



State of Wisconsin
2009 - 2010 LEGISLATURE

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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Reyen

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:

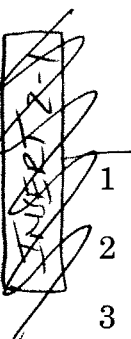
6 115.76 (13m) "Physical restraint" has the meaning given in s. 118.305 (1) (L) (k) ✓

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) (p) ✓

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

INSERT 2-1



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. X

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

5 (c) A behavioral intervention plan may ~~not~~ authorize the use of physical
6 restraint or timeout on a child with a disability ^{consistent with the requirements under 50118.305 if} 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 ^{original} 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 ^{a purposes for which the} benefits of ^{will be used} 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.

INSERT 4-1

↑ but at least 24 hours ↑

①

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

↳ subds 1 to 3

(2) FUNCTIONAL BEHAVIORAL ASSESSMENT. (a) The local educational agency shall arrange for a functional behavioral assessment to be conducted for each child with a disability for whom a behavior intervention plan is required under sub. (1). The functional behavioral assessment shall establish a baseline measure of the child's behaviors that are of a type described in sub. (1) (a) 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 ^{significant factors; including} contextual, cognitive, and affective factors that contribute to each behavior described in subd. 1.

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

(1).

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

**** NOTE: what is a community treatment provider?
Is this a term of art or a title that would be recognized by the reader?

1

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

and any relevant community treatment providers of the child

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

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

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

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115.797 (1) (a) "Dispute" means any disagreement between parties concerning

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the proposal or refusal to initiate or change the evaluation, individualized education

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program or educational placement of a child with a disability or the provision of a free

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appropriate public education to or the use of physical restraint or timeout on such

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a child. "Dispute" includes any such disagreement between parties that arises before

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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.

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

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115.80 (1) (a) 1m. A parent, or the attorney representing the child, may file a

parent learns of the

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written request for a hearing within one year after the use by the local educational

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agency of physical restraint or timeout on the parent's child, except that, if the local

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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

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subdivision, he or she may file a request under this subdivision within one year after

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the local educational agency provides the notice. The division shall develop a model

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form to assist parents in filing a request under this subdivision.

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

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115.80 (1) (a) 2. The parent, or the attorney representing the child, shall

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include in the request under subd. 1. or 1m. the name of the child, the address of the

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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).

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.

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

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

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

17 (i) (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 (j) (k) "Parent" has the meaning given in s. 115.76 (12).

x (1) ^(k) (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.

x (6) ^(L) (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.

x (10) ^(m) (n) "School" ^{means} ^{operated by a school district} 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. ^{school operated by a}

****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.

x (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. ^{on whom physical restraint or a timeout is used}

Notwithstanding so 115.01(10)A

2
1 (p) "School employee" includes a person who is under contract with a school.

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

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

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

for other isolated area that is not a
classroom, that is

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~~ Obtain certification 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 ^{in the manner authorized under this 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.

*** NOTE: Will certification under this paragraph be permanent? Or must the
school-based resource person periodically renew this certification? What will be the
conditions for renewal of certification? For example, must the person complete
the training again?

*** NOTE: What do you mean by "an insufficient number of school employees"? Is insufficient for what? Who determines what constitutes a sufficient number?

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

21 x (e) - (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).

CS FOR USE OF PHYSICAL RESTRAINT OR TIMEOUT

1

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

2

REQUIRED/ (a) No school employee may use physical restraint on a pupil or impose

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or supervise timeout unless that employee has been trained and certified by the department under this subsection.

4

5

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

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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.

8

9

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

11

12

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

13

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

14

15

c. The effect of timeout on a pupil.

16

d. Reporting requirements when timeout is used.

17

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

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

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21

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

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23

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

24

25

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

INERT 12-1

NOTE: This paragraph requires the department to renew the certification of a person who meets the requirements of this sub-section. What are the requirements for renewal?

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(d) Reporting requirements when physical restraint is used.

(e) Procedures for investigating and resolving complaints regarding the use of physical restraint.

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

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

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

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

one of the following applies: ^{apply}

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

2. For a child with a disability whose ^{The} individualized education program ^{of the child} includes a behavioral intervention plan, the child's individualized education

LPS: this note will also be used at 15-21 - after you prepare it here you can copy/paste it to there.

INSERT 13-4

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 x (d) (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 x (e) (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 x (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

NOTE: Because we have added the language regarding the school employee to stop the use of physical restraint or limit "as soon as the purpose for which it is being used is achieved" I eliminated the language regarding the employee to continue to use physical restraint for additional minutes.

INSERT 13-22

stopped as soon as the purpose for which it is being used is achieved but 15

before the end of the 15 minutes authorized and subd. 1.

for more than 15 minutes

g for more than

NOTE: I want to know when the end of the 15-minute period and the point at which the employee gets the okay to extend the 15-minute period?

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 ^{(b) Except as provided in para (c) 5 a} 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:

x 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.

INSERT 14-15

11 b. The pupil's individualized education program includes a behavioral
12 intervention plan, the ^{child's} 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 (d) (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

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 x ¹⁰ ~~10~~ ^a (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 x ²⁰ ~~20~~ ^b (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 x ³⁰ ~~30~~ ^c (c) It complies with all state and county fire and safety codes and is equipped
10 with adequate lighting and ventilation.

11 x ⁴⁰ ~~40~~ ^d (d) It affords the school employee with the means to hear and see the pupil at
12 all times.

13 x ⁵⁰ ~~50~~ ^e (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 x (e) ² ~~2~~ ^c (c) 1. Except as provided in subd. 2., a school employee who uses timeout on a
19 pupil shall ensure that timeout is ^{stopped ~~removed~~ as soon as the purpose for which it is being used is achieved but is} 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. ^{in any school day}

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 ^{before the end of the 15 minutes authorized under subd. 1} 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 ^a and obtain the approval of the school principal or his or her designee

for more than 15 minutes

INSERT *** NOTE Pgs. 13, line 8

What happens between the end of the 15-minute period and the point at which the employee gets the okay to extend the 15-minute period? Must the pupil return to the classroom even if he or she is out of control?

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

INSERT 18-2

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:

****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?

- 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

INSERT 18-21

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), ^{the} 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:

or the attorney
representing the child

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.

INSERT 21-1

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

INSERT 21-6

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

INSERT 21-12

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

****NOTE: With whom does the parent of a non-disabled pupil file the request for a hearing? By whom is the hearing conducted?

2. Within one year after the use of physical restraint or timeout on the pupil, file a written complaint regarding the use of physical restraint or timeout on the pupil with the school district or, in the case of a pupil ^{parent learns of the} attending a charter school under s. 118.40 (2r), ^{enrolled in} attending a private school in which a child with a disability is enrolled

INSERT 21-19

^{as provided in s. 115.77 (1m) (d), or} attending a private school participating in the program under s. 119.23, with the ^{governing body of the private school} state superintendent. The school district ^{operator of the charter school} or state superintendent shall respond to the complaint within 15 days. The parent ^{or attorney representing the pupil} may, within 30 days after ^a the determination of a school district under this subdivision, appeal the determination of the school district to the state superintendent. The state superintendent shall review the ^{of the school district's} school district's compliance with this section.

INSERT 21-22

****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

****NOTE: Is it your intent that the state superintendent's review under this subdivision be limited only to the matters raised in the complaint or is it your intent that the state superintendent review more broadly the compliance with 501180305? As drafted the review is more broad.

INSERT 22-1 →

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?

****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?

****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?

11 B

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.

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.

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

(END)

12 B

2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2425/P2ins
TKK:cjs:jf

1 **INSERT 2-1**

2 **SECTION 1.** 115.76 (16o) of the statutes is created to read:

3 115.76 (16o) "Timeout room" has the meaning given in s. 118.305 (1) (q). ✓

4 **INSERT 4-1**

5 2. Provide the parent ^{in the parent's native language,} with a description of each physical restraint that may be
6 used. ✓

7 3. Provide the parent with an opportunity to see and enter the timeout room.

8 **INSERT 12-1**

9 d. Methods for ensuring the safety of a pupil and any school employees involved
10 in the use of physical restraint on a pupil.

11 **INSERT 13-4**

12 (c) A school employee certified under sub. (4) (c) may, after reviewing and
13 considering any known medical, developmental, or psychological limitations of a
14 pupil who is not a child with a disability, use physical restraint on that pupil in an
15 emergency if other less intrusive interventions, including positive behavioral
16 interventions and supports, constructive, non-physical deescalation, and
17 restructuring of the pupil's school environment, have failed or been deemed
18 inappropriate.

19 **INSERT 13-22**

20 Before a school employee may use a timeout on a pupil, the school principal or his or
21 her designee shall provide the pupil's parent with an opportunity to see and enter the
22 timeout room.

23 **INSERT 14-15**

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

4 (c) A school employee certified under sub. (4) (c) may, after reviewing and
5 considering any known medical, developmental, or psychological limitations of a
6 pupil, use timeout on that pupil without the written consent of the pupil's parent in
7 an emergency if 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 **INSERT 18-2**

12 each county children with disabilities education board that operates a school,

13 **INSERT 18-21**

14 each county children with disabilities education board that operates a school,

15 **INSERT 21-1**

parent learns of the

16 2. Within one year after the use of physical restraint or timeout on the child,
17 file a written complaint regarding the school's compliance with this section with the
18 local educational agency. The local educational agency shall respond to the
19 complaint within 15 days. The parent, or the attorney representing the child, shall
20 provide a copy of the written complaint to the department. The parent, or the

21 attorney representing the child, may, within 30 days after the determination of
22 local educational agency under this subdivision, appeal the determination of the
23 local educational agency to the state superintendent. The state superintendent shall
24 review the school district's compliance with this section.

the matter
is the
complaint
by

25 **INSERT 21-12**

local educational agencies

~~NOTE~~ NOTE: Is this complaint procedure for children with disabilities acceptable?
→ **INSERT 2**

an entity,
or the state superintendent, in review of school district compliance with this section,
the agency, school district, or governing body, or state superintendent,

1 The parent of a pupil ^{last existing} enrolled in a ^{STET} public school, or the attorney representing the
2 pupil, shall ^{file} submit the written request ^{with} to the school district. The parent of a pupil
3 enrolled in a charter school, or the attorney representing the pupil, shall ^{file} submit the
4 written request ^{with} to the operator of the charter school. The parent of a pupil enrolled
5 in a private school participating in the program under s. 119.23, or the attorney
6 representing the pupil, shall ^{file} submit the written request ^{with} to the governing body of the
7 private school. The parent or attorney representing the pupil shall provide the
8 department with a copy of the request. The school district, operator of the charter
9 school, or governing body of the private school shall hold a hearing on the matters
10 contained in the written request in the manner established by the department by
11 rule. The parent or attorney representing the pupil may appeal a negative
12 determination received under this subdivision to the state superintendent.

INSERT 21-19

13 The parent, or the attorney representing the pupil, shall provide a copy of the written
14 complaint to the department.

INSERT 21-22

15 **(10) REMEDIES.** To resolve a complaint received at a hearing held under sub.

16 (9) (b) 1. or in writing under sub. (9) (a) 2. or (b) 2. in which the local educational
17 agency, school district, operator of the charter school, ^{under s. 118.04(2r)} or governing body of a private
18 school participating in the program under s. 119.23 ^{STET: leave as typed} that heard or responded to the

19 complaint ^{finds} found that the school in which the pupil or child with a disability is
20 enrolled has failed to comply with the requirements of this section, the local
21 educational agency, school district, operator of the charter school, or governing body
22 of the private school participating in the program under s. 119.23 ^{shall} must address the
23 failure of the school to comply, including prescribing corrective action appropriate to

in its response to a complaint received under sub. (9)(a) 2. or (b) 2. or at a hearing held under sub. (9)(b) 1.

The state superintendent shall review the compliance of the school district, operator of the charter school, or governing body of the private school with this section.

If a

shall

- 1 address the needs of the pupil or child with a disability and corrective action to
- 2 achieve compliance.

require the school to achieve compliance
and shall prescribe corrective
action that is appropriate to
the needs of the pupil or
child with a disability
that the school must take to
do so.

1 **INSERT Z**

****NOTE: Is it your intent that the state superintendent's review under this ^{in the complaint} ~~section~~ ^{subdivision} be limited only to the matters raised ~~at the hearing~~, or is it your intent that the state superintendent review, more broadly, the local educational agency's compliance with section 118.305? As drafted, the review is more broad.

2 **INSERT 21-6**

3 1. Within one year after the parent learns of the use of physical restraint or a
4 timeout on the pupil, file a written request for a hearing. The parent of a pupil
5 enrolled in a school operated by a school district ^{with the} or the attorney representing the
6 pupil, shall file the written request with the school district. ^{in the case} The parent of a pupil
7 enrolled in a charter school under s. 118.40 (2r), or the attorney representing the
8 pupil, shall file the written request with the operator of the charter school. The
9 parent ^{or, in the case} of a pupil enrolled in a private school participating in the program under s.
10 119.23, or the attorney representing the pupil, shall file the written request with the
11 governing body of the private school. The parent, or the attorney representing the
12 pupil, shall include in the request the name of the pupil, the address of the residence
13 of the pupil, the name of the school the pupil is attending, a description of the nature
14 of the problem of the pupil relating to the use of physical restraint or timeout,
15 including facts relating to the problem, and a proposed resolution of the problem to
16 the extent known and available to the parents at the time. The parent or attorney
17 representing the pupil shall provide the department with a copy of the request. The
18 school district, operator of the charter school, or governing body of the private school
19 shall hold a hearing on the matters contained in the written request in the manner
20 established by the department by rule. The parent or attorney representing the
21 pupil may appeal a determination received under this subdivision to the state

1 superintendent. The state superintendent shall review the compliance of the school
2 district, operator of the charter school, or governing body of the private school with
3 this section.

subdivision

✓ ****NOTE: Is it your intent that the state superintendent's review under this section²
be limited only to the matters raised at the hearing, or is it your intent that the state
superintendent review, more broadly, the school district, etc., compliance with section
118.305? As drafted, the review is more broad.

district's

4 **INSERT 22-1**

****NOTE: This subsection requires the state superintendent to require a school to
achieve compliance with s. 118.305. However, the state superintendent has no authority
under current law or this bill to compel compliance by a private school participating in
the program under s. 119.23 or by an independent charter school under s. 118.40 (2r). ✓

****NOTE: Do you want me to amend s. 119.23 to permit the state superintendent
to prohibit a private school from participating in the program under s. 119.23 if that
private school does not comply with the requirements under s. 118.305? ✓

****NOTE: Do you want me to amend s. 118.40 (5) to permit the state superintendent
to revoke the charter of an independent charter school if that school fails to comply with
s. 118.305? ✓

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2425/P2dn

TKK:cjs:md

8/24/09

- date -

Representative Pasch:

This draft incorporates a number of changes arising from drafters notes embedded in the previous draft and from the comments of Atty. Spitzer-Resnick in a meeting between myself and Atty. Spitzer-Resnick on August 24, 2009.

In addition, at the request of Atty. Spitzer-Resnick's colleague, Dianne Greenley, I have modified the conditions under which a timeout or physical restraint may be used, in the absence of parental consent, under proposed s. 118.305 (5) and (6).

Please review the draft carefully to ensure that it accomplishes your intent.

Tracy K. Kuczenski
Legislative Attorney
Phone: (608) 266-9867
E-mail: tracy.kuczenski@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2425/P3dn
TKK:cjs:ph

September 9, 2009

Representative Bask:

This draft incorporates a number of changes arising from drafters notes embedded in the previous draft and from the comments of Atty. Schneider-Resnick in a meeting between myself and Atty. Spitzer-Resnick on August 24, 2009.

In addition, at the request of Atty. Spitzer-Resnick's colleague, Dianne Greenley, I have modified the conditions under which a timeout or physical restraint may be used, in the absence of parental consent, under proposed s. 118.305 (5) and (6).

Please review the draft carefully to ensure that it accomplishes your intent.

Tracy K. Kuczenski
Legislative Attorney
Phone: (608) 266-9867
E-mail: tracy.kuczenski@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2425/P3dn
TKK:cjs:ph

September 9, 2009

Representative Pasch:

This draft incorporates a number of changes arising from drafters notes embedded in the previous draft and from the comments of Atty. Spitzer-Resnick in a meeting between myself and Atty. Spitzer-Resnick on August 24, 2009.

In addition, at the request of Atty. Spitzer-Resnick's colleague, Dianne Greenley, I have modified the conditions under which a timeout or physical restraint may be used, in the absence of parental consent, under proposed s. 118.305 (5) and (6).

Please review the draft carefully to ensure that it accomplishes your intent.

Tracy K. Kuczenski
Legislative Attorney
Phone: (608) 266-9867
E-mail: tracy.kuczenski@legis.wisconsin.gov

Kuczenski, Tracy

From: Kuczenski, Tracy
Sent: Wednesday, September 16, 2009 9:14 AM
To: Ludwig, Frederic
Cc: 'Jeff Spitzer-Resnick'
Subject: RE: re: seclusion/restraint
Attachments: LRB 2425 Drafting Notes 9 15 09 tkk response.doc

Hi Fred and Jeff --

I have responded to Jeff's responses/questions in the attached document; my responses are underlined.

Tracy

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

From: Ludwig, Frederic
Sent: Tuesday, September 15, 2009 4:55 PM
To: Kuczenski, Tracy
Subject: re: seclusion/restraint

Tracy,

I met with Jeff last week, and here's what I got out of our conversation. Feel free to contact him directly with any further questions or concerns.

Fred

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

9/16/2009

LRB 2425/P3
Response to Drafting Notes
9/16/09 Drafter's response in underlined text.

What is a community treatment provider? Is this a term of art or a title that would be recognized by the reader? (pg 5)

We believe this can be left alone, as it would pertain to anyone providing treatment in the community (term of art?)

I don't know what a "relevant" community treatment provider is; it sounds incredibly broad. It could involve a music therapist, a physical therapist, an art teacher, a physician; all of these treatment providers may address issues relevant to the pupil's functional behavioral assessment. The issue is whether the term "community treatment provider" gives the local educational agency sufficient notice that they have to include the art teacher in the preparation of the functional behavioral assessment if the art teacher is a relevant community treatment provider. I don't think there is sufficient notice provided here.

Will certification under this paragraph be permanent? Or must the school-based resource person periodically renew this certification? What will be the conditions for renewal of certification? For example, must the person complete the training again? (pg 9)

Should/may DPI decide this through rule?

They certainly could. Is that what you would like? If so, should the rulemaking requirement be discretionary (DPI **may** promulgate rules) or mandatory (DPI **shall** promulgate rules)?

What do you mean by "an insufficient number of school employees"? Insufficient for what? Who determines what constitutes a sufficient number? (pg 10)

We thought your perspective/suggestions would be helpful here. Let's discuss this further.

I am not sure what you mean by "insufficient," or in what context "insufficient" is being used: in the school at the time of the event? In the classroom at the time of an event? Does the teacher him or herself decide what is an insufficient number? Does the insufficiency of the number vary depending on the particular day's events? If so, the teacher could decide that there is never a sufficient number and always rely upon physical restraints or timeout. I just don't understand how this is going to work in the school.

This paragraph requires the department to renew the certification of a person who "meets the requirements of this subsection." What are the requirements for renewal? (pg 11)

Unless we're missing something here, aren't the requirements for renewal listed under this subsection (training program)?

That's the question. Must the person repeat the entire training program to **renew** the certification? Or is there something else the person can/should do. Some sort of "continuing education program" for persons who have certification? Is there a precedent out there? Some sort of training that school employees must

go through now? Or is this training an entirely new concept? What would a refresher course look like compared to repeating the entire training program?

Because we have added the language requiring the school employee to stop the use of physical restraint or timeout “as soon as the purpose for which it is being used is achieved,” I eliminated the language permitting the employee to continue using physical restraint or timeout for 5 additional minutes. Okay? (pg 13)

Okay.

What happens between the end of the 15–minute period and the point of which the employee gets the okay to extend the 15–minute period? (pg 13)

Okay.

Not sure what you mean, “okay.” Here’s the scenario: the school employee realizes at minute 14 that 15 minutes will not be sufficient. The school employee attempts to communicate with the resource person but s/he was out of the office or busy with another pupil. The 15 minute period has expired and the school employee has not been able to communicate with the resource person or has not yet obtained permission from the principal to extend the time of the physical restraint. What happens? Must the pupil be released from the physical restraint even if he or she is out of control?

Because we have added the language requiring the school employee to stop the use of physical restraint or timeout “as soon as the purpose for which it is being used is achieved,” I eliminated the language permitting the employee to continue using physical restraint or timeout for 5 additional minutes. Okay? (pg 16)

Okay.

What happens between the end of the 15–minute period and the point at which the employee gets the okay to extend the 15–minute period? Must the pupil return to the classroom even if he or she is out of control? (pg 16)

There should not be a gap.

Pg 16, line 5:

...he or she shall, **before the end of the 15 minutes**...communicate with the school-based resource person...who shall evaluate the need for the use of timeout for more than 15 minutes and obtain the approval of the school principal or his or her designee prior to authorizing the school employee to use a timeout for more than 15 minutes.

Right, ideally there will be no gap. But what if there is? What if the school employee is not able to communicate with the resource person in 15 minutes? See my scenario above.

Is this complaint procedure for children with disabilities acceptable? (pg 21)

Yes

Is it your intent that the state superintendent's review under this subdivision be limited only to the matters raised in the complaint, or is it your intent that the state superintendent review, more broadly, the local educational agency's compliance with section 118.305? As drafted, the review is more broad. (pg 21)

Yes

By yes, you mean it is your intent that the review be narrow, correct? If so, I'll make changes here and in the other places a similar note was included.

Is it your intent that the state superintendent's review under this subdivision be limited only to the matters raised at the hearing, or is it your intent that the state superintendent review, more broadly, the school district's, etc., compliance with s. 118.305? As drafted, the review is more broad. (pg 22)

Yes

Is it your intent that the state superintendent's review under this subdivision be limited only to the matters raised in the complaint, or is it your intent that the state superintendent review, more broadly, the school district's, etc., compliance with section 118.305? As drafted, the review is more broad. (pg 23)

Yes

This subsection requires the state superintendent to require a school to achieve compliance with s. 118.305. However, the state superintendent has no authority under current law or this bill to compel compliance by a private school participating in the program under s. 119.23 or by an independent charter school under s. 118.40 (2r). (pg 24)

Atty. Spitzer-Resnick believes that this bill provides this power to the superintendent. However, if it does not, then the bill should be amended to reflect this.

Do you want me to amend s. 119.23 to permit the state superintendent to prohibit a private school from participating in the program under s. 119.23 if that private school does not comply with the requirements under s. 118.305? (pg 24)

Atty. Spitzer-Resnick believes that this bill provides this power to the superintendent. However, if it does not, then the bill should be amended to reflect this.

Do you want me to amend s. 118.40 (5) to permit the state superintendent to revoke the charter of an independent charter school if that school fails to comply with s. 118.305? (pg 24)

Atty. Spitzer-Resnick believes that this bill provides this power to the superintendent. However, if it does not, then the bill should be amended to reflect this.

Additional Comments

Relating Clause: may we incorporate “positive behavioral interventions and supports” instead of reference to physical restraints and timeouts?

Yes, but I will also need to add “aversive interventions” as well.

Pg 21: Place sentence beginning with “The local educational agency shall” on line 16 after the succeeding sentence on line 18

Okay.

Pg 23: Place sentence beginning with “The school district, operator of the charter school” on line 6 after the succeeding sentence on line 9

Okay.

LRB 2425/P3
Response to Drafting Notes
9/16/09 Drafter's response in underlined text.

- ✓ **What is a community treatment provider? Is this a term of art or a title that would be recognized by the reader? (pg 5)**

We believe this can be left alone, as it would pertain to anyone providing treatment in the community (term of art?)

I don't know what a "relevant" community treatment provider is; it sounds incredibly broad. It could involve a music therapist, a physical therapist, an art teacher, a physician; all of these treatment providers may address issues relevant to the pupil's functional behavioral assessment. The issue is whether the term "community treatment provider" gives the local educational agency sufficient notice that they have to include the art teacher in the preparation of the functional behavioral assessment if the art teacher is a relevant community treatment provider. I don't think there is sufficient notice provided here.

I continue to believe that the term "community treatment provider" should be left alone. Yes, it is very broad and is intended to be so. All of the professionals you have listed above could provide helpful information and therefore should do so. Your concern about insufficient notice can be addressed in one of 2 ways. You could provide a suggested alternative as I can't think of any. Or, opponents to this measure in the legislature can provide alternatives.

- ✓ **Will certification under this paragraph be permanent? Or must the school-based resource person periodically renew this certification? What will be the conditions for renewal of certification? For example, must the person complete the training again? (pg 9)**

Should/may DPI decide this through rule?

They certainly could. Is that what you would like? If so, should the rulemaking requirement be discretionary (DPI **may** promulgate rules) or mandatory (DPI **shall** promulgate rules)?

I think the bill should use the mandatory "shall."

- ✓ **What do you mean by "an insufficient number of school employees"? Insufficient for what? Who determines what constitutes a sufficient number? (pg 10)**

We thought your perspective/suggestions would be helpful here. Let's discuss this further.

I am not sure what you mean by "insufficient," or in what context "insufficient" is being used: in the school at the time of the event? In the classroom at the time of an event? Does the teacher him or herself decide what is an insufficient number? Does the insufficiency of the number vary depending on the particular day's events? If so, the teacher could decide that there is never a sufficient number and always rely upon physical restraints or timeout. I just don't understand how this is going to work in the school.

The point of this provision is to avoid restraining or secluding kids simply because the school has failed to staff a class sufficiently. I agree that further definition by inserting the clause: “present to implement less restrictive alternatives” or similar language to that, would be helpful.

✓ **This paragraph requires the department to renew the certification of a person who “meets the requirements of this subsection.” What are the requirements for renewal? (pg 11)**

Unless we’re missing something here, aren’t the requirements for renewal listed under this subsection (training program)?

That’s the question. Must the person repeat the entire training program to **renew** the certification? Or is there something else the person can/should do. Some sort of “continuing education program” for persons who have certification? Is there a precedent out there? Some sort of training that school employees must go through now? Or is this training an entirely new concept? What would a refresher course look like compared to repeating the entire training program?

Yes, we want the recertification to involve the same training as the original certification.

✓ **Because we have added the language requiring the school employee to stop the use of physical restraint or timeout “as soon as the purpose for which it is being used is achieved,” I eliminated the language permitting the employee to continue using physical restraint or timeout for 5 additional minutes. Okay? (pg 13)**

Okay.

✓ **What happens between the end of the 15–minute period and the point of which the employee gets the okay to extend the 15–minute period? (pg 13)**

Okay.

Not sure what you mean, “okay.” Here’s the scenario: the school employee realizes at minute 14 that 15 minutes will not be sufficient. The school employee attempts to communicate with the resource person but s/he was out of the office or busy with another pupil. The 15 minute period has expired and the school employee has not been able to communicate with the resource person or has not yet obtained permission from the principal to extend the time of the physical restraint. What happens? Must the pupil be released from the physical restraint even if he or she is out of control?

The entire point is to not wait until minute 14 to come to the realization that 15 minutes will not be enough. This provision should be left as is, and once again, the concerns you have raised can be dealt with during the political process if necessary.

✓ **Because we have added the language requiring the school employee to stop the use of physical restraint or timeout “as soon as the purpose for which it is being used is achieved,” I eliminated the language permitting the employee to continue using physical restraint or timeout for 5 additional minutes. Okay? (pg 16)**

Okay.

What happens between the end of the 15-minute period and the point at which the employee gets the okay to extend the 15-minute period? Must the pupil return to the classroom even if he or she is out of control? (pg 16)

There should not be a gap.

Pg 16, line 5:

...he or she shall, **before the end of the 15 minutes**...communicate with the school-based resource person...who shall evaluate the need for the use of timeout for more than 15 minutes and obtain the approval of the school principal or his or her designee prior to authorizing the school employee to use a timeout for more than 15 minutes.

Right, ideally there will be no gap. But what if there is? What if the school employee is not able to communicate with the resource person in 15 minutes? See my scenario above.

Same comment as above, and yes, if they wait until after 15 minutes, they will need to let the student go.

✓ **Is this complaint procedure for children with disabilities acceptable? (pg 21)**

Yes

✓ **Is it your intent that the state superintendent's review under this subdivision be limited only to the matters raised in the complaint, or is it your intent that the state superintendent review, more broadly, the local educational agency's compliance with section 118.305? As drafted, the review is more broad. (pg 21)**

Yes

By yes, you mean it is your intent that the review be narrow, correct? If so, I'll make changes here and in the other places a similar note was included.

No, the "yes" meant that it is fine as drafted, with broad review over compliance with the statute.

✓ **Is it your intent that the state superintendent's review under this subdivision be limited only to the matters raised at the hearing, or is it your intent that the state superintendent review, more broadly, the school district's, etc., compliance with s. 118.305? As drafted, the review is more broad. (pg 22)**

Yes

✓ **Is it your intent that the state superintendent's review under this subdivision be limited only to the matters raised in the complaint, or is it your intent that the state superintendent review, more broadly, the school district's, etc., compliance with section 118.305? As drafted, the review is more broad. (pg 23)**

Yes

✱ **This subsection requires the state superintendent to require a school to achieve compliance with s. 118.305. However, the state superintendent has no authority under current law or this bill to compel**

compliance by a private school participating in the program under s. 119.23 or by an independent charter school under s. 118.40 (2r). (pg 24)

Atty. Spitzer-Resnick believes that this bill provides this power to the superintendent. However, if it does not, then the bill should be amended to reflect this.

- ✓ **Do you want me to amend s. 119.23 to permit the state superintendent to prohibit a private school from participating in the program under s. 119.23 if that private school does not comply with the requirements under s. 118.305? (pg 24)**

Atty. Spitzer-Resnick believes that this bill provides this power to the superintendent. However, if it does not, then the bill should be amended to reflect this.

- ✓ **Do you want me to amend s. 118.40 (5) to permit the state superintendent to revoke the charter of an independent charter school if that school fails to comply with s. 118.305? (pg 24)**

Atty. Spitzer-Resnick believes that this bill provides this power to the superintendent. However, if it does not, then the bill should be amended to reflect this.

Additional Comments

- ✓ **Relating Clause:** may we incorporate “positive behavioral interventions and supports” instead of reference to physical restraints and timeouts?

Yes, but I will also need to add “aversive interventions” as well.

- ✓ **Pg 21:** Place sentence beginning with “The local educational agency shall” on line 16 after the succeeding sentence on line 18

Okay.

- ✓ **Pg 23:** Place sentence beginning with “The school district, operator of the charter school” on line 6 after the succeeding sentence on line 9

Okay.