



**SENATE SUBSTITUTE AMENDMENT 1,
TO 2009 SENATE BILL 468**

April 15, 2010 – Offered by Senator LASSA.

1 **AN ACT** *to renumber* 118.40 (5); and *to create* 118.305, 118.40 (5) (bm) and (cm)
2 and 119.23 (10) (a) 8. of the statutes; **relating to:** the use of positive behavioral
3 interventions and supports and physical restraint and timeout in schools and
4 requiring the exercise of rule-making authority.

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

5 **SECTION 1.** 118.305 of the statutes is created to read:

6 **118.305 Use of positive behavioral interventions and supports,**
7 **physical restraint, and timeout. (1) DEFINITIONS.** In this section:

8 (a) “Child” has the meaning given in s. 115.76 (3).

9 (b) “Child with a disability” has the meaning given in s. 115.76 (5).

10 (c) “High degree of negligence” means criminal negligence, as defined in s.
11 939.25 (1).

12 (d) “Individualized education program” has the meaning given in s. 115.76 (9).

1 (e) “Local educational agency” has the meaning given in s. 115.76 (10).

2 (f) “Parent” has the meaning given in s. 115.76 (12).

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

8 (h) “School” means a school operated by a school district, a charter school, a
9 private school in which a child with a disability is enrolled as provided in s. 115.77
10 (1m) (d), a private school participating in the program under s. 119.23, and a school
11 operated by a county children with disabilities education board.

12 (i) “School employee” includes a person who is under contract with a school.

13 (j) “Seclusion” means a behavioral control technique that involves placing a
14 pupil in a setting from which the pupil is incapable of leaving.

15 (k) “Timeout” means a behavioral management technique administered by a
16 school employee that involves the separation of a pupil from his or her class and the
17 placement of the pupil in a timeout room.

18 (L) “Timeout room” means an enclosed setting, or other isolated area that is not
19 a classroom, that is used for timeout and from which a pupil is capable of leaving.

20 **(2) SECLUSION PROHIBITED; PROHIBITED TYPES AND USES OF PHYSICAL RESTRAINT.** (a)
21 No school employee may use seclusion on a pupil.

22 (b) No school employee may use physical restraint on a pupil if the physical
23 restraint does any of the following:

24 1. Fails to give adequate attention and care to the pupil’s head.

1 2. Places pressure or weight on, or causes the compression of, the chest, lungs,
2 sternum, diaphragm, back, or abdomen of the pupil.

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

4 **(3) TRAINING AND CERTIFICATION REQUIRED FOR USE OF PHYSICAL RESTRAINT.** (a) No
5 school employee may use physical restraint on a pupil unless that employee has been
6 certified by the department under this subsection.

7 (b) The department shall establish by rule an evidence-based training program
8 and shall certify in writing a school employee who successfully completes the
9 training program and demonstrates proficiency in the safe, effective, and
10 appropriate use of physical restraint and each additional behavioral control
11 technique addressed by the training program.

12 (c) Certification under this subsection is valid for 24 months. The department
13 shall renew the certification of any person who requests renewal and successfully
14 recompletes the requirements for certification under this subsection.

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

18 (b) No school employee may use a room for a timeout unless the room has been
19 approved for that use by the school district if the room is located in a school operated,
20 or a charter school established, by the school district, or the state superintendent if
21 the room is located in a charter school established under s. 118.40 (2r), a private
22 school in which a child with a disability is enrolled as provided in s. 115.77 (1m) (d),
23 or a private school participating in the program under s. 119.23. The school district
24 or department of public instruction shall require as a condition for approval that a

1 photograph of the room be submitted with the request for approval. No room may
2 be approved under this paragraph unless the room satisfies all of the following:

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

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

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

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

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

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

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

19 2. For a pupil who does not have an individualized education program, the pupil
20 has been placed in a timeout room.

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

22 4. The pupil has been placed in a timeout room 2 or more times within any
23 3-hour period.

24 (b) The school employee who uses physical restraint or timeout in any of the
25 occurrences identified in par. (a) shall, within 24 hours after the occurrence, submit

1 a written report containing the following information to the school principal or his
2 or her designee, which report shall be retained by the school for review by the
3 department:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 2. The name of the school employees present before, during, and after the
20 occurrence.

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

22 4. The duration of the use of physical restraint for each occurrence involving
23 the use of physical restraint.

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

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

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

4 **(6) PROCEDURES FOR REVIEW OF USE OF PHYSICAL RESTRAINT AND TIMEOUT.** (a) Each
5 school district, each local educational agency, each operator of a charter school, the
6 governing body of each private school in which a child with a disability is enrolled
7 as provided in s. 115.77 (1m) (d), each county children with disabilities education
8 board that operates a school, and the governing body of each private school
9 participating in the program under s. 119.23 shall establish a procedure for
10 reviewing each occurrence identified in sub. (5) (a). The parent of a pupil on whom
11 physical restraint or timeout was used shall be notified in writing of the date, time,
12 and location of the review at least 10 days before the review is to be held and invited
13 to attend the review.

14 (b) A review conducted under this subsection shall be attended by the school
15 principal or his or her designee or the school special education director, by school
16 employees involved in the occurrence, and by other persons identified by the school
17 principal or his or her designee or the school special education director. The review
18 shall include all of the following:

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

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

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

25 c. Whether the parent of the pupil was notified as required under sub. (5) (a).

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

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

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

5 Upon completion of the review under this subd. 2. a., the school employees involved
6 in the occurrence shall work with the parent of the pupil, the school principal or his
7 or her designee or school special education director, and other appropriate persons
8 to prepare a written individual behavior plan for the pupil that provides for the use
9 of other, specified interventions or the continued use of the intervention used
10 previously.

11 b. A determination as to whether the pupil should be evaluated under s.
12 115.782.

13 (c) The individualized education program team of any pupil who is a child with
14 a disability and on whom physical restraint or timeout was used in an occurrence
15 described in sub. (5) (a) shall, within 21 days after the occurrence, convene in the
16 manner provided under s. 115.787 (4) to review the pupil's individualized education
17 program. The pupil's parent shall be notified in writing of the date, time, and place
18 of a meeting required under this paragraph at least 10 days prior to the meeting. A
19 meeting required under this paragraph shall include all of the following:

20 1. A review of the pupil's written progress, monitoring, and incident reports and
21 the report prepared under sub. (5) (b) following the occurrence.

22 2. If appropriate, interviews with the pupil.

23 3. A discussion of the concerns of the pupil's parent regarding the
24 individualized education program of the pupil.

1 4. A review and discussion of any indirect or collateral effects of the use of
2 physical restraint or timeout on the pupil, including increases in aggressive or
3 escapist behaviors, health-related effects, or emotional reactions.

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

8 (b) Any school principal or his or her designee or school employee who is
9 certified under sub. (3) and who uses physical restraint on a pupil as authorized in
10 this section is immune from civil liability for his or her act or omission in the use of
11 physical restraint unless the act or omission constitutes a high degree of negligence.

12 **(8) RULE-MAKING AUTHORITY.** The department shall promulgate rules to
13 administer and implement this section.

14 **SECTION 2.** 118.40 (5) of the statutes is renumbered 118.40 (5) (a).

15 **SECTION 3.** 118.40 (5) (bm) and (cm) of the statutes are created to read:

16 118.40 **(5)** (bm) A charter may be revoked by the entity under sub. (2r) (b) that
17 contracted with the charter school if the state superintendent finds that a charter
18 school established under sub. (2r) has failed to comply with the requirements of s.
19 118.305.

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

24 **SECTION 4.** 119.23 (10) (a) 8. of the statutes is created to read:

25 119.23 **(10)** (a) 8. Failed to comply with the requirements under s. 118.305.

