



2019 SENATE BILL 527

October 25, 2019 - Introduced by Senators OLSEN, JOHNSON, DARLING, BEWLEY, COWLES, KOOYENGA, LARSON, SCHACHTNER and L. TAYLOR, cosponsored by Representatives QUINN, CONSIDINE, DITTRICH, BOWEN, CABRERA, CROWLEY, DOYLE, EDMING, FELZKOWSKI, JAGLER, KULP, MILROY, NOVAK, OHNSTAD, RAMTHUN, RODRIGUEZ, SARGENT, SPREITZER, SUBECK, C. TAYLOR, TITTL, VRUWINK, WITTKKE and ZIMMERMAN. Referred to Committee on Education.

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

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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, the governing body must then report the data about incidents of seclusion and physical restraint at each of its schools to the Department of Public Instruction. The bill also requires that the report provide data about incidents of seclusion

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separately from incidents of physical restraint and must include the total number of children with disabilities who were involved in each type of incident.

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.** 115.787 (2) (i) of the statutes is repealed.

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

4 118.305 (1) (d) (intro.) "Governing body" means the governing body in charge
5 of ~~a~~ any of the following:

6 1. A school.

7 **SECTION 3.** 118.305 (1) (d) 2. of the statutes is created to read:

8 118.305 (1) (d) 2. A private school at which an LEA placed pupil is placed by
9 a local educational agency.

10 **SECTION 4.** 118.305 (1) (dm) of the statutes is created to read:

11 118.305 (1) (dm) "Incident" means an occurrence of a covered individual or a
12 law enforcement officer using seclusion or physical restraint on a pupil. It is
13 considered one incident if immediately following the use of seclusion or physical
14 restraint on a pupil, the pupil's behavior presents a clear, present, and imminent risk
15 to the physical safety of the pupil or others, and a covered individual or law
16 enforcement officer resumes the use of seclusion or physical restraint.

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

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1 118.305 (1) (ek) “LEA placed pupil” means all of the following:

2 1. A pupil placed at a private school by a local educational agency under s.
3 118.15 (1) (d) 4. or 119.235.

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

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

7 118.305 (1) (em) “Local educational agency” has the meaning given in s. 115.76
8 (10).

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

10 118.305 (1) (f) “Parent” ~~has the meaning given in s. 115.76 (12)~~ means a parent
11 of a pupil, including a natural parent, a guardian, or an individual acting as a parent
12 in the absence of a parent or guardian.

13 **SECTION 8.** 118.305 (2) (f) of the statutes is amended to read:

14 118.305 (2) (f) No door connecting the room or area in which the pupil is
15 secluded to other rooms or areas is capable of being locked or has a lock on it.

16 **SECTION 9.** 118.305 (3) (d) 4. of the statutes is created to read:

17 118.305 (3) (d) 4. Those that place the pupil in a prone position.

18 **SECTION 10.** 118.305 (3) (f) of the statutes is renumbered 118.305 (3) (f) (intro.)
19 and amended to read:

20 118.305 (3) (f) (intro.) The covered individual does not use a mechanical or
21 chemical restraint on the pupil. ~~The~~ None of the following constitutes the use of a
22 mechanical restraint:

23 1. The use of supportive equipment to properly align a pupil’s body, assist a
24 pupil to maintain balance, or assist a pupil’s mobility, under the direction and

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1 oversight of appropriate medical or therapeutic staff, ~~does not constitute the use of~~
2 ~~a mechanical restraint.~~

3 **SECTION 11.** 118.305 (3) (f) 2. of the statutes is created to read:

4 118.305 (3) (f) 2. The use of vehicle safety restraints when used as intended
5 during the transport of a pupil in a moving vehicle.

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

7 118.305 (4) (a) (intro.) Whenever a covered individual or a law enforcement
8 officer uses seclusion or physical restraint ~~is used~~ on a pupil at school, the school
9 principal or his or her designee shall do all of the following:

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

11 118.305 (4) (a) 2. (intro.) Within 2 business days after the incident and after
12 consulting with the covered individuals and any law enforcement officers present
13 during the incident, prepare a written report containing all of the following
14 information:

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

16 118.305 (4) (a) 2. d. The names and titles of the covered individuals and any
17 law enforcement officers present during the incident.

18 **SECTION 15.** 118.305 (4) (a) 3. of the statutes is created to read:

19 118.305 (4) (a) 3. Meet with the covered individuals who participated in the
20 incident to discuss all of the following:

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

23 b. How to prevent the need for seclusion or physical restraint, including the
24 factors that may have contributed to the escalation of behaviors; alternatives to

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1 physical restraint, such as de-escalation techniques and possible interventions; and
2 other strategies that the school principal or designee determines are appropriate.

3 **SECTION 16.** 118.305 (4) (b) of the statutes is renumbered 118.305 (4) (b) (intro.)
4 and amended to read:

5 118.305 (4) (b) (intro.) ~~Each~~ The school principal or his or her designee shall
6 retain a report prepared under par. (a) 2. shall be retained by the school and made
7 available for review by shall, within 3 business days of the incident, do one of the
8 following:

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

11 **SECTION 17.** 118.305 (4) (b) 2. of the statutes is created to read:

12 118.305 (4) (b) 2. Hand deliver the report to the pupil's parent.

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

14 118.305 (4) (c) (intro.) Annually by ~~September~~ October 1, the principal of each
15 school or his or her designee shall submit to the governing body a report containing
16 all of the following:

17 **SECTION 19.** 118.305 (4) (c) 1. of the statutes is amended to read:

18 118.305 (4) (c) 1. The number of incidents of seclusion ~~and of physical restraint~~
19 in the school during the previous school year.

20 **SECTION 20.** 118.305 (4) (c) 2. of the statutes is amended to read:

21 118.305 (4) (c) 2. The total number of pupils who were involved in the incidents
22 ~~and the number of children with disabilities who were involved in the incidents.~~ of
23 seclusion reported under subd. 1.

24 **SECTION 21.** 118.305 (4) (c) 3. to 6. of the statutes are created to read:

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

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

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

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

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

10 118.305 (4) (cm) Annually by December 1, each governing body that receives
11 a report under par. (c) shall submit to the state superintendent a report that contains
12 the information under par. (c) for each school under the governing body's charge.

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.

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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.~~

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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:

