

## 2009 DRAFTING REQUEST

### Bill

Received: **03/23/2009**

Received By: **tkuczens**

Wanted: **As time permits**

Identical to LRB:

For: **Sandy Pasch (608) 266-7671**

By/Representing: **Fred Ludwig**

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

Drafter: **tkuczens**

May Contact:

Addl. Drafters:

Subject: **Education - handicapped ed.  
Education - miscellaneous**

Extra Copies: **pg**

Submit via email: **YES**

Requester's email: **Rep.Pasch@legis.wisconsin.gov**

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

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### Pre Topic:

No specific pre topic given

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### Topic:

Positive behavioral support and aversive interventions

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### Instructions:

See attached

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### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?				_____			S&L
/P1	tkuczens 04/23/2009	csicilia 05/01/2009	jfrantze 05/01/2009	_____	sbasford 05/01/2009		S&L
	tkuczens 07/03/2009	csicilia 07/16/2009		_____			
/P2	tkuczens 08/31/2009	csicilia 09/09/2009	mduchek 07/17/2009	_____	mbarman 07/17/2009		S&L

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/P3	tkuczens 09/22/2009	csicilia 09/25/2009	phenry 09/09/2009	_____	sbasford 09/09/2009		S&L
/1			mduchek 09/29/2009	_____	cduerst 09/29/2009	sbasford 01/19/2010	

FE Sent For: "/1" @ intro. 1/22/10

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phenry    \_\_\_\_\_    sbasford  
09/09/2009    \_\_\_\_\_    09/09/2009

FE Sent For:

Handwritten notes and signatures:  
1. jgs 9/25 [initials]  
2. 9/29 [initials]  
3. <END> [initials]  
4. kjf [initials]

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FE Sent For:

1 p2 yjs 7/14  
09

JF  
7/16 <END> 7/17

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/?	tkuczens	PI cjs 5/1 09	db 5/1	db/ru 5/1			

FE Sent For:

<END>

## Hanaman, Cathlene

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**From:** Ludwig, Frederic  
**Sent:** Wednesday, March 18, 2009 5:35 PM  
**To:** Hanaman, Cathlene  
**Subject:** re: Aversive Interventions

**Attachments:** Aversive Interventions DRAFT.pdf

Hi Cathlene-

Representative Pasch would like a bill to be prepared regarding positive behavioral support and aversive interventions. Attached is a draft prepared by Disability Rights Wisconsin which she would like to be used as the primary template for the bill. Since you handled Rep. Pasch's involuntary confinement bill, I figured you would be a good place to start on this.

Let me know if you have any questions regarding the bill draft or if I should be contacting somebody else to handle this draft.

Thanks Cathlene!

Fred



Aversive  
Interventions DRAFT.pdf

--

Fred Ludwig  
**Office of Representative Sandy Pasch**  
608.266.7671 (Office)  
888.534.0022 (Toll-free)  
608.282.3622 (Fax)

## Kuczenski, Tracy

---

**From:** Ludwig, Frederic  
**Sent:** Thursday, April 02, 2009 10:42 AM  
**To:** Kuczenski, Tracy  
**Subject:** RE: re: Aversive Interventions

**Attachments:** UPDATED Draft SR Bill\_3 20 09.doc

Tracy,

I was just made aware of the fact that we have an updated draft that Rep. Pasch would like to be used. I would appreciate it if you could confirm that the included file (UPDATED Draft SR Bill\_3 20 09) will be the version you will use as a guide and **not** the previously sent document (Aversive Interventions DRAFT).

Sorry for the confusion Tracy!



UPDATED Draft SR  
Bill\_3 20 09....

--

Fred Ludwig  
**Office of Representative Sandy Pasch**  
608.266.7671 (Office)  
888.534.0022 (Toll-free)  
608.282.3622 (Fax)

---

**From:** Kuczenski, Tracy  
**Sent:** Thursday, April 02, 2009 8:48 AM  
**To:** Ludwig, Frederic  
**Subject:** RE: re: Aversive Interventions

Hi Fred -

I apologize - I have not started working on this draft yet; I have several other drafts that came in ahead of this request. I will try to get to it tomorrow to, ideally, finish it up by the end of next week at the latest (I will be out M-W of next week).

Tracy

*Tracy K. Kuczenski*  
*Legislative Attorney*  
*Wisconsin Legislative Reference Bureau*  
*(608) 266-9867*  
[Tracy.Kuczenski@legis.wisconsin.gov](mailto:Tracy.Kuczenski@legis.wisconsin.gov)

---

**From:** Ludwig, Frederic  
**Sent:** Wednesday, April 01, 2009 5:54 PM  
**To:** Kuczenski, Tracy  
**Subject:** FW: re: Aversive Interventions

Hi Tracy-

I was wondering if you had any idea when the draft for this will probably be prepared by. I do not mean to rush you or anything... we just have some groups who are trying to schedule a press conference around it, so Rep. Pasch would like to know when we could expect it by. Let me know what you think when you get a chance, and thank you very much for your work on this!

Fred

--

Fred Ludwig  
**Office of Representative Sandy Pasch**  
608.266.7671 (Office)  
888.534.0022 (Toll-free)  
608.282.3622 (Fax)

---

**From:** Hanaman, Cathlene  
**Sent:** Thursday, March 19, 2009 9:23 AM  
**To:** Ludwig, Frederic  
**Subject:** RE: re: Aversive Interventions

Fred:

Just so you know, Tracy Kuczenski (6-9867) will be drafting this request.

-Cathlene

---

**From:** Ludwig, Frederic  
**Sent:** Wednesday, March 18, 2009 5:35 PM  
**To:** Hanaman, Cathlene  
**Subject:** re: Aversive Interventions

Hi Cathlene-

Representative Pasch would like a bill to be prepared regarding positive behavioral support and aversive interventions. Attached is a draft prepared by Disability Rights Wisconsin which she would like to be used as the primary template for the bill. Since you handled Rep. Pasch's involuntary confinement bill, I figured you would be a good place to start on this.

Let me know if you have any questions regarding the bill draft or if I should be contacting somebody else to handle this draft.

Thanks Cathlene!

Fred  
<< File: Aversive Interventions DRAFT.pdf >>

--

Fred Ludwig  
**Office of Representative Sandy Pasch**  
608.266.7671 (Office)  
888.534.0022 (Toll-free)  
608.282.3622 (Fax)

## Kuczenski, Tracy

---

**From:** Ludwig, Frederic  
**Sent:** Friday, April 10, 2009 9:49 AM  
**To:** Kuczenski, Tracy  
**Subject:** RE: re: Aversive Interventions

Hi Tracy,

Sorry to keep bombarding you on this. However, Rep. Pasch would like your draft to reflect the following amendment under "Definitions" in the document we provided you:

(s) "School employee" means a person who ~~serves as a volunteer for or~~ is employed by or under contract with a school district, charter school, private school under s. 119.23 or children with disabilities education board.

Let me know if you have any questions Tracy, and thank you once again for your work on this!!

Fred

--  
Fred Ludwig  
**Office of Representative Sandy Pasch**  
608.266.7671 (Office)  
888.534.0022 (Toll-free)  
608.282.3622 (Fax)

---

**From:** Kuczenski, Tracy  
**Sent:** Thursday, April 09, 2009 1:27 PM  
**To:** Ludwig, Frederic  
**Subject:** RE: re: Aversive Interventions

Hi Fred -

I will do my best to have a draft completed by the 20th, but it will be a preliminary (non-introducible) draft with a lengthy drafters note. Is there some smaller part of the bill that I should focus on that could be introduced separately?

Tracy

*Tracy K. Kuczenski*  
*Legislative Attorney*  
*Wisconsin Legislative Reference Bureau*  
*(608) 266-9867*  
[Tracy.Kuczenski@legis.wisconsin.gov](mailto:Tracy.Kuczenski@legis.wisconsin.gov)

---

**From:** Ludwig, Frederic  
**Sent:** Thursday, April 09, 2009 11:51 AM  
**To:** Kuczenski, Tracy  
**Subject:** RE: re: Aversive Interventions

We have a press conference planned around seclusions and restraints on Wednesday, April 22<sup>nd</sup> which we were hoping to unveil the legislation at. We'd obviously like to have a chance to look over it before sending it around for co-sponsorship, so is there a chance that it could be complete by Monday, April 20<sup>th</sup>? I understand that it is a complicated draft and certainly appreciate your work on it Tracy! Let me know what you think when you get a chance.

Thanks,  
Fred

✓ 118.XXX Positive behavioral interventions and supports and aversive interventions.  
 (1) PURPOSE. Positive behavioral interventions and supports shall be used to improve educational outcomes and to assure that all pupils are safeguarded against the use and misuse of various forms of aversive interventions. Each public and nonpublic school shall take steps to assure that each school employee that is responsible for the education, care, or custody of pupils are aware of aversive intervention requirements and the conditions under which they may be used. No public school or nonpublic school shall authorize, permit, or condone the use of aversive interventions which violates this section. Aversive interventions, to the extent permitted, shall only be used as a last resort.<sup>1</sup>

✓ (2) DEFINITIONS. In this section:

✓ (a) "Administrator" means a school principal, district administrator, pupil services director, or a designee.

✓ (b) "Antecedent" means a preceding circumstance, event, object or phenomenon which may trigger a particular behavior or chain of behaviors.<sup>2</sup>

✓ (c) "Aversive interventions" means deliberative activities, including physical restraint, seclusion, and timeout, designed to establish a negative association with a specific behavior.<sup>3</sup>

✓ (d) "Behavioral intervention plan" means a written document that is developed by an individualized education program team under s. 115.77(9) as part of the pupil's individualized education program.<sup>4</sup>

✓ (e) "Child" has the meaning in s. 115.76 (3).<sup>5</sup>

✓ (f) "Child with a disability" has the meaning in s. 115.76 (5).<sup>6</sup>

✓ (g) "De-escalation" means the withdrawal or presentation of stimulus to a situation which causes it to become more controlled, calm, and less dangerous.<sup>7</sup>

✓ (h) "Department" means the department of public instruction.<sup>8</sup>

✓ (i) "Emergency" means a situation in which it is necessary to control a pupil's unpredictable or spontaneous behavior that poses a clear and present danger of serious physical harm to the pupil or to others and that cannot be immediately prevented by a less restrictive technique than the one temporarily applied by a trained school employee. Threats or profanity are not danger of physical harm and shall not be considered as such unless the pupil also demonstrates a means of carrying out the threat.<sup>9</sup>

✓ (j) "Individual Education Program or IEP" has the meaning in s. 115.76 (9).<sup>10</sup>

✓ (k) "Local educational agency" has the meaning in s. 115.76 (10).

✓ (l) "Mechanical restraint" means 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. The term "mechanical restraint" does not include a protective or stabilizing device that is prescribed by a health care professional for a child with a disability in accordance with the child's individualized education program.

✓ (m) "Nonpublic school" means a school that receives funds from the Department for the purpose of providing special education and related services to pupils with disabilities in accordance with s. 115.xx.<sup>11</sup>

✓ (n) "Parent" has the meaning in s. 115.76 (12).

✓ (o) "Physical restraint" means a restriction imposed by a person that immobilizes or reduces the ability of a pupil to move his or her arms, legs, or head freely. "Physical restraint" does not

*Handwritten notes:*  
 - "considered; dealing with it as soon as possible, if possible"  
 - "115.78(2)(b)"  
 - "What can't be prevented? The situation or the approach to resolve the situation?"  
 - "which behavior is about that danger?"  
 - "which behavior?"  
 - "which behavior?"

include briefly holding a pupil to calm or comfort the pupil, holding a pupil's hand or arm to escort the pupil safely from one area to another, breaking up a fight, or obtaining possession of a weapon or other dangerous objects on a pupil or within the control of a pupil.<sup>12</sup>

✓ (p) "Pupil" includes a child with a disability.

(q) "Positive behavioral interventions and supports" means a set of evidence based practices used to organize teaching and learning environments and experiences for pupils which facilitate the pupil's successful self-awareness, self-management, engagement with others and with the learning process.<sup>13</sup>

*do I read by r/d? whole evidence which practices?*

*the definition doesn't seem to fit the term*

✓ (r) "School day" means any day or partial day that pupils are in attendance at the public education programs, agencies or services or sponsored events.<sup>14</sup>

*Why is a sep definition of school day?*

✓ (s) "School employee" means a person who serves as a volunteer for or is employed by or under contract with a school district, charter school, private school under s. 119.23 or children with disabilities education board.

*participating in the program*

✓ (t) "Seclusion" means a behavioral control technique that involves placing a pupil in a setting—

1. that is locked,
2. from which the exit is physically blocked by furniture or another inanimate object or a closed door held shut from the outside, and
3. from which the pupil is not capable of leaving regardless of any physical or intellectual disabilities.

*Do you mean that he could door or does not have those disabilities?*

✓ (u) "Timeout" means a behavioral management technique that is administered by trained school employees that may involve the supervised separation of the pupil from his or her class in an unlocked setting to calm the pupil<sup>15</sup> and provide the pupil with the opportunity to regain self-control in a setting—

1. that is not locked,
2. from which the exit is not physically blocked by furniture or another inanimate object or a closed door held shut from the outside,<sup>16</sup> and
3. from which the pupil is capable of leaving regardless of any physical or intellectual disabilities.<sup>17</sup>

✓ (v) "Timeout room" means an enclosed setting that may be used for timeout.

ⓐ (3) APPLICABILITY

The requirements in this section shall apply to any public school, charter school, or nonpublic school.<sup>18</sup>

*private*

Should this go into subch V? ✓ (4) POSITIVE BEHAVIORAL INTERVENTIONS AND SUPPORTS. School employees are encouraged to use an array of evidence based positive behavioral interventions and supports to increase or decrease targeted pupil behaviors.<sup>19</sup>

*what are these? are the target pupils only children w/ disabilities*

✓ (a) Behavioral Intervention Plan.

✓ 1. A child with a disability shall have an individualized education plan that includes a behavioral intervention plan when the pupil:

*child w/ disability*

- ✓ (i) exhibits self-injurious or assaultive behavior;
- ✓ (ii) causes property damage or exhibits other severe, pervasive behavioral problems;

*what about other children?*



✓ (iii) significantly interferes with the implementation of the pupil's individualized education program; or

✓ (iv) does not respond to behavioral or instructional approaches specified in the individualized education program.<sup>20</sup>

✓ 2. The Behavioral Intervention Plan shall be preceded by and based on information obtained through the functional behavior assessment.

✓ 3. The Behavioral Intervention Plan shall identify:

(i) the baseline measure of the problem behavior, including the frequency, duration, intensity and/or latency of the targeted behaviors. Such baseline shall, to the extent practicable, include data taken across activities, settings, people and times of the day. The baseline data shall be used as a standard to establish performance criteria and against which to evaluate intervention effectiveness;

(ii) the intervention strategies to be used to alter antecedent events to prevent the occurrence of the behavior, to teach individual alternative and adaptive behaviors to the pupil, and to provide consequences for the targeted inappropriate behavior(s) and alternative acceptable behavior(s); and

✓ (iii) a schedule to measure the effectiveness of the interventions, including the frequency, duration and intensity of the targeted behaviors at scheduled intervals.<sup>21</sup>

✓ 4. The Behavioral Intervention Plan shall address antecedent behaviors, reinforcing consequences of the behavior, recommendations for teaching alternative skills or behaviors and an assessment of pupil preferences for reinforcement.<sup>22</sup>

(b) Functional behavioral assessment.

✓ 1. The FBA shall, as appropriate, be based on multiple sources of data including, but not limited to, information obtained from direct observation of the pupil, information from the pupil, the pupil's teacher(s) and/or related service provider(s), a review of available data and information from the pupil's record and other sources including any relevant information provided by the pupil's parent. The FBA shall not be based solely on the pupil's history of presenting problem behaviors.<sup>23</sup>

✓ 2. The FBA shall provide a baseline of the pupil's problem behaviors with regard to frequency, duration, intensity and/or latency across activities, settings, people and times of the day and include the identification of the problem behavior, the definition of the behavior in concrete terms, the identification of the contextual factors that contribute to the behavior (including cognitive and affective factors) and the formulation of a hypothesis regarding the general conditions under which a behavior usually occurs and probable consequences that serve to maintain it in sufficient detail to form the basis for a behavioral intervention plan for the pupil.

(c) Inclusion in IEP and Monitoring.

1. A pupil's need for a behavioral intervention plan shall be documented in the IEP and such plan shall be reviewed at least annually by the IEP team.<sup>24</sup>

2. The implementation of a pupil's behavioral intervention plan shall include regular progress monitoring of the frequency, duration and intensity of the behavioral interventions at scheduled intervals, as specified in the behavioral intervention plan and on the pupil's IEP. The results of the progress monitoring shall be documented and reported to the pupil's parents and to the IEP team and shall be considered in any determination to revise a pupil's behavioral

✓ intervention plan or IEP.<sup>25</sup> Progress monitoring shall include any indirect or collateral effects the use of aversive interventions may be having on the pupil, including, but not limited to, increases in aggressive or escape behaviors, health-related effects and/or emotional reactions.

(d) A school district may, but is not required, to implement a behavioral intervention plan for any child who presents behaviors described in (4)(a)(1)(i)-(ii). All behavioral intervention plans must meet the requirements of this section.

*included in  
C. 11 S. 78X(4)(a)(x).*

(5) TRAINING

✓ (a) Required Training. All school employees who may physically restrain or who may supervise timeouts with a pupil shall receive Department approved and evidence based training on the following:

✓ 1. Positive behavioral interventions and supports, including de-escalation of problematic behavior, relationship-building,<sup>26</sup> alternatives to timeout and physical restraint, and crisis prevention, and crisis intervention.<sup>27</sup>

✓ 2. Appropriate use of timeout, including the proper use and the restrictions on the use of timeout and prohibition of seclusion, as described in this section. The training shall include the following:

✓ (i) safe and effective use of timeout;

✓ (ii) description and identification of emergencies that may indicate the need for timeout and methods for evaluating the risk of harm in individual situations in order to determine whether the use of timeout is warranted;<sup>28</sup>

✓ (iii) instruction regarding the effects of timeout on the pupil; and

✓ (v) instruction regarding documentation and reporting requirements and investigation of injuries and complaints.<sup>29</sup>

✓ 3. Appropriate use and demonstrated proficiency of use of physical restraints. The training shall include the following:

✓ (i) safe and effective use of physical restraint;

✓ (ii) description and identification of emergencies that may indicate the need for physical restraint and methods for evaluating the risk of harm in individual situations in order to determine whether the use of physical restraint is warranted;<sup>30</sup>

✓ (iii) simulated experience of administering and receiving a variety of approved physical restraint techniques, ranging from minimal physical involvement to very controlling interventions;

✓ (iv) instruction regarding the effects of physical restraint on the pupil restrained, including instruction on monitoring physical signs of distress and obtaining medical assistance;

✓ (v) instruction regarding documentation and reporting requirements and investigation of injuries and complaints; and

✓ (vi) demonstration by participants of proficiency in administering physical restraint.<sup>31</sup>

✓ (b) Frequency of Training. Any school employee who uses timeout or applies physical restraint shall use only techniques in which he or she received evidence based training within the preceding two years, as indicated by written evidence of participation.<sup>32</sup>

✓ (c) School-based resource on Positive Behavioral Interventions and Supports. At the start of each school year, every public or nonpublic school shall identify at least one school employee per school building who is authorized to serve as a school-based resource to assist other staff in

*5 separate out*

✓ implementing positive behavioral interventions and supports in order to assure that all pupils are safeguarded against the use and misuse of physical restraint and timeout. The school-based resource on Positive Behavioral Interventions and Supports shall also ensure proper administration of physical restraint and timeout. These staff members shall participate in advanced training in the use of positive behavioral interventions and supports, use of physical restraint and timeout, identification of emergencies, and evaluation of the risk of harm to pupils beyond the basic training offered to all staff and the public education program shall document the extent of such training.<sup>33</sup> The advanced training shall be evidence based and shall be approved by the Department.

✓ (d) Training records for completion of all training by school employees shall be documented in writing.<sup>34</sup>

✓ (6) USE OF PHYSICAL RESTRAINTS AND TIMEOUT

✓ (a) Appropriate circumstances for use of physical restraints and timeout.

1. A trained school employee may use physical restraint only in an emergency and if at least one of the following is true:

✓ (i) other less intrusive interventions, including positive behavior supports, constructive, non-physical de-escalation and re-structuring of the environment<sup>35</sup> have failed or been deemed inappropriate; or

✓ (ii) the pupil's individualized education program<sup>ard</sup> under s. 115.787 permits the use of physical restraints under the circumstances, and the pupil's parent has consented in writing to the use of physical restraint.<sup>36</sup>

✓ 2. A trained school employee may use timeout only if at least one of the following is true:

✓ (i) other less intrusive interventions, including positive behavioral interventions and supports, constructive, non-physical de-escalation and re-structuring of the environment<sup>37</sup> have failed or been deemed inappropriate; or

✓ (ii) the pupil's individualized education program under s. 115.787 permits the use of timeouts under the circumstances, and the pupil's parent has consented in writing to the use of timeout.<sup>38</sup>

✓ 3. Physical restraint and timeout may only be included in a pupil's IEP if the IEP includes a behavioral intervention plan in conformance with this section.

✓ (b) Trained school employees administering physical restraints or timeout shall review and consider any known medical, developmental, or psychological limitations and/or behavioral intervention plans regarding the use of physical restraint or timeout on an individual pupil.<sup>39</sup>

✓ (c) Training. No school employee shall physically restrain or use timeout with a pupil unless they have completed training described in subsection 5.

✓ (d) Duration of timeout or physical restraint.

1. The period of timeout shall be reasonable, considering the age, size, physical and mental condition of the pupil subject to timeout. If the period of timeout exceeds 15 minutes, the school positive behavioral interventions and supports resource person shall evaluate the need for continued timeout, obtain administrator approval and comply with any administrator directives concerning any continued timeout.<sup>40</sup> However, a pupil shall not be kept in timeout for more than 5 minutes after he or she ceases presenting the specific behavior for which timeout was imposed or any other behavior for which it would be an appropriate

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intervention.<sup>41</sup> In all cases, timeout shall be used for the least amount of time necessary.

2. The period of physical restraint shall not exceed 15 minutes. If the period of physical restraint exceeds 15 minutes, the school positive behavioral interventions and supports resource person shall evaluate the need for continued physical restraint, obtain administrator approval and comply with any administrator directives concerning any continued timeout.<sup>42</sup> However, a pupil shall not be kept in a physical restraint for more than 5 minutes after he or she ceases presenting the specific behavior for which timeout was imposed or any other behavior for which it would be an appropriate intervention.<sup>43</sup> In all cases, physical restraint shall be used for the least amount of time necessary.

what? this refers to p.r.

(e) Supervision.

1. The use of physical restraint shall require the presence of at least two trained school employees at all times.<sup>44</sup>

2. A trained school employee who is responsible for supervising a pupil in timeout shall remain within four feet of the pupil and must be able to see him or her at all times.<sup>45</sup>

(f) Restricted use and prohibitions on physical restraint, timeout, and seclusion.

1. Seclusion is prohibited under all circumstances.<sup>46</sup>

2. Neither physical restraint nor timeout shall be used as a punitive form of discipline or as a threat to control or gain compliance of a pupil's behavior,<sup>47</sup> for the convenience of staff, or due to lack of sufficient staff on-site.

3. Physical Restraint Restrictions and Prohibitions.

(i) If a trained school employee physically restrains a pupil who uses sign language or an augmentative mode of communication as the pupil's primary mode of communication, the pupil shall be permitted to have the pupil's hands free of physical restraint for brief periods, unless a trained school employee determines that such freedom appears likely to result in harm to self or others.<sup>48</sup>

(ii) Any physical restraint technique is prohibited that--

- (1) does not give adequate attention and care to the head;
- (2) places pressure or weight on the chest, lungs, sternum, diaphragm, back, or abdomen, causing chest compression;<sup>49</sup>
- (3) obstructs circulation or breathing;<sup>50</sup>
- (4) utilizes pain to obtain compliance or control;
- (5) releases noxious, toxic, or otherwise unpleasant substances near the pupil; or
- (6) subjects the pupil to ridicule, humiliation, or excessive emotional trauma.<sup>51</sup>

(iii) Therapeutic devices intended for physical therapy or occupational therapy uses shall not be used as a mechanical restraint.<sup>52</sup>

(iv) The use of mechanical restraint is prohibited in public schools and nonpublic schools unless the school is within a mental health or correctional facility or is a Residential Care Center, as defined in s. 48.02(15d).<sup>53</sup>

4. Time-out Restrictions and Prohibitions.

(i) A timeout room shall

- (1) be at least 8' X 6' in size,
- (2) be properly lighted,
- (3) be properly ventilated,<sup>54</sup>
- (4) be free of objects & fixtures,

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✓ (5) meet state and county fire and safety codes,  
✓ (6) provide means by which a school employee can continuously monitor, visually and auditorily, the pupil's behavior,<sup>55</sup>

✓ (7) have the same ceiling height as the surrounding room or rooms and be large enough to accommodate not only the pupil but also any other individual who is required to accompany the pupil,

✓ (8) be constructed of materials that cannot be used by pupils to harm themselves or others, be free of electrical outlets, exposed wiring and other objects that could be used by pupils to harm themselves or others, and be designed so that pupils cannot climb up the walls (including walls far enough apart so as not to offer the pupil being isolated sufficient leverage for climbing), and

✓ (9) if fitted with a door, be fitted with either a steel door or a wooden door of solid-core construction shall be used. If the door includes a viewing panel, the panel shall be unbreakable.<sup>56</sup>

✓ (ii) Before an enclosed timeout room may be used for timeout, the timeout room shall be approved for conformity with the requirements of this section by the local education agency, which shall keep a picture of the room on file.<sup>57</sup>

✓ (g) Grievances

1. Pupils with an IEP. A parent of a pupil with an IEP may request a due process hearing under sec. 115.80 to review the use of physical restraint or timeout or may file a complaint with the Department for review of the school district's conformance with this section.

2. Pupils without an IEP. A parent of a pupil without an IEP may file a grievance of the use of physical restraint or timeout with the local education agency. The local education agency shall respond to the grievance within 15 days.<sup>58</sup> If the parent is unsatisfied with the

determination of the local education agency, the parent may appeal the determination to the Department within 30 days of receiving the determination. The Department shall review the school district's conformance with this section.

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what do you mean by determination?

(7) PARENTAL CONSENT AND NOTIFICATION

✓ (a) Any parental consent provided under subsection (6) shall meet the following requirements.

✓ (b) Parents shall give consent as follows for inclusion of the use of physical restraint or timeout within an IEP—

✓ 1. The parent shall be provided with specific, complete and accurate information in his or her native language or other mode of communication and time to study the information or to seek additional information concerning the proposed activity for which consent is sought, including:

- ✓ i. The benefits of the proposed use of timeout or physical restraint;
- ✓ ii. The way the timeout or physical restraint is to be administered;
- ✓ iii. The expected side effects or risks of side effects of the use of timeout or physical restraint;
- ✓ iv. Alternative behavioral management techniques;
- ✓ v. The probable consequences of the timeout or physical restraint not being used;

- ✓ vi. The time period for which the parental consent is effective, which shall be no longer than 12 months from the time parental consent is given; and
- ✓ vii. The right to withdraw informed consent at any time, in writing.<sup>59</sup>

✓ 2. The parent shall make consent in writing, the school will keep it in the child's record and the parent shall be given a copy of the written consent.<sup>60</sup>

✓ (c) Notice to Parents of Physical Restraints Technique and Timeout Room Conditions. If the school district uses physical restraint or timeout, the school district shall give the parent the opportunity to see the physical space that will be used as a timeout room and explain the proposed physical restraint techniques to the parent before using these techniques on any child.<sup>61</sup>

✓ (d) Notice to Parents of Actual Occurrences of Physical Restraint and Timeout.

✓ 1. Any occurrence of physical restraint, any occurrence of timeout not embedded within a pupil's IEP, any occurrence of a timeout that exceeds 15 minutes, or any occurrence of more than one episode of any length of timeout occurring within any three-hour period, shall require that the school principal or designee shall make reasonable efforts to verbally notify the parents as soon as possible but no later than the end of the school day that the physical restraint or timeout was used.<sup>62</sup>

✓ 2. Within thirty-six hours of any occurrence of physical restraint, occurrence of timeout not embedded within a pupil's IEP, occurrence of a timeout that exceeds 15 minutes, or occurrence of more than one episode of any length of timeout occurring within any three-hour period, a written report shall be mailed, e-mailed or faxed to parents<sup>63</sup> that contains the following information:

- ✓ (i) date, time and duration of the use of the physical restraint or timeout,<sup>64</sup>
- ✓ (ii) actions of the pupil before, during and after the occurrence<sup>65</sup> and other relevant events leading up to the use of the physical restraint or timeout,<sup>66</sup>
- ✓ (iii) names of the school employees involved in the occurrence,
- ✓ (iv) actions of the school employees involved in the occurrence before, during and after the occurrence, including pupil and staff debriefing,<sup>67</sup>
- ✓ (v) a description of any interventions used prior to implementation of the physical restraint or timeout,<sup>68</sup>
- ✓ (vi) a description of any injuries to the pupil, staff, or others and any property damage,
- ✓ (vii) a log of the pupil's behavior in timeout or during physical restraint, including a description of the restraint technique used and any other interaction between the pupil and staff,<sup>69</sup> and
- ✓ (viii) a description of future approaches to the pupil's behavior.<sup>70</sup>

✓ (8) DOCUMENTATION OF AND REPORTING ON USE OF PHYSICAL RESTRAINTS AND TIMEOUT

✓ (a) Documentation. A written report must be submitted within one school day to the school administrator<sup>71</sup> describing any occurrence of physical restraint, occurrence of timeout not embedded within a pupil's IEP, occurrence of a timeout that exceeds 15 minutes, or any occurrence of more than one episode of any length of timeout occurring within any three-hour period. The report shall contain the following information:

- ✓ 1. date, time and duration of the use of the physical restraint or timeout,<sup>72</sup>

- ✓ 2. actions of the pupil before, during and after the occurrence<sup>73</sup> and other relevant events leading up to the use of the physical restraint or timeout,<sup>74</sup>
- ✓ 3. names of the school employees involved in the occurrence,
- ✓ 4. actions of the school employees involved in the occurrence before, during and after the occurrence, including pupil and staff debriefing,<sup>75</sup>
- ✓ 5. a description of any interventions used prior to implementation of the physical restraint,<sup>76</sup>
- ✓ 6. the justification for initiating the physical restraint or timeout,<sup>77</sup>
- ✓ 7. a description of the administration of the physical restraint, including the holds used and reasons such holds were necessary,<sup>78</sup>
- ✓ 8. a description of any injuries to the pupil, staff, or others and any property damage and any medical care provided,
- ✓ 9. a log of the pupil's behavior in timeout or during physical restraint, including a description of the physical restraint technique used and any other interaction between the pupil and staff,<sup>79</sup>
- ✓ 10. a description of future approaches to the pupil's behavior, and<sup>80</sup>
- ✓ 11. the name and job title of the school employee completing the report.<sup>81</sup>

b. Reporting of data to the Department of Public Instruction. Annually, and at such other times as the department requires, each local education agency shall report to the department the following data:

- ✓ 1. total number of incidents of documented occurrences of physical restraint or timeout--
  - ✓ (i) by school district,
  - ✓ (ii) by school, and
  - ✓ (iii) by school employee;
- ✓ 2. number of documented occurrences with pupils with an IEP and number of documented occurrences of pupils without an IEP;
- ✓ 3. length of time of each use of physical restraint;
- ✓ 4. number of each timeout occurrence that was required to be documented and reported to parents and the length of each such timeout;
- ✓ 5. number and type of injuries to pupils or school employees; and
- ✓ 6. confirmation that parents were properly notified about documented occurrences within the time period required by subsection 7.

✓ c. Availability of documentation to the Department of Public Instruction. All records kept in compliance with this section shall be made available to the Department of Public Instruction, upon request.

#### (9) INDIVIDUAL REVIEW AFTER USE OF PHYSICAL RESTRAINTS OR TIMEOUT

- ✓ (a) The requirements of this subsection shall apply whenever an episode of timeout exceeds 15 minutes, any episode of physical restraint, or more than one episode of any length of either occurrence have occurred during any three-hour period.<sup>82</sup>
- ✓ (b) Each school shall ensure that a review process is established and conducted. The purpose of this review shall be to ascertain that appropriate procedures are followed and to minimize future use of physical restraint or timeout. The review shall include, but is not limited to staff

✓ review of the incident, follow up communication with the pupil and his or her family, review of the documentation to ensure use of alternative strategies; and recommendations for adjustment of procedures.

✓ (c) Review of an episode of timeout exceeding 15 minutes, any episode of physical restraint, or more than one episode of any length of either occurrence within any three-hour period shall also include whether any follow-up is appropriate for pupils who witnessed the incident to account for any trauma or emotional disturbance associated with witnessing the incident.<sup>83</sup>

✓ (d) Pupils with an IEP.

1. Whenever a pupil with an IEP has experienced an episode of timeout exceeding 15 minutes, any episode of physical restraint, or more than one episode of any length of either occurrence within any three-hour period, the IEP team shall convene to review the pupil's IEP.

✓ 2. Such review shall include the review of written progress monitoring and incident reports, documentation from observations of and, as appropriate, interviews with the pupil in the program and the concerns of the pupil's parent.<sup>84</sup> Review of the behavioral intervention plan shall include any indirect or collateral effects the use of aversive interventions may be having on the pupil, including, but not limited to, increases in aggressive or escape behaviors, health-related effects and/or emotional reactions.<sup>85</sup> A new functional behavioral assessment shall be completed if the student has not had a functional behavioral assessment within the past year.

✓ 3. The district shall invite the pupil's parent to participate in the IEP review and shall give 10 days written notice of the date, time and location of the review.<sup>86</sup>

(e) Pupils without an IEP.

1. Whenever a pupil without an IEP has experienced an episode of timeout exceeding 15 minutes, any episode of physical restraint, or more than one episode of any length of either occurrence within any three-hour period, a school employee who initiated, monitored and supervised the incidents shall initiate a review of the effectiveness of the procedure used and prepare an individual behavior plan for the pupil that provides either for the use of other, specified interventions or of continued use of these interventions. The plan shall be placed in the pupil's record. The review shall also consider the pupil's potential need for an alternative program or for special education in accordance with s. 115.77.

✓ 2. The district shall invite the pupil's parent to participate in the review and shall give 10 days written notice of the date, time and location of the review.<sup>87</sup>

115. 787(4)(a)2.

<sup>1</sup> See Washington Administrative Code (WAC) 392-172A-03120(2).

<sup>2</sup> See Code of Rhode Island Rules (CRIR) 08-010-013 sec. 3.1.

<sup>3</sup> See 22 Pennsylvania Code (Pa. Code) sec. 14.133(b).

<sup>4</sup> Assembly Bill 765 (2003).



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- <sup>5</sup> Assembly Bill 765 (2003).
- <sup>6</sup> Assembly Bill 765 (2003).
- <sup>7</sup> See CRIR 08-010-013 sec. 3.7.
- <sup>8</sup> Assembly Bill 765 (2003).
- <sup>9</sup> See Wisconsin Department of Public Instruction Directives for the Appropriate Use of Seclusion and Physical Restraint in Special Education Programs, p. 3-5 (hereinafter WDPI Directives).
- <sup>10</sup> Assembly Bill 765 (2003).
- <sup>11</sup> See Code of Maryland Regulations (COMAR) 13A.08.04.02(B)(9).
- <sup>12</sup> Assembly Bill 765 (2003). See also North Carolina General Statutes (N.C. Gen. Stat.) sec 115C-391.1(c)(1)
- <sup>13</sup> See CRIR 08-010-013 sec. 3.21.
- <sup>14</sup> See 1 Code of Colorado Regulations (CCR) 301-45 sec. 2.00(8).
- <sup>15</sup> See Assembly Bill 765 (2003). 118.315(i).
- <sup>16</sup> See 19 Texas Administrative Code (TAC) 831053(b)(3).
- <sup>17</sup> See N.C. Gen. Stat. § 115C-391.1(b)(10)b.
- <sup>18</sup> See COMAR 13A.08.04.01; 8 New York Codes, Rules and Regulations (NYCRR) 200.22(f)(1).
- <sup>19</sup> See COMAR 13A.08.04.03. See also WDPI Directives, p. 4.
- <sup>20</sup> See Assembly Bill 765 (2003).
- <sup>21</sup> See 8 NYCRR 200.22(b)(4).
- <sup>22</sup> See 8 NYCRR 200.22(a)(3).
- <sup>23</sup> See 8 NYCRR 200.22(a)(2).
- <sup>24</sup> See 8 NYCRR 200.22(b)(5).
- <sup>25</sup> See 8 NYCRR 200.22(b)(5).
- <sup>26</sup> See 23 Ill. Adm. Code 1.285(h)(2).
- <sup>27</sup> See 281 IAC 103.6.
- <sup>28</sup> See 23 Ill. Adm. Code 1.285(h)(2).
- <sup>29</sup> See 23 Ill. Adm. Code 1.285(h)(2).
- <sup>30</sup> See 23 Ill. Adm. Code 1.285(h)(2).
- <sup>31</sup> See 23 Ill. Adm. Code 1.285(h)(2).
- <sup>32</sup> See 23 Ill. Adm. Code 1.285(h)(2).
- <sup>33</sup> See CRIR 08-010-013 sec. 4.3.
- <sup>34</sup> See 281 IAC 103.6
- <sup>35</sup> See 1 CCR 301-45 2620-R-2.01(2).
- <sup>36</sup> See Assembly Bill 765(2003) s. 2-3. See also 1 CCR 301-45 2620-R-2.01(1)(a)(viii).
- <sup>37</sup> See 1 CCR 301-45 2620-R-2.01(2).
- <sup>38</sup> See Assembly Bill 765 (2003) s. 2-3.
- <sup>39</sup> See CRIR 08-010-013 sec. 7.3(c). See also WDPI Directives, p. 4.
- <sup>40</sup> See 281 IAC 103.6(5).
- <sup>41</sup> See 23 Ill. Adm. Code 1.285(e)(1).
- <sup>42</sup> See 281 IAC 103.6(5).
- <sup>43</sup> See 23 Ill. Adm. Code 1.285(e)(1).
- <sup>44</sup> See CMR 05-071-033 4.1.
- <sup>45</sup> See 23 Ill. Adm. Code 1.285(a).
- <sup>46</sup> See CRIR 08-010-013 sec. 3.24.
- <sup>47</sup> See 1 CCR 301-45 2620-R-2.01(4).
- <sup>48</sup> See 281 IAC 103.8. See also Ill. Adm. Code 1.285.
- <sup>49</sup> See 1 CCR 301-45 2620-R-2.02(1)(a)(iii).
- <sup>50</sup> See also in 281 IAC 103.6 ("no employee shall use any restraint that obstructs the airway of any child").
- <sup>51</sup> See Assembly Bill 765 (2003) s. (4).

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- <sup>52</sup> See 1 CCR 301-45 2620-R-2.01(5).  
<sup>53</sup> See COMAR 13A.08.04.05(A)(2).  
<sup>54</sup> See also 281 Iowa Administrative Code (IAC) 103.6.  
<sup>55</sup> See Arkansas 20.04.09  
<sup>56</sup> See 23 Illinois Administrative Code (Ill. Adm. Code) 1.285(a)(2).  
<sup>57</sup> See N.C. Gen. Stat. § 115C-391.1(e)(1)e.  
<sup>58</sup> See Oregon Administrative Rules (Or. Admin. R.) 581-021-0062(2)(k).  
<sup>59</sup> See Wis. Admin. Code DHS 94.03.  
<sup>60</sup> See CRIR 08-010-013 sec. 3.19. See also Wis. Admin. Code DHS 94.03.  
<sup>61</sup> See 8 NYCRR sec. 200.22(c)(4).  
<sup>62</sup> See 1 CCR 301-45 2620-R-2.04(2).  
<sup>63</sup> See 1 CCR 301-45 2620-R-2.04(3).  
<sup>64</sup> See 281 IAC 103.7(5).  
<sup>65</sup> See 281 IAC 103.7(5).  
<sup>66</sup> See 23 Ill. Adm. Code 1.285(f)(1).  
<sup>67</sup> See 281 IAC 103.7(5).  
<sup>68</sup> See 23 Ill. Adm. Code 1.285(f)(1).  
<sup>69</sup> See 23 Ill. Adm. Code 1.285(f)(1).  
<sup>70</sup> See 281 IAC 103.7(5).  
<sup>71</sup> See 1 CCR 301-45 2620-R-2.04(1).  
<sup>72</sup> See 281 IAC 103.7(5).  
<sup>73</sup> See 281 IAC 103.7(5).  
<sup>74</sup> See 23 Ill. Adm. Code 1.285(f)(1).  
<sup>75</sup> See 281 IAC 103.7(5).  
<sup>76</sup> See 23 Ill. Adm. Code 1.285(f)(1).  
<sup>77</sup> See Assembly Bill 765(6)2.  
<sup>78</sup> See Assembly Bill 765 (2003) s.(6)(3).  
<sup>79</sup> See 23 Ill. Adm. Code 1.285(f)(1).  
<sup>80</sup> See 281 IAC 103.7(5)  
<sup>81</sup> See Assembly Bill 765 (2003) s.(6)1.  
<sup>82</sup> See 23 Ill. Adm. Code 1.285(f)(4).  
<sup>83</sup> See CRIR 08-010-013 sec. 7.3(d).  
<sup>84</sup> See 8 NYCRR 200.22(f)(7)(ii).  
<sup>85</sup> See 8 NYCRR 200.22(f)(7)(i).  
<sup>86</sup> See 23 Ill. Adm. Code 1.285.  
<sup>87</sup> See 23 Ill. Adm. Code 1.285.

## 2003 ASSEMBLY BILL 765

January 27, 2004 – Introduced by Representatives POCAN, BOYLE, BERCEAU, ALBERS and MILLER, by request of Wisconsin Coalition for Advocacy. Referred to Committee on Education.

1 AN ACT *to amend* 118.164 (3) (b) and 118.31 (3) (intro.); and *to create* 118.315  
2 of the statutes; **relating to:** the use of seclusion and restraints in schools.

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### *Analysis by the Legislative Reference Bureau*

This bill limits and conditions the use of seclusion (a behavioral control technique that secludes a pupil in a locked area) and physical or mechanical restraints (the use of a person or a device to control the behavior of a pupil).

Under the bill, a school employee may use physical restraint only in an emergency and may use a mechanical restraint only if the school at which he or she works is certified as having met the requirements of the Joint Commission on Accreditation of Healthcare Organizations. A school employee may use seclusion only if an emergency exists, the pupil's individualized special education program permits seclusion under the circumstances, or the pupil's parent or guardian consents in writing to the use of seclusion. The bill requires that the area used for seclusion be free of objects with which the pupil could self-inflict bodily harm, that it provide a view of the pupil at all times, and that it be equipped with adequate ventilation and lighting. The school employee using seclusion must also provide the pupil with an explanation of the behavior that led to the seclusion and a list of requirements to be met before the pupil will be released to his or her class. The school employee must monitor the pupil frequently and may not use seclusion for more than 30 minutes at a time, unless an emergency exists.

The bill also prohibits the use of certain kinds of restraint and seclusion, including a seclusion or restraint that is likely to cause physical harm to the pupil; that denies the pupil adequate water, physical comfort, or access to a bathroom; or

**ASSEMBLY BILL 765**

that uses unreasonable and unnecessary force. Finally, the bill requires all school employees who interact with pupils to receive training on the proper use of seclusion and restraint and to prepare and file with the Department of Public Instruction written reports about their use of seclusion and restraint.

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

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

1           **SECTION 1.** 118.164 (3) (b) of the statutes is amended to read:

2           118.164 (3) (b) This subsection does not prohibit the teacher who removed the  
3 pupil from the class or the school board, school district administrator, school  
4 principal or their designees from disciplining the pupil, subject to s. 118.315.

5           **SECTION 2.** 118.31 (3) (intro.) of the statutes is amended to read:

6           118.31 (3) (intro.) ~~Subsection~~ Subject to s. 118.315, sub. (2) does not prohibit  
7 an official, employee or agent of a school board from:

8           **SECTION 3.** 118.315 of the statutes is created to read:

9           **118.315 Use of physical restraint and seclusion. (1) DEFINITIONS.** In this  
10 section:

11           (a) “Behavioral intervention plan” means a written document that is developed  
12 by an individualized education program team under s. 115.78 as part of the pupil’s  
13 individualized education program for a pupil whose behavior is self-injurious or  
14 assaultive; causes property damage or other severe, pervasive behavioral problems;  
15 significantly interferes with the implementation of the pupil’s individualized  
16 education program; or for which the behavioral or instructional approaches specified  
17 in the individualized education program are ineffective.

18           (b) “Child” has the meaning in s. 115.76 (3).

19           (c) “Child with a disability” has the meaning in s. 115.76 (5).

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1 (cm) “Deaf pupil” is a pupil who has a significant hearing loss and who, with  
2 or without amplification, cannot understand speech.

3 (d) “Emergency” means a situation in which it is necessary to control a pupil’s  
4 unpredictable or spontaneous behavior that poses a clear and present danger of  
5 serious physical harm to the pupil or to others and that cannot be immediately  
6 prevented by a less restrictive technique than the one temporarily applied by a  
7 trained school employee.

8 (dm) “Hearing-impaired pupil” is a pupil who has a hearing loss and who, with  
9 or without amplification, can understand speech in some settings.

10 (e) “Mechanical restraint” means a device that restricts a pupil’s freedom of  
11 movement or normal access to a portion of his or her body and that the pupil cannot  
12 easily remove. The term “mechanical device” does not include a protective or  
13 stabilizing device that is prescribed by a health care professional for a child with a  
14 disability in accordance with the child’s individualized education program.

15 (f) “Physical restraint” means a restriction imposed by a person that  
16 immobilizes or reduces the ability of a pupil to move his or her arms, legs, or head  
17 freely. “Physical restraint” does not include briefly holding a pupil to calm or comfort  
18 the pupil, holding a pupil’s hand or arm to escort the pupil safely from one area to  
19 another, or breaking up a fight.

20 (g) “Pupil” includes a child with a disability.

21 (h) “School employee” means a person who serves as volunteer for or is  
22 employed by or under contract with a school district, charter school, private school  
23 under s. 119.23 or children with disabilities education board.

24 (i) “Seclusion” means a behavioral control technique that involves a locked box,  
25 locked closet, or locked room that is designated solely to seclude a pupil. “Seclusion”

**ASSEMBLY BILL 765****SECTION 3**

1 does not include a behavioral management technique that is part of a treatment  
2 program approved by the pupil's treating psychologist or psychiatrist and that may  
3 involve the separation of the pupil from his or her class in an unlocked setting to calm  
4 the pupil.

5 **(2) USE OF RESTRAINTS.** (a) A school employee may use physical restraint on a  
6 pupil only in an emergency.

7 (b) A school employee may use mechanical restraint on a pupil only if the school  
8 at which he or she works is certified as having met the requirements of the Joint  
9 Commission on Accreditation of Healthcare Organizations.

10 **(3) USE OF SECLUSION.** (a) A school employee may use seclusion on a pupil only  
11 if at least one of the following is true:

12 1. An emergency exists and other less intrusive interventions have failed or  
13 been deemed inappropriate.

14 2. The pupil's individualized education program under s. 115.787 permits the  
15 use of seclusion under the circumstances.

16 3. The pupil's parent or guardian has consented in writing to the use of  
17 seclusion.

18 (b) A school employee may use seclusion on a pupil only if the area used for  
19 seclusion is free of objects and fixtures with which a pupil could self-inflict bodily  
20 harm, gives the school employee an adequate view of the pupil at all times, and is  
21 equipped with adequate lighting and ventilation.

22 (c) A school employee who uses seclusion on a pupil shall do all of the following:

23 1. View the pupil during the entire time the pupil is in seclusion.

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1           2. Provide the pupil with an explanation of the behavior that resulted in the  
2 pupil's seclusion and an oral and written list that instructs the pupil on the  
3 requirements that he or she must satisfy to be returned to the class or to instruction.

4           3. Reassess the pupil every 15 minutes while he or she is in seclusion.

5           4. Ensure that the pupil is placed in seclusion for no more than 30 minutes at  
6 a time, unless an emergency exists.

7           **(4) PROHIBITED TYPES OF RESTRAINT AND SECLUSION.** No school employee may use  
8 any of the following seclusions or restraints:

9           (a) One designed or likely to cause physical pain to the pupil.

10          (b) One that releases noxious, toxic, or otherwise unpleasant substances near  
11 the pupil's eyes or face.

12          (c) One that denies the pupil adequate water, physical comfort, or access to a  
13 bathroom.

14          (d) One that subjects the pupil to ridicule, humiliation, or excessive emotional  
15 trauma.

16          (e) One performed by an untrained school employee.

17          (f) One that immobilizes both the pupil's hands and feet, except a technique  
18 designed as an emergency measure.

19          (g) One that precludes adequate supervision of the pupil.

20          (h) One that deprives the pupil of the use of one or more of his or her senses.

21          (i) One that uses unreasonable and unnecessary force under the circumstances.

22          (j) One that deprives a nonverbal or severely disabled child of a device  
23 necessary for communication with others.

24          (k) One that deprives a deaf or hearing-impaired pupil of the free use of his or  
25 her hands.

**ASSEMBLY BILL 765****SECTION 3**

1           **(5) TRAINING IN SECLUSION AND RESTRAINT.** (a) Each school employee who  
2 interacts with pupils shall receive training on the restraint and seclusion policy  
3 governing his or her school; the use of interventions that may eliminate the need for  
4 restraint and seclusion; and the types of restraints and related safety considerations,  
5 including information about the increased risk of injury to a pupil when a restraint  
6 is used.

7           (b) A school employee may not use a restraint on a pupil unless the employee  
8 has received training by recognized crisis intervention experts on how to administer  
9 the restraint in accordance with known medical or psychological limitations or in  
10 accordance with that pupil's behavioral intervention plan.

11           **(6) REPORTING ON SECLUSION AND RESTRAINT.** (a) A person who uses any seclusion  
12 or restraint shall prepare a written report about the incident that includes all of the  
13 following:

14           1. His or her name and job title and the name and job title of any observer; the  
15 date of the restraint or seclusion; and the beginning and ending time of the restraint  
16 or seclusion.

17           2. A description of the activity in which the restrained or secluded pupil was  
18 engaged immediately preceding the use of physical restraint; the behavior that  
19 prompted the restraint or seclusion; the efforts made to de-escalate the situation;  
20 alternatives to restraint or seclusion that were attempted; and the justification for  
21 initiating restraint or seclusion.

22           3. If the incident involved restraint, a description of the administration of the  
23 restraint, including the holds used and reasons such holds were necessary; the  
24 pupil's behavior and reactions during the restraint; how the restraint ended;



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1 documentation of injury to the pupil and staff, if any, during the restraint; and any  
2 medical care provided.

3 4. For a restraint that lasts more than 30 minutes and is used when an  
4 emergency does not exist, the alternatives to restraint that were attempted, the  
5 outcome of those efforts, and the justification for administering the restraint.

6 (b) Every 6 months each school district shall file any report prepared under par.

7 (a) with the department.

8 (END)