

State of Wisconsin
2009 - 2010 LEGISLATURE

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LRB-2425/2

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Today, if possible

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

in 4/23/09
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by 4/30

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regulating

physical restraints and
timeouts

1 AN ACT ~~...~~; relating to: the use of positive behavioral interventions and supports
2 and aversive interventions in schools.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.
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:

3 SECTION 1. 115.76 (13m) of the statutes is created to read:
4 115.76 (13m) "Physical restraint" has the meaning given in s. 118.315 (1) (L). ✓

5 SECTION 2. 115.76 (16m) of the statutes is created to read:
6 115.76 (16m) "Timeout" has the meaning given in s. 118.315 (1) (s). ✓

7 SECTION 3. 115.76 (16p) of the statutes is created to read:
8 115.76 (16p) "Timeout room" has the meaning given in s. 118.315 (1) (t). ✓

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

115.7825 Functional behavioral assessment and behavioral

intervention plan. (1) FUNCTIONAL BEHAVIORAL ASSESSMENT. (a) The individualized

education program team shall complete a functional behavioral assessment for a

child with a disability for whom a behavior intervention plan is required under s.

115.787 (2) (dm). The functional behavioral assessment shall establish a baseline

measure of the problem behaviors of the child and shall contain all of the following

information:

1. A description of the problem behavior in concrete terms.

2. The frequency and duration of the behavior described in subd. 1. and the manner in which the behavior changes in intensity over the course of the day or with changes in variables including the child's activity or setting or the presence of others.

3. An identification of the contextual factors that contribute to the behavior described in subd. 1., including cognitive and affective factors.

****NOTE: Context is defined by Websters as "the set of circumstances or facts that surround a particular event, situation, etc." Contextual factors, then, would include the factors enumerated in the preceding subdivision 2. (the setting, presence of people, time of day in which certain behaviors occur, etc.). I am confused, therefore, by the drafting instructions, which identify cognitive and affective factors as contextual factors. It would seem to me that cognitive and affective factors would be more related to the particular pupil, not the pupil's surroundings. No?

4. A hypothesis regarding the conditions under which the behavior described in subd. 1. usually occurs and the probable consequences that serve to maintain the behavior, provided in sufficient detail that the hypothesis may form the basis for a behavior intervention plan under sub. (2).

****NOTE: The drafting instructions directed me to include "a hypothesis regarding the general conditions under which a behavior usually occurs and probable consequences that serve to maintain it..." in the FBA. I assumed that "it" refers to the problem behavior, and "maintain" is used to mean "cause or enable a situation [it, or the problem behavior] to continue." However, I'm confused by the use of "probable consequences" with "serve to maintain" in this sentence. Consequences are effects, later, of something that occurred earlier. Your drafting instructions would have consequences cause the behavior to continue. Could another word or words be used instead of consequences? Or have I misunderstood your intent?

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a type described in s. 115.787(2)(i) 1 to 3

each

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***NOTE: To hypothesize is to put forward a hypothesis; a hypothesis is a supposition made on the basis of limited evidence as a starting point for further investigation. ~~That~~ the meaning of the word hypothesis is inconsistent with its use as a "sufficiently detailed" basis for the behavioral intervention plan. Could the person conducting the FBA be directed to draw preliminary conclusions from the assessment that could be the basis for recommendations in the behavioral intervention plan? *in the draft*

1 (b) A functional behavioral assessment conducted under this section by the
2 individualized education program team ^{that are} shall not be based solely on the problem
3 behaviors of the child with a disability ~~of a type described in s. 115.787(2)(1) to 3c~~ but on multiple sources of data, including
4 information obtained from direct observation of the child by the child's teachers and
5 related service providers, information obtained from the child and the child's parent,
6 and a review of the child's pupil records.

***NOTE: I drafted this subsection with the assumption that the IEP team conducts the assessment. Okay? That said, what triggers the initiation/completion of a functional behavioral assessment? How is the assessment different from the evaluation conducted by the IEP team under s. 115.782 (2), stats., for the preparation of the IEP? Should the assessment be integrated into the evaluation completed under s. 115.782 (2), stats.?

7 (2) BEHAVIORAL INTERVENTION PLAN. (a) A behavioral intervention plan
8 prepared for a child with a disability under this subsection shall include all of the
9 following: *That are*

10 1. Baseline information about ^{of the} problem behavior ^{of the child of a type described in s. 115.787(2)} obtained through the ^{(P) lot}
11 functional behavioral assessment. *3c*

12 2. Intervention strategies to be used to minimize the occurrence of ^{each} the problem
13 behavior identified in subd. 1.

14 3. Recommendations for teaching and reinforcing appropriate alternative and
15 adaptive behavior^s

16 4. Criteria to determine the effectiveness of the interventions under subd. 2.
17 and the alternative and adaptive behavior^s under subd. 3. The criteria under this
18 subdivision shall measure the frequency, duration, and intensity of the problem
19 behavior identified under subd. 1. *each*

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

6 6. If given as provided under par. (b), parental consent, in writing, to use
 7 physical restraint or timeout.

8 (b) A behavioral intervention plan may not authorize the use of physical
 9 restraint or timeout on a child with a disability as provided under s. 118.315 unless

10 parental consent is given as provided under this paragraph. Consent provided under

11 this paragraph shall be valid for 12 months beginning on the date on which consent

12 is given unless withdrawn by the parent of the child. To obtain parental consent

13 under this paragraph, all of the following shall apply:

14 1. The parent shall be provided with the following specific, complete, and
 15 accurate information in the parent's native language: about all of the following

16 a. The benefits of authorizing the use of physical restraint or timeout.

17 b. The manner in which physical restraint or timeout would be administered.

18 c. Any expected side effects or risks of side effects from the use of physical
 19 restraint or timeout.

20 d. Alternative behavioral management techniques that would be used prior to
 21 or instead of physical restraint or timeout.

22 e. Any possible or probable consequences of withholding consent to use physical
 23 restraint or timeout.

24 f. The period for which consent is effective.

by the parent of the child

A parent may withdraw consent at any time for any reason

and the fact that the parent may withdraw consent at any time for any reason

1 2. The parent shall be provided sufficient time to review and consider the
2 information presented under subd. 1. and to ask questions before being requested to
3 give consent.

4 3. A parent's informed consent to authorize the use of physical restraint or
5 timeout under this paragraph shall be in writing. The parent shall be provided with
6 a copy of the written consent and the school shall retain a copy of the written consent
7 in its records for the child. *local educational agency*

8 4. A parent may withdraw consent at any time for any reason.

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

10 115.787 (2) (i) For a child with a disability who has not responded to the
11 behavioral or instructional approaches specified in an individualized education
12 program required under this section or who exhibits any of the following problem
13 behaviors, a behavioral intervention plan under s. 115.7825 (2):

If the child has not exhibited one of the problem behaviors below?
****NOTE: ~~Other than behavioral or instructional approaches, what approaches~~
~~are there for a child to respond to that is~~ what will the behavioral intervention plan
~~contain that is sufficient to use physical restraint or timeout?~~ That is, should such a
child with a disability have a BIP under this paragraph?

- 14 1. Assaultive or self-injurious behavior.
- 15 2. Behavior that causes property damage.
- 16 3. Behavior that significantly interferes with the implementation of the
17 individualized education program required under this section.

18 SECTION 6. 115.80 (1) (a) 1m. of the statutes is created to read:

19 115.80 (1) (a) 1m. A parent, or the attorney representing the child, may file a
20 written request for a hearing within one year after the use by the local educational
21 agency of physical restraint or timeout under s. 118.315 on the parent's child, except
22 that, if the local educational agency has not previously provided the parent or the
23 attorney representing the child with notice of the right to request a hearing under

INSERT 5-18

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1 this subdivision, he or she may file a request under this subdivision within one year
2 after the local educational agency provides the notice. The division shall develop a
3 model form to assist parents in filing a request under this subdivision.

4 SECTION 7. 115.80 (1) (a) 2. of the statutes is amended to read:

5 115.80 (1) (a) 2. The parent, or the attorney representing the child, shall
6 include in the request under subd. 1. or 1m, the name of the child, the address of the
7 residence of the child, the name of the school the child is attending, a description of
8 the nature of the problem of the child relating to the proposed or refused initiation
9 or change or the use of physical restraint or timeout, including facts relating to the
10 problem, and a proposed resolution of the problem to the extent known and available
11 to the parents at the time.

History: 1997 a. 164, 251; 1999 a. 117; 2005 a. 258.

12 SECTION 8. 115.80 (1) (b) of the statutes is amended to read:

13 115.80 (1) (b) A local educational agency may file a written request for a
14 hearing only to override a parent's refusal to grant consent for an initial evaluation
15 or a reevaluation, to override a parent's refusal to grant consent under s.115.7825 (2)
16 (b) to the use of physical restraint or timeout on the parent's child, or to contest the
17 payment of an independent educational evaluation.

History: 1997 a. 164, 251; 1999 a. 117; 2005 a. 258.

18 SECTION 9. 118.315 of the statutes is created to read:

19 118.315 Use of positive behavioral interventions and supports and
20 aversive interventions. (1) DEFINITIONS. In this section:

****NOTE: Does this new section 118.315 allow the intentional infliction of pain on
pupils under certain circumstances (which would constitute "corporal punishment,"
under s. 118.31 (1))? If so, I will need to amend s. 118.31 (3). Please advise.

INERTG-12

1 (a) "Administrator" means a school principal or designee, a school district
2 administrator, as defined under s. 115.001 (8), or designee, or a pupil services
3 director or designee.

****NOTE: What is a "pupil services director?"

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

****NOTE: I modified the proposed definition of this term, substituting the word
"deliberate" for "deliberative." Deliberate means intentional. Deliberative means
considered, or dealing with the wisdom and expediency of a proposal; as proposed in the
drafting instructions, deliberative did not seem to fit in the definition of aversive
intervention. That said, is it necessary to the effectiveness of the bill to define the term,
"aversive interventions?" Given that seclusion is prohibited under the bill, I wonder why
it is included in the definition of aversive interventions? Would it be sufficient to refer
to timeout and physical restraint wherever the term "aversive interventions" was
proposed to be used? Is it important that the reason for the use of the aversive
interventions be included when referring to physical restraint or timeout?

Also, the drafting instructions directed me to define "antecedent." I did not define
the term in part because the definition proposed was problematic, but also because I did
not see that a definition for this term was necessary. After you have reviewed the draft,
please let me know if you disagree.

7 (c) "Behavioral intervention plan" means the written plan developed as part of
8 an individualized education program under s. 115.787 (2) (dm).

9 (d) "Child" has the meaning given in s. 115.76 (3).

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

11 (f) "Deescalation" means the withdrawal or introduction of a stimulus to a
12 situation in order to cause the situation to be more controlled and calm and less
13 dangerous.

X ****NOTE: Is this definition necessary? Deescalate is defined by ~~Randall's~~
X ~~Webster's Dictionary, 2000 edition~~ to mean "decrease in intensity, magnitude, amount,
or the like." The definition proposed for de-escalation by the drafting instruction seems
more limited. For example, is the withdrawal or presentation of a stimulus the only way
to bring a situation into control? Would it be acceptable to use "deescalate" (defined not
in the bill but using the common dictionary definition) wherever "deescalation" is
proposed to be used?

1 (g) "Emergency" means a situation in which it is necessary to control a pupil's
 2 spontaneous or unpredictable behavior when that behavior poses a clear and present
 3 danger of serious physical harm to the pupil or to others and cannot be immediately
 4 controlled by a less restrictive technique than the one temporarily applied by a
 5 trained school employee. "Emergency" does not include a situation in which a pupil
 6 uses profanity or threatens physical harm to himself or herself or others unless the
 7 pupil demonstrates a means of carrying out the threat.

8 (h) "Individualized education program" has the meaning given in s. 115.76 (9). ✓

9 (i) "Local educational agency" has the meaning given in s. 115.76 (10). ✓

****NOTE: Please be aware that, because "local educational agency" has a specific
 meaning that is tied to children with disabilities, this term cannot be a synonym for school
 districts in the bill. Where necessary, the bill refers to both local educational agencies and
 school districts. ↗

INSERT 8-10

10 (j) "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. "Mechanical restraint" does not include a protective or stabilizing
 13 device that is prescribed by a health care professional for a child with a disability in
 14 accordance with the child's individualized education program.

15 (k) "Parent" has the meaning given in s. 115.76 (12). ✓

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

21 (m) "Positive behavioral interventions and supports" means a set of
 22 evidence-based practices used to organize teaching and learning environments and

- 1 experiences for a pupil which facilitate the pupil's successful self-awareness,
2 self-management, and engagement with others and with the learning process.

****NOTE: I don't believe this definition works; after reading the definition, I don't really understand what a "positive behavioral intervention and support" is. However, because I am not clear what you intend to accomplish with this definition, I did not modify the definition at all.

An intervention is defined in Webster's dictionary as "the act or fact of intervening." Intervene is defined, in turn, as "to come between disputing people or groups, etc.; intercede; mediate." It is not clear how an intervention would be used to "organize teaching and learning environments."

I am also not clear why the term "supports" is incorporated into the defined term. What does "support" mean in this context?

What does a "positive behavioral interventions and support" look like in practice? Are "positive behavioral interventions and supports" an alternative to the use of physical restraint and timeout? Are they only used when a *certain* pupil is exhibiting problem behaviors, or are positive behavioral interventions and supports intended to be incorporated into the curriculum or day-to-day procedures applicable to all pupils in every classroom?

Is there a difference between a "teaching environment" and a "learning environment"?

Finally, what are "evidence-based practices?" Are these determined by a teacher on a case by case basis, or are they part of a teaching curriculum that all teachers must complete?

****NOTE: Do you want to require the Department of Public Instruction to identify positive behavioral interventions and supports by rule?

- 3 (n) "Pupil" includes a child with a disability.
4 (o) "School" includes public schools, charter schools, private schools in which
5 a child with a disability is enrolled as provided in s. 115.77 (1m) (d), and a county
6 children with disabilities education board.

****NOTE: The drafting instructions directed me to define a "nonpublic school" as a school that receives money from DPI to provide special education and related services to children with disabilities under an unidentified section of chapter 115. I did not include a definition for "nonpublic school" because the term "private school" is a defined term under s. 115.001 (3r).

I cross-reference s. 115.77 (1m) (d), stats. Is s. 115.77 (1m) (d), stats., the unidentified section of chapter 115 that you had in mind?

****NOTE: Did you intend this section to apply to pupils enrolled in Milwaukee Parental Choice Program (private) schools under s. 119.23?

- 7 (p) "School day" means any day during which a pupil is in attendance at a
8 school, a school-sponsored event, or public education agencies or services.

****NOTE: I modified the proposed definition of this term. However, I am not clear what "public education agencies or services" means or why this phrase is necessary - wouldn't "school" (as defined above) or "school-sponsored event" cover all the bases, so to speak? Is the use of the term "public" significant? That is, do you intended to exclude "private education agencies or services?"

1 (q) "School employee" means a person who is employed by or under contract
2 with a school.

3 (r) "Seclusion" means a behavioral control technique that involves placing a
4 pupil in a setting from which the pupil is incapable of leaving because the setting is
5 locked or egress from the setting is physically blocked by furniture or another
6 inanimate object or a closed door held shut from the outside.

****NOTE: Is it necessary to explain why a pupil is incapable of leaving a seclusion setting? I recommend eliminating the material beginning with "because" and ending with "outside."

7 (s) "Timeout" means a behavioral management technique administered by a
8 school employee that involves the supervised separation of a pupil from his or her
9 class and the placement of the pupil in a timeout room.

****NOTE: The drafting instructions directed me to define timeout as a technique "administered by a trained school employee." I removed the word, trained; if trained is included in the definition, then a person who is not trained can administer something that looks like and is experienced by a pupil as timeout but is not subject to the restrictions and regulations imposed by this bill. Let me know if you have any questions.

****NOTE: The drafting instructions directed me to define timeout as a technique that "may involve the separation of a pupil..." May is a discretionary term, meaning that as defined, the timeout may involve something other than the separation of a pupil from his or her class. I deleted the word "may." Please let me know if you intended the timeout to involve something else as well.

****NOTE: What do you mean by "supervised separation?" Will the pupil always be supervised? If so, who will look after the classroom from which the pupil was taken?

****NOTE: The drafting instructions directed me to include the purpose for using timeout (to "calm[] the pupil and provid[e] the pupil with the opportunity to regain self-control.") in the definition. I took out the purpose statement. If there are other legitimate reasons to use timeout, then the use of timeout for these reasons is not authorized even if used in compliance with the bill; in addition, the use of timeout for other reasons would not fall within the definition of "timeout" and so would not be subject to regulation under the bill even if the timeout was used in a manner that would otherwise violate the bill.

10 (t) "Timeout room" means an enclosed setting used for timeout and from which
11 a pupil is capable of leaving because the setting is not locked and egress from the

1 setting is not physically blocked by furniture or another inanimate object or a closed
2 door held shut from the outside.

****NOTE: Is it necessary to explain why a pupil is capable of leaving a timeout room? I recommend eliminating the material beginning with "because" and ending with "outside."

3 (2) SECLUSION PROHIBITED; PROHIBITED TYPES AND USES OF PHYSICAL AND
4 MECHANICAL RESTRAINT. (a) No school employee may use seclusion on a pupil.

5 (b) No school employee may use any of the following physical restraints on a
6 pupil. ^{physical restraint} if the person does any of the following

7 1. One that does not ^{Fails to} give adequate attention and care to the pupil's head.

8 2. One that places pressure or weight on, or causes the compression of, the
9 chest, lungs, sternum, diaphragm, back, or abdomen of the pupil.

10 3. One that obstructs the pupil's circulation or the ability of the pupil to breathe.

11 4. One that intentionally causes pain.

****NOTE: I completely modified this subdivision. I substituted "intentionally causes" for "utilizes" and eliminated "to obtain compliance or control." The phrase proposed in the drafting instruction, "one that utilizes pain to obtain compliance and control" implied that a physical restraint that utilizes pain for purposes other than obtaining compliance and control would be acceptable. Okay?

INSERT 11-14

12 5. One that releases noxious, toxic, or otherwise unpleasant substances near
13 the pupil.

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

16 (c) No school employee may use physical restraint or timeout to punish a pupil,
17 for the convenience of the employee or other school employees, or because there is an
18 insufficient number of school employees, and no school employee may threaten the
19 use of physical restraint or timeout to obtain a pupil's cooperation or otherwise obtain
20 control over a pupil's behavior.

****NOTE: How will it be possible to determine that a school employee did not use physical restraint or timeout to “punish a pupil [or] for the convenience of the employee?” This seems very subjective.

Also, the last clause of this paragraph could preclude a school employee from giving a warning (threat) that if a pupil is unable to gain control over his or her behavior that timeout or physical restraint will be used. Is that your intent?

1 (d) No school employee may use a therapeutic device intended for physical
2 therapy or occupational therapy as a mechanical restraint.

3 (e) No school employee may use a mechanical restraint unless the school within
4 which the school employee works is located within a mental health or correctional
5 facility or is a residential care center for children and youth, as defined in s. 48.02
6 (15d).

7 **(3) PHYSICAL RESTRAINT AND TIMEOUT; TRAINING AND CERTIFICATION REQUIRED.** (a)
8 No school employee may physically restrain a pupil or impose or supervise timeout
9 unless that employee has been trained and certified by the department under this
10 subsection within the preceding 48 months.

****NOTE: What do you mean by “physically restrain?” Was it your intent that the defined term, “physical restraint,” would apply in this sentence? As drafted, that is not the case. In this sentence, “physically restrain” is a action, or verb; “physical restraint,” however, is a noun. Do you wish to change the defined term to “physically restrain?” Or prohibit a school employee from “using physical restraint” on a pupil? Elsewhere in the draft I consistently use the phrase “use physical restraint,” not “physically restrain.” Is that inaccurate? Please advise.

11 (b) The department shall establish by rule an evidence-based training program
12 that includes instruction in all of the following:

****NOTE: What do you mean by evidence-based?

13 1. Positive behavioral interventions and supports, alternatives to the use of
14 physical restraint and timeout, and techniques for relationship building, the
15 deescalation of problem behaviors, crisis prevention, and crisis intervention.

****NOTE: Would relationship-building techniques and alternatives to timeout and physical restraint be considered “positive behavioral interventions and supports?” If so, I recommend eliminating these phrases and, possibly, moving them to the definition of “positive behavioral interventions and supports.” If not, I am not clear what you mean by “positive behavioral interventions and supports.”

1 2. The safe, effective, and appropriate use of timeout, including instruction in
2 all of the following:

- 3 a. How to identify emergencies 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:

 ****NOTE: As used in this subdivision, physical restraint sounds like a thing (I
 envison wrist or ankle bands). Is that correct?

- 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. Reporting requirements when physical restraint is used.
18 e. Procedures for investigating and resolving complaints regarding the use of
19 physical restraint.

20 (c) The department shall certify in writing a school employee who successfully
21 completes the training program required under this subsection and demonstrates
22 proficiency in the safe, effective, and appropriate use of each behavioral control
23 technique addressed by the training program. Certification under this subsection

1 shall be valid for a period not to exceed 48 months. The department shall renew the
2 certification of any school employee who requests renewal and meets the
3 requirements of this subsection.

****NOTE: Are there other behavioral control techniques that would be taught in this program besides physical restraint and timeout? If so, should they be identified?

****NOTE: Is a fee required for certification? May certification be revoked? For any reason or only for cause?

4 (4) 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 parent of that pupil with a description of any physical restraint that may
7 be used.

8 2. The use of physical restraint shall require the presence of at least ² two school
9 employees certified under sub. (3) (c).

****NOTE: Just for the sake of argument, in a single teacher classroom, where will the second school employee come from? Who will watch the classroom(s) while physical restraint is being used on a pupil?

10 (b) A school employee certified under sub. (3) (c) may, after reviewing and
11 considering any known medical, developmental, or psychological limitations of a
12 pupil, use physical restraint on that pupil only in an emergency and only if at least
13 one ^e or more of the following applies:

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

****NOTE: Would constructive, non-physical deescalation and restructuring of the pupil's school environment be considered "positive behavioral interventions and supports?" If so, I recommend removing this level of detail and placing it within the definition of "positive behavioral interventions and supports."

****NOTE: Who determines whether "other less intrusive interventions ... have failed or been deemed inappropriate?" The teacher proposing to use the physical restraint?

IMERT 14-Note

1 2. For a child with a disability whose individualized education program
 2 includes a behavioral intervention plan prepared under s. 115.7825, the child's
 3 individualized education program permits the use of physical restraint and the
 4 child's parent has consented in writing to the use of physical restraint in the
 5 circumstances under which physical restraint is proposed to be used.

****NOTE: As drafted, parental consent to the use of physical restraint is only required for those pupils who have an IEP and a behavioral intervention plan. Is that your intent?

6 (c) A school employee who uses physical restraint on a pupil shall do all of the
 7 following: no more than
 8 1. Except as provided in subd. 2., ensure that physical restraint is used for the
 9 lesser of 15 minutes or 5 minutes after the pupil ceases the behavior giving rise to
 10 the use of physical restraint. total

11 2. If the school employee determines that the use of physical restraint on a pupil
 12 may need to exceed 15 minutes, he or she shall communicate with the person identified under sub.
 13 (5), who shall evaluate the need for extending the use of physical restraint on the
 14 pupil and obtain the approval of an administrator prior to authorizing the school
 15 employee to extend the use of physical restraint beyond 15 minutes. The school
 16 employee shall comply with any directives issued by the administrator concerning
 17 the continued use of physical restraint.

****NOTE: I am a bit confused by how the procedure for a school employee to extend the use of physical restraint beyond 15 minutes would work in practice. Why must the school employee go through the school-based resource person in order to get time-sensitive approval from the administrator? What role does the school-based resource person serve in this arrangement? If a physical restraint is a physical "hold," and not a thing, like a wrist band, how will the school employee who is executing the physical restraint be able to leave the setting to communicate with the resource person or administrator in any event?

What happens after the resource person or administrator evaluates the need for extending the use of physical restraint? What if the resource person says "no." May the school employee go to the administrator (on his or her own) anyway?

****NOTE: I am also confused about the use of the term administrator, as defined in sub. (1) (a), in this subdivision. As drafted, the school employee could obtain the approval of any administrator in the state. Is that your intent, or should there be one administrator in each school from whom school employees need to obtain approval prior to extending the use of physical restraint? Alternatively, would using "school principal of his or her designee" in place of administrator suffice?

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

(5) USE OF TIMEOUT. (a) A school employee certified under sub. (3) (c) may, after reviewing and considering any known medical, developmental, or psychological limitations of a pupil, use timeout on that pupil only in compliance with this section and only if at least one or more of the following applies:

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

****NOTE: Please see the notes following sub. (4) (b) 1.

2. For a child with a disability whose individualized education program includes a behavioral intervention plan prepared under s. 115.7825, the child's individualized education program permits the use of timeout and the child's parent has consented in writing to the use of timeout in the circumstances under which timeout is proposed to be used.

****NOTE: As drafted, parental consent to the use of timeout is required only for those pupils who have both an IEP and a behavioral intervention plan. Is that your intent?

INSERT 16-7

X

1 (b) 1. No school employee may use a room as a timeout room unless the room
2 has been approved for that use by the local educational agency or school district
3 within which the school is located. The local educational agency or school district
4 shall require as a condition for approval that a photograph of the room be submitted
5 with the request for approval. No room may be approved as a timeout room under

6 this paragraph unless the room satisfies all of the following:

****NOTE: Is it your intent that charter schools under s. 118.40 (2r) and private schools in which a child with a disability is enrolled would have to get approval from the school board of the school district in which the school is located even though the school board would have no authority over either of those schools? Is there some other entity (DPI?) that could approve the timeout room?

7 a. It is free of fixtures, electrical outlets, exposed wiring or other objects that
8 could be used by the pupil to harm him^{Self} or herself or others and is designed so that
9 the pupil cannot climb up or upon the walls.

10 b. It has an area of at least 42 square feet and a ceiling height that is comparable
11 to the height of the surrounding room or rooms.

12 c. It complies with all state and county fire and safety codes and is equipped
13 with adequate lighting and ventilation.

14 d. It affords the school employee with the means to hear and see the pupil at
15 all times.

16 e. If the timeout room is fitted with a door, the door either has a solid, wood core
17 construction or is constructed of steel.

18 2. Before a school employee may place a pupil in a timeout room identified
19 under subd. 1., the school principal or his or her designee shall provide the parent
20 of the pupil with an opportunity to see and enter the room.

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

material moved from p. 18

material pulled up from p. 18

move to p. 17

pull up - no fl

no more than

1. Except as provided in subd. 2., ensure that timeout is used for the lesser of
 15 minutes or 5 minutes after the pupil ceases presenting the behavior or behaviors
 giving rise to the use of the timeout.

2. If the school employee determines that the use of timeout on a pupil may need
 to exceed 15 minutes, he or she shall communicate with the person identified under sub. (6), who
 shall evaluate the need for extending the use of the timeout and obtain the approval
 of an administrator prior authorizing the school employee to extend the use of the
 timeout beyond 15 minutes. The school employee shall comply with any directives
 issued by the administrator concerning continued use of the timeout.

***NOTE: Please refer to the notes under sub. (5) (c).

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

***NOTE: The drafting instructions did not indicate who at the school or in the
 school district was responsible for notifying the parent, so I drafted the provision so that
 the principal or his or her designee makes that report. Okay?

1. Physical restraint has been used on the pupil.
2. For a pupil who does not have an individualized education plan, the pupil has
 been placed in a timeout room.
3. The pupil has been placed in a timeout room for more than 15 minutes.
4. The pupil has been placed in a timeout room two or more times within any
 consecutive three hour time period.

(b) The school employee who uses physical restraint or timeout in any of the
 occurrences identified in par. (a) shall, within 24 hours after the occurrence, submit

INSERT 18-19

1 a written report containing the following information to the school administrator,
2 which report shall be retained by the school for review by the department:

****NOTE: Who is the "school administrator" in this paragraph? Remember that administrator is defined as "a school principal or designee, a school district administrator or designee, or a pupil services director or designee." Would it be better to have the report submitted to the principal or his or her designee?

Is it your intent that the report be submitted to the school administrator under this paragraph (within 24 hours) before it must be submitted to the pupil's parent under paragraph (c) (within 36 hours)?

****NOTE: I made the list of reportable items under this paragraph identical in the report submitted to the school administrator and the report submitted to the parent. Okay?

- 3 1. The date, time, and duration of the use of physical restraint or timeout.
- 4 2. A description of the actions of the pupil before, during, and after the
- 5 occurrence, including debriefing of the pupil.

****NOTE: The drafting instructions proposed the use of the word "debriefing" with respect to the actions of the pupil and the school employees "before, during, and after the occurrence." Is "debriefing" the appropriate term here? To debrief means "to interrogate in order to obtain useful information or intelligence" or "to subject to prohibitions against revealing or discussing classified information." Is it your intent that the pupil or school employees be interrogated? Or be prohibited from discussing certain information related to the occurrence?

- 6 3. A description of any other relevant events preceding the use of the physical
- 7 restraint or timeout, including ^{the} justification for initiating the use of physical restraint
- 8 or timeout.

- 9 4. The names of the school employees involved in the occurrence.
- 10 5. A description of the actions of the school employees under subd. 3. before,
- 11 during, and after the occurrence, including debriefing of the school employees.

****NOTE: Please see the drafting note following subd. 2.

- 12 6. A description of any interventions used prior to the use of the physical
- 13 restraint or timeout.

- 14 7. A description of the physical restraint used, including any hold used and the
- 15 reason the hold was necessary.

if physical restraint was used

1 8. A log of the pupil's behavior during the use of ^{the} physical restraint or ~~the~~^e
2 timeout, including a description of any interaction between the pupil and the school
3 employees.

4 9. A description of any injuries sustained by, and any medical care
5 administered to, the pupil, school employees, or others before, during, or after the use
6 of ^{the} physical restraint or timeout.

7 10. A description of any property damage associated with the occurrence.

8 11. A description of future actions to be taken to control the pupil's problem
9 behaviors.

10 12. The name and position of the school employee completing the report.

11 (c) The school principal or his or her designee shall, within 36 hours after the
12 occurrence of any of the events identified under par. (a), send or transmit by 1st class
13 mail or electronic mail or facsimile transmission to the pupil's parent the information
14 contained in the report prepared under paragraph (b). Each report prepared under
15 this paragraph shall be retained ^{by the school} ~~and made available~~ ^{review by} for the department ~~and~~.

16 (d) Annually and upon the request of the department, each school district, the
17 operator of each charter school, and each local educational agency shall submit to the
18 department a written report containing a summary of the occurrences identified in
19 par. (a) for which a report was prepared under par. (b). The information reported
20 under this paragraph shall include all of the following:

****NOTE: Do you wish to require the private schools in which a child with a
disability is enrolled under s. 115.77 (1m) (d) to submit a report to the department under
this paragraph?

21 1. The name of the school at which the occurrence occurred.

22 2. The name of the school employees present before, during and after the
23 occurrence.

- 1 3. The number of occurrences involving a child with a disability.
- 2 4. The duration of the use of physical restraint for each occurrence involving
- 3 the use of physical restraint.
- 4 5. The number of timeouts for which a report was required and the duration
- 5 of each such timeout.
- 6 6. The number and a description of any injury related to the occurrence.
- 7 7. Evidence that the parent of a pupil on whom physical restraint or timeout
- 8 was used was notified as required under this subsection. ✓

Handwritten annotations: "each" circled and connected to "each occurrence" in item 6; "ies" circled and connected to "occurrence" in item 6; "each" circled and connected to "each occurrence" in item 6.

9 **(7) PROCEDURES FOR REVIEW OF USE OF PHYSICAL RESTRAINT AND TIMEOUT.** (a) Each
 10 school district, each local educational agency, each operator of a charter school, and
 11 each operator of a private school in which a child with a disability is enrolled as
 12 provided in s. 115.77 (1m) (d) shall establish a procedure for reviewing each
 13 occurrence identified in sub. (6) (a). The parent of a pupil on whom physical restraint
 14 or timeout was used shall be notified in writing of the date, time, and location of the
 15 review at least 10 days before the review is to be held.

- 16 (b) A review conducted under this subsection shall include all of the following:
- 17 1. The review by school employees involved in the occurrence of the
- 18 circumstances before, during, and after the use of physical restraint or timeout to
- 19 determine all of the following:
- 20 a. Whether proper procedures were followed and whether procedures need to
- 21 be modified in future occurrences.
- 22 b. Whether alternative strategies for controlling the situation were utilized.
- 23 c. Whether the parent of the pupil was notified as required under sub. (6) (a). ✓
- 24 d. The need for communication with or counselling of any pupil who witnessed
- 25 the use of physical restraint or timeout.

****NOTE: Must anyone other than the school employees involved in the occurrence (and the invited parents) attend the meeting? Was it your intent that the parent would be present during the full discussion of all issues identified in this paragraph?

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

2 a. A review of the effectiveness of the aversive intervention used. The school
3 employee shall prepare an individual behavior plan for the pupil that provides for
4 the use of other, specified interventions or the continued use of these interventions.

****NOTE: *Which school employee creates the individual behavior plan, and*
Before or after the meeting? *What are the "other, specified interventions" referred to in this subdivision paragraph? What are the "these interventions" referred to in this subdivision paragraph?*

5 b. Whether the pupil should be evaluated under s. 115.782.

6 (c) The individualized education program team of any pupil on whom physical

7 restraint or timeout was used in an occurrence described in sub. (6) (a) shall convene
8 in the manner provided under s. 115.787 (4) to review the pupil's individualized
9 education program and behavioral intervention plan. The pupil's parent shall be
10 notified in writing of the date, time, and place of a meeting required under this
11 paragraph at least 10 days prior to the meeting. A meeting required under this
12 section shall include all of the following:

****NOTE: When (how soon after the occurrence) should the IEP team convene? Is the meeting of the IEP team in addition to or in lieu of the meeting held as required under par. (b)?

13 1. A review of the pupil's written progress, monitoring, and incident reports and
14 the report prepared following the occurrence, as required under sub. (6) (b).

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.

Insert 22-6
A determination as to

use of the physical restraint or timeout

Which school employee creates the individual behavior plan, and

Is the plan under this subdivision subject to review or approval by anyone?

child with a disability

1 4. A review and discussion of any indirect or collateral effects of the use of
2 aversive interventions on the pupil, including increases in aggressive or escapist
3 behaviors, health-related effects, or emotional reactions.

4 5. If a functional behavioral assessment has not been prepared for the pupil
5 within the preceding 12 months, the completion of a functional behavioral
6 assessment.

7 **(8) COMPLAINTS AND GRIEVANCE.** (a) A parent of a child with a disability for
8 whom a behavioral intervention plan has been prepared may do any of the following:

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

****NOTE: What would be the purpose of a hearing under this subdivision?

11 2. File a complaint regarding the school's compliance with this section with the
12 state superintendent.

13 (b) The parent of a pupil who is not a child with a disability may file a grievance
14 regarding the use of physical restraint or timeout on the pupil with the school
15 district. The school district shall respond to the grievance within 15 days. The
16 parent may, within 30 days after a determination under this paragraph, appeal the
17 determination to the state superintendent. The state superintendent shall review
18 the school district's compliance with this section.

****NOTE: I have a number of questions regarding the complaint/grievance section:

1. What did you anticipate a complaint to DPI would look like? Should DPI be required to prepare a complaint form by administrative rule? What happens once a complaint has been filed with DPI?

2. How is a complaint to DPI under paragraph (a) different from a grievance to the school district under paragraph (b)? Why aren't the procedures available to parents of a pupil who is not a child with a disability identical to those available to parents of a child with a disability? For example, why can't the parents of a pupil who is not a child with a disability go directly to DPI with a complaint?

3. What do you mean when you refer to the "determination of the [school district]" under paragraph (b)? What is the school district being asked to determine under paragraph (b)?

4. Must the parent of a child who is not a child with a disability file a grievance within any specific time period (for example, one year, as is provided under proposed s. 115.80 (1) (a) 1m.)?

5. Are the remedies available to the parents under the complaint procedure different from those available under the grievance procedure? For example, if a parent appeals a determination by the school district, what remedy may the state superintendent provide other than the review of the school district's compliance with proposed s. 118.315?

1 (9) 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. (3) (c).
- 7 2. Complete the advanced training 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.

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 required under this subsection ^{e paragraph} and demonstrates
15 proficiency in the safe, effective, and appropriate use of each behavioral control
16 technique addressed by the training program.

****NOTE: What do you mean by "evidence-based training program" (P)

****NOTE: Is a fee required for certification? Does a certification under this paragraph expire? Must a certification under this paragraph be renewed with any frequency? May certification be revoked? For any reason or only for cause?

1

(END)

2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2425/P1ins
TKK:.....

SA ✓

1 **INSERT 5-18** ✓

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

3 115.797 (1) (a) "Dispute" means any disagreement between parties concerning
4 the proposal or refusal to initiate or change the evaluation, individualized education
5 program or educational placement of a child with a disability or the provision of a free
6 appropriate public education to or the use of physical restraint or timeout on such
7 a child. "Dispute" includes any such disagreement between parties that arises before
8 the filing of a request for a hearing under s. 115.80 or in which other processes,
9 including a hearing under s. 115.80 or litigation, have been requested or commenced.

History: 1997 a. 164; 2005 a. 258, 387.

10 **INSERT 6-12**

****NOTE: Should an LEA be granted authority to seek a hearing to override a
parent's refusal to grant consent or withdraw consent to the use of physical
restraint or timeout under s. 115.7825 (2)?

or withdrawal of
replace w/ emdash

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

12 115.80 (2m) (a) Except as provided in par. (c), within 15 days of receiving a
13 request for a hearing under sub. (1) (a) 1. or 1m. and before the hearing is conducted,
14 the local educational agency shall convene a meeting with the child's parents and the
15 relevant members of the individualized education program team who have specific
16 knowledge of the facts identified in the hearing request. At the meeting, the child's
17 parents shall discuss the hearing request and the facts that form the basis of the
18 request and the local educational agency may resolve the issues.

History: 1997 a. 164, 251; 1999 a. 117; 2005 a. 258.

19 **SECTION 3.** 115.80 (2m) (e) of the statutes is amended to read:

20 115.80 (2m) (e) If the local educational agency does not resolve the issues
21 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.

History: 1997 a. 164, 251; 1999 a. 117; 2005 a. 258.

3 **INSERT 8-10**

no 9 § **NOTE:** However, references to local education agencies and school districts may
not capture situations in which a non-disabled pupil is confined in a correctional facility. ✓
Is that okay?

4 **INSERT 11-14**

NOTE: How does the use of noxious, toxic, or unpleasant substances constitute
physical restraint as that term is defined in the bill? Would these be chemicals that could
make a pupil drowsy? Is it okay to use substances, such as gasses, that are not noxious? ✓

5 **INSERT 14-Note**

NOTE: As drafted, this provision would allow physical restraint to be applied in
an emergency to a child with a disability so long as subdivision 1. applies even if the
parent of the child has not consented to the use of physical restraint. Is that your intent? ✓

6 **INSERT 16-7**

7 **(5) USE OF TIMEOUT.** (a) 1. A school employee certified under sub. (3) (c) may,
8 after reviewing and considering any known medical, developmental, or psychological
9 limitations of a pupil who is not a child with a disability, use timeout on that pupil
10 only if other less intrusive interventions, including positive behavioral interventions
11 and supports, constructive, non-physical deescalation, and restructuring of the
12 pupil's school environment have failed or been deemed inappropriate.

NOTE: Please see the notes following sub. (4) (b) 1.

13 2. For a child with a disability a school employee certified under sub. (3) (c) may,
14 after reviewing and considering any known medical, developmental, or psychological
15 limitations of a pupil who is a the child with a disability, use timeout on that child only if both of the
16 following apply: pupil

17 a. Other less intrusive interventions, including positive behavioral
18 interventions and supports, constructive, non-physical deescalation, and

1 restructuring of the child's school environment have failed or been deemed
2 inappropriate.

3 b. The child's individualized education program includes a behavioral
4 intervention plan, the child's individualized education program permits the use of
5 timeout, and the child's parent has consented in writing to the use of timeout in the
6 circumstances under which timeout is proposed to be used.

7 **INSERT 18-19**

****NOTE: I don't understand why notification to the parents is required for these
four "occurrences" but not others. For example, why aren't the parents of pupils with an
IEP required to be notified under subd. 2.? What if the child has an IEP, but not a
behavioral intervention plan and the child has been placed in a timeout? What if the child
has an IEP and a behavioral intervention plan, but the behavioral intervention plan does
not authorize the use of a timeout and the child is placed in a timeout?

8 **INSERT 22-6**

9 ****NOTE: Who decides whether or not to evaluate the pupil? Will that person be
involved in the determination under this subdivision paragraph? If not, is it anticipated
that the determination here will be only a recommendation? Is the recommendation
reviewable? By whom?

I

pupils

pupils

room

room

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2425/?dn

TKK:/:....

js


Representative Pasch:

Please carefully review this draft and the questions and detailed drafting notes embedded in the draft. Note that I have modified a number of the definitions proposed in your drafting instructions dated April 2, 2009, and have substantially reorganized the draft. For example, I moved the material governing IEPs, functional behavioral assessments, and behavioral intervention plans to Chapter 115, subch. V. Please contact me with any questions or concerns. I look forward to working with you on the next iteration of the draft.

The drafting instructions included a purpose statement. As a general policy and with some exceptions, LRB drafters are discouraged from including purpose statements in proposed legislation. This policy is followed for a number of reasons, including that the purpose of the bill should be evident in the language of the bill itself. In addition, however, purpose statements are disfavored because findings or policies included in the purpose statement are often redundant to and may conflict with substantive provisions intended to have legal effect. This is especially true where the purpose statement is broad, but restrictions imposed elsewhere in the bill or in existing law are more tailored. Further, a statement of purpose initially drafted in harmony with substantive provisions of the bill may become irrelevant, inaccurate, or cause confusion if the substantive provisions, but not the purpose statements, are later modified.

The purpose statement proposed in the drafting instructions seemed to be both promotional and redundant rather than substantive. Please let me know if you have any questions about this policy or the explanation provided in this note.

Tracy K. Kuczenski
Legislative Attorney
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E-mail: tracy.kuczenski@legis.wisconsin.gov



DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2425/P1dn
TKK:cjs:jf

May 1, 2009

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STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

June 23, 2009

meeting w/ Jeff Spitzer -

per RUCW: see 118.29 re: all liability exceptions

Reznick

→ immunity if provisions of bill are followed

p. 10 line 2-4

Nonpublic schools that receive public funds - should include schools participating in program under s. 119.23.

see notes on LRB 2425/P1 for approximations of changes to be made to the draft. §



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Notes in pencil taken in meeting w/ Jeff Spitzer - Kanick
on June 23, 2009. notes are approximations of
changes made to achieve /P2.

Tracy Kuzni

1 **AN ACT to amend** 115.797 (1) (a), 115.80 (1) (a) 2., 115.80 (2m) (a) and 115.80 (2m)
2 (e); and **to create** 115.76 (13m), 115.76 (16m), 115.7825, 115.787 (2) (i), 115.80
3 (1) (a) 1m. and ^{118.305} (118.315) of the statutes; **relating to:** the use of physical
4 restraints and timeouts in schools.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.
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:

5 **SECTION 1.** 115.76 (13m) of the statutes is created to read:
6 115.76 (13m) "Physical restraint" has the meaning given in s. 118.315 (1) (L).
7 **SECTION 2.** 115.76 (16m) of the statutes is created to read:
8 115.76 (16m) "Timeout" has the meaning given in s. 118.315 (1) (s).
9 **SECTION 3.** 115.7825 of the statutes is created to read:

115.7825 Functional behavioral assessment and behavioral

intervention plan. (1) FUNCTIONAL BEHAVIORAL ASSESSMENT. (a) The individualized

education program team shall ^{arrange for} conduct a functional behavioral assessment for a child with a disability for whom a behavior intervention plan is required under s. 115.787

(2) (i). The functional behavioral assessment shall establish a baseline measure of the child's behaviors that are of a type described in s. 115.787 (2) (i) 1. to 3. and shall contain all of the following information:

1. A description of each behavior in concrete terms.

2. The frequency and duration of each behavior described in subd. 1. and the manner in which the behavior changes in intensity over the course of the day or with changes in variables including the child's activity or setting or the presence of others.

3. An identification of the contextual factors that contribute to each behavior described in subd. 1., including cognitive and affective factors.

****NOTE: Context is defined by Webster's as "the set of circumstances or facts that surround a particular event, situation, etc." Contextual factors, then, would include the factors enumerated in the preceding subdivision 2. (the setting, presence of people, time of day in which certain behaviors occur, etc.). I am confused, therefore, by the drafting instructions, which identify cognitive and affective factors as contextual factors. It would seem to me that cognitive and affective factors would be more related to the particular pupil, not the pupil's surroundings. No?

4. A hypothesis ^{describing the purpose the behavior described in sub 1. serves for the child;} regarding the conditions under which the behavior described ^{actions or inactions of others} in subd. 1. usually occurs and the probable ^{perpetrate} consequences that serve to maintain the behavior, provided in sufficient detail that the hypothesis may form the basis for a behavior intervention plan under sub. (2). ^{recommendations include in}

****NOTE: The drafting instructions directed me to include "a hypothesis regarding the general conditions under which a behavior usually occurs and probable consequences that serve to maintain it..." in the FBA. I assumed that "it" refers to the problem behavior, and "maintain" is used to mean "cause or enable a situation [it, or the problem behavior] to continue." However, I'm confused by the use of "probable consequences" with "serve to maintain" in this sentence. Consequences are effects, later, of something that occurred earlier. Your drafting instructions would have consequences cause the behavior to continue. Could another word or words be used instead of consequences? Or have I misunderstood your intent?

****NOTE: To hypothesize is to put forward a hypothesis; a hypothesis is a supposition made on the basis of limited evidence as a starting point for further investigation. The meaning of the word hypothesis is inconsistent with it's use in the draft as a "sufficiently detailed" basis for the behavioral intervention plan. Could the person conducting the FBA be directed to draw preliminary conclusions from the assessment that could be the basis for recommendations in the behavioral intervention plan?

① (b) A functional behavioral assessment conducted under this section by the
② individualized education program team shall not be based solely on the behaviors of
3 the child with a disability that are of a type described in s. 115.787 (2) (i) 1. to 3., but
4 on multiple sources of data, including information obtained from direct observation
5 of the child by the child's teachers and related service providers, information
6 obtained from the child and the child's parent, and a review of the child's pupil
7 records.

****NOTE: I drafted this subsection with the assumption that the IEP team conducts the assessment. *Mo. corrected* Okay? That said, what triggers the initiation/completion of a functional behavioral assessment? How is the assessment different from the evaluation conducted by the IEP team under s. 115.782 (2), stats., for the preparation of the IEP? Should the assessment be integrated into the evaluation completed under s. 115.782 (2), stats.?

see section 4 of bill, cr. s. 115.787 (2)(c)
No. could be part of it but not necessarily

8 (2) BEHAVIORAL INTERVENTION PLAN. (a) A behavioral intervention plan
9 prepared for a child with a disability shall include all of the following:
10 1. Baseline information about the behaviors of the child that are of a type
11 described in s. 115.787 (2) (i) 1. to 3. obtained through the functional behavioral
12 assessment.
13 2. Intervention strategies to be used to minimize the occurrence of each
14 behavior identified in subd. 1.
15 3. Recommendations for teaching and reinforcing appropriate alternative and
16 adaptive behaviors.
17 4. Criteria to determine the effectiveness of the interventions under subd. 2.
18 and the alternative and adaptive behaviors under subd. 3. The criteria under this

1 subdivision shall measure the frequency, duration, and intensity of each behavior
2 identified under subd. 1.

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

8 6. If given as provided under par. (b), parental consent, in writing, to use
9 physical restraint or timeout.

10 (b) A behavioral intervention plan may not authorize the use of physical
11 restraint or timeout on a child with a disability unless consent is given by the parent
12 of the child as provided under this paragraph. Consent given under this paragraph
13 shall be valid for 12 months beginning on the date on which consent is given unless
14 withdrawn by the parent of the child. A parent may withdraw consent at any time
15 for any reason. To obtain consent under this paragraph, all of the following shall
16 apply:

17 1. The parent shall be provided with specific, complete, and accurate
18 information in the parent's native language about all of the following:

19 a. The benefits of authorizing the use of physical restraint or timeout.

20 b. The manner in which physical restraint or timeout would be administered.

21 c. Any expected side effects or risks of side effects from the use of physical
22 restraint or timeout.

23 d. Alternative behavioral management techniques that would be used prior to
24 or instead of physical restraint or timeout.

1 e. Any possible or probable consequences of withholding consent to use physical
2 restraint or timeout.

3 f. The period for which consent is effective and the fact that the parent may
4 withdraw consent at any time for any reason.

5 2. The parent shall be provided sufficient time to review and consider the
6 information presented under subd. 1. and to ask questions before being requested to
7 give consent.

8 3. A parent's consent to authorize the use of physical restraint or timeout under
9 this paragraph shall be in writing. The parent shall be provided with a copy of the
10 written consent and the local educational agency shall retain a copy of the written
11 consent in its records for the child.

12 SECTION 4. 115.787 (2) (i) of the statutes is created to read:

13 115.787 (2) (i) For a child with a disability who has not responded to the
14 behavioral approaches specified in the child's individualized education program or
15 who exhibits any of the following behaviors, a behavioral intervention plan under s.
16 115.7825 (2):

must be created

move to line 13

***NOTE: If the child has not exhibited one of the problem behaviors below, what will the behavioral intervention plan contain? That is, should such a child with a disability have a BIP under this paragraph?

BIP required under current law for a child who is suspended extensively.

- 17 1. Assaultive or self-injurious behavior.
- 18 2. Behavior that causes property damage.
- 19 3. Behavior that significantly interferes with the implementation of the child's
- 20 individualized education program.

21 SECTION 5. 115.797 (1) (a) of the statutes is amended to read:

22 115.797 (1) (a) "Dispute" means any disagreement between parties concerning
23 the proposal or refusal to initiate or change the evaluation, individualized education

1 program or educational placement of a child with a disability or the provision of a free
 2 appropriate public education to or the use of physical restraint or timeout on such
 3 a child. "Dispute" includes any such disagreement between parties that arises before
 4 the filing of a request for a hearing under s. 115.80 or in which other processes,
 5 including a hearing under s. 115.80 or litigation, have been requested or commenced.

6 **SECTION 6.** 115.80 (1) (a) 1m. of the statutes is created to read:

7 115.80 (1) (a) 1m. A parent, or the attorney representing the child, may file a
 8 written request for a hearing within one year after the use by the local educational
 9 agency of physical restraint or timeout on the parent's child, except that, if the local
 10 educational agency has not previously provided the parent or the attorney
 11 representing the child with notice of the right to request a hearing under this
 12 subdivision, he or she may file a request under this subdivision within one year after
 13 the local educational agency provides the notice. The division shall develop a model
 14 form to assist parents in filing a request under this subdivision.

15 **SECTION 7.** 115.80 (1) (a) 2. of the statutes is amended to read:

16 115.80 (1) (a) 2. The parent, or the attorney representing the child, shall
 17 include in the request under subd. 1. or 1m. the name of the child, the address of the
 18 residence of the child, the name of the school the child is attending, a description of
 19 the nature of the problem of the child relating to the proposed or refused initiation
 20 or change or the use of physical restraint or timeout, including facts relating to the
 21 problem, and a proposed resolution of the problem to the extent known and available
 22 to the parents at the time.

****NOTE: Should an LEA be granted authority to seek a hearing to override a
 parent's refusal to grant consent — or withdrawal of consent — to the use of physical
 restraint or timeout under s. 115.7825 (2)?

*NO. There are already provisions for what
 recourse s.d. may take*

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

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

8 SECTION 9. 115.80 (2m) (e) of the statutes is amended to read:

9 115.80 (2m) (e) If the local educational agency does not resolve the issues
10 presented by the hearing request to the satisfaction of the child's parents within 30
11 days of receipt of the request, the hearing requested under sub. (1) (a) 1. or 1m. may
12 occur.

13 SECTION 10. 118.315 of the statutes is created to read:

14 118.315 Use of positive behavioral interventions and supports and
15 aversive interventions. (1) DEFINITIONS. In this section:

****NOTE: Does this new section 118.315 allow the intentional infliction of pain on
pupils under certain ^{No.} circumstances (which would constitute "corporal punishment,"
under s. 118.31 (1))? If so, I will need to amend s. 118.31 (3). Please advise.

16 (a) "Administrator" means a school principal or designee, a school district
17 administrator, as defined under s. 115.001 (8), or designee, or a pupil services
18 director or designee.

****NOTE: What is a "pupil services director"?

19 (b) "Aversive intervention" means deliberate action, including physical
20 restraint, seclusion, and timeout, taken by a school employee or administrator to
21 establish a negative association between certain behaviors and the deliberate action.

****NOTE: I modified the proposed definition of this term, substituting the word
"deliberate" for "deliberative." Deliberate means intentional. Deliberative means
considered, or dealing with the wisdom and expediency of a proposal; as proposed in the

JFK make it a person in district who
has special ed/ELL programs, etc.
if not in statute, just vic designee

OK
↓
can substitute
w/ terms
of hand

drafting instructions, deliberative did not seem to fit in the definition of aversive intervention. That said, is it necessary to the effectiveness of the bill to define the term, ^{elcs} "aversive interventions?" Given that seclusion is prohibited under the bill, I wonder why it is included in the definition of aversive interventions? Would it be sufficient to refer to timeout and physical restraint wherever the term "aversive interventions" was proposed to be used? Is it important that the reason for the use of the aversive interventions be included when referring to physical restraint or timeout?

Also, the drafting instructions directed me to define "antecedent." I did not define the term in part because the definition proposed was problematic, but also because I did not see that a definition for this term was necessary. After you have reviewed the draft, please let me know if you disagree. ^{o/c}

1 (c) "Behavioral intervention plan" means the written plan developed as part of
2 an individualized education program under s. 115.787 (2) (i).

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

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

5 (f) "Deescalation" means the withdrawal or introduction of a stimulus to a
6 situation in order to cause the situation to be more controlled and calm and less
7 dangerous.

****NOTE: Is this definition necessary? Deescalate is defined to mean "decrease in intensity, magnitude, amount, or the like." The definition proposed for de-escalation by the drafting instruction seems more limited. For example, is the withdrawal or presentation of a stimulus the only way to bring a situation into control? Would it be acceptable to use "deescalate" (defined not in the bill but using the common dictionary definition) wherever "deescalation" is proposed to be used?

8 (g) "Emergency" means a situation in which it is necessary to control a pupil's
9 spontaneous or unpredictable behavior when that behavior poses a clear and present
10 danger of serious physical harm to the pupil or to others and cannot be immediately
11 controlled by a less restrictive technique than the one temporarily applied by a
12 trained school employee. "Emergency" does not include a situation in which a pupil
13 uses profanity or threatens physical harm to himself or herself or others unless the
14 pupil demonstrates a means of carrying out the threat.

15 (h) "Individualized education program" has the meaning given in s. 115.76 (9).

16 (i) "Local educational agency" has the meaning given in s. 115.76 (10).

I care defining note for next draft

*Doc is on LEAF
kids who get
of ground*

****NOTE: Please be aware that, because "local educational agency" has a specific meaning that is tied to children with disabilities, this term cannot be a synonym for school districts in the bill. Where necessary, the bill refers to both local educational agencies and school districts. However, references to local education agencies and school districts may not capture situations in which a non-disabled pupil is confined in a correctional facility.
Is that okay? *yes.*

1 (j) "Mechanical restraint" means a device that restricts a pupil's freedom of
2 movement or normal access to a portion of his or her body and that the pupil cannot
3 easily remove. "Mechanical restraint" does not include a protective or stabilizing
4 device that is prescribed by a health care professional for a child with a disability in
5 accordance with the child's individualized education program.

6 (k) "Parent" has the meaning given in s. 115.76 (12).

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

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

****NOTE: I don't believe this definition works; after reading the definition, I don't really understand what a "positive behavioral intervention and support" is. However, because I am not clear what you intend to accomplish with this definition, I did not modify the definition at all.

*see notes of
AST about*

An intervention is defined in Webster's dictionary as "the act or fact of intervening." Intervene is defined, in turn, as "to come between disputing people or groups, etc.; intercede; mediate." It is not clear how an intervention would be used to "organize teaching and learning environments."

I am also not clear why the term "supports" is incorporated into the defined term. What does "support" mean in this context?

What does a "positive behavioral intervention and support" look like in practice? Are "positive behavioral interventions and supports" an alternative to the use of physical restraint and timeout? Are they only used when a *certain* pupil is exhibiting problem

yes

behaviors, or are positive behavioral interventions and supports intended to be incorporated into the curriculum or day-to-day procedures applicable to all pupils in every classroom? *both - quality PBS program at school/district-wide*

Is there a difference between a "teaching environment" and a "learning environment"?

Finally, what are "evidence-based practices"? *IDEA/NCLB terminology* Are these determined by a teacher on a case by case basis, or are they part of a teaching curriculum that all teachers must complete? *Neither. Evidence behind the method/practice being employed*

****NOTE: Do you want to require the Department of Public Instruction to identify positive behavioral interventions and supports by rule? *permissive - DPI may have rules.*

1 (n) "Pupil" includes a child with a disability.

2 (o) "School" includes public schools, charter schools, private schools in which
3 a child with a disability is enrolled as provided in s. 115.77 (1m) (d), *private schools participating*
4 children with disabilities education board. *program under s. 119.23*

****NOTE: The drafting instructions directed me to define a "nonpublic school" as a school that receives money from DPI to provide special education and related services to children with disabilities under an unidentified section of chapter 115. I did not include a definition for "nonpublic school" because the term "private school" is a defined term under s. 115.001 (3r).

I cross-referenced s. 115.77 (1m) (d), stats. Is s. 115.77 (1m) (d), stats., the unidentified section of chapter 115 that you had in mind?

****NOTE: Did you intend this section *119.23* to apply to pupils enrolled in Milwaukee Parental Choice Program (private) schools under s. 119.23? *us*

5 (p) "School day" means any day during which a pupil is in attendance at a
6 school *or* a school-sponsored event *or program* ~~or public education agencies or services.~~

****NOTE: I modified the proposed definition of this term. However, I am not clear what "public education agencies or services" means or why this phrase is necessary - wouldn't "school" (as defined above) or "school-sponsored event" cover all the bases, so to speak? Is the use of the term "public" significant? That is, do you intend to exclude "private education agencies or services?"

7 (q) "School employee" means a person who is employed by or under contract
8 with a school.

9 (r) "Seclusion" means a behavioral control technique that involves placing a
10 pupil in a setting from which the pupil is incapable of leaving because the setting is
11 locked or egress from the setting is physically blocked by furniture or another
12 inanimate object or a closed door held shut from the outside.

****NOTE: Is it necessary to explain why a pupil is incapable of leaving a seclusion setting? I recommend eliminating the material beginning with "because" and ending with "outside." ^{ok}

- 1 (s) "Timeout" means a behavioral management technique administered by a
 2 school employee that involves the supervised separation of a pupil from his or her
 3 class and the placement of the pupil in a timeout room.

****NOTE: The drafting instructions directed me to define timeout as a technique "administered by a trained school employee." I removed the word, trained; if trained is included in the definition, then a person who is not trained can administer something that ^{ok} looks like and is experienced by a pupil as timeout but is not subject to the restrictions and regulations imposed by this bill. Let me know if you have any questions.

****NOTE: The drafting instructions directed me to define timeout as a technique that "may involve the separation of a pupil..." May is a discretionary term, meaning that as defined, the timeout may involve something other than the separation of a pupil from ^{ok} his or her class. I deleted the word "may." Please let me know if you intended the timeout to involve something else as well.

****NOTE: What do you mean by "supervised separation?" Will the pupil always be ^{remove} supervised? If so, who will look after the classroom from which the pupil was taken? ^{someone else}

^{yes, but provided to be in def.} ****NOTE: The drafting instructions directed me to include the purpose for using timeout (to "calm[] the pupil and provid[e] the pupil with the opportunity to regain self-control.") in the definition. I took out the purpose statement. If there are other legitimate reasons to use timeout, then the use of timeout for these reasons is not authorized even if used in compliance with the bill; in addition, the use of timeout for other reasons would not fall within the definition of "timeout" and so would not be subject ^{ok} to regulation under the bill even if the timeout was used in a manner that would otherwise violate the bill.

- 4 (t) "Timeout room" means an enclosed setting used for timeout and from which
 5 a pupil is capable of leaving because the setting is not locked and egress from the
 6 setting is not physically blocked by furniture or another inanimate object or a closed
 7 door held shut from the outside.

****NOTE: Is it necessary to explain why a pupil is capable of leaving a timeout room? I recommend eliminating the material beginning with "because" and ending with ^{ok} "outside."

- 8 (2) SECLUSION PROHIBITED; PROHIBITED TYPES AND USES OF PHYSICAL AND
 9 MECHANICAL RESTRAINT. (a) No school employee may use seclusion on a pupil.
 10 (b) No school employee may use physical restraint on a pupil if the physical
 11 restraint does any of the following:
 12 1. Fails to give adequate attention and care to the pupil's head.

- 1 2. Places pressure or weight on, or causes the compression of, the chest, lungs,
- 2 sternum, diaphragm, back, or abdomen of the pupil.
- 3 3. Obstructs the pupil's circulation or the ability of the pupil to breathe.
- 4 4. Intentionally causes pain.

****NOTE: I completely modified this subdivision. I substituted "intentionally causes" for "utilizes" and eliminated "to obtain compliance or control." The phrase proposed in the drafting instruction, "one that utilizes pain to obtain compliance and control" implied that a physical restraint that utilizes pain for purposes other than obtaining compliance and control would be acceptable. Okay?

muc to p. 11 5 ^(b) 5. Releases noxious, toxic, or otherwise unpleasant substances near the pupil. *A*

****NOTE: How does the use of noxious, toxic, or unpleasant substances constitute physical restraint as that term is defined in the bill? Would these be chemicals that could make a pupil drowsy? Is it okay to use substances, such as gasses, that are not noxious?

⁽⁶⁾ 6. Subjects the pupil to ridicule, humiliation, or excessive emotional trauma.

^(d) ^(c) 7 (c) No school employee may use physical restraint or timeout to punish a pupil, for the convenience of the employee or other school employees, or because there is an insufficient number of school employees, and no school employee may threaten the use of physical restraint or timeout to obtain a pupil's cooperation or otherwise obtain control over a pupil's behavior.

****NOTE: How will it be possible to determine that a school employee did not use physical restraint or timeout to "punish a pupil [or] for the convenience of the employee?" This seems very subjective.

Also, the last clause of this paragraph could preclude a school employee from giving a warning (threat) that if a pupil is unable to gain control over his or her behavior that timeout or physical restraint will be used. Is that your intent?

Up to s.d. to determine when it reviews the incident. maybe rules could cover it 014

^(d) ^(d) 12 (d) No school employee may use a therapeutic device intended for physical therapy or occupational therapy as a mechanical restraint.

^(d) ^(e) 14 (e) No school employee may use a mechanical restraint unless the school within which the school employee works is located within a mental health or correctional facility or is a residential care center for children and youth, as defined in s. 48.02 (15d).

1 (3) PHYSICAL RESTRAINT AND TIMEOUT; TRAINING AND CERTIFICATION REQUIRED. (a)
 2 No school employee may ^{use} physically ^{re}restrain a pupil or impose or supervise timeout
 3 unless that employee has been trained and certified by the department under this
 4 subsection within the preceding ²⁴~~48~~ months.

****NOTE: What do you mean by "physically restrain?" Was it your intent that the defined term, "physical restraint," would apply in this sentence? As drafted, that is not the case. In this sentence, "physically restrain" is a action, or verb; "physical restraint," however, is a noun. Do you wish to change the defined term to "physically restrain?" Or prohibit a school employee from "using physical restraint" on a pupil? Elsewhere in the draft I consistently use the phrase "use physical restraint," not "physically restrain." Is that inaccurate? Please advise.

5 (b) The department shall establish by rule an evidence-based training program
 6 that includes instruction in all of the following:

****NOTE: What do you mean by evidence-based? *Not just ad hoc activity
 & not just a "training program"*

7 1. Positive behavioral interventions and supports, alternatives to the use of
 8 physical restraint and timeout, and techniques for relationship building, the
 9 deescalation of problem behaviors, crisis prevention, and crisis intervention.

****NOTE: Would relationship-building techniques and alternatives to timeout and physical restraint be considered "positive behavioral interventions and supports?" If so, I recommend eliminating these phrases and, possibly, moving them to the definition of "positive behavioral interventions and supports." If not, I am not clear what you mean by "positive behavioral interventions and supports." *NO*

10 2. The safe, effective, and appropriate use of timeout, including instruction in
 11 all of the following:

- 12 a. How to identify emergencies that may indicate the need for timeout.
 13 b. Methods for evaluating the risk or danger of physical harm in specific
 14 situations in order to determine whether timeout is warranted.
 15 c. The effect of timeout on a pupil.
 16 d. Reporting requirements when timeout is used.
 17 e. Procedures for investigating and resolving complaints regarding the use of
 18 timeout.

1 3. The safe, effective, and appropriate administration of physical restraint,
2 including instruction in all of the following:

****NOTE: As used in this subdivision, physical restraint sounds like a thing (I
envison wrist or ankle bands). Is that correct? Both tools & hands

3 a. How to identify an emergency that may indicate the need for the use of
4 physical restraint.

5 b. Methods for evaluating the risk of harm in specific situations in order to
6 determine whether the use of physical restraint is warranted.

7 c. The effects of the use of physical restraint on a pupil.

8 d. Reporting requirements when physical restraint is used.

9 e. Procedures for investigating and resolving complaints regarding the use of
10 physical restraint.

11 (c) The department shall certify in writing a school employee who successfully
12 completes the training program required under this subsection and demonstrates
13 proficiency in the safe, effective, and appropriate use of each behavioral control
14 technique addressed by the training program. Certification under this subsection
15 shall be valid for a period not to exceed ^{e 24} 48 months. The department shall renew the
16 certification of any school employee who requests renewal and meets the
17 requirements of this subsection.

****NOTE: Are there other behavioral control techniques that would be taught in
this program besides physical restraint and timeout? If so, should they be identified? yes

****NOTE: Is a fee required for certification? May certification be revoked? For any
reason or only for cause? up to department by dept

18 (4) USE OF PHYSICAL RESTRAINT. (a) 1. Before any school employee may use
19 physical restraint on any pupil, the school principal or his or her designee shall
20 provide the parent of that pupil with a description of any physical restraint that may
21 be used.

1 2. The use of physical restraint shall require the presence of at least 2 school
2 employees certified under sub. (3) (c).

 ****NOTE: Just for the sake of argument, in a single teacher classroom, where will
the second school employee come from? Who will watch the classroom(s) while physical
restraint is being used on a pupil?

} up to
subdivision

3 (b) A school employee certified under sub. (3) (c) may, after reviewing and
4 considering any known medical, developmental, or psychological limitations of a
5 pupil, use physical restraint on that pupil only in an emergency and only if at least
6 one of the following applies:

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

yes, but PBS is broader
a program

 ****NOTE: Would constructive, non-physical deescalation and restructuring of the
pupil's school environment be considered "positive behavioral interventions and
supports?" If so, I recommend removing this level of detail and placing it within the
definition of "positive behavioral interventions and supports."

 ****NOTE: Who determines whether "other less intrusive interventions ... have
failed or been deemed inappropriate?" The (teacher) proposing to use the physical
restraint? yes.

staff person

 ****NOTE: As drafted, this provision would allow physical restraint to be applied in
an emergency to a child with a disability so long as subdivision 1. applies even if the
parent of the child has not consented to the use of physical restraint. Is that your intent? yes.

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

 ****NOTE: As drafted, parental consent to the use of physical restraint is only
required for those pupils who have an IEP and a behavioral intervention plan. Is that
your intent?

yes

1 (c) 1. Except as provided in subd. 2., a school employee who uses physical
 2 restraint on a pupil shall ensure that physical restraint is used for no more than the
 3 lesser of 15 minutes total or 5 minutes after the pupil ceases the behavior giving rise
 4 to the use of physical restraint.

5 2. If the school employee determines that the use of physical restraint on a pupil
 6 may need to exceed 15 minutes, he or she shall communicate with the person
 7 identified under sub. (9), who shall evaluate the need for extending the use of
 8 physical restraint on the pupil and obtain the approval of an administrator prior to
 9 authorizing the school employee to extend the use of physical restraint beyond 15
 10 minutes. The school employee shall comply with any directives issued by the
 11 administrator concerning the continued use of physical restraint.

****NOTE: I am a bit confused by how the procedure for a school employee to extend the use of physical restraint beyond 15 minutes would work in practice. Why must the school employee go through the school-based resource person in order to get time-sensitive approval from the administrator? What role does the school-based resource person serve in this arrangement? If a physical restraint is a physical "hold," and not a thing, like a wrist band, how will the school employee who is executing the physical restraint be able to leave the setting to communicate with the resource person or administrator in any event?

procedurally difficult; goal: decrease in use of physical restraints.

What happens after the resource person or administrator evaluates the need for extending the use of physical restraint? What if the resource person says "no." May the school employee go to the administrator (on his or her own) anyway?

no. it ends

****NOTE: I am also confused about the use of the term administrator, as defined in sub. (1) (a), in this subdivision. As drafted, the school employee could obtain the approval of any administrator in the state. Is that your intent, or should there be one administrator in each school from whom school employees need to obtain approval prior to extending the use of physical restraint? Alternatively, would using "school principal of his or her designee" in place of administrator suffice?

ok - confine to school in which school ee is employed

12 (d) A school employee who uses physical restraint on a pupil who uses sign
 13 language or an augmentative mode of communication as the pupil's primary mode
 14 of communication shall permit the pupil to have his or her hands free of physical
 15 restraint for brief periods throughout the duration of the use of physical restraint for

1 the purpose of communication, unless the school employee determines that such
2 freedom appears likely to result in harm to the pupil or to others.

3 (5) USE OF TIMEOUT. (a) 1. A school employee certified under sub. (3) (c) may,
4 after reviewing and considering any known medical, developmental, or psychological
5 limitations of a pupil who is not a child with a disability, use timeout on that pupil
6 only if other less intrusive interventions, including positive behavioral interventions
7 and supports, constructive, non-physical deescalation, and restructuring of the
8 pupil's school environment, have failed or been deemed inappropriate.

****NOTE: Please see the notes following sub. (4) (b) 1.

9 2. A school employee certified under sub. (3) (c) may, after reviewing and
10 considering any known medical, developmental, or psychological limitations of a
11 pupil who is a child with a disability, use timeout on that pupil only if both of the
12 following apply:

13 a. Other less intrusive interventions, including positive behavioral
14 interventions and supports, constructive, non-physical deescalation, and
15 restructuring of the pupil's school environment, have failed or been deemed
16 inappropriate.

17 b. The pupil's individualized education program includes a behavioral
18 intervention plan, the pupil's individualized education program permits the use of
19 timeout, and the child's parent has consented in writing to the use of timeout in the
20 circumstances under which timeout is proposed to be used.

****NOTE: As drafted, parental consent to the use of timeout is required only for
those pupils who have both an IEP and a behavioral intervention plan. Is that your
intent? (u)

21 (b) 1. No school employee may use a room as a timeout room unless the room
22 has been approved for that use by the local educational agency or school district

1 within which the school is located. The local educational agency or school district
2 shall require as a condition for approval that a photograph of the room be submitted
3 with the request for approval. No room may be approved as a timeout room unless
4 the room satisfies all of the following:

****NOTE: Is it your intent that charter schools under s. 118.40 (2r) and private
schools in which a child with a disability is enrolled would have to get approval from the
school board of the school district in which the school is located even though the school
board would have no authority over either of those schools? Is there some other entity
(DPI?) that could approve the timeout room?

yes - for private schools (2r)

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

8 b. It has an area of at least ⁴⁸42 square feet and a ceiling height that is comparable
9 to the height of the surrounding room or rooms.

10 c. It complies with all state and county fire and safety codes and is equipped
11 with adequate lighting and ventilation.

12 d. It affords the school employee with the means to hear and see the pupil at
13 all times.

14 e. If the timeout room is fitted with a door, the door either has a solid, wood core
15 construction or is constructed of steel.

16 2. Before a school employee may place a pupil in a timeout room identified
17 under subd. 1., the school principal or his or her designee shall provide the parent
18 of the pupil with an opportunity to see and enter the room.

19 (c) 1. Except as provided in subd. 2., a school employee who uses timeout on a
20 pupil shall ensure that timeout is used for no more than the lesser of 15 minutes total
21 or 5 minutes after the pupil ceases presenting the behavior or behaviors giving rise
22 to the use of the timeout.

1 2. If the school employee determines that the use of timeout on a pupil may need
2 to exceed 15 minutes, he or she shall communicate with the person identified under
3 sub. (9), who shall evaluate the need for extending the use of the timeout and obtain
4 the approval of an administrator prior authorizing the school employee to extend the
5 use of the timeout beyond 15 minutes. The school employee shall comply with any
6 directives issued by the administrator concerning continued use of the timeout.

****NOTE: Please refer to the notes under sub. (4) (c). *ok*

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

****NOTE: The drafting instructions did not indicate who at the school or in the
school district was responsible for notifying the parent, so I drafted the provision so that
the principal or his or her designee makes that report. Okay? *Yes.*

- 11 1. Physical restraint has been used on the pupil.
- 12 2. For a pupil who does not have an individualized education plan, the pupil has
13 been placed in a timeout room.
- 14 3. The pupil has been placed in a timeout room for more than 15 minutes.
- 15 4. The pupil has been placed in a timeout room 2 or more times within any
16 consecutive 3-hour time period.

****NOTE: I don't understand why notification to the parents is required for these
four "occurrences" but not others. For example, why aren't the parents of pupils with an
IEP required to be notified under subd. 2.? What if the child has an IEP, but not a
behavioral intervention plan and the child has been placed in a timeout room? What if
the child has an IEP and a behavioral intervention plan, but the behavioral intervention
plan does *not* authorize the use of a timeout and the child is placed in a timeout room?

*No need to
expand/increase
scope of
notification*

17 (b) The school employee who uses physical restraint or timeout in any of the
18 occurrences identified in par. (a) shall, within 24 hours after the occurrence, submit

- 1 a written report containing the following information to the school administrator,
2 which report shall be retained by the school for review by the department:

****NOTE: Who is the "school administrator" in this paragraph? Remember that administrator is defined as "a school principal or designee, a school district administrator or designee, or a pupil services director or designee." Would it be better to have the report submitted to the principal or his or her designee? *yes.*

Is it your intent that the report be submitted to the school administrator under this paragraph (within 24 hours) before it must be submitted to the pupil's parent under paragraph (c) (within ~~36~~ *24* hours)?

****NOTE: I made the list of reportable items under this paragraph identical in the report submitted to the school administrator and the report submitted to the parent. Okay? *yes.*

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

- 4 2. A description of the actions of the pupil before, during, and after the
5 occurrence, including debriefing of the pupil. *see SVs (?) p.22 - reference to incorporate HC review that takes place under this sub.*

****NOTE: The drafting instructions proposed the use of the word "debriefing" with respect to the actions of the pupil and the school employees "before, during, and after the occurrence." Is "debriefing" the appropriate term here? To debrief means "to interrogate in order to obtain useful information or intelligence" or "to subject to prohibitions against revealing or discussing classified information." Is it your intent that the pupil or school employees be interrogated? Or be prohibited from discussing certain information related to the occurrence?

- 6 3. A description of any other relevant events preceding the use of the physical
7 restraint or timeout, including the justification for initiating the use of physical
8 restraint or timeout.

- 9 4. The names of the school employees involved in the occurrence.

- 10 5. A description of the actions of the school employees under subd. 3. before,
11 during, and after the occurrence, including debriefing of the school employees.

****NOTE: Please see the drafting note following subd. 2.

- 12 6. A description of any interventions used prior to the use of the physical
13 restraint or timeout.

- 14 7. If physical restraint was used, a description of the physical restraint used,
15 including any hold used and the reason the hold was necessary.

1 8. A log of the pupil's behavior during the use of the physical restraint or
2 timeout, including a description of any interaction between the pupil and the school
3 employees.

4 9. A description of any injuries sustained by, and any medical care
5 administered to, the pupil, school employees, or others before, during, or after the use
6 of the physical restraint or timeout.

7 10. A description of any property damage associated with the occurrence.

8 11. A description of future actions to be taken to control the pupil's problem
9 behaviors.

10 12. The name and position of the school employee completing the report.

11 (c) The school principal or his or her designee shall, within 36 hours after the
12 occurrence of any of the events identified under par. (a), send or transmit by 1st class
13 mail or electronic mail or facsimile transmission to the pupil's parent the information
14 contained in the report prepared under paragraph (b). Each report prepared under
15 this paragraph shall be retained by the school for review by the department.

16 (d) Annually and upon the request of the department, each school district, the
17 operator of each charter school, and each local educational agency shall submit to the
18 department a written report containing a summary of the occurrences identified in
19 par. (a) for which a report was prepared under par. (b). The information reported
20 under this paragraph shall include all of the following:

 ****NOTE: Do you wish to require the private schools in which a child with a
 disability is enrolled under s. 115.77 (1m) (d) to submit a report to the department under
 this paragraph?

(Yes) and private school participating in 119.23

21 1. The name of the school at which the occurrence occurred.

22 2. The name of the school employees present before, during, and after the
23 occurrence.

1 3. The number of occurrences involving a child with a disability.

2 4. The duration of the use of physical restraint for each occurrence involving
3 the use of physical restraint.

4 5. The number of timeouts for which a report was required and the duration
5 of each such timeout.

6 6. The number and a description of any injuries related to each occurrence.

7 7. Evidence that the parent of each pupil on whom physical restraint or timeout
8 was used was notified as required under this subsection.

9 **(7) PROCEDURES FOR REVIEW OF USE OF PHYSICAL RESTRAINT AND TIMEOUT.** (a) Each
10 school district, each local educational agency, each operator of a charter school, and
11 each operator of a private school in which a child with a disability is enrolled as
12 provided in s. 115.77 (1m) (d) shall establish a procedure for reviewing each
13 occurrence identified in sub. (6) (a). The parent of a pupil on whom physical restraint
14 or timeout was used shall be notified in writing of the date, time, and location of the
15 review at least 10 days before the review is to be held.

16 (b) A review conducted under this subsection shall include all of the following:

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

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

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

23 c. Whether the parent of the pupil was notified as required under sub. (6) (a).

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

TKK: ID person involved in review under his off. resolve person teacher involved, parent. CF. Parent invitation to IEP under 115. up to school

****NOTE: Must anyone other than the school employees involved in the occurrence (and the invited parents) attend the meeting? Was it your intent that the parent would be present during the full discussion of all issues identified in this paragraph? if possible - invite

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

2 upon completion of the review. A review of the effectiveness of the use of the physical restraint or timeout.

3 The school employee shall prepare an individual behavior plan for the pupil that provides for the use of other, specified interventions or the continued use of these interventions.

TKK: Whatever the plan. ****NOTE: Which school employee creates the individual behavior plan, and when does the school employee create the plan? Before or after the meeting? Is the plan under this subdivision paragraph subject to review or approval by anyone? What are the "other, specified interventions" referred to in this subdivision paragraph? What are the "these interventions" referred to in this subdivision paragraph?

6 b. A determination as to whether the pupil should be evaluated under s. 115.782.

-> any s. sec can make this determination under current law ("child find")

TKK: sec Ch. 115, subch. 115. ****NOTE: Who decides whether or not to evaluate the pupil? Will that person be involved in the determination under this subdivision paragraph? If not, is it anticipated that the determination here will be only a recommendation? Is the recommendation reviewable? By whom?

8 (c) The individualized education program team of any child with a disability on whom physical restraint or timeout was used in an occurrence described in sub. (6) (a) shall convene in the manner provided under s. 115.787 (4) to review the pupil's individualized education program and behavioral intervention plan. The pupil's parent shall be notified in writing of the date, time, and place of a meeting required under this paragraph at least 10 days prior to the meeting. A meeting required under this paragraph shall include all of the following:

TKK: within 21 days. ****NOTE: When (how soon after the occurrence) should the IEP team convene? Is the meeting of the IEP team in addition to or in lieu of the meeting held as required under par. (b)?

15 1. A review of the pupil's written progress, monitoring, and incident reports and the report prepared under sub. (6) (b) following the occurrence.

17 2. If appropriate, interviews with the pupil.

could be one big meeting, but meeting under (b) not an IEP mtg.

1 3. Concerns regarding the individualized education program and behavioral
2 intervention plan of the pupil's parent.

3 4. A review and discussion of any indirect or collateral effects of the use of
4 aversive interventions on the pupil, including increases in aggressive or escapist
5 behaviors, health-related effects, or emotional reactions.

6 5. If a functional behavioral assessment has not been prepared for the pupil
7 within the preceding 12 months, the completion of a functional behavioral
8 assessment.

9 (8) COMPLAINTS AND GRIEVANCE. (a) A parent of a child with a disability for whom
10 a behavioral intervention plan has been prepared may do any of the following:

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

****NOTE: What would be the purpose of a hearing under this subdivision?

review for compliance w/ this s. 115.815

13 2. File a ^{written} complaint regarding the school's compliance with this section with the
14 state superintendent. *ok to r-ref 115.*

15 (b) The parent of a pupil who is not a child with a disability may file a grievance
16 regarding the use of physical restraint or timeout on the pupil with the school
17 district. The school district shall respond to the grievance within 15 days. The
18 parent may, within 30 days after a determination under this paragraph, appeal the
19 determination to the state superintendent. The state superintendent shall review
20 the school district's compliance with this section.

****NOTE: I have a number of questions regarding the complaint/grievance section:

1. What did you anticipate a complaint to DPI would look like? ^{letter} Should DPI be required to prepare a complaint form by administrative rule? What happens once a complaint has been filed with DPI?

2. How is a complaint to DPI under paragraph (a) different from a grievance to the school district under paragraph (b)? Why aren't the procedures available to parents of a pupil who is not a child with a disability identical to those available to parents of a child

They are; supplement to ch 115.

Compare to pupil non discrimination process; but not w/ timelines

with a disability? For example, why can't the parents of a pupil who is not a child with a disability go directly to DPI with a complaint? *They can't.*

3. What do you mean when you refer to the "determination of the [school district]" under paragraph (b)? What is the school district being asked to determine under paragraph (b)? *compliance w/ s. 118.315 - TKK clarify in statute.*

4. Must the parent of a child who is not a child with a disability file a grievance within any specific time period (for example, one year, as is provided under proposed s. 115.80 (1) (a) 1m.)? *Yes.*

5. Are the remedies available to the parents under the complaint procedure different from those available under the grievance procedure? For example, if a parent appeals a determination by the school district, what remedy may the state superintendent provide other than the review of the school district's compliance with proposed s. 118.315? *DPI can: 1. offer child-specific remedies/commands to S.D. 2. request that S.D. establish a corrective action plan to ensure the district spends to 100% of kids.*

*move
up to
sub. (2)*

(9) SCHOOL-BASED RESOURCE ON POSITIVE BEHAVIORAL INTERVENTIONS AND

SUPPORTS. (a) Each school shall identify at the beginning of each school year at least one school employee who shall serve as a school-based resource on positive behavioral interventions and supports. The employee identified under this paragraph shall do all of the following:

1. Maintain certification under sub. (3) (c).
2. Complete the advanced training under par. (b).
3. Assist other school employees to implement positive behavioral interventions and supports and safely and appropriately administer physical restraint and timeout.

(b) The department shall establish by rule an advanced, evidence-based training program to be completed by the school employees identified under par. (a). The department shall certify in writing a school employee who successfully completes the training program under this paragraph and demonstrates proficiency in the safe, effective, and appropriate use of each behavioral control technique addressed by the training program.

****NOTE: What do you mean by "evidence-based training program"?

UP TO LPE

****NOTE: Is a fee required for certification? / Does a certification under this paragraph expire? Must a certification under this paragraph be renewed with any frequency? May certification be revoked? For any reason or only for cause?

1

(END)