
Wisconsin Legislative Council

ACT MEMO



Prepared by: Rachel E. Snyder, Senior Staff Attorney

March 9, 2020

2019 Wisconsin Act 118
[2019 Senate Bill 527]

**Pupil Seclusion and Physical
Restraint**

2019 Wisconsin Act 118 makes several changes to the law regarding the seclusion and physical restraint of pupils in schools.

USE OF SECLUSION OR PHYSICAL RESTRAINT

State law provides that covered individuals¹ who work in public schools, including charter schools, and in private schools that participate in the Special Needs Scholarship Program (SNSP) may not use physical restraint or seclusion on a pupil at school unless certain conditions are met.

Use of Seclusion

One of the conditions for using seclusion on a pupil at a public or SNSP school is that no door connecting the room or area in which the pupil is secluded to other rooms is capable of being locked. In addition to not being capable of being locked, the act provides that such doors may not have a lock on them.

Use of Physical Restraint

One of the conditions for using physical restraint on a pupil at a public or SNSP school is that none of the following maneuvers or techniques are used:

- Those that do not give adequate attention and care to protecting the pupil's head.
- Those that cause chest compression by placing pressure or weight on the pupil's chest, lungs, sternum, diaphragm, back, or abdomen.
- Those that place pressure or weight on the pupil's neck or throat, on an artery, or on the back of the pupil's head or neck, or that otherwise obstruct the pupil's circulation or breathing.

The act adds maneuvers and techniques that place the pupil in a prone position to the list of prohibited maneuvers and techniques.

State law also provides that a covered individual may not use a mechanical or chemical restraint on a pupil, but that the use of supportive equipment for certain reasons under the direction and oversight of

¹ Under both prior law and the act, a "covered individual" is an individual who is: (a) employed by a governing body, or under contract with a governing body as an independent contractor, to provide services for the benefit of the school governed by the governing body; (b) employed by a person under contract with a governing body to provide services for the benefit of the school governed by the governing body; or (c) engaged in student teaching under the supervision of a person who is employed by or under contract with a governing body to provide services for the benefit of the school governed by the governing body. A "covered individual" does not include a member of a governing body or a law enforcement officer who is authorized or designated by the governing body to enforce any law or ordinance, to refer to the appropriate authorities a matter for enforcement of any law or ordinance, or to maintain the physical security and safety of a public school. [ss. 118.125 (1) (bL) 1. and 2. and 118.305 (1) (c), Stats.]

appropriate medical or therapeutic staff does not constitute the use of a mechanical restraint. The act provides that the use of vehicle safety restraints when used as intended during the transport of a pupil in a moving vehicle also does not constitute the use of a mechanical restraint.

CHILDREN WITH DISABILITIES

Under **prior law**, the **first** time that seclusion or physical restraint was used on a child with a disability, the child's individualized education program (IEP) team was required to convene as soon as possible after the incident. The IEP team was required to review the child's IEP to ensure that it contained appropriate positive behavioral interventions and supports and other strategies to address the behavior of concern and to revise the IEP if necessary. Prior law required that, if an IEP team determined that the use of seclusion or physical restraint could reasonably be anticipated for the child, then the IEP was required to include appropriate positive interventions and supports and other strategies that address the behavior of concern and that: (1) were based upon a functional behavior assessment of the behavior of concern; (2) incorporate the use of the term "seclusion" or "physical restraint"; and (3) include positive behavioral supports.

The act instead provides that the **second** time that seclusion or physical restraint is used on a child with a disability **within the same school year**, the child's IEP team must convene as soon as practicable, but no later than 10 school days after the incident. The IEP team must review the child's IEP and revise it as the team determines is necessary to ensure that: (1) the IEP includes appropriate positive behavioral interventions and supports and other strategies to address the behavior of concern; and (2) the interventions, supports, and other strategies included in the IEP related to a behavior of concern that resulted in the use of seclusion or physical restraint are based on a functional behavioral assessment of that behavior.

TRAINING

State law provides that, with limited exception, no covered individual may use physical restraint on a pupil at a public or SNSP school unless he or she has had training that includes specific components.

The act repeals the following training components:

- Methods of preventing the need for physical restraint.
- Experience in administering and receiving various types of physical restraint.

The act adds the following training components:

- Evidence-based instruction related to positive behavioral supports and interventions, safe physical escort, understanding antecedents, de-escalation, conflict prevention, and conflict management.
- Evidence-based techniques, including debriefing, that have been shown to prevent or reduce the use of physical restraint.

The act modifies the training component that requires a trainee to demonstrate **proficiency** in administering physical restraint to instead provide that a trainee must demonstrate **his or her ability to identify prohibited techniques** in administering physical restraint.

NOTIFICATION AND REPORTING

State law requires that when seclusion or physical restraint is used on pupils in school, the school principal take specific steps to consult with involved individuals and memorialize each incident in a report, to notify the pupils' parents, and to annually submit a report to the school's governing body.

Incident Reports

Under **prior law**, within two business days of an incident involving the use of seclusion or physical restraint on a pupil at a public or SNSP school, the school principal was required to consult with the covered individuals present during the incident and prepare a written report that contained specific information relating to the incident.

Under **the act**, the incident report requirements apply whenever a covered individual **or a law enforcement officer** uses seclusion or physical restraint on a pupil at a public school or SNSP school. Thus, under the act, the school principal must consult with the covered individuals and with any law enforcement officers present during the incident and must prepare a written report within two business days of the incident that includes the names and titles of those covered individuals and law enforcement officers.

The act also expands the reporting and response requirements in two ways. First, the act requires that, in addition to preparing a written report, the school principal meet with covered individuals who participated in an incident at a public school or SNSP school to discuss: (1) the events preceding, during, and following the incident; and (2) how to prevent the need for seclusion and physical restraint.

Second, the act expands the application of the incident report requirements to include the use of seclusion or physical restraint on local educational agency² (LEA) placed pupils³ at private schools. Thus, under the act, whenever a covered individual or a law enforcement officer uses seclusion or physical restraint on an LEA placed pupil at a private school, the private school administrator must consult with the covered individuals and with any law enforcement officers present during the incident and must prepare a written report within two business days of the incident that includes the same information that must be included in a report about an incident at a public or SNSP school. However, the act does not require that a private school administrator also meet with covered individuals to discuss the incident and how to prevent the need for seclusion and physical restraint.

Parental Notification

Prior law required that the school principal notify the pupil's parent of the incident and of the availability of the written report as soon as practicable, but no later than one business day after the incident. Prior law also required that the school principal retain the report and make it available for review by the pupil's parent within three business days of the incident.

Under **the act**, the school principal, or the private school administrator in the case of an LEA placed pupil at a private school, must notify the pupil's parent of the incident and of the availability of the written report as soon as practicable, but no later than one business day after the incident. Further, within three business days of the incident, the school principal or the private school administrator must

² The act incorporates a prior existing definition of "local education agency" that generally means the school district in which a child with a disability resides, the Department of Health Services (DHS) if the child with a disability resides in a DHS-operated institution or facility, or the Department of Corrections if the child with a disability resides in a Type 1 juvenile correctional facility or a Type 1 prison. [s. 115.76 (10), Stats.]

³ The act defines "LEA placed pupil" to mean a pupil placed at a private school either under a contract that requires the LEA to pay the pupil's tuition or for the purposes of satisfying state or federal special education requirements.

either: (1) send the report to the pupil's parent by first class mail or by electronic transmission; or (2) hand deliver the report to the pupil's parent.

Annual Reports

Under **prior law**, annually by September 1, each public and SNSP school principal was required to submit a report to the school's governing body that included:

- The number of incidents of seclusion and of physical restraint in the school during the previous school year.
- The total number of pupils who were involved in the incidents.
- The number of children with disabilities who were involved in the incidents.

The act requires that data about seclusion and physical restraint be reported separately and that the data regarding number of pupils involved in each type of incident be disaggregated by total number of pupils and number of children with disabilities. Thus, under the act, annually by October 1, each public and SNSP school principal must submit a report to the school's governing body that includes:

- The number of incidents of seclusion in the school during the previous school year.
- The total number of pupils who were involved in the incidents of seclusion.
- The number of children with disabilities who were involved in the incidents of seclusion.
- The number of incidents of physical restraint in the school during the previous school year.
- The total number of pupils who were involved in the incidents of physical restraint.
- The number of children with disabilities who were involved in the incidents of physical restraint.

Further, the act requires that, annually by December 1, each governing body report the data that it receives about incidents of seclusion and physical restraint from each of its schools to the Department of Public Instruction.

Effective date: March 4, 2020

RES:mca;jal