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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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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 118.315 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. 118.815 (1) (1). ~~5/10/09~~

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

8 115.76 (16m) "Timeout" has the meaning given in s. 118.815 (1) (s).

9 SECTION 3. 115.7825 of the statutes is created to read:

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as typed

no ¶ material moved from pages 3 to 5

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115.7825

Functional behavioral assessment and behavioral

intervention plan.

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

local educational agency

shall conduct a functional behavioral assessment for a child

to be conducted

education program team shall 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 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?

le *****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 ^{with a disability} 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.

le *****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.?

Insert 3-8

8 (1) (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 ^{para (a)} s. 115.787 (2) (i) 1. to 3. obtained through the functional behavioral
 12 assessment ^{conducted under sub. (2)}
 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

move to 2-2



The local educational agency shall provide the parent with a copy of the written consent and shall retain a copy of the written records for the child.

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

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

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

(b) A behavioral intervention plan may not authorize the use of physical restraint or timeout on a child with a disability unless consent is given by the parent of the child as provided under this paragraph. Consent given under this paragraph

shall be valid for 12 months beginning on the date on which consent is given unless withdrawn by the parent of the child. A parent may withdraw consent at any time for any reason. To obtain consent under this paragraph, all of the following shall

apply:

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

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

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

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

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

move to 2-2

the child's parent consents in writing

move to 2-2

MOV
to
2-2

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. ^{Provide} The parent ^{with} shall be provided sufficient time to review and consider the
6 information presented under subd. 1. and to ask questions before ^e being requested ^{ing} to
7 give consent. ^{the parent}

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.~~

Insert 5-13

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

13 (a) ~~e~~ 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):

***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?

- 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.

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

****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)?

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. ^{118.305} 118.315 of the statutes is created to read:

14 ^{118.305} 118.315 Use of positive behavioral interventions and supports and
15 aversive interventions. (1) DEFINITIONS. In this section:

le *****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.

le (a) "Administrator" means a school principal or designee, ^{or} a school district administrator, as defined under s. 115.001 (8), or designee, ^{or} a pupil services director or designee.

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

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

le *****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.

- 1 (b) (c) "Behavioral intervention plan" means ^athe written plan developed as part of
- 2 an individualized education program under s. 115.787 ⁷⁸²⁵ (i) 1
- 3 (c) (d) "Child" has the meaning given in s. 115.76 (3).
- 4 (d) (e) "Child with a disability" has the meaning given in s. 115.76 (5).
- 5 (e) (f) "Deescalation" means the withdrawal ^{of a stimulus from} 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 (f) (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 ^{used} temporarily applied by a ~~trained~~ ^{certified under subc (4)(c)} school employee. "Emergency" does not include a situation in which a pupil
- 12 uses profanity or threatens physical harm to himself or herself or others unless the
- 13 pupil demonstrates a means of carrying out the threat.
- 14
- 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).

INSERT 8-15

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****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?

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.

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

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?

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), and a county children with disabilities education board.

4 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-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 to apply to pupils enrolled in Milwaukee Parental Choice Program (private) schools under s. 119.23?

5 (p) "School day" means any day during which a pupil is in attendance at a

6 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 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.

INSERT 10-5

****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."

- 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 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.

- 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 "outside."

- 8 (3) SECLUSION ^{AND USE OF CERTAIN SUBSTANCES} / 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.

INSERT FROM P. 25, line 1

INSERT FROM p. 12, line 5

- 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?

move to p. 11,
line 10

5 (b) ^{No school employee may} ~~Releases~~ ^(caustic) noxious, toxic, or otherwise unpleasant substances near the pupil.

****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 5 ~~6~~ 6. Subjects the pupil to ridicule, humiliation, or excessive emotional trauma.
- 7 (d) ~~(c)~~ (c) No school employee may use physical restraint or timeout to punish a pupil,
- 8 for the convenience of the employee or other school employees, or because there is an
- 9 insufficient number of school employees, and no school employee may threaten the
- 10 use of physical restraint or timeout to obtain a pupil's cooperation or otherwise obtain
- 11 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?

- 12 (e) ~~(d)~~ (d) No school employee may use a therapeutic device intended for physical
- 13 therapy or occupational therapy as a mechanical restraint.
- 14 (f) ~~(e)~~ (e) No school employee may use a mechanical restraint unless the school within
- 15 which the school employee works is located within a mental health or correctional
- 16 facility or is a residential care center for children and youth, as defined in s. 48.02
- 17 (15d).

(3) PHYSICAL RESTRAINT AND TIMEOUT, TRAINING AND CERTIFICATION REQUIRED. (a)
 No school employee may ^{use} physical ^{(S) AUTHORIZED} ^{on} restraint a pupil or impose or supervise timeout
 unless that employee has been trained and certified by the department under this
 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.

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

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

1. Positive behavioral interventions and supports, alternatives to the use of physical restraint and timeout, and techniques for relationship building, the 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."

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

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

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

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

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 ^{person} 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 ²⁴ 48 months. The department shall renew the
16 certification of any school employee ^{person} who requests renewal and meets the
17 requirements of this subsection.

le ****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?

18 (5) (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 ^{pupil's} parent of that pupil with a description of any physical restraint that ^{might} 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).⁽⁴⁾

****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?

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.

****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?

****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?

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?

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 ^{school-based resource} person
 7 identified under sub. (9), ⁽²⁾ who shall evaluate the need for extending the use of
 8 physical restraint on the pupil and obtain the approval of ^{the school principal or his or her} an administrator ^{designee} 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 ^{school principal or his or her designee} 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?

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?

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 (3) (5) USE OF TIMEOUT. (a) 1. A school employee certified under sub. (3) (c) may, (4)
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.

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

9 2. A school employee certified under sub. (3) (c) may, after reviewing and (4)
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.

le *****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?

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
le

SECTION 10

department of health
services; department of
correction
or
department
of public
instruction

INSERT 18-1

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?

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 ^{school-based resource} person identified under
 3 sub. ^{e (2)} (9), who shall evaluate the need for extending the use of the timeout and obtain
 4 the approval of ^{the school principal or his or her designee} ~~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 ^{school principal or his or her designee} ~~administrator~~ concerning continued use of the timeout.

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

7 ^{e (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?

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?

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

SECTION 10

principal or his or her designee

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 ^{a discussion} debriefing of the ^{a pupil's feelings about and reactions to} pupil. _{the occurrence}

****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 ^{a discussion} debriefing of the ^{reactions of the} school employees _{to the occurrence}

****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 ²⁴36 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.

INSERT 21-21

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 SO
18 department a written report containing a summary of the occurrences identified in ^{the}
19 par. (a) for which a report was prepared under par. (b). The information reported ^{body of}
20 under this paragraph shall include all of the following: ^{each private school participation in the program under SO 1190.23}

****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 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 (8) STET: leave as typed

(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.

STET: leave as typed
So 11/9/23

Insert
22-16

7

employees involved in the occurrence

****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 use of the physical restraint or timeout.

3 ^{Upon completion of the review under this subd (2) a,} ^{a written}
③ The school ~~employee~~ shall ^{work with the parent of the pupil, the school-based resource person, and other} prepare an individual behavior plan for the pupil that ^{appropriate persons to}
4 provides for the use of other, specified interventions or the continued use of the
5 intervention. ^{used previously}

****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.
7 115.782.

****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
9 on whom physical restraint or timeout was used in an occurrence described in sub.

10 ⁽⁷⁾ ^{within 21 days after the occurrence}
⑥ (a) shall ⁽⁷⁾ convene in the manner provided under s. 115.787 (4) to review the pupil's
11 individualized education program and behavioral intervention plan. The pupil's
12 parent shall be notified in writing of the date, time, and place of a meeting required
13 under this paragraph at least 10 days prior to the meeting. A meeting required under
14 this paragraph 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)?

15 1. A review of the pupil's written progress, monitoring, and incident reports and
16 the report prepared under sub. ⁽⁷⁾ ⑥ (b) following the occurrence.

17 2. If appropriate, interviews with the pupil.

Within one year after the use of physical restraint or timeout on the parent's child,

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

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

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

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

1. File a written request for a hearing regarding the use of physical restraint or timeout on the child in the manner provided under s. 115.80 (1) (a) 1m. and 20

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

2. File a ^{written} complaint regarding the school's compliance with this section with the state superintendent.

(b) The parent of a pupil who is not a child with a disability may file a grievance regarding the use of physical restraint or timeout on the pupil with the school district. The school district ^{or state superintendent} shall respond to the ^{complaint} grievance within 15 days. The

parent may, within 30 days after ^{of the school district} ^{of a school district} determination ^{of this subdivision} under this paragraph, appeal the determination to the state superintendent. The state superintendent shall review 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

INSERT 24-15A

INSERT 24-15B

INSERT 24-20

INSERT 24-17

9

NOTE: I am still not clear about the purpose of this section. What procedure must be followed once a hearing is requested?

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?

no 9 (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)? What relief may be obtained following a hearing or from the complaint? (result of)

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.)?

no 9 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? 118.305 ✓

INSERT 25-1

move to p. 11, line 8

INSERT 25-16

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). (4)
- 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 under this paragraph and demonstrates proficiency
15 in the safe, effective, and appropriate use of each behavioral control technique
16 addressed by the training program.

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

e
****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)

1 **INSERT 3-8**

2 **(1) BEHAVIORAL INTERVENTION PLAN.** (1)(a) The local educational agency shall
3 ensure that a behavioral intervention plan is prepared for a child with a disability
4 who has not responded to the behavioral approaches specified in the child's
5 individualized education program or who exhibits any of the following behaviors:

- 6 1. Assaultive or self-injurious behavior.
7 2. Behavior that causes property damage.
8 3. Behavior that significantly interferes with the implementation of the child's
9 individualized education program.

10 **INSERT 5-13**

11 115.787 (2) (i) If required under s. 115.7825, a behavioral intervention plan.

12 ~~**INSERT 6-13**~~

13 In this subdivision, "local educational agency" includes the operator of a charter school
14 established under s. 118.40 (2r), the governing body of a private school in which a
15 child with a disability is enrolled as provided in s. 115.77 (1m) (d), and the governing
16 body of a private school participating in the program under s. 119.23.

17 **INSERT 8-15**

18 (9) "High degree of negligence" means criminal negligence, as defined in s.
19 939.25 (1).

20 **INSERT 18-1**

21 (10) ^{if the room is located in a school operated by or a charter school established by the school district}
22 the department of health services if the room is located in an institution or
23 facility operated by the department of health services, the department of corrections
if the room is located in a Type 1 juvenile correctional facility, as defined in s. 938.02

✓
1 (19), or a Type 1 prison, as defined in s. 301.01 (5), or, if the room is located in a charter
2 school established under s. 118.40 (2r), a private school in which a child with a
3 disability is enrolled as provided in s. 115.77 (1m) (d), or a private school
4 participating in the program under s. 119.23, the state superintendent

the state superintendent

5 **INSERT 24-15A**

6 1. File a written request for a hearing within one year after the use of physical
7 restraint or a timeout on the pupil. The parent, or the attorney representing the
8 pupil, shall include in the request the name of the pupil, the address of the residence
9 of the pupil, the name of the school the pupil is attending, a description of the nature
10 of the problem of the pupil relating to the use of physical restraint or timeout,
11 including facts relating to the problem, and a proposed resolution of the problem to
12 the extent known and available to the parents at the time.

13 **INSERT 22-16**

14 be attended by the school-based resource person identified under sub. (2),
15 school employees involved in the occurrence, and other persons identified by the
16 school-based resource person. The review shall address

17 **INSERT 25-16**

18 (10) CIVIL LIABILITY EXEMPTIONS. (a) Any administrator or school-based
19 resource person identified under sub. (2), who authorizes a school employee certified
20 under this section to use physical restraint or timeout on a pupil as authorized in this
21 section is immune from civil liability for the act of authorization unless it constitutes
22 a high degree of negligence.

23 (b) Any administrator, school employee, or school-based resource person
24 identified under sub. (2) who is certified under this section and who uses physical
25 restraint or a timeout on a pupil as authorized in this section is immune from civil

4 **NOTE:** With whom does the parent file the request for a hearing? By whom is the hearing conducted?

address

include

school principal or his or her designee

school principal or his or her designee

sub (2) or (4)

of a non-disabled pupil

1 liability for his or her act or omission in the use of physical restraint or timeout unless
2 the act or omission constitutes a high degree of negligence.

3 (11) RULE-MAKING AUTHORITY. The department may promulgate rules to
4 administer and implement this section.

1

INSERT 10-5

****NOTE: The definition of school uses the word "includes" rather than "means"? Includes is broader, indicating that the list is not exclusive, whereas "means" is more restrictive. Is that intentional? This question is relevant to the following questions:

1. Did you intend s. 118.305 to apply to a private school not specifically identified in the definition of school, such as a private school in which no children with disabilities are enrolled or which is not participating in the Milwaukee Parental Choice Program?

2. Why is "county children with disabilities education board" (board) included in the definition of "school"? Although the board may operate a school or program, it is not in itself a school, correct?

3. Should the definition of school make reference to an institution or facility operated by DHS or a Type 1 juvenile correction facility or Type 1 prison operated by DOC? These institutions are required to seek approval of a timeout room under sub. (6) (b). Note that if any of these particular facilities are included in the definition of school, the terms, "school day" and "school employee" take on much broader meanings. Would you need to modify these definitions?

Please also consider whether the prohibitions on seclusion would need to be modified if these institutions are included in the definition of schools. For that matter, consider whether the provisions of section 118.305 need to be referenced in the chapters governing the treatment of institutionalized pupils by DHS and DOC.

please

2

INSERT 21-21

****NOTE: Should county children with disabilities education boards be required to submit annual reports under this paragraph? What about an institution or facility operated by DHS or a Type 1 juvenile correction facility or Type 1 prison operated by DOC?

3

INSERT 24-15B

4

(4)

2. Within one year after the use of physical restraint or timeout on the pupil,

5

INSERT 24-17

6

or, in the case of a pupil attending a charter school established under s. 118.40 (2r),

7

attending a private school in which a child with a disability is enrolled as provided

8

in s. 115.77 (1m) (d), or attending a private school participating in the program under

9

s. 119.23, with the state superintendent

10

INSERT 24-20

****NOTE: May the parent of a pupil who is not a child with a disability and who attends a charter school under s. 118.40 (2r), a private school in which a child with a disability is enrolled as provided in s. 115.77 (1m) (d), or a private school participating in the MPCP, appeal the determination made by the state superintendent? If so, to whom?

Insert Z from next page

1

INSERT 25-1

****NOTE: With whom or what entity does the parent of a child attending school in an institution or facility operated by DHS or a Type 1 juvenile correction facility of a Type 1 prison operated by DOC file a complaint?

1

This subsection provides for the ~~parents~~ parent of a child with a disability for whom a behavioral intervention plan has been prepared to file a request for a hearing or a written complaint. This subsection also provides for the parent of a child who is not disabled to file a request for a hearing or a written complaint. What about the parent of a child with a disability for whom no behavioral intervention plan has been prepared? Which paragraph, (a) or (b), should the parent of this child use to file a request for a hearing or a written complaint?

Insert Z:

LPS: move this material to page 4 of this insert at the location marked "Insert Z"



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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 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. 118.305 (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. 118.305 (1) (r).
9 SECTION 3. 115.7825 of the statutes is created to read:

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

6 1. Assaultive or self-injurious behavior.

7 2. Behavior that causes property damage.

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

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

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

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

17 3. Recommendations for teaching and reinforcing appropriate alternative and
18 adaptive behaviors.

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

23 5. A schedule for monitoring and reporting on the implementation and
24 effectiveness of the plan prepared under this subsection. The monitoring required
25 under this subdivision shall identify any indirect or collateral effects of the use of

1 aversive interventions on the child with a disability, including increases in
2 aggressive or escape behaviors, health-related effects, and emotional reactions.

3 6. If given as provided under par. (c), parental consent, in writing, to use
4 physical restraint or timeout. *if meets criteria See 119.305(4)(L)*

5 (c) A behavioral intervention plan may not authorize the use of physical
6 restraint or timeout on a child with a disability unless the child's parent consents in
7 writing as provided under this paragraph. The local educational agency shall
8 provide the parent with a copy of the written consent and shall retain a copy of the
9 written consent in its records for the child. Consent under this paragraph is valid
10 for 12 months beginning on the date on which consent is given unless withdrawn by
11 the parent of the child. A parent may withdraw consent at any time for any reason.
12 To obtain consent under this paragraph, the local educational agency shall do all of
13 the following:

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

- 16 a. The ~~benefits of~~ *purpose for* authorizing the use of physical restraint or timeout.
- 17 b. The manner in which physical restraint or timeout may 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 may 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 and the fact that the parent may
25 withdraw consent at any time for any reason.

In the name of the parent authorized under 119.305(4)(L) & consistent with these requirements

incorporate into 5115 the right for the parent to see the room & techniques used under this CR

See the room & techniques

but not less than the end of the next school day

1 2. Provide the parent with sufficient time to review and consider the
2 information presented under subd. 1. and to ask questions before requesting the
3 parent to give consent.

4 (2) FUNCTIONAL BEHAVIORAL ASSESSMENT. (a) The local educational agency shall
5 arrange for a functional behavioral assessment to be conducted for each child with
6 a disability for whom a behavior intervention plan is required under sub. (1). The
7 functional behavioral assessment shall establish a baseline measure of the child's
8 behaviors that are of a type described in sub. (1) (a) 1. to 3. and shall contain all of
9 the following information:

10 1. A description of each behavior in concrete terms.

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

14 3. An identification of the ~~contextual, cognitive, and affective~~ ^{significant factors, including...} factors ^{that} ~~that~~
15 contribute to each behavior described in subd. 1. ^{including} ↗

16 4. A hypothesis describing the purpose the behavior described in subd. 1. serves
17 for the child, the conditions under which the behavior described in subd. 1. usually
18 occurs, and the probable actions or inactions of others that serve to perpetuate the
19 behavior, provided in sufficient detail that the hypothesis may form the basis for
20 recommendations to include in a behavioral intervention plan prepared under sub.
21 (1).

22 (b) A functional behavioral assessment conducted under this section shall be
23 based on multiple sources of data, including information obtained from direct
24 observation of the child with a disability by the child's teachers and related service

any relevant communication treatment provided by the child

1 providers, information obtained from the child and the child's parent, and a review
2 of the child's pupil records.

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

4 115.787 (2) (i) If required under s. 115.7825, a behavioral intervention plan.

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

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

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

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

Roll statute w/ limitations

> or parent claims of it ? was: creation

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

23 115.80 (1) (a) 2. The parent, or the attorney representing the child, shall
24 include in the request under subd. 1. or 1m. the name of the child, the address of the
25 residence of the child, the name of the school the child is attending, a description of

1 the nature of the problem of the child relating to the proposed or refused initiation
 2 or change or the use of physical restraint or timeout, including facts relating to the
 3 problem, and a proposed resolution of the problem to the extent known and available
 4 to the parents at the time.

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

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

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

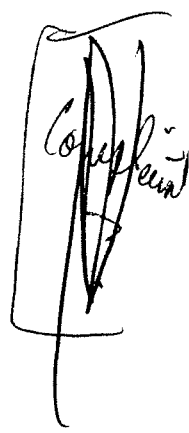
14 115.80 (2m) (e) If the local educational agency does not resolve the issues
 15 presented by the hearing request to the satisfaction of the child’s parents within 30
 16 days of receipt of the request, the hearing requested under sub. (1) (a) 1. or 1m. may
 17 occur.

18 **SECTION 10.** 118.305 of the statutes is created to read:

19 **118.305 Use of positive behavioral interventions and supports and**
 20 **aversive interventions. (1) DEFINITIONS.** In this section:

21 (a) “Aversive intervention” means deliberate action, including physical
 22 restraint, seclusion, and timeout, taken by a school employee to establish a negative
 23 association between certain behaviors and the deliberate action.

24 (b) “Behavioral intervention plan” means a plan developed under s. 115.7825
 25 (1).



A handwritten signature, possibly 'C. Johnson', is enclosed in a hand-drawn rectangular box on the right side of the page.

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

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

3 (e) "Deescalation" means the withdrawal of a stimulus from, or introduction of
4 a stimulus to, a situation in order to cause the situation to be more controlled and
5 calm and less dangerous.

word search

APR?

****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?

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

13 (g) "High degree of negligence" means criminal negligence, as defined in s.
14 939.25 (1).

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).

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

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

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

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

10 (n) "School" ^{means} includes a public school, a charter school, a private school in which
 11 a child with a disability is enrolled as provided in s. 115.77 (1m) (d), a private school
 12 participating in the program under s. 119.23, and a county children with disabilities
 13 education board.

***NOTE: The definition of school uses the word "includes" rather than "means." Includes is broader, indicating that the list is not exclusive, whereas "means" is more restrictive. Is that intentional? This question is relevant to the following questions:

1. Did you intend s. 118.305 to apply to a private school not specifically identified in the definition of "school," such as a private school in which no children with disabilities are enrolled or which is not participating in the Milwaukee Parental Choice Program?

2. Why is "county children with disabilities education board" (board) included in the definition of "school"? Although the board may operate a school or program, it is not in itself a school, correct?

3. Should the definition of "school" make reference to an institution or facility operated by DHS or a Type 1 juvenile correction facility or Type 1 prison operated by DOC? These institutions are required to seek approval of a timeout room under sub. (6) (b). Note that if any of these particular facilities are included in the definition of "school," the terms, "school day" and "school employee" take on much broader meanings. Would you need to modify these definitions?

Please also consider whether the prohibitions on seclusion would need to be modified if these facilities are included in the definition of "school." For that matter, please consider whether the provisions of section 118.305 need to be referenced in the chapters governing the treatment of institutionalized pupils by DHS and DOC.

14 (o) "School day" means any day during which a pupil is in attendance at a school
 15 or a school-sponsored event or program.

Don't want there "school" included, may be addressed in a separate bill. Need to see explicitly exclude Colton from by change of inclusions to means.
 No, but no fewer etc.

OK
 only
 recieves state funds.
 ↓
 is it possible for a private school would receive state \$ but not satisfy the other 2?
 probably not

1 (p) "School employee" includes a person who is under contract with a school.

2 (q) "Seclusion" means a behavioral control technique that involves placing a
3 pupil in a setting from which the pupil is incapable of leaving.

4 (r) "Timeout" means a behavioral management technique administered by a
5 school employee that involves the separation of a pupil from his or her class and the
6 placement of the pupil in a timeout room.

or other isolated area that is not a classroom

7 (s) "Timeout room" means an enclosed setting used for timeout and from which
8 a pupil is capable of leaving.

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

- 14 1. Maintain certification under sub. (4) (c).
- 15 2. Complete the advanced training under par. (b).
- 16 3. Assist other school employees to implement positive behavioral
- 17 interventions and supports and safely and appropriately administer physical
- 18 restraint and timeout.

as set forth in this ~~act~~ chapter section

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

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

4 (b) No school employee may release noxious, toxic, caustic, or otherwise
5 unpleasant substances near the pupil.

6 (c) No school employee may use physical restraint on a pupil if the physical
7 restraint does any of the following:

- 8 1. Fails to give adequate attention and care to the pupil's head.
- 9 2. Places pressure or weight on, or causes the compression of, the chest, lungs,
10 sternum, diaphragm, back, or abdomen of the pupil.
- 11 3. Obstructs the pupil's circulation or the ability of the pupil to breathe.
- 12 4. Intentionally causes pain.
- 13 5. Subjects the pupil to ridicule, humiliation, or emotional trauma.

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

19 (e) No school employee may use a therapeutic device intended for physical
20 therapy or occupational therapy as a mechanical restraint.

21 (f) No school employee may use a mechanical restraint unless the school within
22 which the school employee works is located within a mental health or correctional
23 facility or is a residential care center for children and youth, as defined in s. 48.02
24 (15d).

h/c no Doc/DATF Facility

~~(4) PHYSICAL RESTRAINT AND TIMEOUT AUTHORIZED~~ TRAINING AND CERTIFICATION

REQUIRED. (a) No school employee may use physical restraint on a pupil or impose or supervise timeout unless that employee has been trained and certified by the department under this subsection.

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

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

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

a. How to identify an emergency that may indicate the need for timeout.

b. Methods for evaluating the risk or danger of physical harm in specific situations in order to determine whether timeout is warranted.

c. The effect of timeout on a pupil.

d. Reporting requirements when timeout is used.

e. Procedures for investigating and resolving complaints regarding the use of timeout.

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

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

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

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

? : also include + for use of PR & T. "?

Phys - safety? f. safety of the pupil + any staff involved in the use of P.R. on a pupil

1 d. Reporting requirements when physical restraint is used.

2 e. Procedures for investigating and resolving complaints regarding the use of
3 physical restraint.

4 (c) The department shall certify in writing a person who successfully completes
5 the training program required under this subsection and demonstrates proficiency
6 in the safe, effective, and appropriate use of each behavioral control technique
7 addressed by the training program. Certification under this subsection shall be valid
8 for a period not to exceed 24 months. The department shall renew the certification
9 of any person who requests renewal and meets the requirements of this subsection.

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

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

16 (b) A school employee certified under sub. (4) (c) may, after reviewing and
17 considering any known medical, developmental, or psychological limitations of a
18 pupil, use physical restraint on that pupil only in an emergency and only if at least

19 one of the following applies ^{apply}

both

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

24 2. For a child with a disability whose individualized education program
25 includes a behavioral intervention plan, the child's individualized education

1 program permits the use of physical restraint and the child's parent has consented
2 in writing to the use of physical restraint in the circumstances under which physical
3 restraint is proposed to be used.

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

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

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

22 (6) USE OF TIMEOUT. (a) 1. A school employee certified under sub. (4) (c) may,
23 after reviewing and considering any known medical, developmental, or psychological
24 limitations of a pupil who is not a child with a disability, use timeout on that pupil
25 only if other less intrusive interventions, including positive behavioral interventions

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

3 2. A school employee certified under sub. (4) (c) may, after reviewing and
4 considering any known medical, developmental, or psychological limitations of a
5 pupil who is a child with a disability, use timeout on that pupil only if both of the
6 following apply:

7 a. 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.

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

15 (b) 1. No school employee may use a room as a timeout room unless the room
16 has been approved for that use by the school district if the room is located in a school
17 operated, or a charter school established, by the school district, the department of
18 health services if the room is located in an institution or facility operated by the
19 department of health services, the department of corrections if the room is located
20 in a Type 1 juvenile correctional facility, as defined in s. 938.02 (19), or a Type 1
21 prison, as defined in s. 301.01 (5), or the state superintendent if the room is located
22 in a charter school established under s. 118.40 (2r), a private school in which a child
23 with a disability is enrolled as provided in s. 115.77 (1m) (d), or a private school
24 participating in the program under s. 119.23. The school district, department of
25 health services, department of corrections, or department of public instruction shall

*Parent
File
School*

*edit to
elim.
DHS
1
DOL
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Facility*

1 require as a condition for approval that a photograph of the room be submitted with
2 the request for approval. No room may be approved as a timeout room unless the
3 room satisfies all of the following:

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

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

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

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

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

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

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

22 2. If the school employee determines that the use of timeout on a pupil may need
23 to exceed 15 minutes, he or she shall communicate with the school-based resource
24 person identified under sub. (2), who shall evaluate the need for extending the use
25 of the timeout and obtain the approval of the school principal or his or her designee

1 prior to authorizing the school employee to extend the use of the timeout beyond 15
2 minutes. The school employee shall comply with any directives issued by the school
3 principal or his or her designee concerning continued use of the timeout.

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

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

9 2. For a pupil who does not have an individualized education plan, the pupil has
10 been placed in a timeout room.

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

12 4. The pupil has been placed in a timeout room 2 or more times within any
13 3-hour period.

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

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

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

23 3. A description of any other relevant events preceding the use of the physical
24 restraint or timeout, including the justification for initiating the use of physical
25 restraint or timeout.

1 4. The names of the school employees involved in the occurrence.

2 5. A description of the actions of the school employees under subd. 4. before,
3 during, and after the occurrence, including a discussion of the reactions of the school
4 employees to the occurrence.

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

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

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

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

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

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

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

19 (c) The school principal or his or her designee shall, within 24 hours after the
20 occurrence of any of the events identified under par. (a), send or transmit by 1st class
21 mail or electronic mail or facsimile transmission to the pupil's parent the information
22 contained in the report prepared under paragraph (b). Each report prepared under
23 this paragraph shall be retained by the school for review by the department.

24 (d) Annually and upon the request of the department, each school district, the
25 operator of each charter school, the governing body of each private school in which

1 a child with a disability is enrolled as provided in s. 115.77 (1m) (d), the governing
2 body of each private school participating in the program under s. 119.23, and each
3 local educational agency shall submit to the department a written report containing
4 a summary of the occurrences identified in par. (a) for which a report was prepared
5 under par. (b). The information reported under this paragraph shall include all of
6 the following:

if they ^{operate} run a school
****NOTE: Should county children with disabilities education boards be required to
submit annual reports under this paragraph? What about an institution or facility
operated by DHS or a Type 1 juvenile correction facility or Type 1 prison operated by *MD*
DOC?

- 7 1. The name of the school at which the occurrence occurred.
- 8 2. The name of the school employees present before, during, and after the
9 occurrence.
- 10 3. The number of occurrences involving a child with a disability.
- 11 4. The duration of the use of physical restraint for each occurrence involving
12 the use of physical restraint.
- 13 5. The number of timeouts for which a report was required and the duration
14 of each such timeout.
- 15 6. The number and a description of any injuries related to each occurrence.
- 16 7. Evidence that the parent of each pupil on whom physical restraint or timeout
17 was used was notified as required under this subsection.

18 **(8) PROCEDURES FOR REVIEW OF USE OF PHYSICAL RESTRAINT AND TIMEOUT.** (a) Each
19 school district, each local educational agency, each operator of a charter school, the
20 governing body of each private school in which a child with a disability is enrolled
21 as provided in s. 115.77 (1m) (d), and the governing body of each private school
22 participating in the program under s. 119.23 shall establish a procedure for
23 reviewing each occurrence identified in sub. (7) (a). The parent of a pupil on whom

1 physical restraint or timeout was used shall be notified in writing of the date, time,
2 and location of the review at least 10 days before the review is to be held and invited
3 to attend the review.

4 (b) A review conducted under this subsection shall be attended by the
5 school-based resource person identified under sub. (2), school employees involved in
6 the occurrence, and other persons identified by the school-based resource person.
7 The review shall include all of the following:

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

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

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

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

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

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

18 a. A review of the effectiveness of the use of the physical restraint or timeout.

19 Upon completion of the review under this subd. 2. a., the school employees involved
20 in the occurrence shall work with the parent of the pupil, the school-based resource
21 person, and other appropriate persons to prepare a written individual behavior plan
22 for the pupil that provides for the use of other, specified interventions or the
23 continued use of the intervention used previously.

24 b. A determination as to whether the pupil should be evaluated under s.
25 115.782.

1 (c) The individualized education program team of any child with a disability
 2 on whom physical restraint or timeout was used in an occurrence described in sub.
 3 (7) (a) shall, within 21 days after the occurrence, convene in the manner provided
 4 under s. 115.787 (4) to review the pupil’s individualized education program and
 5 behavioral intervention plan. The pupil’s parent shall be notified in writing of the
 6 date, time, and place of a meeting required under this paragraph at least 10 days
 7 prior to the meeting. A meeting required under this paragraph shall include all of
 8 the following:

9 1. A review of the pupil’s written progress, monitoring, and incident reports and
 10 the report prepared under sub. (7) (b) following the occurrence.

11 2. If appropriate, interviews with the pupil.

12 3. Concerns regarding the individualized education program and behavioral
 13 intervention plan of the pupil’s parent.

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

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

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

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

*What
 they
 did at
 do
 BIP?*

1 2. Within one year after the use of physical restraint or timeout on the parent's
2 child, file a written complaint regarding the school's compliance with this section
3 with the state superintendent.

4 (b) The parent of a pupil who is not a child with a disability may do any of the
5 following:

*within s. 5. of
DPL w/ copy to the
school authority*

6 1. File a written request for a hearing within one year after the use of physical
7 restraint or a timeout on the pupil. The parent, or the attorney representing the
8 pupil, shall include in the request the name of the pupil, the address of the residence
9 of the pupil, the name of the school the pupil is attending, a description of the nature
10 of the problem of the pupil relating to the use of physical restraint or timeout,
11 including facts relating to the problem, and a proposed resolution of the problem to
12 the extent known and available to the parents at the time.

DPL ***NOTE: With whom does the parent of a non-disabled pupil file the request for
a hearing? By whom is the hearing conducted? *DLA DOA: Division of hearing + appeal*

13 2. Within one year after the use of physical restraint or timeout on the pupil,
14 file a written complaint regarding the use of physical restraint or timeout on the
15 pupil with the school district or, in the case of a pupil attending a charter school under
16 s. 118.40 (2r), attending a private school in which a child with a disability is enrolled
17 as provided in s. 115.77 (1m) (d), or attending a private school participating in the
18 program under s. 119.23, with the state superintendent. The school district or state
19 superintendent shall respond to the complaint within 15 days. The parent may,
20 within 30 days after the determination of a school district under this subdivision,
21 appeal the determination of the school district to the state superintendent. The state
22 superintendent shall review the school district's compliance with this section.

***NOTE: This subsection provides for the parent of a child with a disability for whom a behavioral intervention plan has been prepared to file a request for a hearing or a written complaint. This subsection also provides for the parent of a child who is not

disabled to file a request for a hearing or a written complaint. What about the parent of a child with a disability for whom no behavioral intervention plan has been prepared? Which paragraph, (a) or (b), should the parent of this child use to file a request for a hearing or a written complaint?

rights should be the same

should apply to all parents

****NOTE: May the parent of a pupil who is not a child with a disability and who attends a charter school under s. 118.40 (2r), a private school in which a child with a disability is enrolled as provided in s. 115.77 (1m) (d), or a private school participating in the MPCP, appeal the determination made by the state superintendent? If so, to whom?

****NOTE: I am still not clear about the purpose of this subsection. What procedure must be followed once a hearing is requested? 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)? What result or relief may be obtained following a hearing or from the complaint? 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. 118.305?

Individual + CAP

****NOTE: With whom or with what entity does the parent of a child attending school in an institution or facility operated by DHS or a Type 1 juvenile correction facility of a Type 1 prison operated by DOC file a complaint?

collective action plan

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

put name person in need of

make the teacher have the right to manage

6 (b) Any school principal or his or her designee, school employee, or
7 school-based resource person identified under sub. (2) who is certified under sub. (2)
8 or (4) and who uses physical restraint or a timeout on a pupil as authorized in this
9 section is immune from civil liability for his or her act or omission in the use of
10 physical restraint or timeout unless the act or omission constitutes a high degree of
11 negligence.

maybe x-ref federal law & your remedies

12 (11) RULE-MAKING AUTHORITY. The department may promulgate rules to
13 administer and implement this section.

14 (END)

*federal law imposes requirements on complaint process and, if complaint resolution remedy:
• any individualized relief deemed appropriate
• compensatory education
• take advantage of IEP*

Jeff Spitzer-Resnick

From: Dianne Greenley
Sent: Monday, July 27, 2009 4:44 PM
To: Jeff Spitzer-Resnick
Subject: timeout

I think that what we want is for timeout without consent to be used only in an emergency situation. Timeout with consent can be used in non-emergencies. The drafting gets a bit tricky since we also wanted timeout and restraint, even with consent, to be subjected to the requirements of less intrusive intervention, deescalation, etc. So (5)(b) and (6)(a) both need to be rewritten. Perhaps if just convey the intent to the drafter, she can figure out how to do it.

Dianne

Kuczenski, Tracy

From: Jeff Spitzer-Resnick [spitznick@drwi.org]

Sent: Monday, August 24, 2009 2:28 PM

To: Kuczenski, Tracy

Subject: Federal regulations-complaints

Per our conversation, take a look at 34 C.F.R. § 300.151-300.153, for the federal regulations on how states are supposed to administer complaints.

Thanks for another good meeting.

Jeff Spitzer-Resnick
Disability Rights Wisconsin