

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 349 Students with Disabilities in Public Schools

SPONSOR(S): PreK-12 Quality Subcommittee, DuBose and others

TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 62

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) PreK-12 Quality Subcommittee	13 Y, 0 N, As CS	McAlarney	Guy

SUMMARY ANALYSIS

This bill amends s. 1003.573, F.S., regarding the use of seclusion and restraint on students with disabilities in public schools.

Specifically, the bill defines terms related to seclusion, physical restraint, and mechanical restraint, and instructs when such techniques may be used. The bill prohibits placing a student in seclusion.

The bill provides that physical restraint may be used only to protect students or school personnel, but not for disciplining a student. A student may only be physically restrained for the time necessary to protect the student and others. The bill prohibits straightjackets and restraint techniques such as obstructing or restricting breathing or blood flow or inflicting pain to induce compliance.

The bill requires school districts to adopt policies and procedures related to positive behavior interventions and supports and identifying all school personnel authorized to use the restraint. Each school district must report to the Florida Department of Education (DOE) approved procedures for training.

The bill requires the Commissioner of Education to develop recommendations to incorporate instruction regarding autism spectrum disorder, Down syndrome, other developmental disabilities, and emotional or behavioral disabilities into continuing education or inservice training requirements for instructional personnel. These recommendations must address the use of restraint techniques, positive behavior interventions and supports, and effective classroom behavior management strategies.

This bill may have fiscal impact in that school districts may incur costs associated with training, and developing policies and procedures regarding restraint. The DOE may incur costs associated with publishing monthly incident data and providing additional training for effective classroom behavior management strategies. The costs are indeterminate.

The bill provides an effective date of July 1, 2019.

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

In 2012, the U.S. Department of Education published the *Restraint and Seclusion: Resource Document*. The document encouraged states to review current policies on the use of restraint and seclusion in schools.¹ The document lays out guiding principles for crafting restraint and seclusion policies. The principles suggest 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 a child's rights to be treated with dignity and to be free from abuse.² Also, restraint or seclusion should only be used when a student poses an imminent danger of serious physical harm to self or others.³ Schools are encouraged to create a behavioral framework including the use of positive behavior interventions and supports with the end goal of rendering restraint and seclusion unnecessary.⁴

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

Florida law authorizes district school boards, each teacher, and other members of the staff of any school to control and discipline students.⁵ Additionally, teachers are required to keep order in the classroom and in other assigned places.⁶

Currently, school districts are required to develop policies and procedures for training staff in the use of restraint and seclusion. The Florida Department of Education (DOE) is required to develop standards for documenting, reporting, and monitoring the use of restraint and seclusion.⁷

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.⁸
- 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.⁹

Reporting an Incident

A school must prepare an incident report within 24 hours after a student is released from a restraint or seclusion. The report must include:¹⁰

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 Jan. 25, 2019).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ Section 1003.32, F.S.

⁶ *Id.*

⁷ Section 1003.573, F.S.

⁸ Section 1003.573(4), F.S.

⁹ Section 1003.573(5), F.S.

- 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.
- 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. Reasonable efforts must be made to 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.¹¹

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.¹²

District Policies and Procedures

Current law requires school districts to develop restraint and seclusion policies and procedures regarding:¹³

- 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 seclusion, 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:
 - 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.

¹⁰Section 1003.573(1), F.S.

¹¹Section 1003.573(1)(c) and (d), F.S.

¹²Section 1003.573(2), F.S.

¹³Section 1003.573(3), F.S.

DOE Guidance to School Districts Regarding Restraint and Seclusion

In response to legislation enacted in 2011,¹⁴ the DOE issued *Technical Assistance Paper Guidelines for the Use, Documentation, Reporting, and Monitoring of Restraint and Seclusion with Students with Disabilities* (TAP 2011-165) to guide school districts regarding the use of restraint and seclusion with students with disabilities.¹⁵

Specifically, the guidelines cover:¹⁶

- When restraint or seclusion might be used.
- Considerations when selecting a training program for restraint.
- What should be documented.
- Parent notification and reporting.
- Monitoring use.

As provided in the *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. Restraint and seclusion procedures may not be used to punish a student or as a deterrent. According to the *TAP 2011-165*, 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.¹⁷

DOE Seclusion and Restraint Data

Florida school districts began reporting incidents of seclusion in the 2010-2011 school year. Since that time and through the 2017-2018 school year, there were a total of 20,188 incidents of seclusion¹⁸ and 72,019 incidents of restraint¹⁹ reported. However, the number of incidents has generally decreased every school year since the enactment of the law.²⁰

Seclusion Incident Data

School Year Reported	# of Students ²¹	Seclusion Incidents
2010-11	1,321	4,637
2011-12	1,448	4,245
2012-13	1,237	3,024
2013-14	885	2,272
2014-15	732	2,262
2015-16	638	1,563
2016-17	503	1,351
2017-18	349	834
Total	7,113	20,188

¹⁴ Chapter 2011-175, L.O.F.

¹⁵ 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.fldoe.org/docushare/dsweb/Get/Document-6212/dps-2011-165.pdf> (last visited Feb. 27, 2019).

¹⁶ *Id.*

¹⁷ *Id.* at A-1.

¹⁸ Florida Department of Education, Bureau of Exceptional Education, *Seclusion Incident Reports by District*, 2011-12 through 2015-16.

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

²⁰ Florida Department of Education, *2018 Agency Legislative Bill Analysis*, SB 2600 (Companion to HB 63), pp. 4. <http://abar.laspbs.state.fl.us/ABAR/Document.aspx?id=20960&yr=2018> (last visited Jan. 25, 2019).

²¹ Email, Florida Department of Education, Feb. 7, 2019.

Restraint Incident Data

School Year Reported	# of Students ²²	Restraint Incidents
2010-11	3,580	10,683
2011-12	4,369	9,789
2012-13	4,096	9,551
2013-14	3,479	8,964
2014-15	3,229	8,199
2015-16	3,437	7,696
2016-17	3,239	8,770
2017-18	3,136	8,367
Total	28,565	72,019

Crisis Intervention Plan

A crisis intervention plan (CIP) is an action plan for immediate action when a student with mental health or behavior challenges is at risk of harm to self or others.²³ The CIP describes what a individualized student crisis looks like and how school personnel should react. The CIP is specific for each student and can be included in the student's IEP.²⁴ The CIP lists clearly delineated steps that school personnel must take to support a student experiencing a crisis such as what to expect from the student, health concerns of the student, who to contact for assistance, how the CIP team can best work together during the crisis, and how the CIP team will know when a crisis had ended. The CIP is developed by individuals knowledgeable about the student and is regularly reviewed by the student's IEP team.²⁵

Effect of Proposed Changes

The bill amends s. 1003.573, F.S., regarding the use of seclusion and restraint on students with disabilities in public schools.

Definitions

The bill defines the following terms:

- "Crisis Intervention Plan" means an individualized action plan for school personnel to implement when a student exhibits dangerous behavior that may lead to imminent risk of serious injury.
- "Imminent risk of serious injury" means the threat posed by dangerous behavior that may cause serious physical harm to self or others.
- "Restraint" means the use of a mechanical or physical restraint.
- "Mechanical restraint" means the use of a device that restricts a student's freedom of movement. The term does not include the use of devices prescribed by physical or behavioral health professionals when used for the specific and prescribed purposes.
- "Physical restraint" means the use of manual restraint techniques that involve significant physical force applied by a teacher or other staff member to restrict the movement of all or part of a student's body. The term does not include briefly holding a student in order to calm or comfort the student or physically escorting a student to a safe location.
- "Positive behavior interventions and supports" means the use of behavioral interventions to prevent dangerous behaviors that may cause serious physical harm to self or others.

²² *Id.*

²³ Pacer Center, Action Information Sheet: PHP-c141, Behavior Intervention or Crisis Plans, What is a Crisis Plan?, <https://www.pacer.org/parent/php/php-c141.pdf> (last visited Mar 5, 2019).

²⁴ *Id.*

²⁵ *Id.*

- "Seclusion" means the involuntary confinement of the student in a room or area alone and preventing the student from leaving the room or area.
- "Student" means a child with an individual education plan enrolled in grades kindergarten to twelve, in a school as defined in s. 1003.01(2), F.S., or the Florida School for the Deaf and Blind. The term does not include students in pre-kindergarten, students who reside in residential care facilities under s. 1003.58, F.S., or students participating in a Department of Juvenile Justice education program under s. 1003.53, F.S.

Seclusion Prohibited

The bill requires school districts to prohibit school personnel from placing a student in seclusion.

Physical Restraint

The bill provides that a student may be restrained by authorized school personnel if he or she poses an imminent risk of serious injury to fellow students, school personnel, or others. Restraint may not be used for student discipline or to correct student noncompliance. Restraint may be used only after all positive behavior interventions and supports have been exhausted. The degree of force applied during physical restraint cannot exceed the amount of force necessary to protect the student or others from imminent risk of serious injury. All restraint must stop as soon as the threat posed by the dangerous behavior is over. School personnel may not use straightjackets and restraint techniques may not obstruct or restrict breathing or blood flow, or inflict pain to induce compliance.

School District Policies and Procedures

The bill requires that each school district adopt positive behavior interventions and supports and identify all school personnel authorized to use restraint. Each district must develop policies and procedures for reducing the use of restraint, with an emphasis on settings in which it occurs frequently or with students who are restrained repeatedly. The plan must include a goal for reducing the use of restraint and must include the activities, skills, and resources needed to achieve that goal. The activities may include additional training in positive behavior interventions and supports, analysis of data to determine trends, and ongoing reduction of the use of restraint.

At the beginning of each school year, a school district must publicly post its policies and procedures regarding positive behavior interventions and supports. Any revisions made to the policies and procedures must be filed with the bureau chief of the DOE's Bureau of Exceptional Education and Student Services within 90 days of the revision.

Training

The bill requires that each school district provide training to all school personnel authorized to use positive behavior interventions and supports adopted by the school district. The training must be provided annually and include:

- The use of positive behavior interventions and supports.
- Risk assessment procedures to identify when restraint may be used.
- Examples when positive behavior interventions and support techniques have failed to reduce the imminent risk of serious injury.
- Examples of safe and appropriate restraint techniques and how to use these techniques with multiple staff members working as a team.
- Instruction in the district's documentation and reporting requirements.
- Procedures to identify and deal with possible medical emergencies arising during the use of restraint.
- Cardiopulmonary resuscitation.

Crisis Intervention Plan

The bill requires schools to develop crisis intervention plans (CIP) for students who are restrained two times during a semester. Crisis intervention plan means an individualized action plan for school personnel to implement when a student exhibits dangerous behavior that might lead to imminent risk of serious injury. The CIP must be developed by a team comprised of the parents, school personnel, and medical professionals and must include specific positive behavior interventions and supports to use in response to dangerous behaviors. It must include known physical and behavioral health concerns that limit the use of restraint on the student, and a timetable for review and update of the CIP. The school must provide a copy of the CIP to the student's parent.

Documentation and Reporting Requirements

The bill requires that all incident reports include the name of the person using restraint on a student, and the date the person was last trained in the use of positive behavior interventions and supports. The DOE is required to publish de-identified data relating to incidents of restraint on its website beginning October 1, 2019.

Continuing Education and Inservice Training for Teaching Students with Disabilities

The bill amends s. 1012.582(1), F.S., which requires the Commissioner of Education to develop recommendations to incorporate instruction regarding autism spectrum disorder, Down syndrome, other developmental disabilities, and emotional or behavioral disabilities into continuing education or inservice training requirements for instructional personnel. These recommendations must address the early identification and intervention for students with emotional and behavioral disabilities, the use of restraint techniques, positive behavior interventions and supports, and effective classroom behavior management strategies.

The bill has an effective date of July 1, 2019.

B. SECTION DIRECTORY:

- Section 1.** Amends s. 1003.573, F.S., defining terms; prohibiting certain physical restraint techniques; requiring training for school personnel and reporting training procedures to the Department of Education; requiring the documenting and reporting of policies on emergency procedures and restraint; requiring school districts to develop policies and procedures regarding restraint; prohibiting seclusion.
- Section 2.** Amends s. 1012.582, F.S., requiring continuing education and training for teaching students with emotional or behavioral disabilities.
- Section 3:** Provides an effective date of July 1, 2019.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
None.

2. Expenditures:
See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
None.
2. Expenditures:
See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None known.

D. FISCAL COMMENTS:

The bill may have a fiscal impact to school districts associated with the changes required for training and developing new or additional policies and procedures regarding restraint. The DOE may incur costs associated with publishing monthly incident data and providing additional training for effective classroom behavior management strategies. The costs are indeterminate.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:
None.
2. Other:
None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.