

2019 DRAFTING REQUEST

Bill

For: Luther Olsen (608) 266-0751 Drafter: fknepp
 By: Jenna Secondary Drafters:
 Date: 10/30/2018 May Contact:

Same as LRB: -4463



Submit via email: YES
 Requester's email: Sen.Olsen@legis.wisconsin.gov
 Carbon copy (CC) to: fern.knepp@legis.wisconsin.gov
 krista.pleviak@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Seclusion and restraint for children with IEPs

Instructions:

Redraft 17-1898 for the 2019 session

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	fknepp 10/31/2018	kmochal 11/1/2018			
/P1	fknepp 2/13/2019		dwalker 11/1/2018		
/P2	fknepp 7/22/2019	wjackson 2/14/2019	mbarman 2/15/2019		
/P3	fknepp 9/16/2019	wjackson 7/23/2019	wjackson 7/23/2019		
/P4	fknepp	kmochal	lparisi		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	9/25/2019	9/17/2019	9/17/2019		
			lparisi 9/25/2019	lparisi 9/25/2019	

FE Sent For:

<END>

↳ Not
Needed



State of Wisconsin
2017 - 2018 LEGISLATURE

-0669/P1
LRB-1898/1
FFK:jld&amn
Rmk

IN 10-30
out 11-1

2017 BILL

No changes

1 AN ACT *to repeal* 115.787 (2) (i), 118.305 (6) (a) 1. and 118.305 (6) (a) 3.; *to*
2 *renumber and amend* 118.305 (1) (d), 118.305 (4) (b) and 118.305 (5); *to*
3 *amend* 118.305 (1) (f), 118.305 (2) (f), 118.305 (4) (a) (intro.), 118.305 (4) (a) 2.
4 (intro.), 118.305 (4) (a) 2. d., 118.305 (4) (c) (intro.), 118.305 (4) (c) 1., 118.305 (4)
5 (c) 2., 118.305 (6) (a) (intro.), 118.305 (6) (a) 6., 118.305 (6) (b) 1. and 118.305 (6)
6 (c); and *to create* 115.38 (1) (f), 118.305 (1) (d) 2., 118.305 (1) (dm), 118.305 (1)
7 (ek), 118.305 (1) (em), 118.305 (3) (d) 4., 118.305 (4) (a) 3., 118.305 (4) (b) 2.,
8 118.305 (4) (c) 3. to 6., 118.305 (4) (d), 118.305 (4) (e), 118.305 (5) (b), 118.305 (6)
9 (a) 1f. and 118.305 (6) (a) 1m. of the statutes; **relating to:** the seclusion and
10 physical restraint of pupils.

Analysis by the Legislative Reference Bureau

This bill makes changes to the law governing physical restraint and seclusion of pupils in schools.

Under current law, individuals who work in a public school, including a charter school, or a private school participating in the Special Needs Scholarship Program (SNSP school) may only use seclusion or physical restraint on a pupil at school if

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to

certain conditions are met. One of the conditions under current law for using seclusion is that a door connecting the room or area in which the pupil is secluded cannot be capable of being locked. This bill further prohibits such a door from having a lock on it, even if the door is not capable of being locked. One of the conditions under current law for using physical restraint is that the individual restraining the pupil may not use certain maneuvers and techniques. This bill adds maneuvers and techniques that place the pupil in a prone position to this list of prohibited maneuvers and techniques.

In addition, under current law, an individual employed by a school (covered individual) may not use physical restraint on a pupil at a public school or a SNSP school unless the covered individual has received training that includes specific components. This bill changes these components of the training by eliminating the requirements to include 1) methods of preventing the need for physical restraint; 2) experience in administering and receiving various types of physical restraint; and 3) that the individual demonstrates proficiency in administering physical restraint and by requiring that the training include 1) evidence-based instruction related to positive behavior supports and interventions; 2) evidence-based techniques shown to prevent or reduce the use of physical restraint; and 3) that the individual demonstrates the ability to identify prohibited techniques in administering physical restraint.

Current law provides certain notification and reporting requirements whenever seclusion or physical restraint is used on a pupil at a public school or an SNSP school. This bill specifies that these notice and reporting requirements apply whenever a covered individual or law enforcement officer uses seclusion or physical restraint on a pupil at the school. In addition, the bill requires the school principal to meet with the covered individuals who participated in the incident to discuss the events that occurred before, during, and after the use of seclusion or physical restraint on a pupil, and how to prevent the need for seclusion or physical restraint in the future.

The bill also creates similar notice, reporting, and debriefing requirements that apply whenever a covered individual or law enforcement officer uses seclusion or physical restraint on an LEA placed pupil at a private school. Under the bill, an "LEA placed pupil" is a pupil who is placed by a local educational agency at a private school to satisfy state or federal special education law or under a contractual agreement that requires the pupil's resident school district to pay the pupil's tuition at the private school.

Under current law, a principal of a public school or a SNSP school must annually report to the school's governing body the number of incidents of seclusion and physical restraint and the total number of pupils involved in the incident. Under the bill, a principal of a public school, SNSP school, or private school at which an LEA placed pupil is placed must report data about incidents of seclusion and physical restraint to the governing body of the school and to the Department of Public Instruction. Additionally, under the bill, the principal's report must provide data about incidents of seclusion separately from incidents of physical restraint and must include the total number of children with disabilities who were involved in each type

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of incident. Under the bill, DPI must include the information reported by principals on incidents of seclusion and physical restraint in the annual school and school district performance report.

Finally, under current law, the first time seclusion or physical restraint is used on a child with a disability, the child's Individualized Education Program team must convene as soon as possible and review the child's IEP to ensure that it contains appropriate interventions and supports to address the behavior of concern. Under the bill, a child's IEP team is required to meet to review the child's IEP as soon as practicable but no later than ten school days after the second time seclusion or physical restraint is used on the child within the same school year.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 115.38 (1) (f) of the statutes is created to read:

2 115.38 (1) (f) Information reported under s. 118.305 (4) (c).

3 **SECTION 2.** 115.787 (2) (i) of the statutes is repealed.

4 **SECTION 3.** 118.305 (1) (d) of the statutes is renumbered 118.305 (1) (d) (intro.)

5 and amended to read:

6 118.305 (1) (d) (intro.) "Governing body" means the governing body in charge

7 of ~~a~~ any of the following:

8 1. A school.

9 **SECTION 4.** 118.305 (1) (d) 2. of the statutes is created to read:

10 118.305 (1) (d) 2. A private school at which an LEA placed pupil is placed by
11 a local educational agency.

12 **SECTION 5.** 118.305 (1) (dm) of the statutes is created to read:

13 118.305 (1) (dm) "Incident" means an occurrence of a covered individual or a
14 law enforcement officer using seclusion or physical restraint on a pupil. It is
15 considered one incident if immediately following the use of seclusion or physical
16 restraint on a pupil, the pupil's behavior presents a clear, present, and imminent risk

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1 to the physical safety of the pupil or others, and a covered individual or law
2 enforcement officer resumes the use of seclusion or physical restraint.

3 **SECTION 6.** 118.305 (1) (ek) of the statutes is created to read:

4 118.305 (1) (ek) "LEA placed pupil" means all of the following:

5 1. A pupil placed at a private school by a local educational agency under s.
6 118.15 (1) (d) 4. or 119.235.

7 2. A child with a disability placed at a private school by a local educational
8 agency to satisfy the requirements under subch. V of ch. 115 or applicable federal law.

9 **SECTION 7.** 118.305 (1) (em) of the statutes is created to read:

10 118.305 (1) (em) "Local educational agency" has the meaning given in s. 115.76
11 (10).

12 **SECTION 8.** 118.305 (1) (f) of the statutes is amended to read:

13 118.305 (1) (f) "~~Parent~~ has the meaning given in s. 115.76 (12) means a parent
14 of a pupil, including a natural parent, a guardian, or an individual acting as a parent
15 in the absence of a parent or guardian.

16 **SECTION 9.** 118.305 (2) (f) of the statutes is amended to read:

17 118.305 (2) (f) No door connecting the room or area in which the pupil is
18 secluded to other rooms or areas is capable of being locked or has a lock on it.

19 **SECTION 10.** 118.305 (3) (d) 4. of the statutes is created to read:

20 118.305 (3) (d) 4. Those that place the pupil in a prone position.

21 **SECTION 11.** 118.305 (4) (a) (intro.) of the statutes is amended to read:

22 118.305 (4) (a) (intro.) Whenever a covered individual or a law enforcement
23 officer uses seclusion or physical restraint ~~is used~~ on a pupil at school, the school
24 principal or his or her designee shall do all of the following:

25 **SECTION 12.** 118.305 (4) (a) 2. (intro.) of the statutes is amended to read:

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1 118.305 (4) (b) 2. Hand deliver the report to the pupil's parent.

2 **SECTION 17.** 118.305 (4) (c) (intro.) of the statutes is amended to read:

3 118.305 (4) (c) (intro.) ~~Annually by September 1~~ the deadline for reporting
4 information to the department under s. 115.38 (1), the principal of each school or his
5 or her designee shall submit to the governing body and the state superintendent a
6 report containing all of the following:

7 **SECTION 18.** 118.305 (4) (c) 1. of the statutes is amended to read:

8 118.305 (4) (c) 1. The number of incidents of seclusion ~~and of physical restraint~~
9 in the school during the previous school year.

10 **SECTION 19.** 118.305 (4) (c) 2. of the statutes is amended to read:

11 118.305 (4) (c) 2. The total number of pupils who were involved in the incidents
12 ~~and the number of children with disabilities who were involved in the incidents.~~ of
13 seclusion reported under subd. 1.

14 **SECTION 20.** 118.305 (4) (c) 3. to 6. of the statutes are created to read:

15 118.305 (4) (c) 3. The number of children with disabilities who were involved
16 in the incidents of seclusion reported under subd. 1.

17 4. The number of incidents of physical restraint in the school during the
18 previous school year.

19 5. The total number of pupils who were involved in the incidents of physical
20 restraint reported under subd. 4.

21 6. The number of children with disabilities who were involved in the incidents
22 of physical restraint reported under subd. 4.

23 **SECTION 21.** 118.305 (4) (d) of the statutes is created to read:

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1 118.305 (4) (d) Whenever a covered individual or a law enforcement officer uses
2 seclusion or physical restraint on an LEA placed pupil at a private school, the
3 administrator of the private school or his or her designee shall do all of the following:

4 1. As soon as practicable, but no later than one business day after the incident,
5 notify the LEA placed pupil's parent and the local educational agency of the incident
6 and of the availability of the written report under subd. 2.

7 2. Within 2 business days after the incident and after consulting with the
8 covered individuals and any law enforcement officers present during the incident,
9 prepare a written report containing all of the following information:

10 a. The LEA placed pupil's name.

11 b. The date, time, and duration of the use of seclusion or physical restraint.

12 c. A description of the incident, including a description of the actions of the
13 pupil before, during, and after the incident.

14 d. The names and titles of the covered individuals and any law enforcement
15 officers who were present during the incident.

16 **SECTION 22.** 118.305 (4) (e) of the statutes is created to read:

17 118.305 (4) (e) An administrator of a private school or his or her designee shall
18 retain a report prepared under par. (d) 2. and shall within 3 business days of the
19 incident do one of the following:

20 1. Send the report by 1st class mail or by electronic transmission to the LEA
21 placed pupil's parent and to the local educational agency.

22 2. Hand deliver the report to the LEA placed pupil's parent and to the local
23 educational agency.

24 **SECTION 23.** 118.305 (5) of the statutes is renumbered 118.305 (5) (intro.) and
25 amended to read:

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1 118.305 (5) CHILD WITH A DISABILITY. (intro.) The ~~first~~ 2nd time that seclusion
2 or physical restraint is used on a child with a disability within the same school year,
3 the child's individualized education program team shall convene in the manner
4 provided in s. 115.787 (4) as soon as ~~possible~~ practicable after the incident but no
5 later than 10 school days after the incident. The child's individualized education
6 program team shall review the child's individualized education program and revise
7 it as the individualized education program team determines necessary to ensure that
8 it contains all of the following:

9 (a) The individualized education program includes appropriate positive
10 behavioral interventions and supports and other strategies to address the behavior
11 of concern, ~~as provided in s. 115.787 (2) (i), and revise it if necessary.~~

12 **SECTION 24.** 118.305 (5) (b) of the statutes is created to read:

13 118.305 (5) (b) That the interventions, supports, and other strategies included
14 in the individualized education program related to a behavior that resulted in the use
15 of seclusion or physical restraint on the child are based on a functional behavioral
16 assessment of that behavior.

17 **SECTION 25.** 118.305 (6) (a) (intro.) of the statutes is amended to read:

18 118.305 (6) (a) (intro.) Except as provided in par. (c), no covered individual may
19 use physical restraint on a pupil at school unless he or she has received training in
20 ~~the use of physical restraint~~ that includes all of the following components:

21 **SECTION 26.** 118.305 (6) (a) 1. of the statutes is repealed.

22 **SECTION 27.** 118.305 (6) (a) 1f. of the statutes is created to read:

23 118.305 (6) (a) 1f. Evidence-based instruction related to positive behavioral
24 supports and interventions, safe physical escort, understanding antecedents,
25 de-escalation, conflict prevention, and conflict management.

Knepp, Fern

From: Zantow, Jenna
Sent: Monday, January 07, 2019 9:44 AM
To: Knepp, Fern
Subject: LRB 0669/1

Hi Fern—

We would like to request the following draft changes to LRB 0669/1. Let me know if you have any questions!

Page 6 Lines 3-6 should be changed to read:

118.305 (4) (c) (intro.) Annually by the deadline for reporting information to the department under s. 115.38 (1), each school district, independent charter school, and private school participating under 115.7915, shall submit to the governing body and the state superintendent a report containing all the following for each school:

New section to add to the draft, incorporating a new element in 118.305 (3)(f) - Additional language highlighted

118.305 (3) (f) The covered individual does not use a mechanical or chemical restraint on the pupil. The use of supportive equipment to properly align a pupil's body, assist a pupil to maintain balance, or assist a pupil's mobility, under the direction and oversight of appropriate medical or therapeutic staff, does not constitute the use of a mechanical restraint. The use of vehicle safety restraints when used as intended during the transport of a student in a moving vehicle does not constitute use of a mechanical restraint.

Thanks,

Jenna Zantow

Chief of Staff
Office of Senator Luther Olsen
608.266.0751



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-0669/P1/P2
FFK:klm
t wly

In 2-13
but 2-15

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT to repeal** 115.787 (2) (i), 118.305 (6) (a) 1. and 118.305 (6) (a) 3.; **to**
2 **renumber and amend** 118.305 (1) (d), 118.305 (4) (b) and 118.305 (5); **to**
3 **amend** 118.305 (1) (f), 118.305 (2) (f), 118.305 (4) (a) (intro.), 118.305 (4) (a) 2.
4 (intro.), 118.305 (4) (a) 2. d., 118.305 (4) (c) (intro.), 118.305 (4) (c) 1., 118.305 (4)
5 (c) 2., 118.305 (6) (a) (intro.), 118.305 (6) (a) 6., 118.305 (6) (b) 1. and 118.305 (6)
6 (c); and **to create** 115.38 (1) (f), 118.305 (1) (d) 2., 118.305 (1) (dm), 118.305 (1)
7 (ek), 118.305 (1) (em), 118.305 (3) (d) 4., 118.305 (4) (a) 3., 118.305 (4) (b) 2.,
8 118.305 (4) (c) 3. to 6., 118.305 (4) (d), 118.305 (4) (e), 118.305 (5) (b), 118.305 (6)
9 (a) 1f. and 118.305 (6) (a) 1m. of the statutes; **relating to:** the seclusion and
10 physical restraint of pupils.

Analysis by the Legislative Reference Bureau

This bill makes changes to the law governing physical restraint and seclusion of pupils in schools.

Under current law, individuals who work in a public school, including a charter school, or a private school participating in the Special Needs Scholarship Program (SNSP school) may only use seclusion or physical restraint on a pupil at school if certain conditions are met. One of the conditions under current law for using

Current law prohibits the use of mechanical restraints on a pupil. The bill specifies that the use of vehicle safety restraints while transporting a pupil in a motor vehicle is not the use of a mechanical restraint.

seclusion is that a door to the room or area in which the pupil is secluded cannot be capable of being locked. This bill further prohibits such a door from having a lock on it, even if the door is not capable of being locked. One of the conditions under current law for using physical restraint is that the individual restraining the pupil may not use certain maneuvers and techniques. This bill adds maneuvers and techniques that place the pupil in a prone position to this list of prohibited maneuvers and techniques.

In addition, under current law, an individual employed by a school (covered individual) may not use physical restraint on a pupil at a public school or a SNSP school unless the covered individual has received training that includes specific components. This bill changes these components of the training by eliminating the requirements to include 1) methods of preventing the need for physical restraint; 2) experience in administering and receiving various types of physical restraint; and 3) that the individual demonstrates proficiency in administering physical restraint and by requiring that the training include 1) evidence-based instruction related to positive behavior supports and interventions; 2) evidence-based techniques shown to prevent or reduce the use of physical restraint; and 3) that the individual demonstrates the ability to identify prohibited techniques in administering physical restraint.

Current law provides certain notification and reporting requirements whenever seclusion or physical restraint is used on a pupil at a public school or an SNSP school. This bill specifies that these notice and reporting requirements apply whenever a covered individual or law enforcement officer uses seclusion or physical restraint on a pupil at the school. In addition, the bill requires the school principal to meet with the covered individuals who participated in the incident to discuss the events that occurred before, during, and after the use of seclusion or physical restraint on a pupil, and how to prevent the need for seclusion or physical restraint in the future.

The bill also creates similar notice, reporting, and debriefing requirements that apply whenever a covered individual or law enforcement officer uses seclusion or physical restraint on an LEA placed pupil at a private school. Under the bill, an "LEA placed pupil" is a pupil who is placed by a local educational agency at a private school to satisfy state or federal special education law or under a contractual agreement that requires the pupil's resident school district to pay the pupil's tuition at the private school.

Under current law, a principal of a public school or a SNSP school must annually report to the school's governing body the number of incidents of seclusion and physical restraint and the total number of pupils involved in the incident. Under the bill, a principal of a public school, SNSP school, or private school at which an LEA placed pupil is placed must report data about incidents of seclusion and physical restraint to the governing body of the school and to the Department of Public Instruction. Additionally, under the bill, the principal's report must provide data about incidents of seclusion separately from incidents of physical restraint and must include the total number of children with disabilities who were involved in each type of incident. Under the bill, DPI must include the information reported by principals

on incidents of seclusion and physical restraint in the annual school and school district performance report.

Finally, under current law, the first time seclusion or physical restraint is used on a child with a disability, the child's Individualized Education Program team must convene as soon as possible and review the child's IEP to ensure that it contains appropriate interventions and supports to address the behavior of concern. Under the bill, a child's IEP team is required to meet to review the child's IEP as soon as practicable but no later than ten school days after the second time seclusion or physical restraint is used on the child within the same school year.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 115.38 (1) (f) of the statutes is created to read:

2 115.38 (1) (f) Information reported under s. 118.305 (4) (c).

3 **SECTION 2.** 115.787 (2) (i) of the statutes is repealed.

4 **SECTION 3.** 118.305 (1) (d) of the statutes is renumbered 118.305 (1) (d) (intro.)

5 and amended to read:

6 118.305 (1) (d) (intro.) "Governing body" means the governing body in charge

7 of ~~a~~ any of the following:

8 1. A school.

9 **SECTION 4.** 118.305 (1) (d) 2. of the statutes is created to read:

10 118.305 (1) (d) 2. A private school at which an LEA placed pupil is placed by
11 a local educational agency.

12 **SECTION 5.** 118.305 (1) (dm) of the statutes is created to read:

13 118.305 (1) (dm) "Incident" means an occurrence of a covered individual or a
14 law enforcement officer using seclusion or physical restraint on a pupil. It is
15 considered one incident if immediately following the use of seclusion or physical
16 restraint on a pupil, the pupil's behavior presents a clear, present, and imminent risk

1 to the physical safety of the pupil or others, and a covered individual or law
2 enforcement officer resumes the use of seclusion or physical restraint.

3 **SECTION 6.** 118.305 (1) (ek) of the statutes is created to read:

4 118.305 (1) (ek) "LEA placed pupil" means all of the following:

5 1. A pupil placed at a private school by a local educational agency under s.
6 118.15 (1) (d) 4. or 119.235.

7 2. A child with a disability placed at a private school by a local educational
8 agency to satisfy the requirements under subch. V of ch. 115 or applicable federal law.

9 **SECTION 7.** 118.305 (1) (em) of the statutes is created to read:

10 118.305 (1) (em) "Local educational agency" has the meaning given in s. 115.76
11 (10).

12 **SECTION 8.** 118.305 (1) (f) of the statutes is amended to read:

13 118.305 (1) (f) "Parent" ~~has the meaning given in s. 115.76 (12)~~ means a parent
14 of a pupil, including a natural parent, a guardian, or an individual acting as a parent
15 in the absence of a parent or guardian.

16 **SECTION 9.** 118.305 (2) (f) of the statutes is amended to read:

17 118.305 (2) (f) No door connecting the room or area in which the pupil is
18 secluded to other rooms or areas is capable of being locked or has a lock on it.

19 **SECTION 10.** 118.305 (3) (d) 4. of the statutes is created to read:

20 118.305 (3) (d) 4. Those that place the pupil in a prone position.

21 **SECTION 11.** 118.305 (4) (a) (intro.) of the statutes is amended to read:

22 118.305 (4) (a) (intro.) Whenever a covered individual or a law enforcement
23 officer uses seclusion or physical restraint is used on a pupil at school, the school
24 principal or his or her designee shall do all of the following:

25 **SECTION 12.** 118.305 (4) (a) 2. (intro.) of the statutes is amended to read:

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1 118.305 (4) (a) 2. (intro.) Within 2 business days after the incident and after
2 consulting with the covered individuals and any law enforcement officers present
3 during the incident, prepare a written report containing all of the following
4 information:

5 **SECTION 13.** 118.305 (4) (a) 2. d. of the statutes is amended to read:

6 118.305 (4) (a) 2. d. The names and titles of the covered individuals and any
7 law enforcement officers present during the incident.

8 **SECTION 14.** 118.305 (4) (a) 3. of the statutes is created to read:

9 118.305 (4) (a) 3. Meet with the covered individuals who participated in the
10 incident to discuss all of the following:

11 a. The events preceding, during, and following the use of the seclusion or
12 physical restraint.

13 b. How to prevent the need for seclusion or physical restraint, including the
14 factors that may have contributed to the escalation of behaviors; alternatives to
15 physical restraint, such as de-escalation techniques and possible interventions; and
16 other strategies that the school principal or designee determines are appropriate.

17 **SECTION 15.** 118.305 (4) (b) of the statutes is renumbered 118.305 (4) (b) (intro.)
18 and amended to read:

19 118.305 (4) (b) (intro.) ~~Each~~ The school principal or his or her designee shall
20 retain a report prepared under par. (a) 2. shall be retained by the school and made
21 available for review by shall, within 3 business days of the incident, do one of the
22 following:

23 1. Send the report to the pupil's parent within 3 business days of the incident
24 by 1st class mail or by electronic transmission.

25 **SECTION 16.** 118.305 (4) (b) 2. of the statutes is created to read:

1 118.305 (4) (b) 2. Hand deliver the report to the pupil's parent.

2 **SECTION 17.** 118.305 (4) (c) (intro.) of the statutes is amended to read:

3 118.305 (4) (c) (intro.) Annually by September 1 the deadline for reporting
4 information to the department under s. 115.38 (1), the principal of each school or his
5 or her designee shall submit to the governing body and the state superintendent a
6 report containing all of the following:

7 **SECTION 18.** 118.305 (4) (c) 1. of the statutes is amended to read:

8 118.305 (4) (c) 1. The number of incidents of seclusion ~~and of physical restraint~~
9 in the school during the previous school year.

10 **SECTION 19.** 118.305 (4) (c) 2. of the statutes is amended to read:

11 118.305 (4) (c) 2. The total number of pupils who were involved in the incidents
12 ~~and the number of children with disabilities who were involved in the incidents. of~~
13 seclusion reported under subd. 1.

14 **SECTION 20.** 118.305 (4) (c) 3. to 6. of the statutes are created to read:

15 118.305 (4) (c) 3. The number of children with disabilities who were involved
16 in the incidents of seclusion reported under subd. 1.

17 4. The number of incidents of physical restraint in the school during the
18 previous school year.

19 5. The total number of pupils who were involved in the incidents of physical
20 restraint reported under subd. 4.

21 6. The number of children with disabilities who were involved in the incidents
22 of physical restraint reported under subd. 4.

23 **SECTION 21.** 118.305 (4) (d) of the statutes is created to read:

1 118.305 (4) (d) Whenever a covered individual or a law enforcement officer uses
2 seclusion or physical restraint on an LEA placed pupil at a private school, the
3 administrator of the private school or his or her designee shall do all of the following:

4 1. As soon as practicable, but no later than one business day after the incident,
5 notify the LEA placed pupil's parent and the local educational agency of the incident
6 and of the availability of the written report under subd. 2.

7 2. Within 2 business days after the incident and after consulting with the
8 covered individuals and any law enforcement officers present during the incident,
9 prepare a written report containing all of the following information:

10 a. The LEA placed pupil's name.

11 b. The date, time, and duration of the use of seclusion or physical restraint.

12 c. A description of the incident, including a description of the actions of the
13 pupil before, during, and after the incident.

14 d. The names and titles of the covered individuals and any law enforcement
15 officers who were present during the incident.

16 **SECTION 22.** 118.305 (4) (e) of the statutes is created to read:

17 118.305 (4) (e) An administrator of a private school or his or her designee shall
18 retain a report prepared under par. (d) 2. and shall within 3 business days of the
19 incident do one of the following:

20 1. Send the report by 1st class mail or by electronic transmission to the LEA
21 placed pupil's parent and to the local educational agency.

22 2. Hand deliver the report to the LEA placed pupil's parent and to the local
23 educational agency.

24 **SECTION 23.** 118.305 (5) of the statutes is renumbered 118.305 (5) (intro.) and
25 amended to read:

1 118.305 (5) CHILD WITH A DISABILITY. (intro.) The first 2nd time that seclusion
2 or physical restraint is used on a child with a disability within the same school year,
3 the child's individualized education program team shall convene in the manner
4 provided in s. 115.787 (4) as soon as possible practicable after the incident but no
5 later than 10 school days after the incident. The child's individualized education
6 program team shall review the child's individualized education program and revise
7 it as the individualized education program team determines necessary to ensure that
8 it contains all of the following:

9 (a) The individualized education program includes appropriate positive
10 behavioral interventions and supports and other strategies to address the behavior
11 of concern, ~~as provided in s. 115.787 (2) (i), and revise it if necessary.~~

12 **SECTION 24.** 118.305 (5) (b) of the statutes is created to read:

13 118.305 (5) (b) That the interventions, supports, and other strategies included
14 in the individualized education program related to a behavior that resulted in the use
15 of seclusion or physical restraint on the child are based on a functional behavioral
16 assessment of that behavior.

17 **SECTION 25.** 118.305 (6) (a) (intro.) of the statutes is amended to read:

18 118.305 (6) (a) (intro.) Except as provided in par. (c), no covered individual may
19 use physical restraint on a pupil at school unless he or she has received training in
20 ~~the use of physical restraint~~ that includes all of the following components:

21 **SECTION 26.** 118.305 (6) (a) 1. of the statutes is repealed.

22 **SECTION 27.** 118.305 (6) (a) 1f. of the statutes is created to read:

23 118.305 (6) (a) 1f. Evidence-based instruction related to positive behavioral
24 supports and interventions, safe physical escort, understanding antecedents,
25 de-escalation, conflict prevention, and conflict management.

1 **SECTION 28.** 118.305 (6) (a) 1m. of the statutes is created to read:

2 118.305 (6) (a) 1m. Evidence-based techniques, including debriefing, that have
3 been shown to prevent or reduce the use of physical restraint.

4 **SECTION 29.** 118.305 (6) (a) 3. of the statutes is repealed.

5 **SECTION 30.** 118.305 (6) (a) 6. of the statutes is amended to read:

6 118.305 (6) (a) 6. A requirement that the trainee demonstrate proficiency his
7 or her ability to identify prohibited techniques in administering physical restraint.

8 **SECTION 31.** 118.305 (6) (b) 1. of the statutes is amended to read:

9 118.305 (6) (b) 1. At least one covered individual has received training ~~in the~~
10 ~~use of physical restraint~~ under par. (a).

11 **SECTION 32.** 118.305 (6) (c) of the statutes is amended to read:

12 118.305 (6) (c) A covered individual who has not received training ~~in the use~~
13 ~~of physical restraint~~ under par. (a) may use physical restraint on a pupil at school
14 only in an emergency and only if a covered individual who has received training ~~in~~
15 ~~the use of physical restraint~~ under par. (a) is not immediately available due to the
16 unforeseen nature of the emergency.

17

(END)

→ [Tns 9-16]

2019-2020 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0669/P2ins
FFK:...

INS 4-20

1 **SECTION 1.** 118.305 (3) (f) of the statutes is renumbered 118.305 (3) (f) (intro.)
2 and amended to read:

3 118.305 (3) (f) (intro.) The covered individual does not use a mechanical or
4 chemical restraint on the pupil. The None of the following constitute the use of a
5 mechanical restraint:

6 1. The use of supportive equipment to properly align a pupil's body, assist a
7 pupil to maintain balance, or assist a pupil's mobility, under the direction and
8 oversight of appropriate medical or therapeutic staff, does not constitute the use of
9 a mechanical restraint.

History: 2011 a. 125; 2013 a. 168 s. 20; 2015 a. 55.

10 **SECTION 2.** 118.305 (3) (f) 2. of the statutes is created to read:

11 118.305 (3) (f) 2. The use of vehicle safety restraints when used as intended
12 during the transport of a pupil in a motor vehicle.

****NOTE: Please confirm that this language is consistent with your intent. I changed "moving vehicle" to "motor vehicle." "During the transport" suggests that this provision does not apply to a non-moving vehicle that is not being used to transport a pupil.

END INS 4-20

INS 6-6

****NOTE: I did not include the recommended change to s. 118.305 (4) (c) (intro.). The recommendation is to replace "principal of each school or his or her designee" with "each school district, independent charter school, and private school participating under s. 155.7915." There are a few issues with this recommendation. First, it is odd to have a school district report to a school board (the governing body of a public school). The school district acts through its school board. The current language in s. 118.305 (4) (c) (intro.) requires principals of schools in the school district to report to the school board. Second, a similar issue exists with regard to independent charter schools and private schools participating in the SNSP. In general, obligations related to these types of schools are placed on the "governing body" of that school. In this case, the obligation is to report to the governing body, therefore it doesn't work for the obligation itself to be on the governing body. As drafted, the obligation is on the principal or his or her designee. If you prefer

a different individual at the school, please let me know. Please feel free to contact me with any questions about this recommendation.

END INS 6-6

Knepp, Fern

From: Zantow, Jenna
Sent: Tuesday, March 12, 2019 12:03 PM
To: Knepp, Fern
Subject: FW: Restraint/seclusion revision to 19-0669/P2
Attachments: 19-0669_P2.pdf

Telephone call from Jenna 7/22

Hi Fern—

I forwarded your draft and questions on to family ties and this is their response for the new draft: *Go ahead*

New version for Page 6 Lines 18-20 in the P2

118.305 (4) (c) (intro.) Annually by the deadline for reporting information to the department under s. 115.38 (1), the designated administrator for each school district, independent charter school, and private school participating under 115.7915, shall submit to the governing body and the state superintendent a report containing all the following for each school:

and rewrite to take out administrative submitting to the governing body
Okay to be more general.

Regarding the note referencing page 5 line 7, the words "moving vehicle" are consistent with language found in statute and policy in multiple states, as well as federal level proposals. We would like line 7 to read:

during the transport of a student in a moving vehicle

require reporting from governing body → Superintendent

Thanks for your patience on this one! Let me know if you have any follow ups and I will forward them on.

Thanks,
Jenna

From: Joanne Juhnke <joanne@wifamilyties.org>
Sent: Thursday, March 07, 2019 2:07 PM
To: Zantow, Jenna <Jenna.Zantow@legis.wisconsin.gov>
Cc: Sally Flaschberger <Sally.Flaschberger@drwi.org>; Van Haren, Barbara A - DPI <Barbara.VanHaren@dpi.wi.gov>; Pettack, Dee DPI <Deanna.Pettack@dpi.wi.gov> (Deanna.Pettack@dpi.wi.gov) <Deanna.Pettack@dpi.wi.gov>
Subject: Restraint/seclusion revision to 19-0669/P2

Hi Jenna,

Sally and I have put our heads together with Barb Van Haren and Dee Pettack over at DPI, and that conversation resulted in the following response to the notes on the P2. Please forward for drafting:

New version for Page 6 Lines 18-20 in the P2

118.305 (4) (c) (intro.) Annually by the deadline for reporting information to the department under s. 115.38 (1), the designated administrator for each school district, independent charter school, and private school participating under 115.7915, shall submit to the governing body and the state superintendent a report containing all the following for each school:

Regarding the note referencing page 5 line 7, the words "moving vehicle" are consistent with language found in statute and policy in multiple states, as well as federal level proposals. We would like line 7 to read:

during the transport of a student in a moving vehicle

Thanks, and please let me know of any questions. We're looking forward to getting this tidied up and circulated for co-sponsorship!

-- Joanne

Joanne Juhnke
Policy Director
Direct: 608.261.0532 | Mobile: 608.320.6165



Wisconsin Family Ties, Inc. | 16 N. Carroll Street, Suite 230 | Madison, WI 53703
608.267.6800 | 800.422.7145 | wifamilyties.org

From: Zantow, Jenna [<mailto:Jenna.Zantow@legis.wisconsin.gov>]
Sent: Friday, February 22, 2019 11:53 AM
To: Joanne Juhnke
Subject: Updated Draft

Hi Joanne—

Here is the most recent draft. Let me know what you think!

Thanks,

Jenna Zantow
Chief of Staff
Office of Senator Luther Olsen
608.266.0751



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-0669/P2
FFK:klm&wlj

In 7-22 out 7-23

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT to repeal** 115.787 (2) (i), 118.305 (6) (a) 1. and 118.305 (6) (a) 3.; **to**
2 **renumber and amend** 118.305 (1) (d), 118.305 (3) (f), 118.305 (4) (b) and
3 118.305 (5); **to amend** 118.305 (1) (f), 118.305 (2) (f), 118.305 (4) (a) (intro.),
4 118.305 (4) (a) 2. (intro.), 118.305 (4) (a) 2. d., 118.305 (4) (c) (intro.), 118.305 (4)
5 (c) 1., 118.305 (4) (c) 2., 118.305 (6) (a) (intro.), 118.305 (6) (a) 6., 118.305 (6) (b)
6 1. and 118.305 (6) (c); and **to create** 115.38 (1) (f), 118.305 (1) (d) 2., 118.305 (1)
7 (dm), 118.305 (1) (ek), 118.305 (1) (em), 118.305 (3) (d) 4., 118.305 (3) (f) 2.,
8 118.305 (4) (a) 3., 118.305 (4) (b) 2., 118.305 (4) (c) 3. to 6., 118.305 (4) (d), 118.305
9 (4) (e), 118.305 (5) (b), 118.305 (6) (a) 1f. and 118.305 (6) (a) 1m. of the statutes;
10 **relating to:** the seclusion and physical restraint of pupils.

Analysis by the Legislative Reference Bureau

This bill makes changes to the law governing physical restraint and seclusion of pupils in schools.

Under current law, individuals who work in a public school, including a charter school, or a private school participating in the Special Needs Scholarship Program (SNSP school) may only use seclusion or physical restraint on a pupil at school if certain conditions are met. One of the conditions under current law for using

seclusion is that a door to the room or area in which the pupil is secluded cannot be capable of being locked. This bill further prohibits such a door from having a lock on it, even if the door is not capable of being locked. One of the conditions under current law for using physical restraint is that the individual restraining the pupil may not use certain maneuvers and techniques. This bill adds maneuvers and techniques that place the pupil in a prone position to this list of prohibited maneuvers and techniques. Current law also prohibits the use of mechanical restraints on a pupil. The bill specifies that the use of vehicle safety restraints while transporting a pupil in a ~~motor~~ ^{training} vehicle is not the use of a mechanical restraint.

In addition, under current law, an individual employed by a school (covered individual) may not use physical restraint on a pupil at a public school or a SNSP school unless the covered individual has received training that includes specific components. This bill changes these components of the training by eliminating the requirements to include 1) methods of preventing the need for physical restraint; 2) experience in administering and receiving various types of physical restraint; and 3) that the individual demonstrates proficiency in administering physical restraint and by requiring that the training include 1) evidence-based instruction related to positive behavior supports and interventions; 2) evidence-based techniques shown to prevent or reduce the use of physical restraint; and 3) that the individual demonstrates the ability to identify prohibited techniques in administering physical restraint.

Current law provides certain notification and reporting requirements whenever seclusion or physical restraint is used on a pupil at a public school or an SNSP school. This bill specifies that these notice and reporting requirements apply whenever a covered individual or law enforcement officer uses seclusion or physical restraint on a pupil at the school. In addition, the bill requires the school principal to meet with the covered individuals who participated in the incident to discuss the events that occurred before, during, and after the use of seclusion or physical restraint on a pupil, and how to prevent the need for seclusion or physical restraint in the future.

The bill also creates similar notice, reporting, and debriefing requirements that apply whenever a covered individual or law enforcement officer uses seclusion or physical restraint on an LEA placed pupil at a private school. Under the bill, an "LEA placed pupil" is a pupil who is placed by a local educational agency at a private school to satisfy state or federal special education law or under a contractual agreement that requires the pupil's resident school district to pay the pupil's tuition at the private school.

Under current law, a principal of a public school or a SNSP school must annually report to the school's governing body the number of incidents of seclusion and physical restraint and the total number of pupils involved in the incident. Under the bill, a principal of a public school, SNSP school, or private school at which an LEA placed pupil is placed must report data about incidents of seclusion and physical restraint to the governing body of the school and to the Department of Public Instruction. Additionally, under the bill, the principal's report must provide data about incidents of seclusion separately from incidents of physical restraint and must

governing body

at each of the schools

include the total number of children with disabilities who were involved in each type of incident. Under the bill, DPI must include the information reported by principals on incidents of seclusion and physical restraint in the annual school and school district performance report.

Finally, under current law, the first time seclusion or physical restraint is used on a child with a disability, the child's Individualized Education Program team must convene as soon as possible and review the child's IEP to ensure that it contains appropriate interventions and supports to address the behavior of concern. Under the bill, a child's IEP team is required to meet to review the child's IEP as soon as practicable but no later than ten school days after the second time seclusion or physical restraint is used on the child within the same school year.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 115.38 (1) (f) of the statutes is created to read:

2 115.38 (1) (f) Information reported under s. 118.305 (4) (c).

3 **SECTION 2.** 115.787 (2) (i) of the statutes is repealed.

4 **SECTION 3.** 118.305 (1) (d) of the statutes is renumbered 118.305 (1) (d) (intro.)

5 and amended to read:

6 118.305 (1) (d) (intro.) "Governing body" means the governing body in charge
7 of ~~a~~ any of the following:

8 1. A school.

9 **SECTION 4.** 118.305 (1) (d) 2. of the statutes is created to read:

10 118.305 (1) (d) 2. A private school at which an LEA placed pupil is placed by
11 a local educational agency.

12 **SECTION 5.** 118.305 (1) (dm) of the statutes is created to read:

13 118.305 (1) (dm) "Incident" means an occurrence of a covered individual or a
14 law enforcement officer using seclusion or physical restraint on a pupil. It is
15 considered one incident if immediately following the use of seclusion or physical
16 restraint on a pupil, the pupil's behavior presents a clear, present, and imminent risk

1 to the physical safety of the pupil or others, and a covered individual or law
2 enforcement officer resumes the use of seclusion or physical restraint.

3 **SECTION 6.** 118.305 (1) (ek) of the statutes is created to read:

4 118.305 (1) (ek) "LEA placed pupil" means all of the following:

5 1. A pupil placed at a private school by a local educational agency under s.
6 118.15 (1) (d) 4. or 119.235.

7 2. A child with a disability placed at a private school by a local educational
8 agency to satisfy the requirements under subch. V of ch. 115 or applicable federal law.

9 **SECTION 7.** 118.305 (1) (em) of the statutes is created to read:

10 118.305 (1) (em) "Local educational agency" has the meaning given in s. 115.76
11 (10).

12 **SECTION 8.** 118.305 (1) (f) of the statutes is amended to read:

13 118.305 (1) (f) "Parent" has the meaning given in s. 115.76(12) means a parent
14 of a pupil, including a natural parent, a guardian, or an individual acting as a parent
15 in the absence of a parent or guardian.

16 **SECTION 9.** 118.305 (2) (f) of the statutes is amended to read:

17 118.305 (2) (f) No door connecting the room or area in which the pupil is
18 secluded to other rooms or areas is capable of being locked or has a lock on it.

19 **SECTION 10.** 118.305 (3) (d) 4. of the statutes is created to read:

20 118.305 (3) (d) 4. Those that place the pupil in a prone position.

21 **SECTION 11.** 118.305 (3) (f) of the statutes is renumbered 118.305 (3) (f) (intro.)
22 and amended to read:

23 118.305 (3) (f) (intro.) The covered individual does not use a mechanical or
24 chemical restraint on the pupil. The None of the following constitutes the use of a
25 mechanical restraint:

1 1. The use of supportive equipment to properly align a pupil's body, assist a
2 pupil to maintain balance, or assist a pupil's mobility, under the direction and
3 oversight of appropriate medical or therapeutic staff, ~~does not constitute the use of~~
4 ~~a mechanical restraint.~~

5 **SECTION 12.** 118.305 (3) (f) 2. of the statutes is created to read:

6 118.305 (3) (f) 2. The use of vehicle safety restraints when used as intended
7 during the transport of a pupil in a ~~motor~~^{moving} vehicle.

****NOTE: Please confirm that this language is consistent with your intent. I
changed "moving vehicle" to "motor vehicle." "During the transport" suggests that this
provision does not apply to a non-moving vehicle that is not being used to transport a
pupil.

8 **SECTION 13.** 118.305 (4) (a) (intro.) of the statutes is amended to read:

9 118.305 (4) (a) (intro.) Whenever a covered individual or a law enforcement
10 officer uses seclusion or physical restraint is used on a pupil at school, the school
11 principal or his or her designee shall do all of the following:

12 **SECTION 14.** 118.305 (4) (a) 2. (intro.) of the statutes is amended to read:

13 118.305 (4) (a) 2. (intro.) Within 2 business days after the incident and after
14 consulting with the covered individuals and any law enforcement officers present
15 during the incident, prepare a written report containing all of the following
16 information:

17 **SECTION 15.** 118.305 (4) (a) 2. d. of the statutes is amended to read:

18 118.305 (4) (a) 2. d. The names and titles of the covered individuals and any
19 law enforcement officers present during the incident.

20 **SECTION 16.** 118.305 (4) (a) 3. of the statutes is created to read:

21 118.305 (4) (a) 3. Meet with the covered individuals who participated in the
22 incident to discuss all of the following:

1 a. The events preceding, during, and following the use of the seclusion or
2 physical restraint.

3 b. How to prevent the need for seclusion or physical restraint, including the
4 factors that may have contributed to the escalation of behaviors; alternatives to
5 physical restraint, such as de-escalation techniques and possible interventions; and
6 other strategies that the school principal or designee determines are appropriate.

7 **SECTION 17.** 118.305 (4) (b) of the statutes is renumbered 118.305 (4) (b) (intro.)
8 and amended to read:

9 118.305 (4) (b) (intro.) ~~Each~~ The school principal or his or her designee shall
10 retain a report prepared under par. (a) 2. shall be retained by the school and made
11 available for review by shall, within 3 business days of the incident, do one of the
12 following:

13 1. Send the report to the pupil's parent within 3 business days of the incident
14 by 1st class mail or by electronic transmission.

15 **SECTION 18.** 118.305 (4) (b) 2. of the statutes is created to read:

16 118.305 (4) (b) 2. Hand deliver the report to the pupil's parent.

17 **SECTION 19.** 118.305 (4) (c) (intro.) of the statutes is amended to read:

18 118.305 (4) (c) (intro.) Annually by ~~September 1~~ the deadline for reporting
19 information to the department under s. 115.38 (1), the principal of each school or his
20 or her designee shall submit to the governing body and the state superintendent a
21 report containing all of the following: *for each school under its charge*
shall submit to

22 **SECTION 20.** 118.305 (4) (c) 1. of the statutes is amended to read:

23 118.305 (4) (c) 1. The number of incidents of seclusion and of physical restraint
24 in the school during the previous school year.

25 **SECTION 21.** 118.305 (4) (c) 2. of the statutes is amended to read:

1 118.305 (4) (c) 2. The total number of pupils who were involved in the incidents
2 ~~and the number of children with disabilities who were involved in the incidents.~~ of
3 seclusion reported under subd. 1.

4 **SECTION 22.** 118.305 (4) (c) 3. to 6. of the statutes are created to read:

5 118.305 (4) (c) 3. The number of children with disabilities who were involved
6 in the incidents of seclusion reported under subd. 1.

7 4. The number of incidents of physical restraint in the school during the
8 previous school year.

9 5. The total number of pupils who were involved in the incidents of physical
10 restraint reported under subd. 4.

11 6. The number of children with disabilities who were involved in the incidents
12 of physical restraint reported under subd. 4.

13 **SECTION 23.** 118.305 (4) (d) of the statutes is created to read:

14 118.305 (4) (d) Whenever a covered individual or a law enforcement officer uses
15 seclusion or physical restraint on an LEA placed pupil at a private school, the
16 administrator of the private school or his or her designee shall do all of the following:

17 1. As soon as practicable, but no later than one business day after the incident,
18 notify the LEA placed pupil's parent and the local educational agency of the incident
19 and of the availability of the written report under subd. 2.

20 2. Within 2 business days after the incident and after consulting with the
21 covered individuals and any law enforcement officers present during the incident,
22 prepare a written report containing all of the following information:

23 a. The LEA placed pupil's name.

24 b. The date, time, and duration of the use of seclusion or physical restraint.

1 c. A description of the incident, including a description of the actions of the
2 pupil before, during, and after the incident.

3 d. The names and titles of the covered individuals and any law enforcement
4 officers who were present during the incident.

5 **SECTION 24.** 118.305 (4) (e) of the statutes is created to read:

6 118.305 (4) (e) An administrator of a private school or his or her designee shall
7 retain a report prepared under par. (d) 2. and shall within 3 business days of the
8 incident do one of the following:

9 1. Send the report by 1st class mail or by electronic transmission to the LEA
10 placed pupil's parent and to the local educational agency.

11 2. Hand deliver the report to the LEA placed pupil's parent and to the local
12 educational agency.

13 **SECTION 25.** 118.305 (5) of the statutes is renumbered 118.305 (5) (intro.) and
14 amended to read:

15 118.305 (5) CHILD WITH A DISABILITY. (intro.) The first 2nd time that seclusion
16 or physical restraint is used on a child with a disability within the same school year,
17 the child's individualized education program team shall convene in the manner
18 provided in s. 115.787 (4) as soon as possible practicable after the incident but no
19 later than 10 school days after the incident. The child's individualized education
20 program team shall review the child's individualized education program and revise
21 it as the individualized education program team determines necessary to ensure that
22 it contains all of the following:

23 (a) The individualized education program includes appropriate positive
24 behavioral interventions and supports and other strategies to address the behavior
25 of concern, as provided in s. 115.787 (2) (i), and revise it if necessary.

1 **SECTION 26.** 118.305 (5) (b) of the statutes is created to read:

2 118.305 (5) (b) That the interventions, supports, and other strategies included
3 in the individualized education program related to a behavior that resulted in the use
4 of seclusion or physical restraint on the child are based on a functional behavioral
5 assessment of that behavior.

6 **SECTION 27.** 118.305 (6) (a) (intro.) of the statutes is amended to read:

7 118.305 (6) (a) (intro.) Except as provided in par. (c), no covered individual may
8 use physical restraint on a pupil at school unless he or she has received training in
9 ~~the use of physical restraint~~ that includes all of the following components:

10 **SECTION 28.** 118.305 (6) (a) 1. of the statutes is repealed.

11 **SECTION 29.** 118.305 (6) (a) 1f. of the statutes is created to read:

12 118.305 (6) (a) 1f. Evidence-based instruction related to positive behavioral
13 supports and interventions, safe physical escort, understanding antecedents,
14 de-escalation, conflict prevention, and conflict management.

15 **SECTION 30.** 118.305 (6) (a) 1m. of the statutes is created to read:

16 118.305 (6) (a) 1m. Evidence-based techniques, including debriefing, that have
17 been shown to prevent or reduce the use of physical restraint.

18 **SECTION 31.** 118.305 (6) (a) 3. of the statutes is repealed.

19 **SECTION 32.** 118.305 (6) (a) 6. of the statutes is amended to read:

20 118.305 (6) (a) 6. A requirement that the trainee demonstrate proficiency his
21 or her ability to identify prohibited techniques in administering physical restraint.

22 **SECTION 33.** 118.305 (6) (b) 1. of the statutes is amended to read:

23 118.305 (6) (b) 1. At least one covered individual has received training ~~in the~~
24 ~~use of physical restraint~~ under par. (a).

25 **SECTION 34.** 118.305 (6) (c) of the statutes is amended to read:

1 118.305 (6) (c) A covered individual who has not received training in the use
2 of ~~physical restraint~~ under par. (a) may use physical restraint on a pupil at school
3 only in an emergency and only if a covered individual who has received training in
4 the use of ~~physical restraint~~ under par. (a) is not immediately available due to the
5 unforeseen nature of the emergency.

****NOTE: I did not include the recommended change to s. 118.305 (4) (c) (intro.). The recommendation is to replace "principal of each school or his or her designee" with "each school district, independent charter school, and private school participating under s. 155.7915." There are a few issues with this recommendation. First, it is odd to have a school district report to a school board (the governing body of a public school). The school district acts through its school board. The current language in s. 118.305 (4) (c) (intro.) requires principals of schools in the school district to report to the school board. Second, a similar issue exists with regard to independent charter schools and private schools participating in the SNSP. In general, obligations related to these types of schools are placed on the "governing body" of that school. In this case, the obligation is to report to the governing body; therefore, it doesn't work for the obligation itself to be on the governing body. As drafted, the obligation is on the principal or his or her designee. If you prefer a different individual at the school, please let me know. Please feel free to contact me with any questions about this recommendation.

6

(END)

Knepp, Fern

From: Zantow, Jenna
Sent: Monday, September 16, 2019 3:06 PM
To: Knepp, Fern
Subject: RE: LRB 0669

Hi Fern—

Just double checked with them and yes that is correct. Thank you!

-Jenna

From: Knepp, Fern <Fern.Knepp@legis.wisconsin.gov>
Sent: Monday, September 16, 2019 2:37 PM
To: Zantow, Jenna <Jenna.Zantow@legis.wisconsin.gov>
Subject: RE: LRB 0669

Good afternoon Jenna-

I will make the change so that principals must submit a report to the governing body by October 1 and governing bodies must submit reports to DPI by December 1.

The instruction also state that "The analysis would need to eliminate the on page three "in the annual school and school district performance report"." Section 1 of the bill requires that the information reported under s. 118.305 (4) (c) be included in the school and school district performance report under s. 115.38. Removing the cross-reference to s. 115.38 (1) in s. 118.305 (4) (c) does not eliminate this requirement. Do you want to eliminate the requirement in Section 1 of the bill?

In other words is it consistent with your intent that reports under s. 118.305 flow from the principal to the governing body to DPI, but the information in the reports is not included in the school and school district performance report under s. 115.38? If so, I will also eliminate Section 1 from the bill.

Thanks so much,
Fern

From: Zantow, Jenna <Jenna.Zantow@legis.wisconsin.gov>
Sent: Monday, September 16, 2019 10:46 AM
To: Knepp, Fern <Fern.Knepp@legis.wisconsin.gov>
Subject: LRB 0669

Hi Fern—

I have a few more changes for our seclusion and restraint draft from DPI. Let me know if you have any questions!

Page 6 Lines 16-20 should be changed to the following:

Annually by October 1, the principal of each school or his or her designee shall submit to the governing body a report containing all the following for each school under its charge and annually by December 1, the governing body shall submit to the state superintendent the same report containing all of the following for each school under this charge:

This would eliminate the reference to 115.38 (1) in that section which would also change the analysis written by the reference bureau. The analysis would need to eliminate the on page three "in the annual school and school district performance report".

Thanks,

Jenna Zantow

Chief of Staff
Office of Senator Luther Olsen
608.266.0751



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-0669/P3
FFK:klm&wlj

In 9-16
and 9-17

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT to repeal** 115.787 (2) (i), 118.305 (6) (a) 1. and 118.305 (6) (a) 3.; **to**
2 **renumber and amend** 118.305 (1) (d), 118.305 (3) (f), 118.305 (4) (b) and
3 118.305 (5); **to amend** 118.305 (1) (f), 118.305 (2) (f), 118.305 (4) (a) (intro.),
4 118.305 (4) (a) 2. (intro.), 118.305 (4) (a) 2. d., 118.305 (4) (c) (intro.), 118.305 (4)
5 (c) 1., 118.305 (4) (c) 2., 118.305 (6) (a) (intro.), 118.305 (6) (a) 6., 118.305 (6) (b)
6 1. and 118.305 (6) (c); and **to create** 115.38 (1) (f), 118.305 (1) (d) 2., 118.305 (1)
7 (dm), 118.305 (1) (ek), 118.305 (1) (em), 118.305 (3) (d) 4., 118.305 (3) (f) 2.,
8 118.305 (4) (a) 3., 118.305 (4) (b) 2., 118.305 (4) (c) 3. to 6., 118.305 (4) (d), 118.305
9 (4) (e), 118.305 (5) (b), 118.305 (6) (a) 1f. and 118.305 (6) (a) 1m. of the statutes;
10 **relating to:** the seclusion and physical restraint of pupils.

Analysis by the Legislative Reference Bureau

This bill makes changes to the law governing physical restraint and seclusion of pupils in schools.

Under current law, individuals who work in a public school, including a charter school, or a private school participating in the Special Needs Scholarship Program (SNSP school) may only use seclusion or physical restraint on a pupil at school if certain conditions are met. One of the conditions under current law for using

seclusion is that a door to the room or area in which the pupil is secluded cannot be capable of being locked. This bill further prohibits such a door from having a lock on it, even if the door is not capable of being locked. One of the conditions under current law for using physical restraint is that the individual restraining the pupil may not use certain maneuvers and techniques. This bill adds maneuvers and techniques that place the pupil in a prone position to this list of prohibited maneuvers and techniques. Current law also prohibits the use of mechanical restraints on a pupil. The bill specifies that the use of vehicle safety restraints while transporting a pupil in a moving vehicle is not the use of a mechanical restraint.

In addition, under current law, an individual employed by a school (covered individual) may not use physical restraint on a pupil at a public school or a SNSP school unless the covered individual has received training that includes specific components. This bill changes these components of the training by eliminating the requirements to include 1) methods of preventing the need for physical restraint; 2) experience in administering and receiving various types of physical restraint; and 3) that the individual demonstrates proficiency in administering physical restraint and by requiring that the training include 1) evidence-based instruction related to positive behavior supports and interventions; 2) evidence-based techniques shown to prevent or reduce the use of physical restraint; and 3) that the individual demonstrates the ability to identify prohibited techniques in administering physical restraint.

Current law provides certain notification and reporting requirements whenever seclusion or physical restraint is used on a pupil at a public school or an SNSP school. This bill specifies that these notice and reporting requirements apply whenever a covered individual or law enforcement officer uses seclusion or physical restraint on a pupil at the school. In addition, the bill requires the school principal to meet with the covered individuals who participated in the incident to discuss the events that occurred before, during, and after the use of seclusion or physical restraint on a pupil, and how to prevent the need for seclusion or physical restraint in the future.

The bill also creates similar notice, reporting, and debriefing requirements that apply whenever a covered individual or law enforcement officer uses seclusion or physical restraint on an LEA placed pupil at a private school. Under the bill, an "LEA placed pupil" is a pupil who is placed by a local educational agency at a private school to satisfy state or federal special education law or under a contractual agreement that requires the pupil's resident school district to pay the pupil's tuition at the private school.

Under current law, a principal of a public school or a SNSP school must annually report to the school's governing body the number of incidents of seclusion and physical restraint and the total number of pupils involved in the incident. Under the bill, a governing body must report data about incidents of seclusion and physical restraint at each of its schools to the Department of Public Instruction. Additionally, under the bill, the report must provide data about incidents of seclusion separately from incidents of physical restraint and must include the total number of children with disabilities who were involved in each type of incident. Under the bill, DPI must

The bill
also
requires
that

11/1/19

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include the information reported by principals on incidents of seclusion and physical restraint in the annual school and school district performance report.

Finally, under current law, the first time seclusion or physical restraint is used on a child with a disability, the child's Individualized Education Program team must convene as soon as possible and review the child's IEP to ensure that it contains appropriate interventions and supports to address the behavior of concern. Under the bill, a child's IEP team is required to meet to review the child's IEP as soon as practicable but no later than ten school days after the second time seclusion or physical restraint is used on the child within the same school year.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 115.38 (1) (f) of the statutes is created to read:

115.38 (1) (f) Information reported under s. 118.305 (4) (c).

SECTION 2. 115.787 (2) (i) of the statutes is repealed.

SECTION 3. 118.305 (1) (d) of the statutes is renumbered 118.305 (1) (d) (intro.)

and amended to read:

118.305 (1) (d) (intro.) "Governing body" means the governing body in charge of ~~a~~ any of the following:

1. A school.

SECTION 4. 118.305 (1) (d) 2. of the statutes is created to read:

118.305 (1) (d) 2. A private school at which an LEA placed pupil is placed by a local educational agency.

SECTION 5. 118.305 (1) (dm) of the statutes is created to read:

118.305 (1) (dm) "Incident" means an occurrence of a covered individual or a law enforcement officer using seclusion or physical restraint on a pupil. It is considered one incident if immediately following the use of seclusion or physical restraint on a pupil, the pupil's behavior presents a clear, present, and imminent risk

1 to the physical safety of the pupil or others, and a covered individual or law
2 enforcement officer resumes the use of seclusion or physical restraint.

3 **SECTION 6.** 118.305 (1) (ek) of the statutes is created to read:

4 118.305 (1) (ek) "LEA placed pupil" means all of the following:

5 1. A pupil placed at a private school by a local educational agency under s.
6 118.15 (1) (d) 4. or 119.235.

7 2. A child with a disability placed at a private school by a local educational
8 agency to satisfy the requirements under subch. V of ch. 115 or applicable federal law.

9 **SECTION 7.** 118.305 (1) (em) of the statutes is created to read:

10 118.305 (1) (em) "Local educational agency" has the meaning given in s. 115.76
11 (10).

12 **SECTION 8.** 118.305 (1) (f) of the statutes is amended to read:

13 118.305 (1) (f) "Parent" ~~has the meaning given in s. 115.76 (12)~~ means a parent
14 of a pupil, including a natural parent, a guardian, or an individual acting as a parent
15 in the absence of a parent or guardian.

16 **SECTION 9.** 118.305 (2) (f) of the statutes is amended to read:

17 118.305 (2) (f) No door connecting the room or area in which the pupil is
18 secluded to other rooms or areas is capable of being locked or has a lock on it.

19 **SECTION 10.** 118.305 (3) (d) 4. of the statutes is created to read:

20 118.305 (3) (d) 4. Those that place the pupil in a prone position.

21 **SECTION 11.** 118.305 (3) (f) of the statutes is renumbered 118.305 (3) (f) (intro.)
22 and amended to read:

23 118.305 (3) (f) (intro.) The covered individual does not use a mechanical or
24 chemical restraint on the pupil. The None of the following constitutes the use of a
25 mechanical restraint:

1 1. The use of supportive equipment to properly align a pupil's body, assist a
2 pupil to maintain balance, or assist a pupil's mobility, under the direction and
3 oversight of appropriate medical or therapeutic staff, ~~does not constitute the use of~~
4 ~~a mechanical restraint.~~

5 **SECTION 12.** 118.305 (3) (f) 2. of the statutes is created to read:

6 118.305 (3) (f) 2. The use of vehicle safety restraints when used as intended
7 during the transport of a pupil in a moving vehicle.

8 **SECTION 13.** 118.305 (4) (a) (intro.) of the statutes is amended to read:

9 118.305 (4) (a) (intro.) Whenever a covered individual or a law enforcement
10 officer uses seclusion or physical restraint ~~is used~~ on a pupil at school, the school
11 principal or his or her designee shall do all of the following:

12 **SECTION 14.** 118.305 (4) (a) 2. (intro.) of the statutes is amended to read:

13 118.305 (4) (a) 2. (intro.) Within 2 business days after the incident and after
14 consulting with the covered individuals and any law enforcement officers present
15 during the incident, prepare a written report containing all of the following
16 information:

17 **SECTION 15.** 118.305 (4) (a) 2. d. of the statutes is amended to read:

18 118.305 (4) (a) 2. d. The names and titles of the covered individuals and any
19 law enforcement officers present during the incident.

20 **SECTION 16.** 118.305 (4) (a) 3. of the statutes is created to read:

21 118.305 (4) (a) 3. Meet with the covered individuals who participated in the
22 incident to discuss all of the following:

23 a. The events preceding, during, and following the use of the seclusion or
24 physical restraint.

1 b. How to prevent the need for seclusion or physical restraint, including the
 2 factors that may have contributed to the escalation of behaviors; alternatives to
 3 physical restraint, such as de-escalation techniques and possible interventions; and
 4 other strategies that the school principal or designee determines are appropriate.

5 **SECTION 17.** 118.305 (4) (b) of the statutes is renumbered 118.305 (4) (b) (intro.)
 6 and amended to read:

7 118.305 (4) (b) (intro.) ~~Each~~ The school principal or his or her designee shall
 8 retain a report prepared under par. (a) 2. shall be retained by the school and made
 9 available for review by shall, within 3 business days of the incident, do one of the
 10 following:

11 1. Send the report to the pupil's parent within 3 business days of the incident
 12 by 1st class mail or by electronic transmission.

13 **SECTION 18.** 118.305 (4) (b) 2. of the statutes is created to read:

14 118.305 (4) (b) 2. Hand deliver the report to the pupil's parent.

15 **SECTION 19.** 118.305 (4) (c) (intro.) of the statutes is amended to read:

16 118.305 (4) (c) (intro.) Annually by September 1, the principal of the deadline
 17 for reporting information to the department under s. 115.38 (1), each school or his
 18 or her designee shall submit to the governing body shall submit to the state
 19 superintendent, a report containing all of the following for each school under its
 20 charge:

21 **SECTION 20.** 118.305 (4) (c) 1. of the statutes is amended to read:

22 118.305 (4) (c) 1. The number of incidents of seclusion ~~and of physical restraint~~
 23 in the school during the previous school year.

24 **SECTION 21.** 118.305 (4) (c) 2. of the statutes is amended to read:

Handwritten notes and markings on the page include:
 - A box on the left containing "118.305 (4) (b) 2."
 - A box on the right containing "118.305 (4) (c) 1."
 - A box on the right containing "118.305 (4) (c) 2."
 - A large box around the text of Section 19 with "No strike" written vertically on the left and "No strike" written horizontally on the right.
 - A box around the text "for each school under its charge:" in Section 19.
 - A box around the text "Annually by September 1, the principal of the deadline" in Section 19.
 - A box around the text "shall submit to the state superintendent" in Section 19.
 - A box around the text "for reporting information to the department under s. 115.38 (1)" in Section 19.
 - A box around the text "each school or his or her designee shall submit to the governing body" in Section 19.
 - A box around the text "a report containing all of the following" in Section 19.
 - A box around the text "Hand deliver the report to the pupil's parent." in Section 18.

1 118.305 (4) (c) 2. The total number of pupils who were involved in the incidents
2 ~~and the number of children with disabilities who were involved in the incidents.~~ of
3 seclusion reported under subd. 1.

4 **SECTION 22.** 118.305 (4) (c) 3. to 6. of the statutes are created to read:

5 118.305 (4) (c) 3. The number of children with disabilities who were involved
6 in the incidents of seclusion reported under subd. 1.

7 4. The number of incidents of physical restraint in the school during the
8 previous school year.

9 5. The total number of pupils who were involved in the incidents of physical
10 restraint reported under subd. 4.

11 6. The number of children with disabilities who were involved in the incidents
12 of physical restraint reported under subd. 4.

13 **SECTION 23.** 118.305 (4) (d) of the statutes is created to read:

14 118.305 (4) (d) Whenever a covered individual or a law enforcement officer uses
15 seclusion or physical restraint on an LEA placed pupil at a private school, the
16 administrator of the private school or his or her designee shall do all of the following:

17 1. As soon as practicable, but no later than one business day after the incident,
18 notify the LEA placed pupil's parent and the local educational agency of the incident
19 and of the availability of the written report under subd. 2.

20 2. Within 2 business days after the incident and after consulting with the
21 covered individuals and any law enforcement officers present during the incident,
22 prepare a written report containing all of the following information:

23 a. The LEA placed pupil's name.

24 b. The date, time, and duration of the use of seclusion or physical restraint.

INS
B →

1 c. A description of the incident, including a description of the actions of the
2 pupil before, during, and after the incident.

3 d. The names and titles of the covered individuals and any law enforcement
4 officers who were present during the incident.

5 **SECTION 24.** 118.305 (4) (e) of the statutes is created to read:

6 118.305 (4) (e) An administrator of a private school or his or her designee shall
7 retain a report prepared under par. (d) 2. and shall within 3 business days of the
8 incident do one of the following:

9 1. Send the report by 1st class mail or by electronic transmission to the LEA
10 placed pupil's parent and to the local educational agency.

11 2. Hand deliver the report to the LEA placed pupil's parent and to the local
12 educational agency.

13 **SECTION 25.** 118.305 (5) of the statutes is renumbered 118.305 (5) (intro.) and
14 amended to read:

15 118.305 (5) CHILD WITH A DISABILITY. (intro.) The first 2nd time that seclusion
16 or physical restraint is used on a child with a disability within the same school year,
17 the child's individualized education program team shall convene in the manner
18 provided in s. 115.787 (4) as soon as possible practicable after the incident but no
19 later than 10 school days after the incident. The child's individualized education
20 program team shall review the child's individualized education program and revise
21 it as the individualized education program team determines necessary to ensure that
22 it contains all of the following:

23 (a) The individualized education program includes appropriate positive
24 behavioral interventions and supports and other strategies to address the behavior
25 of concern, as provided in s. 115.787 (2) (i), and revise it if necessary.

1 **SECTION 26.** 118.305 (5) (b) of the statutes is created to read:

2 118.305 (5) (b) That the interventions, supports, and other strategies included
3 in the individualized education program related to a behavior that resulted in the use
4 of seclusion or physical restraint on the child are based on a functional behavioral
5 assessment of that behavior.

6 **SECTION 27.** 118.305 (6) (a) (intro.) of the statutes is amended to read:

7 118.305 (6) (a) (intro.) Except as provided in par. (c), no covered individual may
8 use physical restraint on a pupil at school unless he or she has received training in
9 ~~the use of physical restraint~~ that includes all of the following components:

10 **SECTION 28.** 118.305 (6) (a) 1. of the statutes is repealed.

11 **SECTION 29.** 118.305 (6) (a) 1f. of the statutes is created to read:

12 118.305 (6) (a) 1f. Evidence-based instruction related to positive behavioral
13 supports and interventions, safe physical escort, understanding antecedents,
14 de-escalation, conflict prevention, and conflict management.

15 **SECTION 30.** 118.305 (6) (a) 1m. of the statutes is created to read:

16 118.305 (6) (a) 1m. Evidence-based techniques, including debriefing, that have
17 been shown to prevent or reduce the use of physical restraint.

18 **SECTION 31.** 118.305 (6) (a) 3. of the statutes is repealed.

19 **SECTION 32.** 118.305 (6) (a) 6. of the statutes is amended to read:

20 118.305 (6) (a) 6. A requirement that the trainee demonstrate proficiency his
21 or her ability to identify prohibited techniques in administering physical restraint.

22 **SECTION 33.** 118.305 (6) (b) 1. of the statutes is amended to read:

23 118.305 (6) (b) 1. At least one covered individual has received training ~~in the~~
24 ~~use of physical restraint~~ under par. (a).

25 **SECTION 34.** 118.305 (6) (c) of the statutes is amended to read:

2019-2020 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0669/P4ins
FFK:...

INS A

1 SECTION 1. 118.305 (4) (c) (intro.) of the statutes is amended to read:

2 118.305 (4) (c) (intro.) Annually by September October 1, the principal of each
3 school or his or her designee shall submit to the governing body a report containing
4 all of the following:

History: 2011 a. 125; 2013 a. 168 s. 20; 2015 a. 55.

End Ins A

5 SECTION 2. 118.305 (4) (cm) of the statutes is created to read:

6 118.305 (4) (cm) Annually by December 1, each governing body that receives
7 a report under par. (c) shall submit to the state superintendent a report that contains
8 the information under par. (c) for each school under the governing body's charge.

END INS B

9

Knepp, Fern

From: Zantow, Jenna
Sent: Wednesday, September 25, 2019 2:35 PM
To: Knepp, Fern
Cc: Rep.Quinn; Braatz, Ericka
Subject: RE: Draft review: LRB -0669/P4

Hey Fern—

Could you please turn this into a /1 and have it jacketed for us? We would also like to request the Assembly companion bill for Representative Quinn's office.

Thank you!

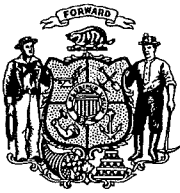
-Jenna

Jenna Zantow

Chief of Staff
Office of Senator Luther Olsen
608.266.0751

From: LRB.Legal <lrblegal@legis.wisconsin.gov>
Sent: Tuesday, September 17, 2019 11:25 AM
To: Sen.Olsen <Sen.Olsen@legis.wisconsin.gov>
Subject: Draft review: LRB -0669/P4

Following is the PDF version of draft LRB -0669/P4.



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-0669/P4
FFK:klm&wlj

No changes

KMA

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT** *to repeal* 115.787 (2) (i), 118.305 (6) (a) 1. and 118.305 (6) (a) 3.; *to*
2 *renumber and amend* 118.305 (1) (d), 118.305 (3) (f), 118.305 (4) (b) and
3 118.305 (5); *to amend* 118.305 (1) (f), 118.305 (2) (f), 118.305 (4) (a) (intro.),
4 118.305 (4) (a) 2. (intro.), 118.305 (4) (a) 2. d., 118.305 (4) (c) (intro.), 118.305 (4)
5 (c) 1., 118.305 (4) (c) 2., 118.305 (6) (a) (intro.), 118.305 (6) (a) 6., 118.305 (6) (b)
6 1. and 118.305 (6) (c); and *to create* 118.305 (1) (d) 2., 118.305 (1) (dm), 118.305
7 (1) (ek), 118.305 (1) (em), 118.305 (3) (d) 4., 118.305 (3) (f) 2., 118.305 (4) (a) 3.,
8 118.305 (4) (b) 2., 118.305 (4) (c) 3. to 6., 118.305 (4) (cm), 118.305 (4) (d), 118.305
9 (4) (e), 118.305 (5) (b), 118.305 (6) (a) 1f. and 118.305 (6) (a) 1m. of the statutes;
10 **relating to:** the seclusion and physical restraint of pupils.

Analysis by the Legislative Reference Bureau

This bill makes changes to the law governing physical restraint and seclusion of pupils in schools.

Under current law, individuals who work in a public school, including a charter school, or a private school participating in the Special Needs Scholarship Program (SNSP school) may only use seclusion or physical restraint on a pupil at school if certain conditions are met. One of the conditions under current law for using

1 118.305 (6) (c) A covered individual who has not received training ~~in the use~~
2 ~~of physical restraint~~ under par. (a) may use physical restraint on a pupil at school
3 only in an emergency and only if a covered individual who has received training ~~in~~
4 ~~the use of physical restraint~~ under par. (a) is not immediately available due to the
5 unforeseen nature of the emergency.

6

(END)

Walker, Dan

From: Schmudlach, Shelby
Sent: Wednesday, September 25, 2019 3:29 PM
To: LRB.Legal
Subject: Draft Review: LRB -0669/1

Please Jacket LRB -0669/1 for the SENATE.