

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Education Pre-K - 12 Committee

BILL: SB 144

INTRODUCER: Senator Flores

SUBJECT: Seclusion and Restraint on Students with Disabilities

DATE: January 25, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carrouth	deMarsh-Mathues	ED	Pre-meeting
2.	_____	_____	CF	_____
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill amends section 1003.573, F.S., to provide Legislative intent and prescribe the use of restraint and seclusion on students with disabilities. Specifically, the bill:

- Requires parents be provided a copy of emergency procedures, including procedures on the use of restraint, at the beginning of each school year;
- Requires that a medical evaluation be completed by a physician, nurse, or other qualified medical professional as soon as possible after a student has been restrained;
- Requires the use of manual physical restraint be restricted to only those personnel who are certified in district-approved techniques;
- Requires the use of cardiopulmonary resuscitation (CPR) be included as a training requirement for staff identified by the district. Districts must identify individuals to be certified and provide annual refresher certification courses; and
- Prohibits the use of seclusion and provides that time-out may be only used as part of a positive behavioral intervention plan.

This bill substantially amends section 1003.573 of the Florida Statutes.

II. Present Situation:

Section 1003.573, F.S., establishes Department of Education (DOE) policies and school district procedures related to seclusion and restraint of students with disabilities. Policies and procedures include documentation and reporting, monitoring, school district responsibilities, and prohibited

practices. Changes to the law were enacted in 2011¹ to provide greater oversight of seclusion and restraint practices.² These changes include, in part:

- Reporting the age, ethnicity, grade, and disability of the student secluded or restrained;
- A description of the restraint, based on terms established by the DOE;
- Establishment of standards by the DOE³ for documenting, reporting, and monitoring the use of seclusion and restraint;
- More detailed incident reporting by the school districts;
- Training programs for personnel on the use of seclusion and restraint; and
- School district plans to reduce the use of seclusion and restraint, including the use of schoolwide positive behavior supports.⁴

Although current law does not provide a definition of seclusion, the U.S. Department of Education's Office of Civil Rights (OCR) now requires that the DOE report all instances of seclusion and restraint for all students, not just those with disabilities.⁵ Documentation, reporting, and monitoring requirements for the use of seclusion disseminated by the DOE are based on the definition issued by OCR.⁶

According to the DOE, the Bureau of Exceptional Education and Student Services (BEES) has developed a technical assistance paper addressing the new requirements of section 1003.573, F.S. This paper has been updated based on recent legislative changes and is currently being reviewed for final approval.⁷

III. Effect of Proposed Changes:

The bill prescribes the use of restraint and seclusion on students with disabilities.

Under the bill, manual physical restraint would only be used when there is an imminent risk of serious injury or death and not used as punishment. The bill prohibits the use of certain techniques. The use of manual physical restraint would be restricted to only those personnel who are certified in district-approved techniques. According to the DOE, this would prohibit the use of physical restraint during an emergency situation by personnel who are not certified.⁸ The bill also prohibits the use of a calming blanket, currently established within the definition of a

¹ ch. 2011-175, L.O.F

² School districts are required to revise previously submitted policies and procedures regarding restraint and seclusion and submit them to the DOE by January 31, 2012. The DOE is currently reviewing updated policies and procedures as they are received. E-mail correspondence from the DOE, January 24, 2012. On file with the Senate Committee on Education Pre-K – 12.

³ The DOE was required to provide standards for documenting, reporting, and monitoring to the school districts by October 1, 2011. These have been published and provided to district ESE directors. See Appendix A:

<http://info.fldoe.org/docushare/dsweb/Get/Document-6212/dps-2011-165.pdf>.

⁴ The technical assistance paper, *Guidelines for the Use, Documentation, Reporting, and Monitoring of Restraint and Seclusion with Students with Disabilities*, has been updated and is being reviewed for final approval. See: <http://info.fldoe.org/docushare/dsweb/Get/Document-6212/dps-2011-165.pdf>.

⁵ DOE Agency bill analysis dated September 23, 2011. On file with the Senate Committee on Education Pre-K – 12.

⁶ See *Guidelines for the Use, Documentation, Reporting, and Monitoring of Restraint and Seclusion with Students with Disabilities*, available at: <http://www.fldoe.org/ese/tap-home.asp>.

⁷ *Id.*

⁸ *Id.*

mechanical restraint. Additionally, the bill states that nothing may be used to cover the body, including a calming blanket.⁹

Under the bill, the use of CPR is included as a training requirement for staff identified by the district.¹⁰ Districts must identify individuals to be certified and provide annual refresher certification courses.

The bill provides definitions for seclusion¹¹ and time-out¹². The definitions outlined in the bill do not align to current definitions used by the DOE, which are the definitions published by the OCR.

Under the bill, school districts would be prohibited from using seclusion and provides that time-out may be only used as part of a positive behavioral intervention plan. According to DOE, some of the specified conditions may be difficult to adhere to, such as only using time-out for one minute for each year of the student's age and not using time-out as a negative consequence.¹³

The bill also requires additional documentation requirements for emergency procedures and the review of the student's functional behavioral assessment and their positive behavioral intervention plan. Furthermore, the bill establishes that current incident reporting requirements be amended to include a copy of a medical evaluation by a qualified medical professional within 24 hours or as soon as available. In order to meet this provision, districts would have to provide access to medical professionals for the evaluation to be completed for each restraint.

The bill requires documentation be provided weekly to the principal, the district ESE director, and to the DOE. Additionally, schools must also send redacted copies of documentation weekly to the Advocacy Center for Persons with Disabilities. This includes policies and procedures, in addition to the incident reports, and deletes the requirement for information to be submitted

⁹ *Id.* According to DOE, the intended purpose of a calming blanket is not one of restraint and notes that research indicates that some educators/therapists and students have found this to be an effective calming method. *See* http://www.eric.ed.gov/ERICWebPortal/search/detailmini.jsp?_nfpb=true&_ERICEstSearch_SearchValue_0=EJ822619&ERICExtSearch_SearchType_0=no&accno=EJ822619.

¹⁰ According to the DOE, such training is not a typical requirement for someone trained in physical restraint. As such, school districts would be required to add training and certification procedures to their policies and procedures to address whether or not it is appropriate for specific employees to use manual physical restraint. School districts would also be required to report training and certification procedures to the DOE as a part of the district's policies and procedures manual.

¹¹ According to the DOE, seclusion is an emergency intervention sometimes used in schools when students are exhibiting disruptive or dangerous behavior. Seclusion is not an instructional tool for the development of pro-social behavior. Rather, it is one method to prevent students from harming themselves or others. It should only be used in emergency situations when an imminent risk of serious injury or death to the student or others exists. *See Guidelines for the Use, Documentation, Reporting, and Monitoring of Restraint and Seclusion with Students with Disabilities*, available at: <http://www.fldoe.org/ease/tap-home.asp>. According to the DOE agency bill analysis dated September 23, 2011, these definitions do not align with the OCR definitions currently used.

¹² Time-out is a procedure in which access to varied sources of reinforcement is removed or reduced for a particular time period contingent on a response. As indicated in this definition, time-out does not necessarily require the physical removal of the individual from the setting. Time-out is not a place. As a behavior reduction technique, the focus of time-out is on those behaviors deemed to be problematic and in need of reduction or elimination. *See DPS: 2011-145 - Guidelines for the Use of Time-out*, available at: <http://www.fldoe.org/ease/tap-home.asp>.

¹³ DOE Agency bill analysis dated September 23, 2011. On file with the Senate Committee on Education Pre-K – 12.

electronically. According to DOE, this reference may need clarification and additional resources may be needed for the more frequent submission of documents.

Under the bill, the content of school district policies and procedures must include information on the allowable use of restraint; personnel authorized to use physical restraint; training procedures; analysis of trend data; and reduction of the use of restraint.

According to the DOE, technical assistance documents and resources, including reporting procedures for school districts, would need to be revised to adhere to the changes proposed in the bill.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Although the DOE states that the requirement to include CPR training would be an additional cost to school districts, because the bill prohibits the use of prone and supine restraints, there may be less need for CPR training. School districts would be required to provide refresher certification training courses in manual physical restraints at least annually to those individuals who have completed the initial training in manual physical restraints.¹⁴ The DOE suggests that to prevent use of manual physical restraint by non-certified personnel, the school district could offer the initial training course and refresher certification training to all applicable personnel. The cost of training implementation is indeterminate at this time.

¹⁴ *Id.*

Additionally, school districts will be required to have a student evaluated by a doctor, nurse, or other qualified medical professional as soon as possible after the manual physical restraint by school personnel. The cost of the annual certification training and medical examination is indeterminate at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.