



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-2425/PS

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Stays RMNR insert

d-note

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

9/22/09
soon

GA ✓

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), 115.76 (16o), 115.7825, 115.787
3 (2) (i), 115.80 (1) (a) 1m. and 118.305 of the statutes; relating to: the use of

4

physical restraints and timeouts in schools. and requiring the exercise of rule-making authority
positive behavioral interventions and supports and aversive interventions

INSERT ANALYSIS

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) (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) (p).
- 9 SECTION 3. 115.76 (16o) of the statutes is created to read:

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

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

3 **115.7825 Behavioral intervention plan and functional behavioral**

4 **assessment. (1) BEHAVIORAL INTERVENTION PLAN.** (a) The local educational agency

5 shall ensure that a behavioral intervention plan is prepared for a child with a

6 disability who has not responded to the behavioral approaches specified in the child's

7 individualized education program or who exhibits any of the following behaviors:

8 1. Assaultive or self-injurious behavior.

9 2. Behavior that causes property damage.

10 3. Behavior that significantly interferes with the implementation of the child's

11 individualized education program.

12 (b) A behavioral intervention plan prepared under this subsection shall include

13 all of the following:

14 1. Baseline information about the behaviors of the child that are of a type

15 described in par. (a) 1. to 3. obtained through the functional behavioral assessment

16 conducted under sub. (2).

17 2. Intervention strategies to be used to minimize the occurrence of each

18 behavior identified in subd. 1.

19 3. Recommendations for teaching and reinforcing appropriate alternative and

20 adaptive behaviors.

21 4. Criteria to determine the effectiveness of the interventions under subd. 2.

22 and the alternative and adaptive behaviors under subd. 3. The criteria under this

23 subdivision shall measure the frequency, duration, and intensity of each behavior

24 identified under subd. 1.

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

6 (c) A behavioral intervention plan may authorize the use of physical restraint
7 or timeout on a child with a disability consistent with the requirements under s.
8 118.305 if the child's parent consents in writing as provided under this paragraph.
9 The local educational agency shall provide the parent with a copy of the written
10 consent and shall retain the original written consent in its records for the child.
11 Consent under this paragraph is valid for 12 months beginning on the date on which
12 consent is given unless withdrawn by the parent of the child. A parent may withdraw
13 consent at any time for any reason. To obtain consent under this paragraph, the local
14 educational agency shall do all of the following:

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

- 17 a. The purposes for which the physical restraint or timeout will be used.
18 b. The manner in which physical restraint or timeout may be administered.
19 c. Any expected side effects or risks of side effects from the use of physical
20 restraint or timeout.
21 d. Alternative behavioral management techniques that may be used prior to
22 or instead of physical restraint or timeout.
23 e. Any possible or probable consequences of withholding consent to use physical
24 restraint or timeout.

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

3 2. Provide the parent with a description, in the parent's native language, of
4 each physical restraint that may be used.

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

6 4. Provide the parent with sufficient time, but at least 24 hours, to review and
7 consider the information presented under subds. 1. to 3. and to ask questions before
8 requesting the parent to give consent.

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

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

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

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

21 4. A hypothesis describing the purpose the behavior described in subd. 1. serves
22 for the child, the conditions under which the behavior described in subd. 1. usually
23 occurs, and the probable actions or inactions of others that serve to perpetuate the
24 behavior, provided in sufficient detail that the hypothesis may form the basis for

1 recommendations to ^{be included} include in a behavioral intervention plan prepared under sub.
2 (1). ✓

3 (b) A functional behavioral assessment conducted under this section shall be
4 based on multiple sources of data, including information obtained from direct
5 observation of the child with a disability by the child's teachers and related service
6 providers, information obtained from the child, the child's parent, and any relevant
7 community treatment providers of the child, and a review of the child's pupil records.

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

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

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

12 **SECTION 6.** 115.797 (1) (a) of the statutes is amended to read:

13 115.797 (1) (a) "Dispute" means any disagreement between parties concerning
14 the proposal or refusal to initiate or change the evaluation, individualized education
15 program or educational placement of a child with a disability or the provision of a free
16 appropriate public education to or the use of physical restraint or timeout on such
17 a child. "Dispute" includes any such disagreement between parties that arises before
18 the filing of a request for a hearing under s. 115.80 or in which other processes,
19 including a hearing under s. 115.80 or litigation, have been requested or commenced.

20 **SECTION 7.** 115.80 (1) (a) 1m. of the statutes is created to read:

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

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

4 **SECTION 8.** 115.80 (1) (a) 2. of the statutes is amended to read:

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

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

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

20 **SECTION 10.** 115.80 (2m) (e) of the statutes is amended to read:

21 115.80 (2m) (e) If the local educational agency does not resolve the issues
22 presented by the hearing request to the satisfaction of the child's parents within 30
23 days of receipt of the request, the hearing requested under sub. (1) (a) 1. or 1m. may
24 occur.

25 **SECTION 11.** 118.305 of the statutes is created to read:

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

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

6 (b) "Behavioral intervention plan" means a plan developed under s. 115.7825
7 (1).

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

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

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

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

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

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

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

1 (j) "Parent" has the meaning given in s. 115.76 (12).

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

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

11 (m) "School" means a school operated by a school district, a charter school, a
12 private school in which a child with a disability is enrolled as provided in s. 115.77
13 (1m) (d), a private school participating in the program under s. 119.23, and a school
14 operated by a county children with disabilities education board.

15 (n) "School employee" includes a person who is under contract with a school.

16 (o) "Seclusion" means a behavioral control technique that involves placing a
17 pupil in a setting from which the pupil is incapable of leaving.

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

21 (q) "Timeout room" means an enclosed setting, or other isolated area that is not
22 a classroom, that is used for timeout and from which a pupil is capable of leaving.

23 (2) SCHOOL-BASED RESOURCE ON POSITIVE BEHAVIORAL INTERVENTIONS AND
24 SUPPORTS. (a) Each school shall identify at the beginning of each school year at least
25 one school employee who shall serve as a school-based resource on positive

1 behavioral interventions and supports. The employee identified under this
2 paragraph shall do all of the following:

- 3 1. Maintain certification under sub. (4) (c).
- 4 2. Obtain certification under par. (b).
- 5 3. Assist other school employees to implement positive behavioral
- 6 interventions and supports and safely and appropriately administer physical
- 7 restraint and timeout in the manner authorized under this section.

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

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le ******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?

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

17 (b) No school employee may ^{intentionally} release noxious, toxic, caustic, or otherwise
18 unpleasant substances near a pupil ^{for the purpose of controlling or modifying the}
^{behavior of or punishing the pupil}

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

- 21 1. Fails to give adequate attention and care to the pupil's head.
- 22 2. Places pressure or weight on, or causes the compression of, the chest, lungs,
- 23 sternum, diaphragm, back, or abdomen of the pupil.

1 3. Obstructs the pupil's circulation or the ability of the pupil to breathe.

2 4. Intentionally causes pain.

3 5. Subjects the pupil to ridicule, humiliation, or emotional trauma.

4 (d) No school employee may use physical restraint or timeout to punish a pupil,

5 for the convenience of the employee or ~~other~~^{another} school employees, or because there is an

6 insufficient number of school employees/ and no school employee may threaten the

7 use of physical restraint or timeout to obtain a pupil's cooperation or otherwise obtain

8 control over a pupil's behavior.

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

9 (e) No school employee may use a mechanical restraint.

10 (4) TRAINING AND CERTIFICATION REQUIRED FOR USE OF PHYSICAL RESTRAINT OR
11 TIMEOUT. (a) No school employee may use physical restraint on a pupil or impose or
12 supervise timeout unless that employee has been certified by the department under
13 this subsection.

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

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

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

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

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

- 1 c. The effect of timeout on a pupil.
- 2 d. Reporting requirements when timeout is used.
- 3 e. Procedures for investigating and resolving complaints regarding the use of
- 4 timeout.

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

- 7 a. How to identify an emergency that may indicate the need for the use of
- 8 physical restraint.
- 9 b. Methods for evaluating the risk of harm in specific situations in order to
- 10 determine whether the use of physical restraint is warranted.
- 11 c. The effects of the use of physical restraint on a pupil.
- 12 d. Methods for ensuring the safety of a pupil and any school employees involved
- 13 in the use of physical restraint on a pupil.
- 14 e. Reporting requirements when physical restraint is used.
- 15 f. Procedures for investigating and resolving complaints regarding the use of
- 16 physical restraint.

17 (c) The department shall issue a certificate to a person who successfully
18 completes the training program required under this subsection and demonstrates
19 proficiency in the safe, effective, and appropriate use of each behavioral control
20 technique addressed by the training program. Certification under this subsection
21 is valid for 24 months. The department shall ~~renew the certification of any person~~
22 who requests renewal and ~~meets~~ ^{successfully ~~completes~~ ~~recompletes~~} the requirements ^{for certification under} of this subsection.

****NOTE: 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?

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

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

7 (b) A school employee certified under sub. (4) (c) may, after reviewing and
8 considering any known medical, developmental, or psychological limitations of a
9 child with a disability, use physical restraint on that child in an emergency if both
10 of the following apply:

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

15 2. The individualized education program of the child includes a behavioral
16 intervention plan that permits the use of physical restraint and the child's parent has
17 consented in writing to the use of physical restraint in the circumstances under
18 which physical restraint is proposed to be used.

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

1 (d) 1. Except as provided in subd. 2., a school employee who uses physical
2 restraint on a pupil shall ensure that physical restraint is stopped as soon as the
3 purpose for which it is being used is achieved but is used for no more than 15 minutes
4 total in any day.

****NOTE: 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? ✓

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, before the end of the 15 minutes
7 authorized under subd. 1., communicate with the school-based resource person
8 identified under sub. (2), who shall evaluate the need for the use of physical restraint
9 on the pupil for more than 15 minutes and obtain the approval of the school principal
10 or his or her designee prior to authorizing the school employee to use physical
11 restraint for more than 15 minutes. The school employee shall comply with any
12 directives issued by the school principal or his or her designee concerning the
13 continued use of physical restraint.

****NOTE: 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? ✓

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

1 **(6) USE OF TIMEOUT.** (a) Before a school employee may use a timeout on a pupil,
2 the school principal or his or her designee shall provide the pupil's parent with an
3 opportunity to see and enter the timeout room.

4 (b) Except as provided in par. (c), a school employee certified under sub. (4) (c)
5 may, after reviewing and considering any known medical, developmental, or
6 psychological limitations of a pupil, use timeout on that pupil if both of the following
7 apply:

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

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

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

20 (c) A school employee certified under sub. (4) (c) may, after reviewing and
21 considering any known medical, developmental, or psychological limitations of a
22 pupil, use timeout on that pupil without the written consent of the pupil's parent in
23 an emergency if other less intrusive interventions, including positive behavioral
24 interventions and supports, constructive, non-physical deescalation, and

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

3 (d) No school employee may use a room as a timeout room unless the room has
4 been approved for that use by the school district if the room is located in a school
5 operated, or a charter school established, by the school district, or the state
6 superintendent if the room is located in a charter school established under s. 118.40
7 (2r), a private school in which a child with a disability is enrolled as provided in s.
8 115.77 (1m) (d), or a private school participating in the program under s. 119.23. The
9 school district or department of public instruction shall require as a condition for
10 approval that a photograph of the room be submitted with the request for approval.
11 No room may be approved as a timeout room unless the room satisfies all of the
12 following:

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

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

18 3. It complies with all state and county fire and safety codes and is equipped
19 with adequate lighting and ventilation.

20 4. It affords the school employee with the means to hear and see the pupil at
21 all times.

22 5. If the timeout room is fitted with a door, the door either has a solid, wood core
23 construction or is constructed of steel.

1 (e) 1. Except as provided in subd. 2., a school employee who uses timeout on a
2 pupil shall ensure that timeout is stopped as soon as the purpose for which it is being
3 used is achieved but is used for no more than 15 minutes total in any day.

****NOTE: 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? ✓

4 2. If the school employee determines that the use of timeout on a pupil may need
5 to exceed 15 minutes, he or she shall, before the end of the 15 minutes authorized
6 under subd. 1., communicate with the school-based resource person identified under
7 sub. (2), who shall evaluate the need for the use of timeout for more than 15 minutes
8 and obtain the approval of the school principal or his or her designee prior to
9 authorizing the school employee to use a timeout for more than 15 minutes. The
10 school employee shall comply with any directives issued by the school principal or his
11 or her designee concerning continued use of the timeout.

****NOTE: 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? ✓

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

- 16 1. Physical restraint has been used on the pupil.
- 17 2. For a pupil who does not have an individualized education plan, the pupil ^{program}
18 has been placed in a timeout room. ✓
- 19 3. The pupil has been placed in a timeout room for more than 15 minutes.
- 20 4. The pupil has been placed in a timeout room 2 or more times within any
21 3-hour period.

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

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

7 2. A description of the actions of the pupil before, during, and after the
8 occurrence, including a discussion of the pupil's feelings about and reactions to the
9 occurrence.

10 3. A description of any other relevant events preceding the use of the physical
11 restraint or timeout, including the justification for initiating the use of physical
12 restraint or timeout.

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

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

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

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

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

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

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

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

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

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

13 (d) Annually and upon the request of the department, each school district, each
14 operator of a charter school, the governing body of each private school in which a child
15 with a disability is enrolled as provided in s. 115.77 (1m) (d), the governing body of
16 each private school participating in the program under s. 119.23, each county
17 children with disabilities education board that operates a school, and each local
18 educational agency shall submit to the department a written report containing a
19 summary of the occurrences identified in par. (a) for which a report was prepared
20 under par. (b). The information reported under this paragraph shall include all of
21 the following:

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

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

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

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

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

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

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

8 **(8) PROCEDURES FOR REVIEW OF USE OF PHYSICAL RESTRAINT AND TIMEOUT.** (a) Each
9 school district, each local educational agency, each operator of a charter school, the
10 governing body of each private school in which a child with a disability is enrolled
11 as provided in s. 115.77 (1m) (d), each county children with disabilities education
12 board that operates a school, and the governing body of each private school
13 participating in the program under s. 119.23 shall establish a procedure for
14 reviewing each occurrence identified in sub. (7) (a). The parent of a pupil on whom
15 physical restraint or timeout was used shall be notified in writing of the date, time,
16 and location of the review at least 10 days before the review is to be held and invited
17 to attend the review.

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

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

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

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

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

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

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

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

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

14 b. A determination as to whether the pupil should be evaluated under s.
15 115.782.

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

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

- 1 2. If appropriate, interviews with the pupil.
- 2 3. Concerns regarding the individualized education program and behavioral
- 3 intervention plan of the pupil's parent.
- 4 4. A review and discussion of any indirect or collateral effects of the use of
- 5 aversive interventions on the pupil, including increases in aggressive or escapist
- 6 behaviors, health-related effects, or emotional reactions.
- 7 5. If a functional behavioral assessment has not been prepared for the pupil
- 8 within the preceding 12 months, the completion of a functional behavioral
- 9 assessment.

10 **(9) COMPLAINTS.** (a) A parent of a child with a disability, or the attorney
 11 representing the child, may do any of the following:

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

14 2. Within one year after the parent learns of the use of physical restraint or
 15 timeout on the child, file a written complaint regarding the school's compliance with
 16 this section with the local educational agency. *The local educational agency shall*
 17 *respond to the complaint within 15 days.* *The parent, or the attorney representing*
 18 *the child, shall provide a copy of the written complaint to the department.* *The*
 19 *parent, or the attorney representing the child, may, within 30 days after the*
 20 *determination of the matters in the complaint under this subdivision, appeal the*
 21 *determination of the local educational agency to the state superintendent. The state*
 22 *superintendent shall review the local educational agency's compliance with this*
 23 *section.*

<move
this
sent

****NOTE: Is this complaint procedure for children with disabilities acceptable?
 ****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 local educational agency's compliance with section 118.305? As drafted, the review is more broad.

1 (b) The parent of a pupil who is not a child with a disability, or the attorney
2 representing the pupil, may do any of the following:

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

****NOTE: 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.

1 2. Within one year after the parent learns of the use of physical restraint or
 2 timeout on the pupil, file a written complaint regarding the use of physical restraint
 3 or timeout on the pupil with the school district or, in the case of a pupil enrolled in
 4 a charter school under s. 118.40 (2r), with the operator of the charter school or, in the
 5 case of a pupil enrolled in a private school participating in the program under s.
 6 119.23, with the governing body of the private school. The school district, operator
 7 of the charter school, or governing body of the private school shall respond to the
 8 complaint within 15 days. The parent, or the attorney representing the pupil, shall
 9 provide a copy of the written complaint to the department. The parent or attorney
 10 representing the pupil may, within 30 days after a determination of the matters in
 11 the complaint under this subdivision, appeal the determination to the state
 12 superintendent. The state superintendent shall review the compliance of the school
 13 district, operator of the charter school, and governing body of the private school with
 14 this section.

move this sentence

****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 school district's, etc., compliance with section 118.305? As drafted, the review is more broad.

(a)
 15 **(10) REMEDIES.** If a local educational agency, school district, operator of a
 16 charter school under s. 118.40 (2r), or governing body of a private school participating
 17 in the program under s. 119.23, in its response to a complaint received under sub. (9)
 18 (a) 2. or (b) 2. or at a hearing held under sub. (9) (b) 1., or the state superintendent,
 19 in his or her review of an entity's compliance with this section, finds that the school
 20 in which the pupil or child with a disability is enrolled has failed to comply with the
 21 requirements of this section, the agency, school district, ^{operator} or governing body or state
 22 superintendent, shall require the school to achieve compliance and shall prescribe

take
1 corrective action that is appropriate to the needs of the pupil or child with a disability

2 that the school must take to do so.

and to achieve compliance with this section
****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?

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

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

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

16

(END)

INSERT 24-16A

INSERT 24-16B

note

2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2425/P3ins
TKK:cjs:ph

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The bill defines
INSERT Z

~~“Mechanical restraint”~~ *means* ^{*as*} a device that restricts a pupil’s freedom of movement or normal access to a portion of his or her body and that the pupil cannot easily remove. “Mechanical restraint” does not, however, include a protective or stabilizing device that is prescribed by a health care professional for a child with a disability.

INSERT 24-16A

x
SECTION 1. 118.40 (5) *(intro.)* of the statutes, *except the title*, is renumbered
118.40 (5) (a) *(intro.)*.
^ ^

✓
SECTION 2. 118.40 (5) (bm) and (cm) of the statutes are created to read:

118.40 (5) (bm) A charter may be revoked by the entity under sub. (2r) (b) that contracted with the charter school if the state superintendent finds that a charter school established under sub. (2r) has failed to comply with the requirements of s. 118.305.

(cm) The charter of a charter school established and operated by an entity under sub. (2r) (b) may be revoked by the state superintendent if the state superintendent finds that the charter school has failed to comply with the requirements of s. 118.305.

1

INSERT ANALYSIS

child

behavioral
following the placement or referral of that child to the private school by a local educational agency

This bill regulates the use of aversive interventions in schools. The bill defines "school" as a school operated by a school district, a charter school, a private school in which a student with a disability is enrolled, a private school participating in the Milwaukee Parental Choice Program, and a school operated by a county children with disabilities education board. The bill defines "aversive intervention" as deliberate action, including physical restraint, seclusion, and timeout, taken by a school employee to establish a negative association between certain behaviors and the deliberate action. "Physical restraint" is defined in the bill as a restriction imposed by a person that immobilizes or reduces the ability of a pupil to freely move his or her arms, legs, or head. "Timeout" is defined in the bill as 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. The bill defines "timeout room" as an enclosed setting or isolated area from which a pupil is capable of leaving. In contrast, "seclusion" is defined in the bill as the placement of a pupil in a setting from which the pupil is incapable of leaving.

The bill requires each school to designate an employee to serve as a school-based resource person to assist other school employees with the implementation of positive behavioral interventions and supports and to appropriately administer physical restraints and timeout. The bill defines "positive interventions and supports" as a set of evidence-based practices used to organize teaching and learning environments and experiences for a pupil which facilitate the pupil's successful self-awareness, self-management, and engagement with others and with the learning process. The bill requires the Department of Public Instruction (department) to establish a training and certification program to be completed before a person may be identified as the school-based resource person.

designated

The bill also requires the department to establish a training program to provide instruction to school employees on the safe, effective, and appropriate use of physical restraint and timeout. The bill defines a "school employee" to include a person who is under a contract with a school. No school employee may use physical restraint or a timeout on a pupil unless the employee has completed the training and obtained certification under the program.

The bill prohibits a school employee from using seclusion on a pupil, using any physical restraint that poses certain identified risks to a pupil, or using any mechanical restraint on a pupil. The bill also prohibits a school employee from intentionally releasing noxious, toxic, caustic, or otherwise unpleasant substances near a pupil. A school employee may use physical restraint or a timeout on a pupil only if certain requirements, established in the bill, are met.

The bill limits both the circumstances under which physical restraint or a timeout may be used on a pupil and also the period for which physical restraint or a timeout may be used on a pupil. Physical restraint may be used only in the case of an emergency, and only if other less intrusive interventions have failed and the school has provided the parent of the pupil with a description of any physical

INSERT 2

"Mechanical restraint" is defined as a device that restricts a pupil's freedom of movement or normal access to a portion of his or her body and that the pupil cannot easily remove. "Mechanical restraint" does not, however, include a protective or stabilizing device prescribed by a health care professional for a child with a disability.

restraint that might be used. If the pupil is a child with a disability, the individualized education program (IEP) prepared for that child must have a behavioral intervention plan (BIP) and the BIP must authorize the use of physical restraint in order for physical restraint to be used. Unless the school employee obtains permission from the school-based resource person, in the manner provided in the bill, to extend the use of physical restraint, the school employee must stop the use of physical restraint as soon as the purpose for which the physical restraint is used is achieved or within 15 minutes, whichever is sooner.

principal

Except in the case of an emergency, a timeout may be used only if other less intrusive interventions have failed and only if the pupil's parent has seen the timeout room and consented to the use of a timeout in writing. If the pupil is a child with a disability, the child's IEP must have a BIP and the BIP must authorize the use of timeout in order for timeout to be used. In the case of an emergency, written consent of the pupil's parent is not required for the use of a timeout on a pupil, and, if the pupil is a child with a disability, the child need not have a BIP which authorizes the use of timeout. Unless the school employee obtains permission from the school-based resource person, in the manner provided in the bill, to extend the use of timeout, the school employee must stop the use of timeout as soon as the purpose for which the timeout is used is achieved or within 15 minutes, whichever is sooner.

Before a room may be used as a timeout room, the room must be approved for that use by the school district if the room is located in a school operated by or a charter school established by the school district, or by the state superintendent if the room is located in an independent charter school or in a private school subject to the requirements of the bill. The bill establishes requirements which each proposed timeout room must satisfy in order for that room to be considered appropriate for use as a timeout room.

principal

The bill requires a school to orally notify the parent of a pupil on whom physical restraint or certain instances of a timeout are used as soon as practicable but in no event later than the end of the day in which physical restraint or timeout is used. The bill requires each school to establish procedures for the review of the use of physical restraint and timeout in the school. The bill also requires each school, annually and upon the request of the department, to submit a written report containing a summary of each use of physical restraint and each identified use of timeout. The bill establishes procedures for the parent of a pupil, including a pupil who is a child with a disability, to seek a hearing on or file a written complaint regarding the use of physical restraint or a timeout on that pupil. The bill permits the parent to appeal a determination made at a hearing or in response to the written complaint to the state superintendent.

in certain circumstances

certain instances in which a

is used

is approved

a

Finally, the bill requires a local educational agency to prepare a BIP for a child with a disability who has not responded to the behavioral approaches specified in the child's IEP or if the child exhibits any of the following behaviors: 1) assaultive or self-injurious behavior; 2) behavior that causes property damage; or 3) behavior that significantly interferes with the implementation of the child's IEP. The BIP must contain certain information derived from a functional behavioral assessment of the child, including a description of the specific behaviors underlying the need for the

BIP, strategies to minimize these behaviors, and recommendations for teaching and reinforcing appropriate alternative and adaptive behaviors. A BIP may authorize the use of physical restraint or timeout on the child, but only if the parent consents in writing to the use of physical restraint or a timeout, and only if the use of physical restraint or timeout is consistent with the requirements established in this bill.

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2 *W9*

INSERT 9-13

The rules promulgated under this paragraph shall specify the period for which certification is valid and the requirements a person must satisfy to renew certification under this paragraph.

sub. under (a) 2, or (b) 1. or 2.

INSERT 24-3

(b) If the state superintendent, in his or her review of an entity's compliance with this section, finds that the school in which the pupil or child with a disability is enrolled has failed to comply with the requirements of this section, the state superintendent shall 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 achieve compliance.

[Handwritten signature]

agency, school districts, operators, or governing body

INSERT 24-16 B

SECTION 1. 118.40 (5) (e) of the statutes is created to read:

118.40 (5) (e) The state superintendent finds that a charter school established under sub. (2c) has failed to comply with the requirements of s. 118.305.

SECTION 2. 119.23 (10) (a) 8. of the statutes is created to read:

119.23 (10) (a) 8. Failed to comply with the requirements under s. 118.305.

of a local educational agency, school district, operator of a charter school, or governing body of a private school

DNOTE

LRB-2425/1

- date -

TKK @ cjs:

Pasch
Reps Pasch:

① In the event a charter school established under s. 118.40(2r)^{2r}
fails to comply with s. 118.305[^], and the chartering entity
s. 118.305
fails to bring the school into compliance with s. 118.305[^],
do you want to withhold state aid provided to the school
under s. 118.40(2r)(~~2~~)[^], stat s.?

Tracy K. Kuczenki

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

LRB-2425/1dn
TKK:cjs:jf

September 29, 2009

Rep. Pasch:

In the event a charter school established under s. 118.40 (2r) fails to comply with s. 118.305, and the chartering entity fails to bring the school into compliance with s. 118.305, do you want to withhold state aid provided to the school under s. 118.40 (2r) (e), stats.?

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

Basford, Sarah

From: Ludwig, Frederic
Sent: Friday, January 15, 2010 5:03 PM
To: Basford, Sarah
Subject: RE: LRB -2425/P3 & D-Note

Could we have this jacketed?

Thanks,
Fred

From: Basford, Sarah
Sent: Wednesday, September 09, 2009 1:26 PM
To: Rep.Pasch
Cc: Kuczenski, Tracy
Subject: LRB -2425/P3 & D-Note

<< File: 09-2425/P3 >> << File: 09-2425/P3dn >>

This is being re-sent to reflect a spelling correction in the Drafter's Note.

Sarah Basford
Program Assistant
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