

State of Wisconsin



2019 Senate Bill 527

Date of enactment: **March 2, 2020**
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2019 WISCONSIN ACT 118

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

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

SECTION 1. 115.787 (2) (i) of the statutes is repealed.

SECTION 2. 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 3. 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 4. 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 to the physical safety of the pupil or others, and a covered individual

or law enforcement officer resumes the use of seclusion or physical restraint.

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

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

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

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

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

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

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

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

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

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

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

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

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

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

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

1. 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

118.305 (4) (d) Whenever a covered individual or a law enforcement officer uses seclusion or physical restraint on an LEA placed pupil at a private school, the

administrator of the private school or his or her designee shall do all of the following:

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

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

- a. The LEA placed pupil's name.
- b. The date, time, and duration of the use of seclusion or physical restraint.
- c. A description of the incident, including a description of the actions of the pupil before, during, and after the incident.
- d. The names and titles of the covered individuals and any law enforcement officers who were present during the incident.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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