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WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2009-10

(session year)

Senate

(Assembly, Senate or Joint)

Committee on ... Education (SC-Ed)

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

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The Wisconsin Council of Administrators of Special Services

February 18, 2010

Thank you Chairman Lehman for the opportunity to discuss the important issues related to Senate Bill 468.

I am Gary Myrah, the director of special services for the Port Washington-Saukville School District. I am also the president of the Wisconsin Council of Administrators of Special Services and the chair to the Wisconsin State Superintendent Advisory Council on Special Education.

My testimony today is as the president of WCASS.

I have been a director of special services since 1978 and am also a licensed school psychologist. The State of Wisconsin has evolved in those years. When I began in the profession, it was common for children with severe autism to be placed in institutions and were shunned from the public. Today we are providing successful opportunities for children with severe autism in public schools in their own communities. We have also improved techniques and strategies working with students with emotional disabilities and have higher success rates than years past.

As we have reviewed the components of the Senate Bill 468 related to Positive Behavior Interventions and Supports and Restraint and Seclusion, we wish to focus on the following themes:

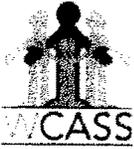
1. As professional educators we do not support nor defend the misuse of seclusion and restraint, and our greatest concern is the safety of our children and our faculty.
2. Because of the concern of the reported cases that ended tragically we began a campaign of training administrators and faculty on
 - a. the WDPI Directives related to Seclusion & Restraint (400+ recorded trainings throughout the State), and
 - b. Non-violent Crisis Prevention and Intervention (since July 1, 2008, 11,234 educators have been trained)
3. School districts throughout Wisconsin have responded positively to the voluntary development of PBIS systems in districts (185 schools in 50 Wisconsin school districts have been trained as of Jan.27, 2010).
4. Our collective organizations have serious concerns regarding the passage of State legislation when we believe there will soon be federal legislation.

In addition to these themes, the WCASS Executive Board passed a resolution on October 29, 2009 that our organization would participate in a stakeholders advisory committee after the resolution of federal legislation is enacted. We are concerned with the multitude of conflicting elements between the proposed State legislation and the proposed federal legislation that is found in HR 4247 / S2860.

When conflicts occur between federal and State statutory language it results in opportunities for attorneys to come forward and litigate for interpretation. Wisconsin educators have proven it is not necessary to have a law to prescribe that which has already been initiated (i.e. extensive training in seclusion, restraint as well as PBIS). It is sad to believe a primary initiator of this bill is an attorney who seems to be using the tragedy of the misuse of restraint during the heat of conflict as a means to profile school employees as evil people.

The leadership of the Wisconsin Department of Public Instruction and the educational organizations of Wisconsin are stepping forward to resolve this issue. We also have data that demonstrates the responsiveness of school districts throughout the State to initiate change without statutory language.

We therefore ask for your support to eliminate SB 468.



The Wisconsin Council of Administrators of Special Services

Good Morning,

I am Nissan Bar-Lev, Director of Special Education for CESA 7, a consortium of 38 school districts in northeast Wisconsin, a member of the Wisconsin School Administrative Alliance, and the co-author of ***The Appropriate Use of Seclusion & Restraint Practices in Special Education Programs*** – a training program for school staff.

The School Administrative Alliance recognized that the best way to ensure the appropriate use of seclusion and restraint in the classroom - is to train staff in every district.

Toward this end, representatives from the teachers union (WEAC), and representatives from the associations of the Building Principals, District administrators and Special Education Directors – with collaboration with DPI staff – put together (about 2 years ago) this training material that is based in part on the DPI directives and on research-based best practices from around the country.

Essential elements of this training:

- The dignity and safety of our children and school staff are paramount;
- Seclusion and restraint are implemented as a last resort, when other less invasive strategies have been tried and found ineffective, and/or the behavior is likely to result in injury to the student or others;
- When used, seclusion and restraint should be part of an Individual Educational Program – providing a platform for communication between parents and staff.

Since July 1, 2008, well over 450 trainings on ***The Appropriate Use of Seclusion & Restraint Practices in Special Education Programs*** have been documented on our website. In addition to these trainings, The Crisis Prevention Institute Inc. reported to us that since July 1, 2008, 11,234 school staff members have been trained in Non Violent Crisis Prevention. Of these 11,234 staff members, 7,817 were trained for the very first time, while some 3,417 staff members were provided with refresher courses.

All of this was accomplished without state law. The state of Wisconsin did not have to enter into our classrooms and tell us how to teach. We, as professional educators, recognized the need to strengthen our own members' knowledge/techniques/strategies – as the population that we are entrusted to educate – is manifesting an increasing amount of mental health challenges.

While we understand that impending federal legislation on seclusion and restraint will soon become law, there is absolutely no need to pass conflicting state laws, like SB 468 that will “muddy the water” by increasing the potential for disputes between parents and schools and further polarize parents and schools. There is much discrepancy between the proposed federal and state laws. Additionally, the fiscal costs associated with the state law will far exceed the costs of implementing federal law.

We do not need a new state law such as SB 468 to tell us what needs to be done in the classroom. We are already training our staff, and we will continue to do so - because it is the right thing to do.

Please say “no” to SB 468.



The Wisconsin Council of Administrators of Special Services

Chairman Lehman and honorable Wisconsin Senators, I appreciate the opportunity to discuss the important issues related to Senate Bill 468.

I am Greg Nyen, the director of pupil services and special education for the Stevens Point Area Public School District. I am also on the executive board for the Wisconsin Council of Administrators in Special Services (WCASS). I have been a director of pupil services and special education for five years, was a school psychologist for five years and was a staff psychologist for the State of Wisconsin at the Northern Wisconsin Center for the Developmentally Disabled (NWC) for approximately five years. The State of Wisconsin has considered and passed much legislation during that time span. When I began my profession as a psychologist while working for the State of Wisconsin, I was responsible for the behavioral treatment plans of those children with severe autism and other disabling conditions who had grown into adults and had been placed in institutions and separated from the public many years prior. Together with a team of mental health professionals it was our responsibility to treat and prevent the maladaptive and sometimes aggressive behaviors of the then adult-aged people who were placed in the community as part of the deinstitutionalization of America but had failed placements due to the lack of support systems. At that time, no one argued that the legislation designed to provide people with disabilities a more productive life was ill-conceived or inappropriate but rather that it appeared at face value to be in the best interest of the people we served at NWC. However well-intended that legislation was, it was not successful for a small segment of the population I served and to the contrary left many disabled people without viable options for independence. It was and continues to be apparent that legislation that is not well thought out or that lacks proper support systems only compounds the problem of trying to achieve something that seemed to many as inherently right. I suggest that we are again being presented with legislation that may be well-intended but is unnecessary and is lacking forethought. **Senate Bill 468 severely limits the necessary supports for many stakeholders and will not achieve what many may hope.**

If the intent of SB 468 is to make safe our educational facilities for all students by requiring multiple layers of consent, documentation, and training relative to the application of seclusion and restraint, I would suggest to you that it will actually have the converse effect. As the leaders of our respective Wisconsin educational institutions we are committed to providing an environment that is conducive to optimal learning for all students. Some of us here before you today are responsible for advocating for that small segment of the population I referred to in my aforementioned remarks that comprises today's body of students in special education. Some of our special education students, during times of crisis, will engage in maladaptive or dangerous behaviors that put themselves and/or others in harm's way. As administrators we spend a great deal of time insuring that faculty and staff members are adequately prepared to intervene when a crisis happens. **For years we have prepared others to intervene appropriately without SB 468. Split-second decisions are influenced greatly by the amount of training and information**



The Wisconsin Council of Administrators of Special Services received during times of crisis. There is often not sufficient time to verify whether the student or situation at that moment in time has the proposed signed parental consent behind it before intervention is necessary. **To impose the language outlined in SB 468 will create an increased level of anxiety among educators who are already fearful of looming litigation, or possible disciplinary action, which will ultimately increase the risk for injury to other students by non-action instead of immediate intervention.** Faculty and staff members that once intervened appropriately will now be more apt to take a hands-off approach and defer to law enforcement.

The continuing reductions in funding for education mean that fewer schools are able to support the presence of Police Liaison Officers (PLO). In the Stevens Point Area Public School District we are forced to reduce next year's budget by over \$7 million, thus eliminating one PLO and a part time district security position. This will create a scenario where officers will be pulled off the streets to tend to the needs of students in crisis at school buildings. The recent changes to Child Protective Services Chapter 51 language mandate that prior to police transport for a child in crisis a contact with the county human services department must be made to determine viable options for potential treatment. **During times of constricting funds at the state, county and local level legislation such as SB 468 will create a bureaucratic bottleneck during times of crisis.** The demand for an increased response from local law enforcement officers will strain systems that are struggling to maintain employees while funding streams dwindle. In rural areas where there is no local law enforcement present a significant period of time may lapse before support from the county may arrive. This lapse in response time is likely to escalate situations that are already dangerous therefore requiring an intervention upon arrival that will likely be more intense than if addressed at the point of original breakdown.

Finally, SB 468 will restrict the access of students with certain behavioral tendencies, no matter how infrequent, to a more restrictive environment from the one in which they once enjoyed and flourished. As special education placements have evolved over time to a more inclusive environment that benefits all students, this trend will be greatly diminished if not come to a complete halt. Whether prevented by the lack of parental consent as required by SB 468 or by the hesitation or refusal of faculty and staff to intervene when confronted with a crisis situation, teachers, students and parents will be less likely to want students that may exhibit any potential dangerous behavior to be integrated into their classroom or the classrooms of their students. It will not take long before fear will dictate that students who exhibit verbal aggression or threaten physical aggression will be ostracized just the same for fear they may jeopardize the safety of others as well. **SB 468 is not well thought out and will lessen the quality of life for many special education students.**

In summary, SB 468:

- Lacks forethought and consideration for the effect on peripheral systems of support,



The Wisconsin Council of Administrators of Special Services

- Will create an increased level of anxiety over anticipated response to crisis situations,
- Will create the perception of the need for intervention by law enforcement,
- Will lessen, not strengthen, the independent and overall functioning of some students with disabilities.

By not supporting SB 468 you are in fact supporting students with disabilities.



The Wisconsin Council of Administrators of Special Services

February 18, 2010

Distinguished Chairman Lehman and Honorable Senators:

Thank you for your long-standing concern and distinguished service to the benefit of all the children of Wisconsin served by our public schools. Thank you especially today for your concern for the safety of all those students, which is our essential and shared focus in your hearing today regarding Senate Bill 468.

My name is David Kwiatkowski and I am here today to testify on behalf of the Wisconsin Council of Administrators of Special Services as the President-Elect of that organization. I have also served on the Wisconsin School Administrator's Alliance Legislative Committee for the past ten years and can attest to the shared commitment of that alliance to the testimony provided today by the leadership of WCASS. I have been a special educator for thirty years and a special education administrator for twenty of those years. I currently serve as the Executive Director of Special Education for CESA 8. I am also currently a dissertator at UW-Milwaukee completing my doctoral research on effective school improvement practices demonstrating in small rural schools. My entire career as an educator has been devoted to the service of small rural schools and their students in Wisconsin. I have served as a school board member for ten years for one of those small rural school districts in Crivitz.

In order to be most respectful of the Senators' time and attention today, I will not reiterate the consistent and shared concerns that WCASS and the SAA have for SB 468 as expressed by my colleagues here today and undoubtedly through the voluminous written testimony that you will receive from public educators and stakeholders across the state regarding that bill. Rather, I would like to alert the committee to the unique perspectives and potential problems faced by of the 230 small, primarily rural and isolated school districts across Wisconsin related to SB 468, which I hope you find me credible to provide.

Those small rural school districts have suffered most critically from sharply declining financial resources related to our failing state school finance system. Each year, administrative teams and school boards have agonized over which valuable educational services will need to be trimmed or cut in order to meet shrinking budgets in the face of the growing needs of our students, parents and communities. Those school districts can least afford any additional costs from another unfunded mandate, particularly those that are redundant, conflicting, and unnecessary as those forwarded by SB 468. The educationally relevant and appropriate provisions outlined in SB 468 are already available and in practice in even these smallest of rural and isolated school districts such as Goodman-Armstrong Creek. They can however ill-afford to waste precious staff time and financial resources on more redundant, inflexible and expensive training

activities and increased meetings and paperwork requirements for the supposed benefit of parents, who often find these as inconvenient, confusing and frustrating, themselves. They especially can not afford to waste precious time and monetary resources intended for use on high quality instruction and pupil services on the litigation that this bill will undoubtedly inspire through its proposed requirements that will come in conflict with pending federal legislation. In short, SB 468 brings no added value to the practice of appropriate seclusion and restraint for the purposes of student and staff safety, but promises excessive and unnecessary costs to these already financially struggling small school districts.

The threat of litigation also promises to make small rural schools less safe for all students and staff, rather than more so. These threats of litigation are likely to interfere with small schools' efforts to foster and maintain close trusting relationship with parents in their districts while they undermine the calm, confident and competent actions of our staff, as they face crisis situations related to the safety and security of all their students. If staff and administration are confronted with the likelihood of sanctions and litigation each time they are called to act to protect students from themselves and others in the school setting, it can be expected that more errors and omissions will occur, rather than less. This in turn will leave more innocent students at-risk, undermining the trust and confidence of the larger group of parents and students in these communities. If schools are forced to rely on law enforcement to intervene in such crisis situations, because of the threat of litigation, small, rural and isolated school districts will find it most difficult to keep students safe. This is due to the long response time for county sheriff's departments or part-time municipal law-enforcement which rarely can be brought on-site in less than an hour, if available at all in that school day. Even parent intervention, when available and willingly offered, can rarely be provided expediently in these geographically large districts. It is therefore most essential that well-trained staff and administration in small and under-resourced schools not be burdened with superfluous and threatening procedural requirements in order to act quickly and effectively for the protection and safety of all their students.

On behalf of the Wisconsin Council of Administrators of Special Services, the Wisconsin School Administrators Alliance and the 230 small school districts, their students, parents and staff, I ask the honorable Senators of the Education Committee to defeat or delay any action on the appropriate use of seclusion and restraint techniques in the State Senate until such legislation can be effectively aligned to duly authorized federal legislation. WCASS and the SAA pledge to participate and expedite the stakeholders' process on that state legislation once federal action is complete. WCASS and the WI DPI can be trusted to continue to be vigilant and proactive in their appropriate training and supervision of safe and appropriate use of seclusion and restraint techniques as necessary for the safety of all students and staff.

Thank you again to your time and attention to this critical issue for the safety of all students and staff in Wisconsin public schools, and especially our small, financially struggling school districts.



The Wisconsin Council of Administrators of Special Services

In brief:

- SB 468 brings nothing new to the provision of appropriate seclusion and restraint to small rural school districts except the threat of costly litigation;
- Small rural school districts can least afford another unfunded mandate that will bring no added value to instructional outcomes for our students and especially to one that promises costly litigation over discrepancies with federal legislation;
- The threat of litigation borne of SB 468 will make small, rural school districts less safe for all children by interfering with more proactive, positive relationships with parents and by encouraging inaction and deferment of crisis interventions to outside, difficult to mobilize authorities and / or parents who already overwhelmed by the responsibilities of parenting children with such severe needs;
- The State of Wisconsin, its school children and parents, especially those in small, rural school districts, would be better served if the State Senate delayed legislation on the appropriate use of seclusion and restraint until it can be effectively aligned with authorized federal legislation.



The Wisconsin Council of Administrators of Special Services

Wisconsin Council of Administrators of Special Services Board Motion on SB 468 and AB 682

Whereas, Wisconsin Council of Administrators of Special Services (WCASS) has been contacted by the Wisconsin Department of Public Instruction (WDPI) to participate in four stakeholder meetings to discuss proposed legislation contained in LRB-2425 regarding the use of seclusion, restraint and aversive intervention in schools; and

Whereas, WCASS recognizes the safety of all students in our public schools is a solemn responsibility; and

Whereas, WCASS recognizes the safety of all staff in our public schools is a solemn responsibility; and

Whereas, WCASS has steadfastly promoted, developed and supervised training and best practices as set forth in the *WDPI Directives on the Appropriate Use of Seclusion and Restraint in Special Education Programs*; and

Whereas, WCASS actively collaborates with WDPI in promoting *Positive Behavioral Interventions and Supports*, as well as other behavioral support systems for all students in Wisconsin public schools; and

Whereas, WCASS anticipates federal guidance and regulation regarding the appropriate use of seclusion and restraint to be forthcoming; and

Whereas, WCASS finds the proposed Wisconsin legislative action to be unnecessary and fiscally irresponsible; and

Therefore, be it resolved that WCASS will respectfully decline participation in a stakeholder's advisory effort at this time because it would be inappropriate for Wisconsin to take action until this issue is resolved at the federal level.

Motion approved October 29, 2009

The Preventing Harmful Restraint and Seclusion in Schools Act will establish minimum safety standards in schools similar to federal protections already in place in hospitals and other community-based facilities. The bill uses definitions from existing law and creates new definitions relevant to schools

TERM	SUMMARY OF FEDERAL DEFINITIONS	SUMMARY OF STATE DEFINITIONS
Aversive intervention		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.
Chemical Restraint	A drug or medication used on a student to control behavior or restrict freedom of movement that is not prescribed by a licensed physician for standard treatment of the student's medical or psychiatric condition and administered for that purpose as prescribed	
Emergency		A situation in which it is necessary to control a pupil's spontaneous or unpredictable behavior when that behavior poses a clear and present danger of serious physical harm to the pupil or to others and cannot be immediately controlled by a less restrictive technique than the one used by a school employee certified under sub. (4) (c). "Emergency" does not include a situation in which a pupil uses profanity or threatens physical harm to himself or herself or others unless the pupil demonstrates a means of carrying out the threat.
High degree of negligence		Means criminal negligence, as defined in s.939.25 (1). <i>In this section, "criminal negligence" means ordinary negligence to a high degree, consisting of conduct which that the actor should realize creates a substantial and unreasonable risk of death or great bodily harm to another, except that for purposes of ss. 940.08 (2), 940.10 (2) and 940.24 (2), "criminal negligence" means ordinary negligence to a high degree, consisting of conduct that the actor should realize creates a substantial and unreasonable risk of death or great bodily harm to an unborn child, to the woman who is pregnant with that unborn child or to another.</i>
Mechanical Restraint	<i>(from Public Health Service Act)</i> The use of devices as a means of restricting a student's freedom of movement.	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 include a protective or stabilizing device that is prescribed by a health care professional for a child with a disability in accordance with the child's individualized education program.
Physical Escort	<i>(from Public Health Service Act)</i> The temporary touching or holding of the hand, wrist, arm, shoulder or back for the purpose of inducing a student who is acting out to walk to a safe location.	
Physical Restraint	<i>(from Public Health Service Act)</i> A personal restriction that immobilizes or reduces the ability of an individual to move his or her arms, legs, or head freely.	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. "Physical restraint" does not include briefly holding a pupil to calm or comfort the pupil, holding a pupil's hand or arm to escort the pupil safely from one area to another, or intervening in a fight.
School	Public or private early childhood, elementary and secondary schools and school programs that receive support in any form from federal education funds. Head Start programs will also be included.	
School Personnel	<i>(from Elementary and Secondary Education Act)</i> Includes teachers, principals, administrators, counselors, social workers, school resource officers, psychologists, nurses, librarians, and	

	other support staff who are employed by a school or who perform services for the school on a contractual basis	
Seclusion	(from Public Health Service Act) A behavior control technique involving locked isolation , not including a time out.	A behavioral control technique that involves placing a pupil in a setting from which <i>the pupil is incapable of leaving</i>
Student	A child enrolled in a school as defined in the bill and, in the case of a child enrolled in a private school or private program, who receives support from federal education funds. Includes both students with and without disabilities.	
Time Out	(from Public Health Service Act) A behavior management technique that is part of an approved treatment program and may involve the <u>separation of the student from the group</u> , in a non-locked setting, for the purpose of calming. <i>Time out is not seclusion.</i>	A behavioral management technique administered by a school employee that involves the <u>separation of a pupil from his or her class</u> and the placement of the pupil in a timeout room.
Timeout room		An enclosed setting, or other isolated area that is not a classroom, that is used for timeout and from which a <i>pupil is capable of leaving</i>

OTHER DIFFERENCES

IEP provisions	The use of physical restraint or seclusion as a planned intervention <u>shall not be written into</u> a student's education plan, individual safety plan, behavioral plan, or individualized education program (as defined in section 602 of the Individuals with Disabilities Act (20 U.S.C. 1401)). Local educational agencies or schools may establish policies and procedures for use of physical restraint or seclusion in school safety or crisis plans, provided that such school plans are not specific to any individual student.	The individualized education program of the child includes a behavioral intervention plan that permits the use of physical restraint and the child's parent has consented in writing to the use of physical restraint in the circumstances under which physical restraint is proposed to be used.
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COMPLAINTS.

Complaints & Attorneys		<p>a) A parent of a child with a disability, or the attorney representing the child, may do any of the following:</p> <ol style="list-style-type: none"> 1. File a written request for a hearing regarding the use of physical restraint or timeout on the child in the manner provided under s. 115.80 (1) (a) 1m. and 2. 2. Within one year after the parent learns of the use of physical restraint or timeout on the child, file a written complaint regarding the school's compliance with this section with the local educational agency. The parent, or the ATTORNEY REPRESENTING the child, shall provide a copy of the written complaint to the department. The local educational agency shall respond to the complaint within 15 days after receiving the complaint. The parent, or the ATTORNEY REPRESENTING the child, may, within 30 days after the determination of the matters in the complaint under this subdivision, appeal the determination of the local educational agency to the state superintendent. The state superintendent shall review the local educational agency's compliance with this section. <p>b) The parent of a pupil who is not a child with a disability, or</p>
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the ATTORNEY REPRESENTING the pupil, may do any of the following.

1. Within one year after the parent learns of the use of physical restraint or timeout on the pupil, file a written request for a hearing with the school district or, in the case of a pupil enrolled in a charter school under s. 118.40 (2r), with the operator of the charter school or, in the case of a pupil enrolled in a private school participating in the program under s. 119.23, with the governing body of the private school.

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.

The parent or ATTORNEY REPRESENTING the pupil shall provide the department with a copy of the request. The school district, operator of the charter school, or governing body of the private school shall hold a hearing on the matters contained in the written request in the manner established by the department by rule.

The parent or ATTORNEY REPRESENTING the pupil may appeal a determination received under this subdivision to the state superintendent. 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.

- c) Within one year after the parent learns of 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 enrolled in a charter school under s. 118.40 (2r), with the operator of the charter school or, in the case of a pupil enrolled in a private school participating in the program under s. 119.23, with the governing body of the private school.

The parent, or the ATTORNEY REPRESENTING the pupil, shall provide a copy of the written complaint to the department. The school district, operator of the charter school, or governing body of the private school shall respond to the complaint within 15 days after receiving the complaint. The parent or ATTORNEY REPRESENTING the pupil may, within 30 days after a determination of the matters in the complaint under this subdivision, appeal the determination to the state superintendent. The state superintendent shall review the compliance of the school district, operator of the charter school, and governing body of the private school with this section.

Physical restraint or seclusion will *only* be allowed when *all* the following conditions are met:

Summary of conditions

1. There is imminent danger of physical injury;
2. Less invasive interventions wouldn't work to protect the student or others from injury;
3. No mechanical devices are used;
4. Staff are trained by a state-approved training program; and
5. Staff members are monitoring the student closely

Physical restraint or seclusion are *prohibited* when used:

Summary of Prohibitions

1. For discipline or convenience;
2. As a therapeutic intervention;
3. For any period of time that extends past the threat of imminent danger; and
4. By untrained staff, with rare exceptions for unavoidable circumstances, when no trained staff are available and the threat of imminent danger exists.

Date?

TESTIMONY IN FAVOR OF SB 468

by

Jeffrey Spitzer-Resnick
Managing Attorney

As many of you know, Disability Rights Wisconsin (DRW) is Wisconsin's protection and advocacy agency for people with disabilities. In that role, DRW has both state and federal statutory authority to investigate allegations of abuse and neglect of people with disabilities in Wisconsin, and to take steps to prevent and remedy such abuse and neglect. One of the many areas that DRW provides advocacy is in Wisconsin's schools. As Managing Attorney for DRW's Schools & Civil Rights Team, I spend most of my time advocating for children with disabilities who need special education.

For more than 10 years, DRW has received dozens of complaints regarding the inappropriate use of seclusion and restraint in Wisconsin schools. Many of these cases have been truly horrific, including children locked in unsafe rooms with holes in the wall and insulation coming out, for so long that they were urinating and defecating in those rooms. In some cases, DRW was able to provide representation for the victims of these inappropriate practices, and achieve many good things, including dismissals and resignations of teachers and administrators, closure of unsafe seclusion rooms, training for staff on the use of Positive Behavior Interventions & Support (PBIS), and six figure financial settlements. The cases in which DRW has been involved were so horrific that school districts have uniformly been wise to settle these cases out of court.

At one level, you may think that DRW has done its job by providing effective representation to victims of inappropriate seclusion and restraint. However, DRW's success in this arena has been limited to after the fact remedies that will never heal the emotional and physical scars that victims of these inappropriate practices have suffered. Thus, about 10 years ago, DRW began seeking legislation to prevent these inappropriate practices in our schools. Despite introduction of prior measures on this issue, remarkably, this is the first time which the legislature has held a public hearing on this topic. For this, we thank Senator Lehman, and the rest of the committee members.

When DRW first proposed legislation in this area, there were only six states which had laws regulating seclusion and restraint in schools. However, since this has emerged as a national problem, there are now 20 states which have statutes or regulations regarding seclusion and restraint in schools. Indeed, as you may have heard, there is now federal legislation pending in this area.

There are a number of reasons why legislation in this area has not moved forward until now. First, because there is no state or federal requirement to track the usage of seclusion and restraint in schools, many questioned how often these horrific practices occurred. In order to address this problem, DRW joined with two other statewide nonprofit agencies, Wisconsin FACETS, and Wisconsin Family Ties, to research and publish the report which you have all previously received, and which we have provided you with an Executive Summary, today, *Out of Darkness...Into the Light: New Approaches to Reducing the Use of Seclusion and Restraint with Wisconsin Children*. While this report does not pretend to reveal an accurate number of instances of seclusion and restraint in Wisconsin's schools, it does tell the stories of more than 2 dozen children who have been inappropriately secluded and restrained. You will hear more about their (and others) stories from some of their parents and even some of the victims later in this hearing.

Another reason we wrote this report was to provide policy makers and the public with high quality research on the issue of how to handle challenging behavior and what role seclusion and restraint have in controlling such behavior. *Out of Darkness* reveals two very important things in this regard. First, **seclusion and restraint are ineffective techniques in controlling challenging behavior**. Numerous studies have shown, that when health care facilities, including inpatient mental health institutions, were **required by federal and state laws to reduce or eliminate seclusion and restraint, patients and staff had fewer injuries and fewer instances of challenging behavior**. The reason for this is simple. When Congress and state legislatures responded to the abusive use of seclusion and restraint in the inpatient health care arena in the 1980s, although those institutions expressed the same fears that educators are expressing regarding SB 468, they realized that they had to **treat the behavior instead of attempting to control it**. Virtually all health care providers now acknowledge that seclusion and restraint is not treatment. Similarly, seclusion and restraint have no educational value, and simply do not belong in our schools, in all but the most exceptional circumstances.

Later in this hearing you will hear from highly respected educators who will explain that the use of seclusion and restraint in schools makes behavior worse, not better, and risks serious injury to both students and staff. But, you may ask, what should schools do about challenging behavior if they can only use seclusion and restraint in limited circumstances? Fortunately, SB 468, backed up by research, and the educators you will hear from later today, has the answer. PBIS is a proven effective school wide response to improve behavior in schools. It works regardless of the type of school, rich or poor, academically successful or challenged, and regardless of whether the students have disabilities or not. Best of all, implementation of PBIS in Wisconsin schools will not only reduce challenging behavior, it has been proven to raise academic performance of students in schools which use it.

The final reason it has taken so long to have this issue aired publicly, is that although we have made every effort to come to a consensus with other education stakeholders on this issue, quite simply, they have simply stated that they do not want legislation in this area, and have worked hard to defeat efforts to have legislation to promote PBIS and to reduce the use of seclusion and

restraint and make it safer. We are well aware that we will hear arguments from them today about how passage of this bill would make schools unsafe and necessitate calling the police more often. To that, we have two responses. First, all available research demonstrates that passage of this bill will make schools safer, and improve academic performance. If you hear otherwise from other witnesses, please ask them for the research that backs up their claims.

Second, SB 468 was crafted by selecting the best elements of the 20 states' legislative and regulatory provisions, and combining them into a "best of the best" bill. However, we acknowledge that there can be multiple legislative approaches to this issue and we welcome all constructive ideas about how to make SB 468 an even better bill. We have always welcomed this input, and we continue to be willing to meet with anyone and everyone who may have constructive ideas on how to improve this bill.

Finally, in focusing on the many provisions of this bill, we certainly hope that this committee will not lose sight of the fact that there are a number of essential elements that we are hard pressed to understand why anyone would oppose. Those elements are as follows:

1. No child should be locked in a room. It is a violation of fire codes.
2. Any room in which a child is secluded or kept in a timeout, should meet basic standards of safety.
3. No child should be secluded or kept in a timeout, in a room without their parents having an opportunity to see the room.
4. Any staff member who uses restraints on a child should be trained on how to use such restraints, as without that training, the staff member risks injury to him or herself as well as the student.
5. Any restraint that restricts breathing should never be used.
6. School staff should keep track of their use of seclusion, timeout and restraint and report that to DPI.
7. After seclusion, timeout, and/or restraints are used, school staff should meet with each other as well as the child's parents and the child to determine how to reduce challenging behaviors with that child in the future so that seclusion, timeout, and/or restraints will no longer be necessary.

If other educational stakeholders have ideas that would enhance Wisconsin's schools ability to achieve these common sense elements listed above, we welcome discussion on those ideas. It is our hope that after this hearing, all stakeholders on this issue can agree on a common legislative approach to present to you as a friendly amendment. However, if other stakeholders continue to resist coming to such agreement, then we urge you to pass SB 468 as currently drafted.

Thank you for your attention to this critical issue. I welcome any questions which you may have.



Date?

I am here to testify in support of Senate bill 468

Today you are hearing a lot of stories about students being locked into storage rooms and closets, and being physically restrained by adults. I have a story like that, of years of abuse of my son by people who should have been helping him. But I am choosing to focus on Positive Behavioral Supports, and why they are so important.

My son Sam has autism. He was mostly included in elementary school classes. However when he went to Middle School, he was put in a more restrictive placement, where he was miserable. He was in a placement where the teacher did not understand autism and used humiliation, threats, intimidation, and frequent use of a seclusion room. Her need for control caused her to engage in constant unnecessary power struggles. This type of treatment made his behavior escalate. He became a very angry boy. He had outbursts several times a day, and soon was never allowed to leave the resource room and often was dragged to a closet and locked in.

When my son came home with bruises, I pulled him from school, got an advocate, and called child protection. Here is where things turned around. After a marathon IEP with an advocate from Wisconsin FACETS and an autism consultant, Sam was able to go back to school.

My son went back to middle school but not to the same classroom and teacher. He went to the classroom next door. His new teacher evaluated his behavior to understand what was triggering his outbursts. She listened to the autism consultant's advice about providing visual supports, extra processing time, allowed the use of a keyboard or dictation instead of having him write with a pen and paper. When he asked for a break, she let him take a break. None of these interventions had been used by his previous teacher. None of these interventions are expensive.

Sam calmed down in the new classroom and after a few weeks he was no longer afraid to go to school. His outbursts went from 4-5 per day to about 1 per week. Soon he was able to attend classes with his typically developing peers outside the resource room. His attendance improved, his grades improved, and he was able to join the choir.

When he went to High School he was fully included with a paraprofessional and resource room support for study hall. At a parent teacher conference his sophomore year, the assistant principal who was on Sam's team told my husband and I that when he looked at Sam's file before his freshman year, he was afraid that the school would not be able to meet his needs, and he doubted Sam would be successful in his building. But he said that the student described in the file was not the Sam he had come to know. I tried to explain that Sam's behavior was a result of how he had been treated, but I could tell he didn't believe me. He couldn't imagine professionals in his district who would treat a child so badly.

This bill is being fought by some because they claim it is too expensive. On the contrary, research shows that instituting PBIS reduces behavior problems that disrupt the learning of all. If our goal is to increase learning and safety for all, why are some teachers still using strategies that INCREASE undesirable behavior? Why are some teachers so resistant to updating their skills, and don't use proven strategies

to support struggling students? Why would administrators support such teachers? I wish we did not need to mandate this, but it appears to be necessary.

Our grandmas told us "an ounce of prevention is worth a pound of cure." PBIS puts the focus on preventing problems from escalating, not on punishments that do not work. Use of PBIS is the evidence-based way to keep students and teachers safe.

From my experience, the positive change in my son's behavior was due to in the way he was treated and the use of well-documented best practice. When he was welcomed, cared for, and given the accommodations he required due to his autism, he blossomed.

It wasn't expensive. Respect does not cost a lot of money.

Emily Levine, 7680 N Longview Dr., Glendale, WI 53209 414-427-9345



Date?

Most often, kids presenting with challenging behavior are kids with disabilities. My son has a mental health disorder and is on the autism spectrum.

Throughout his early elementary years, my son was regularly restrained, secluded and locked in a time out room. This method of behavioral management made Donovan's mental illness worse.

At age 7 in one particular seclusion incident, he was confined to the time out room for an entire day alone. The plan was to keep him in the time out room until he demonstrated he wouldn't get angry anymore. This seclusion plan was written for an entire week.

Donovan didn't make it through the first day. He became psychotic and ended up in the hospital. No one asked me, no one told me about the plan until after it happened.

It took months for him to recover enough to function at all. In many aspects, he has not recovered 9 years after the incidents.

My son has the right to his feelings. Instead, he was continually punished for his inability to express himself appropriately caused by his language delays, anxiety and mood disorder.

When school stopped using adverse consequences and began working with Donovan proactively, he became successful in school both behaviorally and academically.

Now I work with kids like Donovan in public schools, I know the direct ~~the~~ benefits of teaching positive strategies. I experience our students' successes as a result.

Kids with disabilities presenting with challenging behaviors don't have the ability to regulate themselves for a variety of reasons.

It's our obligation to teach students positive coping skills so they can be successful in school, in life and go on to live to their fullest potential, realizing their hopes and dreams just like 'typical' kids. We have an obligation to help our students achieve that.

Unfortunately our kids aren't always afforded those opportunities, regular use of restraint & seclusion occurs every day as punitive punishment.

Positive Behavioral Intervention & Support is not rocket science. It's a paradigm shift in our adult view of behavior; asking ourselves WHY is it happening, vs. focusing on the WHAT of the challenging behavior. When we get curious, when we view the world through the eyes of the child, the positive solutions are usually very clear.

SB 468 regulating the use of seclusion and restraint is necessary to protect our kids, to require that paradigm shift in thinking about why challenging behavior is occurring, requiring us to provide positive strategies and instruction. We prepare the student for life, we teach to the skill deficit, just as we teach academics.

What are we teaching our kids when we seclude and restrain them? We're teaching them that the bigger human has the upper hand, that power and control is a means to gain compliance..... how is that serving our children?

With SB 468, parents are required to be informed, schools required to collect and report data on the use of Seclusion & Restraint and to utilize positive behavioral interventions and supports.

SB 468 will require public schools to teach our kids appropriate coping strategies and help them achieve success. That is the purpose of school, to teach our kids to be productive members of society.

Most importantly, SB 468 allows Seclusion and Restraint to only be used when there's an imminent risk of safety, *NOT* for 'non-compliance', 'refusal to work' or as a punitive punishment.

There are state and federal regulations for the use of Seclusion & Restraint in hospitals, residential centers, group homes, foster homes, nursing homes and even in Prisons.

There is no such protection for our most vulnerable population, students with disabilities, attending public schools in WI.

Using seclusion & restraint with our kids as a means to control or punish is traumatizing & psychologically damaging, yet it continues to occur every single day without just cause. The impact on our kids lasts forever. The traumatic impact incurred irreparable. Going to school isn't supposed to hurt.

Respectfully submitted on February 18, 2010

Paula Buege

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RE: SB 468
Senate Committee on Education
Submitted By Kirby Lentz, Ed.D., Senior Policy Analyst

Date?

ORAL TESTIMONY

I am Dr. Kirby Lentz from Onalaska. I have spent my forty year career working with students with special needs and I have an adult child with disabilities. The past twenty years, I have consulted, presented, and have written about school-parent relationships and developing meaningful and collaborative IEPs for students with disabilities. I have advocated and worked hard to reduce the use and the practice of aversive behavioral procedures, including seclusion and restraint.

I will be the first person to say that aversive behavioral procedures do not teach alternative behaviors, do not remediate behavioral issues, and do not fit into any environment – school or community.

I oppose Senate Bill 468, not because of the need to reduce and make rare the use of aversive behavioral procedures; I totally support a rarely used paradigm. My opposition is based upon the process detailed in the Bill. My main contention is the lack of involvement of the student's IEP team. The Bill is directed toward Chapter 115 and special education. Each student with a disability has an IEP team. It is this team that must be engaged in this process, not a prescriptive and generalized state rule.

Through my work facilitating collaborative IEP teams across the country, I have seen great things happen to meet student needs through IEP teams. Developing appropriate behavioral strategies, monitoring the application of agreed upon protocols, and evaluating its benefit and effectiveness is best done by the IEP team. This IEP team responsibility is clearly stated in IDEIA and PI-115. I have also seen reporting similar to the reporting proposed in SB 468 end up as a checklist, filed, and forgotten.

Through the collaboration (parents and teachers) of IEP development, including behavioral intervention plans; I have experienced functional behavioral assessments that have eliminated and reduced aversive techniques, propelled student achievement and social acceptance. For example in one case, a student having autism, would engage in severe self abuse and vacate or leave an instructional area, run out of the classroom often hitting, kicking, and screaming resulting in many school personnel chasing, tackling, and physically transporting the student back into the area he left. The IEP team in completing its functional behavioral assessment hypothesized that the student was feeling the environment was too noisy and too many people were too close. The IEP team, including the student and the parents designed a simple procedure in which the student learned to hold up an "I need a break" card and be allowed to go to a quieter area for five minutes.

He learned to leave to this quieter area often with his assignments and teacher approval, and gradually vacating, hitting, and restraint became rare. Self-abuse continued, but not to the degree he needed to be restrained for protection. Parents engaged this process at home and in the community.

There are scores of examples, but the problem with generalized and restrictive procedures such as this Bill weakens the IEP team function and eliminates people who are closest to the student to find meaningful and often simple means to dealing with difficult situations.

I would offer the following recommendations:

1. Replace SB 468 with language similar to HR 4247
2. DPI should re-issue the Information Bulletin 7.01
3. LEAs should develop local policies in ways that are meaningful to that district.
4. Strengthen the IEP process and the IEP team function at the local level.
5. Remove all the training requirements by the LEA in this Bill and demand that this is part of post secondary teacher training curriculum by our colleges and universities. The LEA would assess on teacher hiring the ability of the prospective teacher to handle behavioral interventions and understand principles of positive behavior supports.
6. LEA develop monitoring reports they feel are necessary for them to monitor and assess utilization of aversive and positive behavior procedures. A statewide database will do little to affect individual student achievement.
7. DPI and LEAs support groups such as FACETS who help parents understand behavioral strategies, how to monitor effectiveness, and how to be equal partners in the IEP team.
8. DPI takes a consulting and supportive role in this issue rather than compliance monitor
9. This is an unfunded mandate. I would rather have LEAs use what money they have for instruction than pay for training that should be done at the university level, to collate superficial data to DPI with little probability of decreasing the use of aversive behavior techniques, or to pay a teacher or administrator extra money to watch over a restraint.

I believe it is imperative that seclusion and restraint are rarely used. We must, however ensure that the process you approve actually will support what is best for the individual LEA, parents, and each Wisconsin student. I do not believe the process you have put forward in SB 468 will do this. Thank you.



Senate Education Committee

SB 468

I am in favor of this bill

Erin Miller-

Spectrum adult

Date?

I am here to testify in support of Positive Behavior Interventions, and reducing restraint and seclusion. Today you have heard from parents, educators, and concerned citizens. You have heard traumatic stories and the difference a bit of respect and compassion makes. Now I bring my own story before you, bearing witness as to what it was like to be that child. The experience of restraint and seclusion and what a difference small accommodations can make.

I am an autistic adult and was once an autistic child. I can't speak to all cases, but in my experience restraint and seclusion are usually practiced for the convenience of the teacher. When I was growing up there were no such protections in place in any state. There were no CDC statistics saying 1 in 110 children has some form of autism. There was little publicized research on the use of restraint and seclusion as a punitive means of wresting back control. My teachers assumed I was simply misbehaving and acted accordingly.

To this day I can still remember struggling to keep control, wondering why I couldn't make myself stop. My heart going from 0-350 in 2 seconds. As though outside of time, a shadow of a thought; like a darting dark fingerling brushed my consciousness. It read "I must not lash out. I must retain speech." If I didn't my teachers wouldn't understand. I didn't have the words for it then, but somehow I knew that speaking was the only way they knew how to communicate. If I couldn't tell them... if I needed to leave or was unable to calm myself according to procedure, I could physically hurt, lose my future, be forced down or beaten into submission. Perhaps in the literal sense. There were times I literally thought I was going to die.

Ten, seven or even three years ago, there simply wasn't the myriad of educational supports we have today. But we have them now! We have behavioral interventions, safe evidence-based strategies, and a level of awareness of people with disabilities we didn't have before! Understanding is not a limited commodity. There is no reason not to use them. As you make your decision realize you can and do make a difference.

Erin Miller





**Testimony on SB468
Senate Committee on Education**

**Shel Gross, Director of Public Policy
Mental Health America of Wisconsin**

Mental Health America of Wisconsin urges your support of SB468, which we believe will benefit both students and schools.

We can all agree that limiting the use of seclusion and restraint procedures in schools is in everyone's best interest. Fortunately utilizing positive behavior intervention and support (PBIS) can help achieve this. But its impact goes beyond this. As a board member of the Wisconsin Prevention Network (WPN) I received this email from one of our members:

I served as a Middle School Counselor in Charles County Maryland public school system. PBIS was active for several years when I worked there in 2005. I saw a decrease in suspension rates and a HUGE spike in the positive rapport with at-risk youth. Kids started seeing a positive peer pressure situation and soon kids were "checking" other kids on their behavior. I liked it because it demonstrated that Yes, good things come your way if you make good choices and I think that is accurate.

Another one of our WPN members reported similar results in a school district in Wisconsin. So this approach is not simply theory: we know it works to improve school climate. And this will facilitate learning.

Of course, there may still be times when seclusion and restraint are required, but hopefully this will be greatly reduced. The bill allows use of seclusion and restraint but ensures that staff are trained so they can implement it in a manner which maximizes safety for the staff and the student. Importantly the bill also increases parental notification and involvement in decision-making about use of these procedures. I am sure you will hear, if you have not already, many stories of parents learning well after the fact what has happened to their children in school.

SB468 is a feasible approach to address an unacceptable situation. The testimonials I have heard convince me that the effort required to implement PBIS will pay off big time. Ultimately our schools will be able to focus more energy on their primary mission; educating our children.





WI FACETS

Date?

Wisconsin Family Assistance Center for Education, Training and Support, Inc.
2714 N. Dr. Martin Luther King Drive ♦ Milwaukee, WI ♦ 53212
(414) 374-4645 ♦ 877-374-0511 ♦ FAX (414) 374-4655 ♦ TDD (414) 374-4635

TESTIMONY IN FAVOR OF SB 468 Jan Serak, WI FACETS Executive Co-Director

Thank you, Senator Lehman and committee, for the opportunity to speak on this important topic. WI FACETS is the U.S. Department of Education's Parent Training and Information Center serving Wisconsin. WI FACETS is funded, under the Individuals with Disabilities Education Act Part (IDEA), to ensure that parents receive training and support to help improve results for their children with disabilities. WI FACETS is confident this legislation will contribute to academic and behavioral success for children

Last year, our Parent Center assisted over 48,000 parents and others who contacted us. We supported parents at 193 school meetings. For over 14 years, WI FACETS has received about 75 calls/year (often many more) from parents and school staff seeking help with seclusion and restraint situations. Parents have reported their children being duct-taped to desks, spending all day in a Rifton chair, being held in prone restraint on the floor, being locked in unsupervised rooms, and otherwise traumatized. This is just the tip of the iceberg. There are many more children in these situations that we do not hear about.

- ♦ Most parents who contact us are in shock after finding their child was secluded or restrained – often as a long term intervention, rather than just a temporary safety measure. Most parents are not asked for their consent to use these measures. They often find out from other parents, staff or students. Teachers call us, usually anonymously, to ask if we will contact a parent to let them know that seclusion or restraint is being used with their child. Some parents find out when they research the source of strange marks appearing on their child or when they try to find out why their child balks at getting on the school bus. SB 468 would require schools to get parent consent and to keep them informed if seclusion/restraint is used.
- ♦ Many parents do not know when, how often, or what circumstances led to the use of seclusion and restraint. Some parents are able to get an incident report. Some parents find that reports show that measures were inappropriately used for behaviors that did not place the student or others at risk of harm (as, noncompliance, threats, disruption). More often, parents find no records were kept and are told that there is no law to keep any records. SB 468 would require documentation.
- ♦ Parents often report that staff members using seclusion/restraint measures have not received training on PBIS, non-violent crisis intervention, or the appropriate use of seclusion and restraint. Teachers who contact us also have reported that some staff in their school were “trained” by “reading PowerPoint notes on a website.” SB 468 requires WDPI-approved staff training.
- ♦ Most parents acknowledge their child's complex behavioral needs. They also worry their child is losing precious academic learning time while in seclusion/restraint. They sometimes find seclusion/restraint worsens their child's behavior. Many parents report these measures being implemented without *comprehensive, function-based positive behavioral intervention plans*. The National PBIS TA Center has documented that schools that implement PBIS demonstrate reductions in problem behavior and improved academic outcomes. SB 468 supports academic progress and PBIS.

WI FACETS supports SB 468 and believes it will ensure a safer, more productive learning environment for children and school personnel alike. As the parent of a young adult with autism, I urge your support.



Senate Education Committee
SB 468

Date?

This Bill is necessary. I'm an advocate for children and young adults in about twenty different school districts. This allows me to compare the huge differences in the use of restraint, seclusion and positive behavior intervention in different school districts.

Wisconsin needs laws in place to promote the use of PBIS and to regulate use of restraint and seclusion. It is a shame we need laws for some schools to do the right thing but we do. Let me give you an example in my own school district. I was at a meeting with the Wisconsin Department of Public Instruction and Quality Education Coalition. Tony Evers now State Superintendent of Schools informed us that DPI had changed a DPI bulletin on restraint and seclusion to a directive. I asked how we could insure schools would follow the directive. Tony Evers suggested we go to our school boards and ask them to adopt the directive as school policy. I asked my school district to make the DPI directive on seclusion and restraint school policy. Several school board members asked "Is the directive law?" I replied no that is why I'm asking for you to make it school policy. They did not make it school policy. The reason they gave was because if they made the directive school policy then parents might make the school follow the directive.

My school puts children with Downs Syndrom and Spinal Bifida in seclusion for crying and restrains them as a punishment not because they are a threat to themselves and others. Parents need to know what is being done to their children when they are at school. SB 468 would allow parents to know when their child is restrained or secluded.

There are so many examples I could give that have made me passionate about having a law that provides training to teachers and administrators on PBIS. The law would hopefully change schools attitudes. It is a shame we need laws to force schools to do the "Right Thing". Please pass SB 468 so all Wisconsin schools provide PBIS for our students not punish students for having a disability.

Cynthia Hirsch

Cynthia Hirsch
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SB468? Date?

Good morning. I am Julie Brill elementary principal at Merrill Elementary Healthy Living charter School in Oshkosh, which is part of the Oshkosh Area School District. I am here as part of a team including a parent, police school liaison officer, and a teacher of students with emotional behavioral disabilities. Each of us would like to take a minute to express our concern and opposition to SB 468 regarding seclusion and restraint in schools.

Educators choose their vocations because of their deep commitment to serve . . . children, families, and society. Today that commitment must be deeper than ever. The desire must be inclusive of a commitment to serve families and

communities because the challenges of education children extend far beyond the walls of schools. In the schools and districts for which I have been fortunate to work over the past 21 years, I have been among educators who have given themselves unselfishly to the children.

At Merrill Elementary, there is a Danish proverb that is often referred to in our professional conversations that underscores our understanding of the magnitude of our work, “when you take a child by the hand you take a mother by the heart.” This awesome responsibility is not one to be taken lightly; and we don’t. Every decision with every child every day is a decision fraught with care and concern for the immediate well-being of the child while focusing on the horizon and equipping him/her with the

skills necessary to be a contributing member of society in life.

A parent, Becky VanRavenstein, will share her thoughts on the proposed SB 468.

I have a third grade son with special needs. He is served in the emotional behavioral disabilities program at Merrill Elementary. This is his third year in the program and his growth fluctuates. Last year he made tremendous gains socially and emotionally as well as academically. We were considering dismissing him from the program; however, we determined that we would not change his placement until he was into his third grade year and experiencing the same success.

This year he took an unfortunate turn. His behaviors became more aggressive and . . . after a couple of lengthy stays in the children's behavioral unit, he was diagnosed with Bipolar Disorder. His behavior became aggressive and jeopardized the safety of others. He would yell, kick, scream, and strike others; especially the adults that tried to help him. His episodes slowly escalated. Yelling and screaming, behaviors that he was able to contain and control and redirect after 30 – 60 minutes evolved into physically lashing out at others to the point that he had to be secluded and the police contacted to transport him.

I am a single parent and I could not take him home. The school did not want me to go home alone with my son for fear that he would physically harm me; they

are aware that he has done this in the past. My son is 9 years old.

In a previous school, one without a time out room, he was unsuccessful because he did not have anywhere to go to cool down. Since he has transferred to Merrill with the appropriate facilities to address his needs, including a time out room he has been much more successful. In the past if he had an emotional outburst he could spend 25 minutes in the time out room releasing his anger and frustration and would be able to refocus and finish the day in school successfully.

I am happy to report that although my son was struggling earlier in the year, with appropriate counseling, a diagnosis, the right medication, and ongoing support from the teachers and staff at

Merrill, he has not had to spend any time in the time out room nor has he had to be restrained.

I am officer Kari Pettit a police school liaison officer in the Oshkosh Area School District and employed by Oshkosh Police Department.

Before this job I had no understanding of students with emotional behavior disabilities. If I received a call from a school while I was on patrol and observed a child acting the way some of our students behave when they are in crisis, I would have assumed he was acting out intentionally. If other patrol officers are called to respond it is highly unlikely that they will understand our children.

Patrol will be called each time a student is in crisis because this bill does not allow for a common sense approach of educators to respond to students. The options for the police are limited as well. We have no where to go with kids. Our options are to take them home and often parents are not home, take them to the police station, or charge them with a criminal act. However, by experience there have been times that there was a known mental illness in which case the options for care were in the hands of the parents.

I ask you what do you believe is more emotionally damaging for children, having them spend time in a padded, monitored time out room or being zip-tied with their hands behind their back

and hauled out of the school by police officers?

I am Mary Brenzel, I have Master's Degree in Emotional Behavioral Disabilities, and I have worked with self-contained EBD students for more than 20 years.

The time out room as defined in the proposed legislation has a negative focus. It assumes that it is punitive and a negative place for students. In reality it is often used by the students to cool down. They will choose to go there of their own volition when they feel their anger and frustration building. At times they are in there for 10 minutes, sometimes as long as 60 minutes to cool down. The door to the time out room is

only closed when the child becomes violent.

A focus of our program is to teach children social skills. This includes providing them with the coping skills and strategies to recognize when they are becoming angry and out of control and utilizing anger management techniques that they have learned.

Restraining is emotionally exhausting for everyone. It also seems to have the opposite effect on kids. However, if they are a danger to themselves or others, we have no option but to restrain. The proposed bill would discourage all school personnel from exercising this

approach to working with children and would result in many 911 phone calls.

We are a site that serves children with the most challenging disabilities in our district. Many of our students with EBD come to our school after having spent time in mental health facilities. The students need time to transition to the school environment. During this transition period they can become frustrated and violent. Our time out room allows them to safely and privately go to a location until they are able to refocus. The majority of students that spend any time in the time out room are able to rejoin the learning environment.

The students will learn that acting out is a positive reinforcer. They will learn that after they are aggressive for 15

minutes, the police will be notified and they will be brought home. Some of our students will figure this out and use this strategy to get out of school for part or all of a day. This would be counterproductive for them.

Many of the students we serve are able to regain control in 15 minutes. Some students just can't. This arbitrary time is clearly not based on any research. I ask you, when you are angry or frustrated, are you able to magically refocus in just 15 minutes? Why would we expect that of children?



SB 468?

Date?

My name is Susan Carey. My husband, Mike Garrity are parents of two daughters. Our daughter Katie, 16 has a diagnosis of Down syndrome, Autism, ADHD and Mood disorder. Katie has had struggles he whole life – some related to behavior.

While attending middle school Katie was outside with her c lass and didn't want to reenter. Katie ran to the woods nearby and was then carried into the school by 4 staff members and taken to a conference room where she was held face down on the floor by 2 or 3 people. The police officer who responded to a call at the school about Katie being "out of control" later told us that when he first arrived on the scene he couldn't even tell if "Katie was a boy or a girl because she was on the bottom of the pile." Katie was then handcuffed. Katie's IEP had no provision for restraint. If this bill had been in place the staff at school's school would have been trained in how to handle this situation in a better way. My husband and I later filed a complaint with the DPI for unlawful restraint, the DPI ruled in our favor and for corrective action ordered the school district to mandate non-violent crises intervention training for all employees who work with children in special education settings. The non-violent crisis intervention training, which emphasizes deescalating meltdowns as well as how to safely hold a child in an emergency, was a step in the right direction. This bill is very important because it would require all schools to train staff on the use of restrain and protect WI children and staff from injury and quite possibly save lives of children. We also feel an important part of the bill would be requiring school staff to document incidents fro restraint and seclusion and to provide reports to the DPI. Children who have suffered such a trauma as restraint and seclusion cannot always report such incidents accurately and completely.

In 2006 Katie was ordered by the public school to attend the day school or a residential treatment center. Katie suffered numerous and frequent bouts of inappropriate and aversive seclusion ranging from 15 to 3 hours. The seclusion setting involved a Crisis Intervention Room where Katie was told to sit in a chair with a staff member present who at times restrained her. Also in that room were other students who Katie witnessed engaging in maladaptive behavior. By design Katie was not allowed to work on school work in the CIR, sitting for anywhere from 15 minutes to an hour – a very long time for children. This technique does not promote a child being able to calm themselves, in fact it often served to escalate her behavior.

Katie was sent to the CIR for a variety of reasons including: swearing, hitting staff, (she never hit a peer), and fleeing. However, she was also sent for taking materials not related to a lesson, sitting under a desk, and at least one time for the convenience of the staff so that they could have a meeting. She was often carried there – the report would say that she was "whisked away to the CIR". Her psychologist and psychiatrist categorically have stated that these kinds of seclusions do not teach Katie how to become a better student or citizen, nor do they deescalate behavior, but rather they make the behavior worse and inflict genuine psychological pain on the child and at times physical harm. Because of this they are also counterproductive to Katie's academic progress. During this time in Katie's life (2 ½ years) Katie would often talk about what a bad and stupid person she was. This bill would help because it would not allow seclusion to continue for more than 15 minutes at a time, unless a genuine emergency continues to exist.

After a time we placed Katie in a private setting where teaching her appropriate behavior was the most important thing she did. Positive Behavior Intervention and Support in this bill is so very important because it focuses on prevention first. PBIS is a proactive way to teach behavior taking into account that, just as all children do not learn academics the same, they do not learn appropriate behavior the same. And appropriate behavior and social skills must be taught. Children like Katie do not learn from punitive measures – you cannot punish a disability or behaviors out of someone.

We would never as educators take a struggling reader and simply tell them how to read and then expect them to master it. And then, when they don't, we would never take all printed material away from them, put them in a secluded spot and tell them they can come out when they can read. Yet, that's exactly what happens to some children who struggle with learning appropriate behavior. "Sit there until you know how to behave." You need to teach appropriate behavior in a positive way with the goal being to help that child become a better student and better citizen. We have seen this work with our own daughter in the past two years.

Finally, as an educator with almost 30 years of experience I can tell you, that for some reason we have more and more children, with and without diagnosis, who do not come to school with the tools they need to engage in appropriate behavior. Our schools need to provide the guidance that this bill would give them. No educational setting should be unprepared to support students who struggle. And no child should endure the trauma that unnecessary restraint and seclusion inflicts on them.



SB408?

Date?

Good Morning My name is Sally Flaschberger. I am an advocacy specialist with Disability Rights Wisconsin. I am also the parent of a 15 year old with cerebral palsy, epilepsy, and learning disabilities and a 17 year old with an anxiety disorder. I am here today to talk about my experience with parents whose children have been the subject of seclusion and restraint in schools in South Eastern Wisconsin. Each of these students had a range of disabilities from being a non-verbal student with autism, a student with an emotional behavior disability, and a student with a genetic disorder. Each of these students struggled with behavior issues and needed a positive behavior intervention plan.

These students' parents contacted Disability Rights Wisconsin to specifically advocate relating to issues arising due to inappropriate use of seclusion and restraint. During the process of investigating these complaints, it was found that the children either had no behavior plan or a behavior plan that was only filled with negative consequences instead of positive. In all of these cases, the behaviors plans that were being instituted were actually creating more negative behaviors.

Each of these children have gone on to have a proper function behavior assessment completed and a positive behavior intervention plan put in place with the appropriate replacement behaviors being worked on. One student has moved from an alternative placement back into the regular education setting, another student who was being educated in a self contained classroom now participates in mostly all regular education classes in a high school setting, and the final student was placed at a specialized school that uses a positive behavior system and is making progress that hasn't been seen in the last 5 years.

Each of these parents struggled to understand whether the interventions of seclusion or restraint were appropriate. Often they were not informed or felt the school had no other choice. These students' behaviors were not always a danger to themselves or others. Sometimes it was as simple as not picking up a piece of paper or using bad language.

I encourage you to move quickly to protect our most vulnerable students and to pass this important legislation.



SB 468? Date?

My name is Rhonda J. Greenhaw. Each year in Wisconsin classrooms, children with behavioral issues are secluded and exposed to the improper use of restraints, children like my daughter, Alana – a child with a disability. My daughter is autistic, and she experiences some significant challenges. When my daughter was entering kindergarten, we had an IEP in which the district told us they had created a “special program” for my daughter and some other children – a transitional kindergarten – and we were promised that it was an exceptional opportunity for our daughter.

Before the start of school, my husband and I visited the classroom. It was a small, crowded room, staffed with a regular education teacher, a special education teacher, and one aide, and slated to have 19 regular education and six special education students. My husband and I expressed our concerns: our daughter’s challenges were significant, and the staffing levels seemed extremely inadequate to appropriately supervise her. One of my daughter’s behaviors is Pica, a behavior that compels her to consume non-food items. We have had to visit the emergency room when she swallowed a light bulb, and we have had to remove nails and other potentially fatal objects from her mouth. In addition, her other impulse control issues could result in a lot of running around and grabbing behaviors if not properly managed. We were very concerned that the classroom presented too many opportunities for injury. Other special education parents also expressed discomfort with the low staffing levels, yet we were told to trust the school.

The first day of class was chaotic. The classroom aide was outside at the buses, the special education teacher was in the hall talking to a parent, and the regular education teacher was trying to deal with a throng of students. The special education teacher frantically told us to just leave Alana in the classroom. We set her in her desk, and moved to the side of the room to watch. We were extremely alarmed as our daughter and another special education student, wandered the room. She picked up a group of sharpened pencils and held them in front of her face as she walked around, she attempted to put computer cords in her mouth and my husband had to intervene. In order to keep her safe, we stayed in the classroom for nearly an hour until everyone was settled down and we were able to hand her off to the special education teacher. She promised us that this was just first day issues, but clearly our daughter and other students needed more support in that environment. Several of the parents decided to have a meeting with the district Director of Special Education, the principle, and the teachers. We described what we witnessed, and detailed our children’s challenges, making it clear that in such an environment, appropriate support was critical for safety. The school was only willing to provide an additional part time aide to the classroom.

For the next three days I visited the classroom periodically. Each time I came to the school, the regular education students were involved in wonderful projects. The special education students, however, were not in the classroom. They were pulled out into a “resource room.” This was a windowless room that contained leftover computer equipment, a few toys, and boxes of old school materials.

On my daughter's fourth day of school, when I went into the classroom the regular education students were coloring the "special person of the day," and the special education students were in the "resource room." I found my daughter running in circles with a dog bone chew toy in her mouth, two other students were tussling over a computer keyboard, there were no activities out on any of the tables, and the special education teacher and aide were standing in the corner near the door. When I came into the room, the teacher grabbed my daughter's hand and said, "come on Alana, let's read." When I asked about going into the classroom, the teacher said they were just getting ready to go, and lined everyone up and went to the classroom. The regular education teacher expressed surprise when we arrived, and the special education teacher said, "oh, you're not ready for us?" All of the special education students then had to wait in the hallway for ten minutes. When we were finally allowed in, the regular education students were on the floor sitting in a circle in front of the teacher. My daughter and another special education student with behavior issues were led to the circle, and strapped into two waiting Ripkin chairs positioned on the periphery of the circle about two feet from a cement wall. These chairs are like wooden high chairs. I was literally frozen in my place as I watched my daughter and the other student strapped into the chair. I didn't know what to do. I felt so bad for her, as all of the other students watched her getting restrained. I was also terrified, because my daughter is tall, and was able to touch the floor. She was struggling against the restraints and trying to reach the other children; she could have very easily tipped over in the chair, slamming into the cement wall, which could have resulted in a very serious head trauma.

That was the last time my daughter was in that classroom. We pulled our daughter out of school immediately for her own safety. Yet the effects of those four days remain. Our daughter developed aggressive behaviors in that classroom that persist to this day. Additionally, considerable district resources had to be spent to address the situation – we ended up having eight IEPs, three of which were either facilitated or mediated by the state.

In addition to being the parent of a child with behavior issues, I am also a behavior analyst. I work with children with behavior issues in my practice, using applied behavior analysis to provide interventions at home, in the community, and the school. I can tell you that this legislation is not only critical to the safety of children, it is also good practice. By calling for the use of positive behavior supports, this legislation will provide schools guidance using behavior analytic principles to create effective methods for addressing challenging behaviors.

This legislation will result in functional behavior assessments appropriate supports for challenging behaviors. These methods can be used to reduce or eliminate challenging behaviors by determining the function of the behavior the child is displaying, and then teaching appropriate replacement behaviors. Children can be taught to have "quiet hands" in circle time, or to ask appropriately for attention or breaks. The child develops self-control, a pivotal behavior that allows them exposure additional areas of reinforcement, enabling them to spend instructive time in the classroom with peers who can act as behavioral models, reinforce communication skills,

and will provide a host of other positive experiences for both children with special needs and typically developed children.

Districts that spend the resources upfront on appropriate positive behavior support programs will save money in the long run, saving our state millions of dollars in later, more expensive interventions, such as alternative placements. Students who learn appropriate replacement behaviors can eventually have their supports faded as their functional abilities improve.

Finally, young students who are restrained as a means of control rather than taught to control their own behavior, will only be a growing problem as the child matures. They will be a larger child without the ability to self-control. This exposes the staff and the student to increased risk of injury as they attempt to use restraints on a larger and larger child, and the state or district will then be exposed to increased risk for financial liability if something goes wrong. And what is the outcome for a student who never learns self-control? Ultimately they may have to be confined, or injure someone, or get injured or worse. Every year in the United States children die as the result of improperly used restraints.

The best practice is to ensure that students in Wisconsin schools are provided with positive behavior supports, and that teachers and school districts are given clear instruction about how to create and implement these supports. Seclusion and restraints should never be a default mechanism employed to deal with a lack of appropriate staffing or training. With the rate of increase with children with developmental disabilities, and the imperative of inclusion expressed in IDEA, it is essential that Wisconsin create a policy that will protect children and teachers, and provide the guidance and oversight that is so badly needed.

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WISCONSIN LEGISLATIVE COUNCIL

Terry C. Anderson, Director
Laura D. Rose, Deputy Director

TO: SENATOR JULIE LASSA

FROM: Russell Whitesel, Senior Staff Attorney

RE: 2009 Senate Bill 468, Relating to the Use of Positive Behavioral Interventions and Supports and Aversive Interventions in Schools

DATE: February 17, 2010

This memorandum describes the provisions of 2009 Senate Bill 468 ("the bill"). The bill regulates the use of aversive interventions in schools, such as timeouts and physical restraints. In addition, the bill also relates to the use of positive behavioral interventions and supports and provides procedures for the review of the use of timeouts and physical restraints. The bill has not been introduced.

PRIMARY DEFINITIONS

Senate Bill 468 defines the term "school" as a school operated by a school district, a charter school, a private school in which a child with a disability is enrolled following the placement or referral of that child to the private school by a local educational agency, a private school participating in the Milwaukee Parental Choice Program, and a school operated by a county children with disabilities education board. "Aversive intervention" is defined in the bill as deliberate action, including physical restraint, seclusion, and timeout, that is taken by a school employee to establish a negative association between certain behaviors and the deliberative action. The bill also defines "physical restraint" 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 includes a definition of "timeout room," describing it as an enclosed setting or isolated area from which a pupil is capable of leaving. The term "seclusion" is defined in the bill in contrast to a "timeout room" as placement of a pupil in a setting from which the pupil is incapable of leaving. Additional defined terms used in the bill are described in the sections of the memorandum that follow.

PERSONNEL REQUIREMENTS

The bill requires each school, as defined above, 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 legislation defines "positive behavioral 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 in the learning process. The legislation requires the Department of Public Instruction (DPI) to establish a training and certification program to be completed before a person may be designated as a school-based resource person.

In addition, the bill requires DPI to establish by rule, a training program that is advanced and evidence-based to provide instruction to school employees on the safe, effective, and appropriate use of physical restraint and timeout. The bill specifies the areas of instruction to be included in the training and certification program. For purposes of legislation, the bill defines "school employee" to include a person who is under contract with the school. No school employee under the bill may use physical restraint or a timeout on a pupil unless the employee has completed the training and obtained certification under the program established by DPI.

PROHIBITIONS

The legislation prohibits a school employee from doing any of the following unless certain requirements are met:

1. Using seclusion on a pupil.
2. Using any physical restraint that poses certain identified risks to a pupil.
3. Using any mechanical restraint on a pupil.

The bill defines "mechanical restraint" 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. The bill provides that "mechanical restraint" does not include a protective or stabilizing device that is prescribed by a health care professional for a child with a disability. 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 circumstances under which the physical restraint or a timeout may be used on any pupil and also the period for which the physical restraint or timeout may be used on any 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 restraint that might be used. If the pupil is a child with a disability, the individual 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 principal, in the manner provided under this legislation, 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.

Unless an emergency exists, 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 the 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 a timeout. However, unless the school employee obtains permission from the school principal, in the manner provided in the bill, to extend the use of a 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.

Prior to using any room for 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 legislation establishes specific requirements which a proposed timeout room must satisfy in order to be approved for use as a timeout room. Generally, no room may be approved as a timeout room unless the room satisfies all of the following conditions:

1. It is free of fixtures, electrical outlets, exposed wiring, or other objects that could be used by the pupil to harm himself or herself or others and is designed so that the pupil cannot climb up or upon the walls.
2. It is an area of at least 48 square feet and a ceiling height that is comparable to the height of the surrounding room or rooms.
3. It complies with all state and county fire and safety codes and is equipped with adequate lighting and ventilation.
4. It affords the school employee with the means to hear and see the pupil at all times.
5. If the timeout room is fitted with a door, the door either has a solid, wood core construction or is constructed of steel.

NOTIFICATION

The bill requires the school principal or his or her designee to make reasonable efforts to orally notify the parent of a pupil when any of the following occur, as soon as practicable but in no event later than the end of the day of the occurrence:

1. Physical restraint has been used on the pupil.
2. For a pupil who does not have an IEP, the pupil has been placed in the timeout room.
3. The pupil was placed in a timeout room for more than 15 minutes.

4. The pupil has been placed in a timeout room two or more times within any three-hour period.

In addition, the school employee who uses physical restraint or timeout in any of the occurrences identified above, shall, within 24 hours after the occurrence, submit a written report (to be retained by the school for review by the department) containing the following information to the school principal or his or her designee:

1. The date, time, and duration of the use of physical restraint or timeout.
2. A description of the actions of the pupil before, during, and after the occurrence, including a discussion of the pupil's feelings about and reactions to the occurrence.
3. A description of any other relevant events preceding the use of physical restraint or timeout, including the justification for initiating the use of physical restraint or timeout.
4. The names of the school employees involved in the occurrence.
5. A description of the actions of the school employees before, during, and after the occurrence, including a discussion of the reactions of the school employees to the occurrence.
6. A description of any interventions used prior to the use of physical restraint or timeout.
7. If physical restraint was used, a description of the physical restraint used, including any hold used and the reason the hold was necessary.
8. A log of the pupil's behavior during the use of the physical restraint or timeout, including a description of any interaction between the pupil and the school employees.
9. A description of any injuries sustained by the pupil or any medical care administered to the pupil by school employees or others before, during, or after the use of the physical restraint or timeout.
10. A description of any property damage associated with the occurrence.
11. A description of all future actions to be taken to control the pupil's problem behaviors.
12. The name and position of the school employee completing the report.

Within the provisions of notification, the school principal or his or her designee is required, within 24 hours after an occurrence of any events noted above, to send or transmit by first class mail or electronic mail or facsimile transmission to the pupil's parents, the information contained in the report described above. Each report prepared under the paragraph must be retained by the school for review by the department.

Annually, and upon request of the department, each school district, and each school covered by the bill's requirements, must submit to DPI a written report containing a summary of the occurrences for which the report was prepared. The bill sets forth the requirements for the summary report.

The bill also 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 timeout on that pupil. The legislation permits the parent to appeal a determination, within specified time periods, made at a hearing or in response to the written complaint, directly to the State Superintendent. [See section below on "Procedures for Review."]

REQUIRED PLANS

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

This BIP must contain certain information derived from a functional BIP including the following:

1. Baseline information about the behaviors of the child that are a type that relate to the behaviors noted above.
2. Intervention strategies to be used to minimize the occurrence of each behavior.
3. Each behavior identified above.
4. Recommendations for teaching and reinforcing appropriate alternative and adaptive behaviors.
5. Criteria to determine the effectiveness of the interventions that measure the frequency, duration, and intensity of each behavior identified above.
6. A schedule for monitoring and reporting on the implementation and effectiveness of the plan prepared under the legislation. The monitoring required under this provision must identify any indirect or collateral effects of the use of aversive interventions on a child with a disability, including increases in aggressive or escape behaviors, health-related effects, and emotional reactions.

The BIP may authorize the use of physical restraint or a timeout on a child with a disability consistent with the requirements of the statutes, if the child's parent consents in writing in the manner prescribed by the legislation. The local educational agency must provide the parent with a copy of the written consent and shall retain the original written consent in its records for the child. Consent under the bill is valid for only 12 months beginning on the date on which consent is given unless withdrawn by the parent of the child. Under the legislation, a parent may withdraw consent at any time for any reason. To obtain consent under this provision, the local educational agency shall provide the parent with specific, complete, and accurate information in the parent's native language about all of the following:

1. The purposes for which the physical restraint or timeout will be used.
2. The manner in which the physical restraint or timeout may be administered.
3. Any expected side effects or risks of side effects from the use of physical restraint or timeout.
4. Alternative behavioral management techniques that may be used prior to or instead of physical restraint or timeout.
5. Any possible or probable consequences of withholding consent to use physical restraint or timeout.
6. The period for which consent is effective and the fact that the parent may withdraw consent at any time for any reason.

The school district must also provide the parent with a description (in the parent's native language) of each physical restraint that may be used, provide the parent with an opportunity to see and enter the timeout room, and allow the parent with sufficient time, but at least 24 hours, to review and consider the information presented to them, and ask questions before requesting the parent to give consent. It should be noted that this section pertains only to a local educational agency, not to a private school or other entity.

The functional behavioral assessment required under the bill requires each local educational agency to arrange for the assessment to be conducted for each child with a disability that requires a BIP. The assessment must contain all of the following information:

1. A description of each behavior in concrete terms.
2. The frequency and duration of each behavior described 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 effective factors that contribute to each behavior described.
4. A hypothesis describing the purpose the behavior described above serves for the child, the conditions under which the behavior 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 the recommendations to be included in the BIP.

The legislation requires the functional behavioral assessment to 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 providers, information obtained from the child, the child's parent, and any relevant community treatment providers of the child, and a review of the child's pupil records.

PROCEDURES FOR REVIEW

Each school board or other enumerated entity must establish a procedure for review of any use of any physical restraint or timeout. The parent of the pupil on whom physical restraint or timeout will be used shall be notified in writing of the date, time, and location of the review session at least 10 days before the review is to be held and be invited to attend the review.

The legislation requires the review to be attended by the school-based resource person, school employees involved in the occurrence, and other persons identified by the school-based resource person. The session shall include a review by school employees involved in the occurrence of the circumstances before, during, and after the use of physical restraint or timeout to determine all of the following:

1. Whether proper procedures were followed and whether procedures need to be modified in future occurrences.
2. Whether alternative strategies for controlling the situation were utilized.
3. Whether the parent of the pupil was notified as required.
4. The need for communication with, or counseling of, any people who witnessed the use of physical restraint or timeout.

For a pupil who is not a child with a disability, the session must include a review of the effectiveness of the use of physical restraint or timeout.

Upon completion of the review for a child who is not a child with a disability, the school employees involved in the occurrence must work with the parent of the pupil, the school-based resource person, and other appropriate persons to prepare a written individual behavior plan for the pupil that provides for the use of other, specified interventions with a continued use of the intervention used previously. A determination shall also be made as to whether the pupil should be provided with additional evaluation.

The legislation requires that the individualized educational program team of any child with a disability on whom restraint or timeout was used under the bill to convene within 21 days after the occurrence in a manner provided under the statutes to review the pupil's IEP and BIP. The pupil's parent shall be notified in writing of the time, date, and place of any meeting required at least 10 days prior to the meeting. The legislation specifies that the meeting required under this paragraph shall include all of the following:

1. A review of the pupil's written progress, monitoring and incident reports, and any report prepared following an occurrence.
2. If appropriate, interviews with the pupil.
3. Concerns regarding the IEP and BIP with the pupil's parent.

4. A review and discussion of any indirect or collateral effects of the use of aversive interventions on a pupil, including increases in aggressive or escapist behaviors, health-related effects, or emotional reactions.
5. If a functional behavioral assessment has not been prepared for the pupil within the preceding 12 months, the legislation requires completion of a functional behavioral assessment.

CIVIL LIABILITY EXEMPTIONS

The bill provides any school principal, his or her designee, or school-based research person who authorizes a school employee certified to use physical restraint or timeout on a pupil is immune from civil liability for the act of authorization, unless it constitutes a high degree of negligence. The legislation also provides that any school principal, his or her designee, school employee, or school-based resource person who is certified under the legislation and who uses physical restraint or timeout on a pupil as authorized under the bill, is immune from civil liability for his or her act or omission in the use of physical restraint or timeout or unless the act or omission constitutes a high degree of negligence.

OTHER PROVISIONS

The bill authorizes DPI to promulgate rules to administer and implement the provisions of the bill. If a hearing on a complaint finds that a school failed to comply with the requirements in the bill, the school can be ordered to take corrective action to achieve compliance. In addition, the legislation authorizes the revocation of a charter granted to a charter school if the State Superintendent finds that that school has failed to comply with the requirements of the legislation. The bill also permits a choice school operating under Chapter 119 to be barred from participation by the superintendent for a violation of provisions contained in the legislation.

The bill does not contain any delayed effective date; therefore, the provisions of the bill will become effective on the day following publication of the legislation, after passage by both houses of the Legislature, and approval of the Governor.

If you have any questions, please feel free to contact me directly at the Legislative Council staff offices.

RW:jb:ty:wu