whether proper procedures were followed and whether procedures need to
16 be modified in future occurrences.

17 b. Whether alternative strategies for controlling the situation were utilized.

18 c. Whether the parent of the pupil was notified as required under sub. (7) (a).

19 d. The need for communication with or counselling of any pupil who witnessed
20 the use of physical restraint or timeout.

21 2. For a pupil who is not a child with a disability, all of the following:

22 a. A review of the effectiveness of the use of the physical restraint or timeout.
23 Upon completion of the review under this subd. 2. a., the school employees involved
24 in the occurrence shall work with the parent of the pupil, the school–based resource
25 person, and other appropriate persons to prepare a written individual behavior plan

1 for the pupil that provides for the use of other, specified interventions or the
2 continued use of the intervention used previously.
3 b. A determination as to whether the pupil should be evaluated under s.
4 115.782.
5 (c) The individualized education program team of any child with a disability
6 on whom physical restraint or timeout was used in an occurrence described in sub.
7 (7) (a) shall, within 21 days after the occurrence, convene in the manner provided
8 under s. 115.787 (4) to review the pupil's individualized education program and
9 behavioral intervention plan. The pupil's parent shall be notified in writing of the
10 date, time, and place of a meeting required under this paragraph at least 10 days
11 prior to the meeting. A meeting required under this paragraph shall include all of
12 the following:
13 1. A review of the pupil's written progress, monitoring, and incident reports and
14 the report prepared under sub. (7) (b) following the occurrence.
15 2. If appropriate, interviews with the pupil.
16 3. Concerns regarding the individualized education program and behavioral
17 intervention plan of the pupil's parent.
18 4. A review and discussion of any indirect or collateral effects of the use of
19 aversive interventions on the pupil, including increases in aggressive or escapist
20 behaviors, health–related effects, or emotional reactions.
21 5. If a functional behavioral assessment has not been prepared for the pupil
22 within the preceding 12 months, the completion of a functional behavioral
23 assessment.
24 **(9)** COMPLAINTS. (a) A parent of a child with a disability, or the attorney
25 representing the child, may do any of the following:

1. File a written request for a hearing regarding the use of physical restraint or timeout on the child in the manner provided under s. 115.80 (1) (a) 1m. and 2.

2. Within one year after the parent learns of the use of physical restraint or timeout on the child, file a written complaint regarding the school's compliance with this section with the local educational agency. The parent, or the attorney representing the child, shall provide a copy of the written complaint to the department. The local educational agency shall respond to the complaint within 15 days after receiving the complaint. The parent, or the attorney representing the child, may, within 30 days after the determination of the matters in the complaint under this subdivision, appeal the determination of the local educational agency to the state superintendent. The state superintendent shall review the local educational agency's compliance with this section.

(b) The parent of a pupil who is not a child with a disability, or the attorney representing the pupil, may do any of the following:

1. Within one year after the parent learns of the use of physical restraint or timeout on the pupil, file a written request for a hearing with the school district or, in the case of a pupil enrolled in a charter school under s. 118.40 (2r), with the operator of the charter school or, in the case of a pupil enrolled in a private school participating in the program under s. 119.23, with the governing body of the private school. The parent, or the attorney representing the pupil, shall include in the request the name of the pupil, the address of the residence of the pupil, the name of the school the pupil is attending, a description of the nature of the problem of the pupil relating to the use of physical restraint or timeout, including facts relating to the problem, and a proposed resolution of the problem to the extent known and available to the parents at the time. The parent or attorney representing the pupil

1 shall provide the department with a copy of the request. The school district, operator
2 of the charter school, or governing body of the private school shall hold a hearing on
3 the matters contained in the written request in the manner established by the
4 department by rule. The parent or attorney representing the pupil may appeal a
5 determination received under this subdivision to the state superintendent. The
6 state superintendent shall review the compliance of the school district, operator of
7 the charter school, or governing body of the private school with this section.

8 2. Within one year after the parent learns of the use of physical restraint or
9 timeout on the pupil, file a written complaint regarding the use of physical restraint
10 or timeout on the pupil with the school district or, in the case of a pupil enrolled in
11 a charter school under s. 118.40 (2r), with the operator of the charter school or, in the
12 case of a pupil enrolled in a private school participating in the program under s.
13 119.23, with the governing body of the private school. The parent, or the attorney
14 representing the pupil, shall provide a copy of the written complaint to the
15 department. The school district, operator of the charter school, or governing body of
16 the private school shall respond to the complaint within 15 days after receiving the
17 complaint. The parent or attorney representing the pupil may, within 30 days after
18 a determination of the matters in the complaint under this subdivision, appeal the
19 determination to the state superintendent. The state superintendent shall review
20 the compliance of the school district, operator of the charter school, and governing
21 body of the private school with this section.

22 **(10)** REMEDIES. (a) If a local educational agency, school district, operator of a
23 charter school under s. 118.40 (2r), or governing body of a private school participating
24 in the program under s. 119.23, in its response to a complaint received under sub. (9)
25 (a) 2. or (b) 2. or at a hearing held under sub. (9) (b) 1., finds that the school in which

1 the pupil or child with a disability is enrolled has failed to comply with the
2 requirements of this section, the agency, school district, operator, or governing body
3 shall take corrective action that is appropriate to the needs of the pupil or child with
4 a disability and to achieve compliance with this section.

5 (b) If the state superintendent, in his or her review under sub. (9) (a) 2. or (b)
6 1. or 2. of the compliance with this section of a local educational agency, school
7 district, operator of a charter school, or governing body of a private school, finds that
8 the school in which the pupil or child with a disability is enrolled has failed to comply
9 with the requirements of this section, the state superintendent shall require the
10 agency, school district, operator, or governing body to achieve compliance and shall
11 prescribe corrective action that is appropriate to the needs of the pupil or child with
12 a disability that the agency, school district, operator, or governing body must take to
13 achieve compliance.

14 **(11)** CIVIL LIABILITY EXEMPTIONS. (a) Any school principal or his or her designee
15 or school–based resource person identified under sub. (2), who authorizes a school
16 employee certified under sub. (2) or (4) to use physical restraint or timeout on a pupil
17 as authorized in this section is immune from civil liability for the act of authorization
18 unless it constitutes a high degree of negligence.

19 (b) Any school principal or his or her designee, school employee, or
20 school–based resource person identified under sub. (2) who is certified under sub. (2)
21 or (4) and who uses physical restraint or a timeout on a pupil as authorized in this
22 section is immune from civil liability for his or her act or omission in the use of
23 physical restraint or timeout unless the act or omission constitutes a high degree of
24 negligence.

1 **(12)** RULE-MAKING AUTHORITY. The department may promulgate rules to
2 administer and implement this section.

3 **SECTION 12.** 118.40 (5) of the statutes is renumbered 118.40 (5) (a).

4 **SECTION 13.** 118.40 (5) (bm) and (cm) of the statutes are created to read:

5 118.40 **(5)** (bm) A charter may be revoked by the entity under sub. (2r) (b) that
6 contracted with the charter school if the state superintendent finds that a charter
7 school established under sub. (2r) has failed to comply with the requirements of s.
8 118.305.

9 (cm) The charter of a charter school established and operated by an entity
10 under sub. (2r) (b) may be revoked by the state superintendent if the state
11 superintendent finds that the charter school has failed to comply with the
12 requirements of s. 118.305.

13 **SECTION 14.** 119.23 (10) (a) 8. of the statutes is created to read:

14 119.23 **(10)** (a) 8. Failed to comply with the requirements under s. 118.305.

15 **(END)**

Basford, Sarah

From: Kelly, Jessica
Sent: Tuesday, December 01, 2009 10:32 AM
To: LRB.Legal
Subject: Draft Review: LRB 09-3915/1 Topic: positive behavioral interventions and supports

Please Jacket LRB 09-3915/1 for the SENATE.