



2003 ASSEMBLY BILL 765

January 27, 2004 – Introduced by Representatives POCAN, BOYLE, BERCEAU, ALBERS and MILLER, by request of Wisconsin Coalition for Advocacy. Referred to Committee on Education.

- 1 **AN ACT** *to amend* 118.164 (3) (b) and 118.31 (3) (intro.); and *to create* 118.315
2 of the statutes; **relating to:** the use of seclusion and restraints in schools.

Analysis by the Legislative Reference Bureau

This bill limits and conditions the use of seclusion (a behavioral control technique that secludes a pupil in a locked area) and physical or mechanical restraints (the use of a person or a device to control the behavior of a pupil).

Under the bill, a school employee may use physical restraint only in an emergency and may use a mechanical restraint only if the school at which he or she works is certified as having met the requirements of the Joint Commission on Accreditation of Healthcare Organizations. A school employee may use seclusion only if an emergency exists, the pupil's individualized special education program permits seclusion under the circumstances, or the pupil's parent or guardian consents in writing to the use of seclusion. The bill requires that the area used for seclusion be free of objects with which the pupil could self-inflict bodily harm, that it provide a view of the pupil at all times, and that it be equipped with adequate ventilation and lighting. The school employee using seclusion must also provide the pupil with an explanation of the behavior that led to the seclusion and a list of requirements to be met before the pupil will be released to his or her class. The school employee must monitor the pupil frequently and may not use seclusion for more than 30 minutes at a time, unless an emergency exists.

The bill also prohibits the use of certain kinds of restraint and seclusion, including a seclusion or restraint that is likely to cause physical harm to the pupil; that denies the pupil adequate water, physical comfort, or access to a bathroom; or

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that uses unreasonable and unnecessary force. Finally, the bill requires all school employees who interact with pupils to receive training on the proper use of seclusion and restraint and to prepare and file with the Department of Public Instruction written reports about their use of seclusion and restraint.

For further information see the *local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 118.164 (3) (b) of the statutes is amended to read:

2 118.164 (3) (b) This subsection does not prohibit the teacher who removed the
3 pupil from the class or the school board, school district administrator, school
4 principal or their designees from disciplining the pupil, subject to s. 118.315.

5 **SECTION 2.** 118.31 (3) (intro.) of the statutes is amended to read:

6 118.31 (3) (intro.) ~~Subsection~~ Subject to s. 118.315, sub. (2) does not prohibit
7 an official, employee or agent of a school board from:

8 **SECTION 3.** 118.315 of the statutes is created to read:

9 **118.315 Use of physical restraint and seclusion. (1) DEFINITIONS.** In this
10 section:

11 (a) “Behavioral intervention plan” means a written document that is developed
12 by an individualized education program team under s. 115.78 as part of the pupil’s
13 individualized education program for a pupil whose behavior is self-injurious or
14 assaultive; causes property damage or other severe, pervasive behavioral problems;
15 significantly interferes with the implementation of the pupil’s individualized
16 education program; or for which the behavioral or instructional approaches specified
17 in the individualized education program are ineffective.

18 (b) “Child” has the meaning in s. 115.76 (3).

19 (c) “Child with a disability” has the meaning in s. 115.76 (5).

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1 (cm) "Deaf pupil" is a pupil who has a significant hearing loss and who, with
2 or without amplification, cannot understand speech.

3 (d) "Emergency" means a situation in which it is necessary to control a pupil's
4 unpredictable or spontaneous behavior that poses a clear and present danger of
5 serious physical harm to the pupil or to others and that cannot be immediately
6 prevented by a less restrictive technique than the one temporarily applied by a
7 trained school employee.

8 (dm) "Hearing-impaired pupil" is a pupil who has a hearing loss and who, with
9 or without amplification, can understand speech in some settings.

10 (e) "Mechanical restraint" means a device that restricts a pupil's freedom of
11 movement or normal access to a portion of his or her body and that the pupil cannot
12 easily remove. The term "mechanical device" does not include a protective or
13 stabilizing device that is prescribed by a health care professional for a child with a
14 disability in accordance with the child's individualized education program.

15 (f) "Physical restraint" means a restriction imposed by a person that
16 immobilizes or reduces the ability of a pupil to move his or her arms, legs, or head
17 freely. "Physical restraint" does not include briefly holding a pupil to calm or comfort
18 the pupil, holding a pupil's hand or arm to escort the pupil safely from one area to
19 another, or breaking up a fight.

20 (g) "Pupil" includes a child with a disability.

21 (h) "School employee" means a person who serves as volunteer for or is
22 employed by or under contract with a school district, charter school, private school
23 under s. 119.23 or children with disabilities education board.

24 (i) "Seclusion" means a behavioral control technique that involves a locked box,
25 locked closet, or locked room that is designated solely to seclude a pupil. "Seclusion"

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1 does not include a behavioral management technique that is part of a treatment
2 program approved by the pupil's treating psychologist or psychiatrist and that may
3 involve the separation of the pupil from his or her class in an unlocked setting to calm
4 the pupil.

5 (2) USE OF RESTRAINTS. (a) A school employee may use physical restraint on a
6 pupil only in an emergency.

7 (b) A school employee may use mechanical restraint on a pupil only if the school
8 at which he or she works is certified as having met the requirements of the Joint
9 Commission on Accreditation of Healthcare Organizations.

10 (3) USE OF SECLUSION. (a) A school employee may use seclusion on a pupil only
11 if at least one of the following is true:

12 1. An emergency exists and other less intrusive interventions have failed or
13 been deemed inappropriate.

14 2. The pupil's individualized education program under s. 115.787 permits the
15 use of seclusion under the circumstances.

16 3. The pupil's parent or guardian has consented in writing to the use of
17 seclusion.

18 (b) A school employee may use seclusion on a pupil only if the area used for
19 seclusion is free of objects and fixtures with which a pupil could self-inflict bodily
20 harm, gives the school employee an adequate view of the pupil at all times, and is
21 equipped with adequate lighting and ventilation.

22 (c) A school employee who uses seclusion on a pupil shall do all of the following:

23 1. View the pupil during the entire time the pupil is in seclusion.

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1 2. Provide the pupil with an explanation of the behavior that resulted in the
2 pupil's seclusion and an oral and written list that instructs the pupil on the
3 requirements that he or she must satisfy to be returned to the class or to instruction.

4 3. Reassess the pupil every 15 minutes while he or she is in seclusion.

5 4. Ensure that the pupil is placed in seclusion for no more than 30 minutes at
6 a time, unless an emergency exists.

7 **(4) PROHIBITED TYPES OF RESTRAINT AND SECLUSION.** No school employee may use
8 any of the following seclusions or restraints:

9 (a) One designed or likely to cause physical pain to the pupil.

10 (b) One that releases noxious, toxic, or otherwise unpleasant substances near
11 the pupil's eyes or face.

12 (c) One that denies the pupil adequate water, physical comfort, or access to a
13 bathroom.

14 (d) One that subjects the pupil to ridicule, humiliation, or excessive emotional
15 trauma.

16 (e) One performed by an untrained school employee.

17 (f) One that immobilizes both the pupil's hands and feet, except a technique
18 designed as an emergency measure.

19 (g) One that precludes adequate supervision of the pupil.

20 (h) One that deprives the pupil of the use of one or more of his or her senses.

21 (i) One that uses unreasonable and unnecessary force under the circumstances.

22 (j) One that deprives a nonverbal or severely disabled child of a device
23 necessary for communication with others.

24 (k) One that deprives a deaf or hearing-impaired pupil of the free use of his or
25 her hands.

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1 **(5) TRAINING IN SECLUSION AND RESTRAINT.** (a) Each school employee who
2 interacts with pupils shall receive training on the restraint and seclusion policy
3 governing his or her school; the use of interventions that may eliminate the need for
4 restraint and seclusion; and the types of restraints and related safety considerations,
5 including information about the increased risk of injury to a pupil when a restraint
6 is used.

7 (b) A school employee may not use a restraint on a pupil unless the employee
8 has received training by recognized crisis intervention experts on how to administer
9 the restraint in accordance with known medical or psychological limitations or in
10 accordance with that pupil's behavioral intervention plan.

11 **(6) REPORTING ON SECLUSION AND RESTRAINT.** (a) A person who uses any seclusion
12 or restraint shall prepare a written report about the incident that includes all of the
13 following:

14 1. His or her name and job title and the name and job title of any observer; the
15 date of the restraint or seclusion; and the beginning and ending time of the restraint
16 or seclusion.

17 2. A description of the activity in which the restrained or secluded pupil was
18 engaged immediately preceding the use of physical restraint; the behavior that
19 prompted the restraint or seclusion; the efforts made to de-escalate the situation;
20 alternatives to restraint or seclusion that were attempted; and the justification for
21 initiating restraint or seclusion.

22 3. If the incident involved restraint, a description of the administration of the
23 restraint, including the holds used and reasons such holds were necessary; the
24 pupil's behavior and reactions during the restraint; how the restraint ended;

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1 documentation of injury to the pupil and staff, if any, during the restraint; and any
2 medical care provided.

3 4. For a restraint that lasts more than 30 minutes and is used when an
4 emergency does not exist, the alternatives to restraint that were attempted, the
5 outcome of those efforts, and the justification for administering the restraint.

6 (b) Every 6 months each school district shall file any report prepared under par.

7 (a) with the department.

8 (END)