

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 233 Students with Disabilities in Public Schools
SPONSOR(S): PreK-12 Quality Subcommittee; Edwards; Plasencia and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 810

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) PreK-12 Quality Subcommittee	14 Y, 0 N, As CS	McAlarney	Duncan
2) PreK-12 Appropriations Subcommittee			
3) Education Committee			

SUMMARY ANALYSIS

Section 1003.573, F.S., establishes standards and procedures regarding the use, monitoring, documentation and reporting of seclusion and restraint on students with disabilities. The use of manual restraint or seclusion is required to be monitored at the classroom, building, district, and state levels. The Florida Department of Education (DOE) is required to develop standards for and provides guidance to school districts. School districts must develop policies and procedures regarding incident-reporting, data collection, and monitoring. Each school district is required to provide its policies and procedures to DOE.

The bill amends the use of restraint and seclusion on students with disabilities. Specifically, the bill:

- Defines terms related to seclusion and restraint.
- Replaces the term “manual restraint” with “physical restraint.”
- Provides that physical restraint may be used only to protect students, school personnel or others, or to prevent the destruction of property, but not for disciplining a student. Restraints should be used only when all other strategies and techniques have been exhausted. A student may only be physical restrained for the time necessary for protection.
- Prohibits physical restraint techniques, such as:
 - Pain inducement to obtain compliance.
 - Bone locks.
 - Hyperextension of joints;
 - Peer restraint.
 - Pressure or weight on the chest, lungs, sternum, diaphragm, back, or abdomen, causing chest compression.
 - Straddling or sitting on any part of the body or a maneuver that places pressure, weight, or leverage on the neck or throat, on an artery, or on the back of the student's head or neck or that otherwise obstructs or restricts the circulation of blood or obstructs an airway.
 - Any type of choking, including hand chokes, and any type of neck or head hold.
- Requires school districts to develop policies and procedures to ensure the physical safety and security of all students and school personnel; and requires that students be treated with dignity and respect.
- Outlines under what circumstances seclusion and restraint may not be used.
- Describes the circumstance when time-outs may be used and prohibits certain areas.
- Requires the school to review a student’s functional behavioral assessment and individualized behavior intervention plan when a student is placed in time-out, physically restrained or secluded more than twice in a semester.
- Includes emotional and behavioral disabilities in the list of disabilities for which certain school personnel must be trained to identify for early intervention.
- Adds to staff training effective classroom behavior management strategies such as differential reinforcement, precision commands, minimizing attention or access to other reinforcers, and time-out methods.
- Directs DOE to publish data and analysis relating to incidents of seclusion and restraint on its website.

The bill does not appear to have a fiscal impact.

The bill provides an effective date of July 1, 2017.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0233.PKQ

DATE: 3/28/2017

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Federal Guidance on the Use of Seclusion and Restraint on Students with Disabilities

U.S. Department of Education Guidance

On May 15, 2012, the U.S. Department of Education published the *Restraint and Seclusion: Resource Document*. The goal was to encourage each state to review its current policies and guidelines on the use of restraint and seclusion in schools to help ensure that every student is safe and protected, and, if appropriate, to develop or revise its policies and guidelines.¹

The document described 15 principles to consider when developing or revising policies and procedures on the use of restraint and seclusion. The principles stress that every effort should be made to prevent the need for the use of restraint and seclusion and that any behavioral intervention must be consistent with the child's rights to be treated with dignity and to be free from abuse. It stated that restraint or seclusion should never be used except in situations where a child's behavior poses imminent danger of serious physical harm to self or others, and restraint and seclusion should be avoided to the greatest extent possible without endangering the safety of students and staff.²

The document states that the use of restraint and seclusion can have very serious consequences, including, most tragically, death. Furthermore, there is no evidence that using restraint or seclusion is effective in reducing the occurrence of the problem behaviors. Schools are encouraged to make every effort to structure safe environments and provide a behavioral framework, such as the use of positive behavior interventions and supports, which applies to all children, staff, and places in the school so that restraint and seclusion techniques are unnecessary.³

Specifically, the 15 Principles are as follows:⁴

1. Every effort should be made to prevent the need for the use of restraint and for the use of seclusion.
2. Schools should never use mechanical restraints to restrict a child's freedom of movement, and schools should never use a drug or medication to control behavior or restrict freedom of movement (except as authorized by a licensed physician or other qualified health professional).
3. Physical restraint or seclusion should not be used except in situations where the child's behavior poses imminent danger of serious physical harm to self or others and other interventions are ineffective and should be discontinued as soon as imminent danger of serious physical harm to self or others has dissipated.
4. Policies restricting the use of restraint and seclusion should apply to all children, not just children with disabilities.
5. Any behavioral intervention must be consistent with the child's rights to be treated with dignity and to be free from abuse.
6. Restraint or seclusion should never be used as punishment or discipline (e.g., placing in seclusion for out-of-seat behavior), as a means of coercion or retaliation, or as a convenience.
7. Restraint or seclusion should never be used in a manner that restricts a child's breathing or harms the child.

¹ U.S. Department of Education, *Restraint and Seclusion: Resource Document*, May 2012, <https://www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf> (last visited Mar. 22, 2017).

² *Id.*

³ *Id.*

⁴ *Id.*

8. The use of restraint or seclusion, particularly when there is repeated use for an individual child, multiple uses within the same classroom, or multiple uses by the same individual, should trigger a review and, if appropriate, revision of strategies currently in place to address dangerous behavior; if positive behavioral strategies are not in place, staff should consider developing them.
9. Behavioral strategies to address dangerous behavior that results in the use of restraint or seclusion should address the underlying cause or purpose of the dangerous behavior.
10. Teachers and other personnel should be trained regularly on the appropriate use of effective alternatives to physical restraint and seclusion, such as positive behavioral interventions and supports and, only for cases involving imminent danger of serious physical harm, on the safe use of physical restraint and seclusion.
11. Every instance in which restraint or seclusion is used should be carefully and continuously and visually monitored to ensure the appropriateness of its use and safety of the child, other children, teachers, and other personnel.
12. Parents should be informed of the policies on restraint and seclusion at their child's school or other educational setting, as well as applicable federal, state, or local laws.
13. Parents should be notified as soon as possible following each instance in which restraint or seclusion is used with their child.
14. Policies regarding the use of restraint and seclusion should be reviewed regularly and updated as appropriate.
15. Policies regarding the use of restraint and seclusion should provide that each incident involving the use of restraint or seclusion should be documented in writing and provide for the collection of specific data that would enable teachers, staff, and other personnel to understand and implement the preceding principles.

Florida Law and the Use of Restraint and Seclusion on Students with Disabilities

Section 1003.573, F.S., governs the use of restraint and seclusion on students with disabilities. The Florida Department of Education (DOE) is required to develop standards for documenting, reporting, and monitoring the use of restraint and seclusion.

Prohibited Restraint & Seclusion

School personnel are prohibited from:

- using a mechanical physical restraint on a student or manual physical restraint that restricts a student's breathing; and
- from closing, locking, or physically blocking a student in a room that is unlit and does not meet the rules of the State Fire Marshal for seclusion time-out rooms.⁵

Reporting an Incident

A school must prepare an incident report within 24 hours after a student is released from a restraint or seclusion, which must include:⁶

- The name, age, grade, ethnicity and disability of the student restrained or secluded.
- The date, time, and location of the incident and the duration and type of the restraint or seclusion.
- The names of the persons restraining or assisting in the restraint of the student.
- The names of any nonstudent who was present to witness the restraint or seclusion.
- The context in which the seclusion or restraint occurred.
- The student's behavior leading up to and precipitating the decision to use restraint or seclusion.
- The specific positive behavioral strategies used to prevent and deescalate the behavior.

⁵Section 1003.573(4) and (5), F.S.

⁶Section 1003.573(1), F.S.

- Any injuries, visible marks, or possible medical emergencies that may have occurred during the restraint or seclusion and documented according to district policies.
- Steps taken to notify the parent or guardian.

Schools must notify the parent or guardian of the student in writing before the end of the school day each time restraint or seclusion is used and reasonable efforts must be made to also notify the parent or guardian by telephone or email. Parents must also be provided a complete incident report in writing by mail within three days after a student was manually or physically restrained or secluded. The school must maintain documentation of the parent or guardian's acknowledgement of receipt of notification of his or her child's restraint or seclusion.⁷

Monitoring

The use of manual restraint or seclusion on students must be monitored at the classroom, building, district, and state levels. Documentation related to any incidents reported must be provided to the principal, the school district's director of Exceptional Student Education, and the DOE's Bureau of Exceptional Education and Student Services each month that the school is in session.⁸

District Policies and Procedures

School districts must develop policies and procedures regarding:⁹

- Incident reporting.
- Data collection and monitoring, including when, where, and why students are restrained or secluded; the frequency of occurrences of such restraint or seclusion; and the prone or mechanical restraint that is most used.
- Monitoring and reporting of data collected.
- Training programs relating to manual or physical restraint and seclusion.
- The district's plan for selecting personnel to be trained.
- The district's plan for reducing the use of restraint and seclusion particularly in settings in which it occurs frequently or with students who are restrained repeatedly, and for reducing the use of prone restraint and mechanical restraint. The plan must include a goal for reducing the use of restraint and seclusion and must include activities, skills, and resources needed to achieve that goal. Activities may include, but are not limited to:
 - additional training in positive behavioral support and crisis management;
 - parental involvement;
 - data review;
 - updates of students' functional behavioral analysis and positive behavior intervention plans;
 - additional student evaluations;
 - debriefing with staff;
 - use of schoolwide positive behavior support; and
 - changes to the school environment.

DOE Guidance to School Districts Regarding Restraint, Seclusion, and Time-Out

In response to legislation enacted in 2011,¹⁰ DOE issued Technical Assistance Paper (TAP 2011-165) to guide school districts regarding the use of restraint and seclusion with students with disabilities.¹¹

⁷Section 1003.573(1)(c) and (d), F.S.

⁸Section 1003.573(2), F.S.

⁹Section 1003.573(3), F.S.

¹⁰ Chapter 2011-175, L.O.F.

¹¹ Florida Department of Education, Technical Assistance Paper, *Guidelines for the Use, Documentation, Reporting, and Monitoring of Restraint and Seclusion with Students with Disabilities*, <https://info.fl DOE.org/docushare/dsweb/Get/Document-6212/dps-2011-165.pdf> (last visited Mar. 22, 2017).

Specifically, the document covers:¹²

- when restraint and/or seclusion might be used;
- considerations when selecting a training program for restraint;
- what should be documented;
- parent notification and reporting; and
- monitoring use.

As provided in TAP 2011-165, schools should ensure that students are treated with respect and dignity in an environment that provides for the physical safety and security of students and staff. There are instances in which students pose a threat to the safety of themselves or others. The purpose of restraint and seclusion is to prevent injury to self and/or others; these procedures are not to be used to punish a student, as a deterrent, or to “teach a student a lesson.” It is important to recognize that the use of restraint and seclusion may have an emotional impact on students. Such interventions should only be used in emergency situations when an imminent risk of serious injury or death to the student or others exists and in a manner that conveys respect for the dignity of the student.¹³

In 2011, DOE also issued Technical Assistance Paper (TAP 2011-145),¹⁴ to provide guidance and information to school districts in the development of effective time-out procedures. According to TAP 2011-145, time-out uses intervention strategies to decrease the frequency of problematic behaviors. Although time-out can be an effective intervention, it is also an aversive procedure that may adversely impact the classroom learning environment. Of particular concern is its focus primarily on inappropriate, rather than appropriate, behavior and the impact on a student’s access to instruction. The use of time-out has also been the subject of litigation, specifically concerning its use with students with behavior disorders.¹⁵

A non-exclusionary time-out occurs when a student does not have the opportunity to receive reinforcement for an inappropriate behavior for a specified period of time without removing the student from the setting or the activity. The advantage of this type of time-out is that it attempts to keep the student engaged in the ongoing activity in the classroom.¹⁶

An exclusionary time-out involves removing a student from an activity for a period of time but not from the room or area of activity. Unlike contingent observation, the student is not allowed to view or be involved in any activity for a specified amount of time. The student may sit in a study carrel or in some other excluded area of the educational setting but remains in full view of instructional staff.¹⁷

There are no current State Board of Education Rules that define time-out procedures or requirements. Each district that uses time-out as an intervention strategy should develop procedures that are educationally appropriate and ensure a safe educational learning environment at all times. Consequently, the information in TAP 2011-145 is a guide for the development of time-out procedures and strategies based on best practices.¹⁸

DOE Seclusion and Restraint Data

Florida school districts began reporting incidents of seclusion in the 2010-2011 school year. Since that time and up to the 2015-2016 school year there have been a total of 18,003 incidents of seclusion¹⁹

¹² *Id.*

¹³ *Id.* at A-1.

¹⁴ Florida Department of Education, Technical Assistance Paper, *Guidelines for the Use of Time-out*, <https://info.fldoe.org/docushare/dsweb/Get/Document-6219/dps-2011-145.pdf> (last visited Mar. 22, 2017).

¹⁵ *Id.* at A-1.

¹⁶ *Id.* at B-1.

¹⁷ *Id.* at B-1.

¹⁸ *Id.* at A-1.

¹⁹ Florida Department of Education, Bureau of Exceptional Education, *Seclusion Incident Reports by District*, 2011-12 through 2015-16.

and 54,882 incidents of restraint²⁰ reported. However, the number of incidents have decreased every school year since the enactment of the law.²¹

Seclusion Incident Data

School Year Reported	# of Students ²²	Seclusion Incidents
2010-11	1321	4,637
2011-12	1448	4,245
2012-13	1237	3,024
2013-14	885	2,272
2014-15	732	2,262
2015-16	638	1,563
Total	6,621	18,003

Restraint Incident Data

School Year Reported	# of Students ²³	Restraint Incidents
2010-11	3580	10,683
2011-12	4369	9,789
2012-13	4096	9,551
2013-14	3479	8,964
2014-15	3229	8,199
2015-16	3437	7,696
Total	22,190	54,882

Effect of Proposed Changes

This bill amends s. 1003.573, F.S. regarding the restraint and seclusion of public school students who have a functional behavioral assessment and an individualized behavioral intervention plan.

Definitions

The bill removes the term “manual restraint” deferring to “physical restraint” and defines the following terms:

- “Behavioral protective equipment” is used to prevent external or internal tissue damage caused by chronic self-injurious or self-stimulatory behavior.
- “Mechanical restraint” is the use of a physical device that restricts a student's freedom of movement. However, the definition does not include the use of:
 - Medical protective equipment;
 - Devices such as straitjackets, helmets, gloves, wraps, and other behavioral protective equipment that is temporarily used to prevent severe tissue damage;
 - Physical equipment or orthopedic appliances, surgical dressings or bandages, or supportive body bands or other restraints;
 - Devices used to support functional body position or proper balance, or to prevent a person from falling out of a bed or a wheelchair; and
 - Equipment used for safety during transportation.

²⁰ Florida Department of Education, Bureau of Exceptional Education, *Restraint Incident Reports by District*, 2011-12 through 2015-16.

²¹ Florida Department of Education, *2017 Agency Legislative Bill Analysis*, SB 810 (Companion to HB 233), pp. 3.

<http://abar.laspbs.state.fl.us/ABAR/Document.aspx?id=8435&yr=2017> (last visited Mar. 22, 2017).

²² Email, Florida Department of Education, March 23, 2017.

²³ *Id.*

- “Medical protective equipment” is health-related protective devices prescribed by a physician or dentist.
- “Physical restraint” is the use of manual restraint techniques that involve significant physical force to restrict movement.
- “Prone restraint” is a student lying face down.
- “Seclusion” is removing a student from an educational environment and involuntarily confining the student alone. The definition does not include of time-outs.
- Student as a student with a functional behavioral assessment and a behavioral intervention plan.²⁴
- “Time-out” as a procedure in which access to varied sources of reinforcement is removed or reduced for a particular time period contingent on a response.
 - In exclusionary time-outs, a student is contingently removed from the reinforcing environment for a brief, stipulated duration.
 - In non-exclusionary time-outs, a student remains in the environment, educational activities are continued, and the reinforcer is contingently removed for a brief, stipulated duration.

Physical Restraint

Section 1003.32, F.S., authorizes district school boards, each teacher or other member of the staff of any school to control and discipline students as assigned to him or her by the principal or the principal's designated representative. Teachers are also required to keep order in the classroom and in other places in which he or she is assigned to be in charge of students.

Notwithstanding the authority granted under s. 1003.32, F.S., physical restraint may be used only to protect students, school personnel or others, or to prevent the destruction of property, but not for disciplining a student. Restraints should be used only when all other strategies and techniques have been exhausted. A student may only be physical restrained for the time necessary for protection. The degree of force applied may only be the degree of force necessary to protect the restrained student and others from bodily injury.

While current law requires school districts to develop policies and procedures for training staff in the use of restraint and seclusion, the bill requires school personnel such as a former law enforcement officer to receive training in the specific district-approved techniques.

School personnel are prohibited from using the following techniques on a child:

- Pain inducement to obtain compliance.
- Bone locks.
- Hyperextension of joints.
- Peer restraint.
- Pressure or weight on the chest, lungs, sternum, diaphragm, back, or abdomen, causing chest compression.
- Straddling or sitting on any part of the body or a maneuver that places pressure, weight, or leverage on the neck or throat, on an artery, or on the back of the student's head or neck or that otherwise obstructs or restricts the circulation of blood or obstructs an airway.
- Any type of choking, including hand chokes, and any type of neck or head hold.

²⁴ A functional behavioral assessment is a process for developing a useful understanding of how behavior relates to the environment. By knowing the function (or purpose) that the behavior serves for the student, one is able to develop an intervention (plan) that also serves that purpose, but does so through positive student behaviors. Intervention strategies may include effective prevention, remediation, or development of alternative behaviors (replacement behaviors). Florida Department of Education, Technical Assistance Paper FY 1999-3, *Functional Behavioral Assessment and Behavioral Intervention Plans*, Dec. 1999, available at <http://www.fldoe.org/core/fileparse.php/7590/urlt/0107234-tap99-3.pdf> (last visited March 23, 2017).

- A technique that involves spraying or pushing anything on or into the student's mouth, nose, eyes, or any part of the face or that involves covering the face or body with anything, including soft objects such as pillows or washcloths.
- A maneuver that involves punching, hitting, poking, pinching, or shoving.

Prone, mechanical, or physical restraint should be used only when all other behavioral strategies and intervention techniques have been exhausted.

Seclusion and Time-Out

The bill provides that a student may only be secluded when proper staff training and safeguards are in place. For example, staff may not seclude or place a student in time-out in a room does not meet the rules of the State Fire Marshal for seclusion time-out rooms and that closes, locks, or physically blocks a student in an unlit room.

For exclusionary time-outs, staff may only place a student in time out if the following conditions are met:

- It is part of a positive behavior intervention plan developed for the student from a functional behavioral assessment and it is referenced in the student's individual education plan.
- It is documented that it was preceded by positive behavioral supports that were not effective.
- It takes place in a classroom or in another environment where educational class activities are available.
- The student is observed on a constant basis by an adult for the entire duration.
- The area and process are free of actions that embarrass or humiliate the student.
- Threats and excessive physical force are not used.
- The area is not locked.

Student Followup

In those instances where a student is placed in a time-out, physically restrained, or secluded more than twice during a semester, the school must review the student's functional behavioral assessment and individualized behavior intervention plan.

Documentation and Reporting Requirements

The bill requires school districts at the beginning of each school year to post its policies on emergency procedures and the posting must include seclusion and physical restraint policies.

Additionally, the bill states that school district policies must ensure the physical safety and security of students and school personnel; and promote a positive culture and climate in which all students are treated with dignity and respect.

Added to the current list that governs the policies and procedures in s. 1003.573 (3) (a), F.S. are:

- A description of escalating behavioral strategies that may be used.
- Allowable use of physical restraint or seclusion on students.
- Analysis of data to determine trends.
- Ongoing reduction of the use of physical restraint and seclusion.
- Training procedures relating to physical restraint and seclusion.

Continuing Education and Inservice Training for Teaching Students with Disabilities

The bill adds emotional and behavioral disabilities to the list of disabilities on which school personnel must be trained in order to increase early identification and intervention. The training must also include effective classroom behavior management strategies, such as differential reinforcement, precision commands, minimizing attention or access to other reinforcers, and time-out methods.

Also, the DOE is required to publish data and analysis relating to incidents of seclusion and restraint on its website.

The bill has an effective date of July 1, 2017.

B. SECTION DIRECTORY:

Section 1. Amends s. 1003.573, F.S., to define terms; prohibit certain physical restraint techniques; add provisions relating to the use of seclusion and time-out; require a student's functional behavioral assessment and individualized behavior intervention plan to be reviewed; and adds emotional and behavioral disabilities to the list of disabilities on which school personnel who teach student with disabilities must be trained in order to increase early identification and intervention.

Section 2. Amends s. 1012.582 (1) – (2), F.S., regarding the Commissioner of Education's recommendations to incorporate instruction into continuing education or inservice training requirements for instruction personnel by:

- Adding emotional or behavioral disabilities to the current list of disabilities;
- Removing the term "manual" from "manual physical restraints"; and
- Adding a list of effective classroom behavior management strategies.

Section 3: Provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 27, 2017, the PreK-12 Quality Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS differs from the bill by:

- removing the certification and training requirements;
- prohibiting the use of spray as a physical restraint technique;
- removing the legislative finding and instead requiring school districts to develop policies and procedures that ensure the physical safety and security of all students and school personnel; and promote a positive culture where students are treated with dignity;
- adding the definition of “prone restraint;”
- adding exclusionary or non-exclusionary time-out to the instances when a student’s functional behavioral assessment and individualized behavior intervention plan is reviewed; and
- changing the date the department must place monthly restraint and seclusion data on its website from January 31, 2018, to October 1, 2017.

The bill analysis is drafted to the PCS as passed by the PreK-12 Quality Subcommittee.