

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**CHILDREN, FAMILIES, AND ELDER AFFAIRS**  
**Senator Storms, Chair**  
**Senator Rich, Vice Chair**

**MEETING DATE:** Thursday, February 16, 2012  
**TIME:** 10:30 a.m.—12:45 p.m.  
**PLACE:** James E. "Jim" King, Jr. Committee Room, 401 Senate Office Building

**MEMBERS:** Senator Storms, Chair; Senator Rich, Vice Chair; Senators Detert, Dockery, Gibson, and Latvala

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>SB 144</b> Flores (Similar H 1467)	Seclusion and Restraint on Students With Disabilities in Public Schools; Requiring that manual physical restraint be used only in an emergency when there is an imminent risk of serious injury or death to the student or others; providing restrictions on the use of manual physical restraint; prohibiting the use of manual physical restraint by school personnel who are not certified to use district-approved methods for applying restraint techniques; requiring that each school medically evaluate a student after the student is manually physically restrained; prohibiting school personnel from placing a student in seclusion; providing requirements for the use of time-out; requiring that a school district report its training and certification procedures to the Department of Education, etc.  ED 01/30/2012 Favorable CF 02/09/2012 CF 02/16/2012 BC	Temporarily Postponed
2	Other Related Meeting Materials		

**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.)

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Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

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BILL: SB 144

INTRODUCER: Senator Flores and others

SUBJECT: Seclusion and Restraint on Students with Disabilities

DATE: February 8, 2012      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Carrouth</u>	<u>deMarsh-Mathues</u>	<u>ED</u>	<b>Favorable</b>
2.	<u>Daniell</u>	<u>Farmer</u>	<u>CF</u>	<b>Pre-meeting</b>
3.	_____	_____	<u>BC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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**I. Summary:**

The bill amends Florida law providing Legislative intent relating to the use, prevention, and reduction of seclusion and restraint on students with disabilities. Additionally, the bill prescribes the use of restraint and seclusion. Specifically, the bill:

- Requires parents be provided a copy of emergency procedures, including procedures on the use of manual physical 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 school personnel who are certified in district-approved techniques;
- Prohibits the use of manual physical restraint except when an imminent risk of serious injury or death exists;
- Prohibits certain manual physical restraint techniques;
- Requires school districts to train and certify individuals in the use of manual physical restraint, and offer refresher certification courses;
- Requires incident report documentation to be submitted each week that the school is in session to certain persons, as well as to the Advocacy Center for Persons with Disabilities, Inc.;
- Requires certain information to be made available to the public on the Department of Education’s website;
- Prohibits the use of seclusion; and
- Provides that time-out may only be used as part of a positive behavioral intervention plan and only when certain conditions are met.

This bill substantially amends section 1003.573, Florida Statutes.

## II. Present Situation:

After reported incidences of restraint and seclusion techniques being used in schools throughout the country that resulted in injury or death to the student, the U.S. House of Representatives' Committee on Education and Labor requested a study from the Governmental Accountability Office (GAO) seeking verification of the reports.<sup>1</sup> Although the GAO report found that there were "hundreds of cases of alleged abuse and death" related to the use of restraints and seclusion, almost all of which involved children with disabilities, the GAO could not determine whether the allegations were widespread.<sup>2</sup> The GAO report did present four themes:

- Children with disabilities were sometimes restrained and secluded even when they did not appear to be physically aggressive and their parents did not give consent;
- Facedown or other restraints that block air to the lungs can be deadly;
- Teachers and staff in these cases were often not trained in the use of restraints and techniques; and
- Teachers and staff from these cases continue to be employed as educators.<sup>3</sup>

Currently, there are no federal laws that restrict the use of restraint and seclusion in public and private schools,<sup>4</sup> and state laws are widely divergent. In 2009 and 2010, bills were introduced in the U.S. House of Representatives and Senate to regulate the use of restraint and seclusion in schools. The Keeping All Students Safe Act (Act) was proposed in the House of Representatives and would have created the first federal limitations on the use of restraint and seclusion in school.<sup>5</sup> The Act would have established minimum standards that:

- Prohibited school personnel from managing any student by using any mechanical or chemical restraints, physical restraint or escort that restricts breathing, or aversive behavioral intervention that compromises student health and safety;
- Prohibited school personnel from using physical restraint or seclusion, unless such measures are required to eliminate an imminent danger of physical injury to the student or others;
- Required states to ensure that a sufficient number of school personnel received state-approved crisis intervention training and certification;
- Prohibited physical restraint or seclusion from being written into a student's individual education plan (IEP);<sup>6</sup> and

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<sup>1</sup> U.S. Gov't Accountability Office, *Seclusions and Restraints: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers*, Report GAO-09-719T (May 19, 2009), available at <http://www.gao.gov/new.items/d09719t.pdf> (last visited Feb. 6, 2012).

<sup>2</sup> *Id.* at Highlights of GAO-09-719T.

<sup>3</sup> *Id.* at 7.

<sup>4</sup> In contrast, the Children's Health Act of 2000 amended Title V of the Public Health Service Act to regulate the use of restraints and seclusions on residents of certain hospitals and health care facilities that receive federal funds, as well as on children in certain residential, non-medical, community-based facilities. *Id.* at 3.

<sup>5</sup> H.R. 4247 (111th Congress, 2d Session) (2010), available at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111\\_cong\\_bills&docid=f:h4247rfs.txt.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h4247rfs.txt.pdf) (last visited Feb. 6, 2012).

<sup>6</sup> An IEP is developed by parents and school personnel and often includes instructions related to the use of strategies to support the student, such as behavioral interventions like the use of seclusion and restraints. U.S. Gov't Accountability Office, *supra* note 1, at 3.

- Required schools to establish procedures to notify parents in a timely manner if physical restraint or seclusion is imposed on their child.<sup>7</sup>

The Act passed the House of Representatives but was never heard in the Senate Committee on Health, Education, Labor, and Pensions.<sup>8</sup>

As of December 2010, 23 states had adopted specific laws regulating the use of restraint and seclusion in schools and 10 other states had created policies or guidance materials to discuss how restraint and seclusion may be used.<sup>9</sup>

The Individuals with Disabilities Education Act (IDEA) is a federal law providing for the education of children with disabilities.<sup>10</sup> The IDEA provides federal funds to help state and local education agencies meet their obligation to educate students with disabilities. To be eligible to receive these federal funds, states must comply with numerous requirements, including:

- States and school districts must make available a free appropriate public education to all children with disabilities;
- Each child receiving services must have an IEP spelling out the specific special education and related services to be provided to meet the child's needs; and
- "To the maximum extent appropriate," children with disabilities must be educated with children who are not disabled.<sup>11</sup>

The IDEA provides that when the behavior of a child with a disability impedes the child's learning or the learning of others, the IEP team must consider "the use of positive behavioral interventions and supports, and other strategies, to address that behavior."<sup>12</sup> Nothing in the IDEA specifically addresses the use of seclusion and restraints; however, the federal Department of Education has noted that state law may address whether restraints may be used, and the "critical inquiry is whether the use of such restraints or techniques can be implemented consisted with the child's IEP and the requirement that the IEP Teams consider the use of positive behavioral interventions."<sup>13</sup>

Section 1003.573, F.S., establishes policies and procedures related to seclusion and restraint of students with disabilities in Florida. These policies and procedures include documentation and reporting, monitoring, school district responsibilities, and prohibited practices. Changes to the law were made in 2011<sup>14</sup> to provide greater oversight of seclusion and restraint practices.<sup>15</sup> These

<sup>7</sup> H.R. 4247, *supra* note 5.

<sup>8</sup> See Govtrack.us, *H.R. 4247: Keeping All Students Safe Act*, <http://www.govtrack.us/congress/bill.xpd?bill=h111-4247> (last visited Feb. 6, 2012).

<sup>9</sup> Daniel Stewart, *How Do the States Regulate Restraint and Seclusion in Public Schools? A Survey of the Strengths and Weaknesses in State Laws*, 34 *HAMLIN L. REV.* 531, 535-36 (2011).

<sup>10</sup> 20 U.S.C. s. 1400 et seq.

<sup>11</sup> Nancy Lee Jones and Jody Feder, Congressional Research Serv., *The Use of Seclusion and Restraint in Public Schools: The Legal Issues*, 4 (April 14, 2009), available at [http://www.spannj.org/information/CRS\\_Report\\_on\\_Legal\\_Issues\\_in\\_Seclusion\\_&\\_Restraints.pdf](http://www.spannj.org/information/CRS_Report_on_Legal_Issues_in_Seclusion_&_Restraints.pdf) (last visited Feb. 6, 2012).

<sup>12</sup> *Id.* at 5 (citing 20 U.S.C. s. 1414(d)(3)(B)).

<sup>13</sup> *Id.* (quoting Letter to Anonymous, 50 IDELR 228 (OSEP Mar. 17, 2008)).

<sup>14</sup> Chapter 2011-175, Laws of Fla.

changes included, 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 Department of Education (DOE or department);
- Establishment of standards for documenting, reporting, and monitoring the use of seclusion and restraint;<sup>16</sup>
- 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.<sup>17</sup>

School districts began reporting incidents of restraint and seclusion at the beginning of the 2010-2011 school year. Since the inception of the reporting system, there have been 10,323 incidents of restraint reported and 4,637 incidents of seclusion reported.<sup>18</sup>

Section 1003.573, F.S., does not provide a definition for “seclusion.” The department’s Technical Assistance Paper regarding the documentation, reporting, and monitoring requirements for the use of seclusion uses the definition of “seclusion” provided by the U.S. Department of Education’s Office of Civil Rights (OCR). The OCR defines seclusion as “the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving. It does not include a time-out, which is a behavior management technique that is part of an approved program, involves the monitored separation of the student in a non-locked setting, and is implemented for the purposes of calming.”<sup>19</sup> Currently, OCR requires DOE to report all instances of seclusion and restraint for all students, not just those with disabilities.<sup>20</sup>

### III. Effect of Proposed Changes:

This bill amends s. 1003.573, F.S., relating to the use of restraint and seclusion on students with disabilities.

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<sup>15</sup> School districts are required to revise previously submitted policies and procedures regarding restraint and seclusion and submit them to the Department of Education (DOE or department) by January 31, 2012. The department is currently reviewing updated policies and procedures as they are received. E-mail correspondence from DOE to Senate professional staff of the Committee on Education Pre-K – 12 (Jan. 24, 2012) (on file with the Senate Committee on Education Pre-K – 12).

<sup>16</sup> The department was required to provide standards for documenting, reporting, and monitoring to the school districts by October 1, 2011. These standards were disseminated at the Administrators’ Management Meeting in September 2011. Fla. Dep’t of Education, *2012 Agency Legislative Bill Analysis, SB 144* (Sept. 23, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs).

<sup>17</sup> The department published a Technical Assistance Paper in 2011 to provide guidance regarding the use, documenting, reporting, and monitoring of restraint and seclusion with students with disabilities in school districts. *See* Fla. Dep’t of Education, *Technical Assistance Paper: Guidelines for the Use, Documentation, Reporting, and Monitoring of Restraint and Seclusion with Students with Disabilities* (2011-165) (Oct. 14, 2011), available at <http://info.fldoe.org/docushare/dsweb/Get/Document-6212/dps-2011-165.pdf> (last visited Feb. 6, 2012) [hereinafter *Technical Assistance Paper*].

<sup>18</sup> Fla. Dep’t of Education, *supra* note 16.

<sup>19</sup> *Technical Assistance Paper*, *supra* note 17, at 5.

<sup>20</sup> *Id.*

The bill provides that manual physical restraint may only be used when there is an imminent risk of serious injury or death<sup>21</sup> to the student or others, and the restraint may only be used with the degree of force necessary to protect the student or others and for only the period of time necessary to eliminate the imminent risk of serious injury or death.

The bill defines “manual physical restraint” as the use of physical restraint techniques that involve physical force applied by a teacher or other staff member to restrict the movement of all or part of a student’s body.

The use of manual physical restraint is restricted to school personnel who are certified in district-approved techniques. School personnel who may have received training elsewhere must still be certified in the specific district-approved techniques and may not apply the techniques or procedures acquired elsewhere. According to the Department of Education (DOE or department), this may prohibit the use of physical restraint during an emergency situation by personnel who are not certified.<sup>22</sup>

The bill provides a list of manual physical restraint techniques that are prohibited. For example:

- Prone and supine restraint.
- Pain inducement to obtain compliance.
- Bone locks.
- Hyperextension of joints.
- Peer restraint.
- Mechanical restraint.<sup>23</sup>
- 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 any maneuver that places pressure, weight, or leverage on the neck or throat, or any 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.
- Any technique that involves 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.
- Any maneuver that involves punching, hitting, poking, pinching, or shoving.
- Any type of mat or blanket restraint.
- Water or lemon sprays.

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<sup>21</sup> The bill defines “imminent risk of serious injury or death” as the impending risk of significant injury, such as a laceration, bone fracture, substantial hematoma, or other injury to internal organs, or death.

<sup>22</sup> Fla. Dep’t of Education, *supra* note 16.

<sup>23</sup> “Mechanical restraint” is defined in the bill as the use of a physical device that restricts a student’s movement or restricts the normal function of a student’s body. The term includes the use of straps, belts, tie-downs, calming blankets, and chairs with straps. The term does not include medical protective equipment, restraints necessary for ongoing medical treatment in the educational setting, devices used to support functional body position or proper balance, or equipment used for safety during transportation.

The bill requires that the school<sup>24</sup> have any student who has been manually physically restrained be medically evaluated by a physician, nurse, or other qualified medical professional as soon as possible. The results of the medical evaluation must be included in the incident report that a school must file within 24 hours after a student is released from a restraint.

Under the bill, each school district must report its training and certification procedures to DOE. Training requirements for initial certification in the use of manual physical restraint include:

- Deescalation procedures.
- Information regarding the risks associated with manual physical restraint and procedures for assessing individual situations and students.
- The actual use of specific techniques that range from the least to most restrictive.
- Techniques for implementing manual physical restraint with multiple staff members working as a team.
- Techniques for assisting a student to reenter the instructional environment.
- Instruction in the district's documentation and reporting requirements.
- Procedures to identify and deal with possible medical emergencies that may arise during the use of manual physical restraint.
- Cardiopulmonary resuscitation (CPR).<sup>25</sup>

The school districts must provide refresher certification training courses at least annually. The district must maintain a record that includes the name and position of the person certified, the date of the most recent certification, an indication of whether it was initial certification or refresher certification, and whether the individual successfully completed the certification.<sup>26</sup> Additionally, school district policies must address whether certain employees working in specific settings (such as school bus drivers, job coaches, cafeteria workers, etc.) must be certified in manual physical restraint techniques.

If a student is manually physically restrained more than twice during a school year, the school must review the student's functional behavioral assessment and positive behavioral intervention plan. The bill does not specify what is to be done after the school reviews these plans.

The use of seclusion is prohibited under the bill; however, school personnel may place a student in time-out, as long as the following conditions are met:

- The time-out is part of a positive behavioral intervention plan developed from a functional behavioral assessment and referenced in the student's individual education plan.
- There is documentation that the time-out was preceded by the use of other positive behavioral supports that were not effective.

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<sup>24</sup> The bill does not specify whose responsibility it is at the school to ensure that a student is medically evaluated after being manually physically restrained.

<sup>25</sup> According to the department, CPR training is not a typical requirement for someone trained in physical restraint. Accordingly, school districts may incur expenses in order to implement CPR training. Fla. Dep't of Education, *supra* note 16.

<sup>26</sup> The bill does not require a competency test after the training and certification. Accordingly, it is unclear how it will be determined if the individual successfully completed the certification and achieved proficiency.

- The time-out takes place in a classroom or in another environment where class educational activities are taking place.
- The student is not physically prevented from leaving the time-out area.
- The student is observed on a constant basis by an adult for the duration of the time-out.
- The time-out area and process are free of any action that is likely to embarrass or humiliate the student.

The bill provides definitions for “seclusion”<sup>27</sup> and “time-out;”<sup>28</sup> however, the definitions provided for in the bill do not align to current definitions used by DOE, which are the definitions published by the OCR.<sup>29</sup>

The bill also provides that time-out may not be used for a period that exceeds one minute for each year of a student’s age. 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.<sup>30</sup>

The bill requires each school district to provide a copy of its policies on all emergency procedures, including the use of manual physical restraints, to each student’s parent or guardian at the beginning of each school year. The parent or guardian must sign a form indicating he or she received and read the policies.

The bill requires that certain documentation be provided weekly (rather than monthly) to the principal, the district Exceptional Student Education director, and the department. The bill removes the option to provide this information electronically. Additionally, schools must send redacted copies of the same documentation weekly to the Advocacy Center for Persons with Disabilities. According to DOE, this provision may need clarification and additional resources may be needed for the more frequent submission of documents.<sup>31</sup>

The bill requires DOE to maintain, and update monthly, data of incidents of manual physical restraint and to make such information available to the public on the department’s website no later than January 31, 2013.

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

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<sup>27</sup> “Seclusion” means removing a student from an educational environment, involuntarily confining the student in a room or area, and preventing the student from leaving the room or area if achieved by locking the door or otherwise physically blocking the student’s way, threatening physical force or other consequences, or using physical force.

<sup>28</sup> “Time-out” means a procedure in which access to varied sources of reinforcement is removed or reduced for a particular time period contingent on a response. The opportunity to receive reinforcement is contingently removed for a specified time. Either a student is contingently removed from the reinforcing environment or the reinforcing environment is contingently removed for some stipulated duration. A time-out setting may not be locked and the exit may not be blocked. Physical force or threats may not be used to place a student in time-out.

<sup>29</sup> Fla. Dep’t of Education, *supra* note 16.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

Finally, the bill makes technical and conforming changes, provides Legislative intent, and provides an effective date of July 1, 2012.

#### IV. Constitutional Issues:

##### A. Municipality/County Mandates Restrictions:

None.

##### B. Public Records/Open Meetings Issues:

None.

##### C. Trust Funds Restrictions:

None.

##### D. Other Constitutional Issues:

This bill amends Florida law regarding the use of restraints and seclusion on students with disabilities. The use of seclusion and restraint in public schools has been subject to constitutional challenges primarily based on the Fourteenth Amendment's guarantee of due process. The due process clause prohibits the government from depriving an individual of his or her liberty without due process of law.<sup>32</sup> In the public school setting, due process challenges to the use of seclusion and restraint have generally been rejected if such tactics are deemed to be reasonable, especially if the use constitutes a routine disciplinary technique.<sup>33</sup> However, an individual may have a cause of action under the due process clause if the seclusion or restraint is found to be unreasonable such that it "shocks the conscious."<sup>34</sup>

Some plaintiffs have also claimed that the use of seclusion and restraint violates the Fourth Amendment's prohibition against unreasonable seizures.<sup>35</sup> As with due process claims, courts assess these claims using a reasonableness standard. For example, the court in *Couture v. Board of Education of the Albuquerque Public Schools*<sup>36</sup> found that the use of supervised time-outs for a student who engaged in disruptive and threatening behavior was reasonable, particularly in light of the fact that the use of time-outs was authorized by the student's individualized education plan.<sup>37</sup>

Finally, although the Individuals with Disabilities Education Act (IDEA) does not specifically reference the use of restraints and seclusion, cases have been brought

<sup>32</sup> See U.S. CONST. amend. XIV, s. 1; FLA. CONST. art. I, s. 9.

<sup>33</sup> Nancy Lee Jones and Jody Feder, *supra* note 11, at 2.

<sup>34</sup> *Id.* at 3.

<sup>35</sup> See U.S. CONST. amend. IV; FLA. CONST. art. I, s. 12.

<sup>36</sup> 535 F.3d 1243 (10th Cir. N.M. 2008).

<sup>37</sup> Nancy Lee Jones and Jody Feder, *supra* note 11, at 3.

alleging that the use of such techniques violates a student's right to a free appropriate public education.<sup>38</sup>

This bill prohibits the use of seclusion and provides criteria that must be followed when using manual physical restraints and time-out. The intent of the bill is to “prevent, and achieve an ongoing reduction of, the use of manual physical restraint in the public schools.” Accordingly, the provisions of this bill may survive a constitutional challenge; however, “the due process inquiry, and the reasonableness standard upon which it relies, are subjective and highly dependent on the facts in a given case, thus making it difficult to predict the outcome of a due process challenge to the use of seclusion and restraint in public schools.”<sup>39</sup>

## V. Fiscal Impact Statement:

### A. Tax/Fee Issues:

None.

### B. Private Sector Impact:

The bill requires school personnel to be certified to use district-approved methods for the appropriate application of specific restraint techniques, and to take refresher certification training annually. The bill does not specify who is to pay for the training and certification. It appears that this cost will be borne by the school district; however, since this is not specifically spelled out in the bill, there may be a possibility that school personnel will be required to pay for the training and certification.

### C. Government Sector Impact:

According to the Department of Education (DOE or department),

School districts would be required to provide refresher certification training courses in manual physical restraints at least annually to those individuals that have completed the initial training in manual physical restraints. To prevent use of manual physical restraint by non-certified personnel, the school district should offer the initial training course and refresher certification training to all applicable personnel. The cost of training implementation is indeterminate at this time.

The use of CPR has been added to the list of training requirements. School districts will incur costs associated with certifications and training in CPR classes.

Additionally, school districts will be required to have a student medically evaluated by a doctor, nurse, or other qualified medical professional as

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<sup>38</sup> *Id.* at 5.

<sup>39</sup> *Id.* at 3.

soon as possible after the manual physical restraint<sup>40</sup> . . . The cost of the . . . medical examination is indeterminate at this time.<sup>41</sup>

The department also stated that technical assistance documents and resources will need to be amended to conform to the new statutory requirements.<sup>42</sup>

## VI. Technical Deficiencies:

On line 371 of the bill, it provides that a school must send a redacted copy of any incident report to the Advocacy Center for Persons with Disabilities, Inc., (Advocacy Center). It appears that the name of the Advocacy Center was changed a year ago and the entity is now known as Disability Rights Florida. The Legislature may wish to amend the bill to reflect the proper name of the Advocacy Center.

The bill specifically provides that mechanical restraints are a prohibited form of manual physical restraint techniques. Included in the definition of “mechanical restraints” are calming blankets. According to DOE, the intended purpose of a calming blanket is not to restrain a person and research indicates that some educators, therapists, and students have found this to be an effective calming method.<sup>43</sup>

The bill provides that any pressure or weight on the chest causing chest compression is considered a manual physical restraint and is prohibited. The medical definition of cardiopulmonary resuscitation (CPR) involves chest compressions to make the heart pump and mouth-to-mouth ventilation to breath for the victim.<sup>44</sup> Because the definition of CPR includes pressure on the chest causing chest compressions, there may be a situation where school personnel refuses to conduct CPR for fear of repercussions for applying a prohibited manual physical restraint technique.

The bill provides that in order for school personnel to place a student in time-out, there must be documentation that the time-out was preceded by the use of other positive behavioral supports that were not effective (lines 225-227). The bill does not specify how many other techniques school personnel must try before placing a student in time-out,<sup>45</sup> nor does the bill provide how or where this documentation should occur.

Additionally, the bill provides that school personnel may place a student in time-out as long as the time-out area and process are free of any action that is likely to embarrass or

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<sup>40</sup> The department stated that many schools do not have a school nurse on campus and the provisions of this bill may require the student to be transported to the office of a medical professional. If the parent or guardian of the student is unavailable to transport and accompany the student to the medical professional’s office, DOE assumes that the school or the school district will be required to do so. Fla. Dep’t of Education, *supra* note 16.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> MedicineNet.com, *Definition of cardiopulmonary resuscitation*, <http://www.medterms.com/script/main/art.asp?articlekey=2632> (last visited Feb. 6, 2012).

<sup>45</sup> It appears that in certain districts, the training provided to school personnel regarding restraints and seclusion includes a list of positive behavioral supports that school personnel should attempt prior to resorting to restraining or secluding the student. Conversation with Steve Moyer, parent (Feb. 7, 2012).

humiliate the student. This appears to be a subjective requirement; one in which the teacher could do everything properly but simply telling the student to go to time-out could embarrass the student.

Throughout the bill, the terms “school personnel” and “staff member” appear to be used interchangeably. Also, in the definition of “manual physical restraint” the term “teacher” is used. The Legislature may wish to amend the bill to use one term consistently in order to avoid confusion.

Finally, DOE suggested providing rulemaking authority to the department in order to address some of the issues presented in the bill.<sup>46</sup>

**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.

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This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

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<sup>46</sup> Fla. Dep’t of Education, *supra* note 16.



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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
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The Committee on Children, Families, and Elder Affairs (Detert) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause and insert:

Section 1. Section 1003.573, Florida Statutes, is amended to read:

1003.573 Use, prevention, and reduction of seclusion and restraint on students with disabilities in public schools ~~Use of restraint and seclusion on students with disabilities.~~

(1) DEFINITIONS.—As used in this section, the term:

(a) "Department" means the Department of Education.

(b) "Imminent risk of serious injury or death" means the



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13 impending risk of a significant injury, such as a laceration,  
14 bone fracture, substantial hematoma, or other injury to internal  
15 organs, or death.

16 (c) "Manual physical restraint" means the use of physical  
17 restraint techniques that involve physical force applied by  
18 school personnel to restrict the movement of all or part of a  
19 student's body.

20 (d) "Mechanical restraint" means the use of a physical  
21 device that restricts a student's movement or restricts the  
22 normal function of a student's body. The term includes the use  
23 of straps, belts, tie-downs, calming blankets, and chairs with  
24 straps; however, the term does not include the use of:

25 1. Medical protective equipment;

26 2. Physical equipment or orthopedic appliances, surgical  
27 dressings or bandages, or supportive body bands or other  
28 restraints necessary for ongoing medical treatment in the  
29 educational setting;

30 3. Devices used to support functional body position or  
31 proper balance, or to prevent a person from falling out of a bed  
32 or a wheelchair, except when such device is used for any purpose  
33 other than supporting a body position or proper balance, such as  
34 coercion, discipline, convenience, or retaliation, to prevent  
35 imminent risk of serious injury or death of the student or  
36 others, or for any other behavior-management reason; or

37 4. Equipment used for safety during transportation, such as  
38 seatbelts or wheelchair tie-downs.

39 (e) "Medical protective equipment" means health-related  
40 protective devices prescribed by a physician or dentist for use  
41 as student protection in response to an existing medical



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42 condition.

43 (f) "Seclusion" means the involuntary confinement of a  
44 student alone in a room or area from which the student is  
45 prevented from leaving. The term does not include the use of  
46 time-out.

47 (g) "Student" means a student with a disability.

48 (h) "Time-out" means a procedure in which access to varied  
49 sources of reinforcement is removed or reduced for a particular  
50 time period contingent on a response. The opportunity to receive  
51 reinforcement is contingently removed for a specified time.  
52 Either a student is contingently removed from the reinforcing  
53 environment or the reinforcing environment is contingently  
54 removed for some stipulated duration. A time-out setting may not  
55 be locked and the exit may not be blocked. Physical force or  
56 threats may not be used to place a student in time-out.

57 (2) LEGISLATIVE FINDINGS AND INTENT.—

58 (a) The Legislature finds that public schools have a  
59 responsibility to ensure that each student is treated with  
60 respect and dignity in a trauma-informed environment that  
61 provides for the physical safety and security of students and  
62 others.

63 (b) The Legislature finds that students, educators, and  
64 families are concerned about the use of seclusion and restraint,  
65 particularly when used on students in special education  
66 programs. Seclusion and restraint refer to safety procedures in  
67 which a student is isolated from others or physically held in  
68 response to serious problem behavior that places the student or  
69 others at risk of injury or harm. There is concern that these  
70 procedures are prone to misapplication and abuse and place a



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71 student at an equal or greater risk than the risk of the  
72 student's problem behavior. Particular concerns include:

73 1. Seclusion or restraint is inappropriately selected and  
74 implemented as treatment or behavioral intervention rather than  
75 as a safety procedure;

76 2. Seclusion or restraint is inappropriately used for  
77 behaviors, such as noncompliance, threats, or disruption, which  
78 do not place the student or others at risk of injury or harm;

79 3. Students, peers, or staff may be injured or physically  
80 harmed during attempts to conduct seclusion or restraint;

81 4. Risk of injury or harm is increased because seclusion or  
82 restraint is implemented by staff who are not adequately  
83 trained;

84 5. The use of seclusion or restraint may inadvertently  
85 result in reinforcing or strengthening the problem behavior; and

86 6. Seclusion or restraint is implemented independent of  
87 comprehensive, function-based behavioral intervention plans.

88  
89 Moreover, there are concerns about the inadequate  
90 documentation of seclusion or restraint procedures, the failure  
91 to notify parents when seclusion or restraint is applied, and  
92 the failure to use data to analyze and address the cause of the  
93 precipitating behavior.

94 (c) The Legislature finds that the majority of problem  
95 behaviors that are currently used to justify seclusion or  
96 restraint could be prevented with early identification and  
97 intensive early intervention. The need for seclusion or  
98 restraint is, in part, a result of insufficient investment in  
99 prevention efforts. The Legislature further finds that the use



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100 of seclusion or restraint may produce trauma in students. For  
101 such students, who are already experiencing trauma, the use may  
102 cause retraumatization. Left unaddressed, the lasting effects of  
103 childhood trauma place a heavy burden on individuals, families,  
104 and communities. Research has shown that trauma significantly  
105 increases the risk of mental health problems, difficulties with  
106 social relationships and behavior, physical illness, and poor  
107 school performance.

108 (d) The Legislature intends that students be free from the  
109 abusive and unnecessary use of seclusion or restraint in the  
110 public schools. The Legislature further intends to prevent, and  
111 achieve an ongoing reduction of, the use of manual physical  
112 restraint in the public schools and, specifically, to prohibit  
113 the use of seclusion, prone and supine restraint, and mechanical  
114 restraint on students. The Legislature also intends that manual  
115 physical restraint be used only when an imminent risk of serious  
116 injury or death exists; that manual physical restraint not be  
117 employed as punishment, for the convenience of staff, or as a  
118 substitute for a positive behavior-support plan; and that, when  
119 used, persons applying manual physical restraint impose the  
120 least possible restrictions and discontinue the restraint as  
121 soon as the threat of imminent risk of serious injury or death  
122 ceases.

123 (3) MANUAL PHYSICAL RESTRAINT.—Manual physical restraint  
124 shall be used only in an emergency when there is an imminent  
125 risk of serious injury or death to the student or others.

126 (a) Manual physical restraint shall be used only for the  
127 period needed in order to eliminate the imminent risk of serious  
128 injury or death to the student or others.



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129       (b) The degree of force applied during manual physical  
130 restraint must be only that degree of force necessary to protect  
131 the student or others from bodily injury.

132       (c) Manual physical restraint shall be used only by school  
133 personnel who are qualified and certified to use the district-  
134 approved methods for the appropriate application of specific  
135 restraint techniques. School personnel who have received  
136 training that is not associated with their employment with the  
137 school district, such as a former law enforcement officer who is  
138 now a teacher, shall be certified in the specific district-  
139 approved techniques and may not apply techniques or procedures  
140 acquired elsewhere.

141       (d) School personnel may not manually physically restrain a  
142 student except when an imminent risk of serious injury or death  
143 to the student or others exists.

144       (e) School personnel may not use any of the following  
145 manual physical restraint techniques on a student:

- 146       1. Prone and supine restraint.
- 147       2. Pain inducement to obtain compliance.
- 148       3. Bone locks.
- 149       4. Hyperextension of joints.
- 150       5. Peer restraint.
- 151       6. Mechanical restraint.
- 152       7. Pressure or weight on the chest, lungs, sternum,  
153 diaphragm, back, or abdomen, causing chest compression. This  
154 provision does not prohibit the use of cardiopulmonary  
155 resuscitation.
- 156       8. Straddling or sitting on any part of the body or any  
157 maneuver that places pressure, weight, or leverage on the neck



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158 or throat, on any artery, or on the back of the student's head  
159 or neck or that otherwise obstructs or restricts the circulation  
160 of blood or obstructs an airway.

161 9. Any type of choking, including hand chokes, and any type  
162 of neck or head hold.

163 10. Any technique that involves pushing anything on or into  
164 the student's mouth, nose, eyes, or any part of the face or that  
165 involves covering the face or body with anything, including soft  
166 objects such as pillows or washcloths.

167 11. Any maneuver that involves punching, hitting, poking,  
168 pinching, or shoving.

169 12. Any type of mat or blanket restraint.

170 13. Water or lemon sprays.

171 (f) The school shall ensure that a student is medically  
172 evaluated by a physician, nurse, or other qualified medical  
173 professional as soon as possible after the student has been  
174 manually physically restrained by school personnel.

175 (4) SECLUSION; TIME-OUT.—

176 (a) School personnel may not place a student in seclusion.

177 (b) School personnel may place a student in time-out if the  
178 following conditions are met:

179 1. The time-out is part of a positive behavioral  
180 intervention plan developed for that student from a functional  
181 behavioral assessment and referenced in the student's individual  
182 education plan.

183 2. There is documentation that the time-out was preceded by  
184 the use of other positive behavioral supports that were not  
185 effective.

186 3. The time-out takes place in a classroom or in another



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187 environment where class educational activities are taking place.

188 4. The student is not physically prevented from leaving the  
189 time-out area.

190 5. The student is observed on a constant basis by an adult  
191 for the duration of the time-out.

192 (c) Time-out may not be used for a period that exceeds 1  
193 minute for each year of a student's age and time-out must end  
194 immediately when the student is calm enough to return to his or  
195 her seat.

196 (d) Time-out may not be used as a punishment or negative  
197 consequence of a student's behavior.

198 (5) TRAINING AND CERTIFICATION.-

199 (a) Each school district shall report its training and  
200 certification procedures to the department by publishing the  
201 procedures in the district's special policies and procedures  
202 manual.

203 (b) Training for initial certification in the use of manual  
204 physical restraint must include:

205 1. Procedures for deescalating problem behaviors before the  
206 problems increase to a level or intensity necessitating physical  
207 intervention.

208 2. Information regarding the risks associated with manual  
209 physical restraint and procedures for assessing individual  
210 situations and students in order to determine if the use of  
211 manual physical restraint is appropriate and sufficiently safe.

212 3. The actual use of specific techniques that range from  
213 the least to most restrictive, with ample opportunity for  
214 trainees to demonstrate proficiency in the use of such  
215 techniques.



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216           4. Techniques for implementing manual physical restraint  
217 with multiple school personnel working as a team.

218           5. Techniques for assisting a student to reenter the  
219 instructional environment and again engage in learning.

220           6. Instruction in the district's documentation and  
221 reporting requirements.

222           7. Procedures to identify and deal with possible medical  
223 emergencies arising during the use of manual physical restraint.

224           8. Cardiopulmonary resuscitation.

225           (c) School districts shall provide refresher certification  
226 training courses in manual physical restraint techniques at  
227 least annually to all school personnel who have successfully  
228 completed the initial certification program. The district must  
229 identify those persons to be certified and maintain a record  
230 that includes the name and position of the person certified, the  
231 date of the most recent certification, an indication of whether  
232 it was an initial certification or a refresher certification,  
233 and whether the individual successfully completed the  
234 certification and achieved proficiency.

235           (d) School district policies regarding the use of manual  
236 physical restraint must address whether it is appropriate for an  
237 employee working in specific settings, such as a school bus  
238 driver, school bus aide, job coach, employment specialist, or  
239 cafeteria worker, to be certified in manual physical restraint  
240 techniques. In the case of school resource officers or others  
241 who may be employed by other agencies when working in a school,  
242 administrators shall review each agency's specific policies to  
243 be aware of techniques that may be used.

244           (6) STUDENT-CENTERED FOLLOWUP.—If a student is manually



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245 physically restrained more than twice during a school year, the  
246 school shall review the student's functional behavioral  
247 assessment and positive behavioral intervention plan.

248 (7)(1) DOCUMENTATION AND REPORTING.—

249 (a) At the beginning of each school year, a school district  
250 shall provide a copy of its policies on all emergency  
251 procedures, including its policies on the use of manual physical  
252 restraint, to each student's parent or guardian. The student's  
253 parent or guardian must sign a form indicating that he or she  
254 has read and received the district's policies, which the  
255 student's school shall retain on file.

256 (b)(a) A school shall prepare an incident report within 24  
257 hours after a student is released from a restraint ~~or seclusion~~.  
258 If the student's release occurs on a day before the school  
259 closes for the weekend, a holiday, or another reason, the  
260 incident report must be completed by the end of the school day  
261 on the day the school reopens.

262 (c)(b) The following must be included in the incident  
263 report:

- 264 1. The name of the student restrained ~~or secluded~~.
- 265 2. The age, grade, ethnicity, and disability of the student  
266 restrained ~~or secluded~~.
- 267 3. The date and time of the event and the duration of the  
268 restraint ~~or seclusion~~.
- 269 4. The location at which the restraint ~~or seclusion~~  
270 occurred.
- 271 5. A description of the type of restraint used in terms  
272 established by the Department of Education.
- 273 6. The name of the person using or assisting in the



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274 restraint ~~or seclusion~~ of the student.

275 7. The name of any nonstudent who was present to witness  
276 the restraint ~~or seclusion~~.

277 8. A description of the incident, including:

278 a. The context in which the restraint ~~or seclusion~~  
279 occurred.

280 b. The student's behavior leading up to and precipitating  
281 the decision to use manual ~~or~~ physical restraint ~~or seclusion~~,  
282 including an indication as to why there was an imminent risk of  
283 serious injury or death to the student or others.

284 c. The specific positive behavioral strategies used to  
285 prevent and deescalate the behavior.

286 d. What occurred with the student immediately after the  
287 termination of the restraint ~~or seclusion~~.

288 e. Any injuries, visible marks, or possible medical  
289 emergencies that may have occurred during the restraint ~~or~~  
290 ~~seclusion~~, documented according to district policies.

291 f. The results of the medical evaluation and a copy of any  
292 report by the medical professionals conducting the evaluation,  
293 if available. If the medical report is not available within 24  
294 hours, the district must submit the medical report separately as  
295 soon as it is available.

296 g.f. Evidence of steps taken to notify the student's parent  
297 or guardian.

298 (d)-(e) A school shall notify the parent or guardian of a  
299 student each time manual ~~or~~ physical restraint ~~or seclusion~~ is  
300 used. Such notification must be in writing and provided before  
301 the end of the school day on which the restraint ~~or seclusion~~  
302 occurs. Reasonable efforts must also be taken to notify the



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303 parent or guardian by telephone or computer e-mail, or both, and  
304 these efforts must be documented. The school shall obtain, and  
305 keep in its records, the parent's or guardian's signed  
306 acknowledgment that he or she was notified of his or her child's  
307 restraint ~~or seclusion~~.

308 (e) ~~(d)~~ A school shall also provide the parent or guardian  
309 with the completed incident report in writing by mail within 3  
310 school days after a student was ~~manually or physically~~  
311 restrained ~~or secluded~~. The school shall obtain, and keep in its  
312 records, the parent's or guardian's signed acknowledgment that  
313 he or she received a copy of the incident report.

314 (8) ~~(2)~~ MONITORING.—

315 (a) ~~Monitoring of~~ The use of manual ~~or~~ physical restraint  
316 ~~or seclusion~~ on students shall be monitored ~~occur~~ at the  
317 classroom, building, district, and state levels.

318 (b) Any documentation prepared by a school pursuant to ~~as~~  
319 ~~required in~~ subsection (7) ~~(1)~~ shall be provided to the school  
320 principal, the district director of Exceptional Student  
321 Education, and the bureau chief of the Bureau of Exceptional  
322 Education and Student Services ~~electronically~~ each week ~~month~~  
323 that the school is in session.

324 (c) Four times during the school year, the school shall  
325 send a redacted copy of any incident report and other  
326 documentation prepared pursuant to subsection (7) to Disability  
327 Rights Florida.

328 (d) ~~(e)~~ The department shall maintain aggregate data of  
329 incidents of manual ~~or~~ physical restraint ~~and seclusion~~ and  
330 disaggregate the data for analysis by county, school, student  
331 exceptionality, and other variables, including the type and



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332 method of restraint ~~or seclusion~~ used. This information shall be  
333 updated monthly and made available to the public through the  
334 department's website no later than January 31, 2013.

335 (e)~~(d)~~ The department shall establish standards for  
336 documenting, reporting, and monitoring the use of manual ~~or~~  
337 physical restraint ~~or mechanical restraint, and occurrences of~~  
338 ~~seclusion~~. These standards shall be provided to school districts  
339 ~~by October 1, 2011.~~

340 (9)~~(3)~~ SCHOOL DISTRICT POLICIES AND PROCEDURES.—

341 (a) Each school district shall develop policies and  
342 procedures that are consistent with this section and that govern  
343 the following:

344 1. Allowable use of manual physical restraint on students.

345 2. Personnel authorized to use manual physical restraint.

346 3. Training procedures.

347 4.1. Incident-reporting procedures.

348 5.2. Data collection and monitoring, including when, where,  
349 and why students are restrained ~~or secluded~~; the frequency of  
350 occurrences of such restraint ~~or seclusion~~; and the ~~prone or~~  
351 ~~mechanical~~ restraint that is most used.

352 6.3. Monitoring and reporting of data collected.

353 7.4. Training programs relating to manual ~~or~~ physical  
354 restraint ~~and seclusion~~.

355 8.5. The district's plan for selecting personnel to be  
356 trained.

357 9.6. The district's plan for reducing the use of restraint  
358 ~~and seclusion~~ particularly in settings in which it occurs  
359 frequently or with students who are restrained repeatedly, ~~and~~  
360 ~~for reducing the use of prone restraint and mechanical~~



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361 ~~restraint~~. The plan must include a goal for reducing the use of  
362 restraint ~~and seclusion~~ and must include activities, skills, and  
363 resources needed to achieve that goal. Activities may include,  
364 but are not limited to:

- 365 a. Additional training in positive behavioral support and  
366 crisis management;
- 367 b. Parental involvement;
- 368 c. Data review;
- 369 d. Updates of students' functional behavioral analysis and  
370 positive behavior intervention plans;
- 371 e. Additional student evaluations;
- 372 f. Debriefing with staff;
- 373 g. Use of schoolwide positive behavior support; and
- 374 h. Changes to the school environment.

375 10. Analysis of data to determine trends.

376 11. Ongoing reduction of the use of manual physical  
377 restraint.

378 (b) Any revisions that a school district makes to its ~~to~~  
379 ~~the district's~~ policies and procedures, which are ~~must be~~  
380 prepared as part of the school district's ~~its~~ special policies  
381 and procedures, must be filed with the bureau chief of the  
382 Bureau of Exceptional Education and Student Services ~~no later~~  
383 ~~than January 31, 2012.~~

384 ~~(4) PROHIBITED RESTRAINT. School personnel may not use a~~  
385 ~~mechanical restraint or a manual or physical restraint that~~  
386 ~~restricts a student's breathing.~~

387 ~~(5) SECLUSION. School personnel may not close, lock, or~~  
388 ~~physically block a student in a room that is unlit and does not~~  
389 ~~meet the rules of the State Fire Marshal for seclusion time-out~~



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390 ~~rooms.~~

391 Section 2. This act shall take effect July 1, 2012.

392

393

394 ===== T I T L E A M E N D M E N T =====

395 And the title is amended as follows:

396 Delete everything before the enacting clause

397 and insert:

398 A bill to be entitled

399 An act relating to ; providing an effective date.

400 An act relating to the use, prevention, and reduction

401 of seclusion and restraint on students with

402 disabilities in public schools; amending s. 1003.573,

403 F.S.; providing definitions; providing legislative

404 findings and intent; requiring that manual physical

405 restraint be used only in an emergency when there is

406 an imminent risk of serious injury or death to the

407 student or others; providing restrictions on the use

408 of manual physical restraint; prohibiting the use of

409 manual physical restraint by school personnel who are

410 not certified to use district-approved methods for

411 applying restraint techniques; prohibiting specified

412 techniques; requiring that each school medically

413 evaluate a student after the student is manually

414 physically restrained; prohibiting school personnel

415 from placing a student in seclusion; providing

416 requirements for the use of time-out; requiring that a

417 school district report its training and certification

418 procedures to the Department of Education; requiring



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419 that school personnel be trained and certified in the  
420 use of manual physical restraint; requiring that a  
421 school review a student's functional behavior  
422 assessment and positive behavioral intervention plan  
423 under certain circumstances; requiring that parents be  
424 notified of a school district's policies regarding the  
425 use of manual physical restraint; requiring that each  
426 school send a redacted copy of any incident report or  
427 other documentation to Disability Rights Florida;  
428 requiring that the department make available on its  
429 website data of incidents of manual physical restraint  
430 by a specified date; requiring that each school  
431 district develop policies and procedures addressing  
432 the allowable use of manual physical restraint,  
433 personnel authorized to use such restraint, training  
434 procedures, analysis of data trends, and the reduction  
435 of the use of manual physical restraint; requiring  
436 that any revisions to a school district's policies and  
437 procedures be filed with the bureau chief of the  
438 Bureau of Exceptional Education and Student Services  
439 by a specified date; providing an effective date.



158648

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/16/2012	.	
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The Committee on Children, Families, and Elder Affairs (Storms) recommended the following:

1           **Senate Amendment to Amendment (695260) (with title**  
2 **amendment)**

3  
4           Delete lines 123 - 125  
5 and insert:

6           (3) MANUAL PHYSICAL RESTRAINT.—Manual physical restraint  
7 shall be used only to protect the safety of students or  
8 property, and may not be used for student discipline or for the  
9 convenience of school district staff.

10  
11 ===== T I T L E   A M E N D M E N T =====

12 And the title is amended as follows:



158648

13           Delete lines 404 - 407  
14 and insert:  
15           findings and intent; requiring that manual physical  
16           restraint be used only to protect the safety of  
17           students or property; providing restrictions on the  
18           use



516078

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/16/2012	.	
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The Committee on Children, Families, and Elder Affairs (Storms)  
recommended the following:

**Senate Amendment to Amendment (695260)**

Delete lines 12 - 15.

1  
2  
3



838606

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/16/2012	.	
	.	
	.	
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The Committee on Children, Families, and Elder Affairs (Storms)  
recommended the following:

**Senate Amendment to Amendment (695260)**

Delete lines 141 - 143.

1  
2  
3

By Senator Flores

38-00163-12

2012144\_\_

1 A bill to be entitled  
 2 An act relating to the use, prevention, and reduction  
 3 of seclusion and restraint on students with  
 4 disabilities in public schools; amending s. 1003.573,  
 5 F.S.; providing definitions; providing legislative  
 6 findings and intent; requiring that manual physical  
 7 restraint be used only in an emergency when there is  
 8 an imminent risk of serious injury or death to the  
 9 student or others; providing restrictions on the use  
 10 of manual physical restraint; prohibiting the use of  
 11 manual physical restraint by school personnel who are  
 12 not certified to use district-approved methods for  
 13 applying restraint techniques; prohibiting specified  
 14 techniques; requiring that each school medically  
 15 evaluate a student after the student is manually  
 16 physically restrained; prohibiting school personnel  
 17 from placing a student in seclusion; providing  
 18 requirements for the use of time-out; requiring that a  
 19 school district report its training and certification  
 20 procedures to the Department of Education; requiring  
 21 that school personnel be trained and certified in the  
 22 use of manual physical restraint; requiring that a  
 23 school review a student's functional behavior  
 24 assessment and positive behavioral intervention plan  
 25 under certain circumstances; requiring that parents be  
 26 notified of a school district's policies regarding the  
 27 use of manual physical restraint; requiring that each  
 28 school send a redacted copy of any incident report or  
 29 other documentation to the Advocacy Center for Persons

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

38-00163-12

2012144\_\_

30 with Disabilities, Inc.; requiring that the department  
 31 make available on its website data of incidents of  
 32 manual physical restraint by a specified date;  
 33 requiring that each school district develop policies  
 34 and procedures addressing the allowable use of manual  
 35 physical restraint, personnel authorized to use such  
 36 restraint, training procedures, analysis of data  
 37 trends, and the reduction of the use of manual  
 38 physical restraint; requiring that any revisions to a  
 39 school district's policies and procedures be filed  
 40 with the bureau chief of the Bureau of Exceptional  
 41 Education and Student Services by a specified date;  
 42 providing an effective date.

43  
 44 Be It Enacted by the Legislature of the State of Florida:

45  
 46 Section 1. Section 1003.573, Florida Statutes, is amended  
 47 to read:

48 1003.573 Use, prevention, and reduction of seclusion and  
 49 restraint on students with disabilities in public schools ~~Use of~~  
 50 ~~restraint and seclusion on students with disabilities.~~

51 (1) DEFINITIONS.—As used in this section, the term:

52 (a) "Department" means the Department of Education.

53 (b) "Imminent risk of serious injury or death" means the  
 54 impending risk of a significant injury, such as a laceration,  
 55 bone fracture, substantial hematoma, or other injury to internal  
 56 organs, or death.

57 (c) "Manual physical restraint" means the use of physical  
 58 restraint techniques that involve physical force applied by a

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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59 teacher or other staff member to restrict the movement of all or  
60 part of a student's body.

61 (d) "Mechanical restraint" means the use of a physical  
62 device that restricts a student's movement or restricts the  
63 normal function of a student's body. The term includes the use  
64 of straps, belts, tie-downs, calming blankets, and chairs with  
65 straps; however, the term does not include the use of:

66 1. Medical protective equipment;

67 2. Physical equipment or orthopedic appliances, surgical  
68 dressings or bandages, or supportive body bands or other  
69 restraints necessary for ongoing medical treatment in the  
70 educational setting;

71 3. Devices used to support functional body position or  
72 proper balance, or to prevent a person from falling out of a bed  
73 or a wheelchair, except when such device is used for any purpose  
74 other than supporting a body position or proper balance, such as  
75 coercion, discipline, convenience, or retaliation, to prevent  
76 imminent risk of serious injury or death of the student or  
77 others, or for any other behavior-management reason; or

78 4. Equipment used for safety during transportation, such as  
79 seatbelts or wheelchair tie-downs.

80 (e) "Medical protective equipment" means health-related  
81 protective devices prescribed by a physician or dentist for use  
82 as student protection in response to an existing medical  
83 condition.

84 (f) "Seclusion" means removing a student from an  
85 educational environment, involuntarily confining the student in  
86 a room or area, and preventing the student from leaving the room  
87 or area if achieved by locking the door or otherwise physically

38-00163-12 2012144

88 blocking the student's way, threatening physical force or other  
89 consequences, or using physical force. The term does not include  
90 the use of time-out.

91 (g) "Student" means a student with a disability.

92 (h) "Time-out" means a procedure in which access to varied  
93 sources of reinforcement is removed or reduced for a particular  
94 time period contingent on a response. The opportunity to receive  
95 reinforcement is contingently removed for a specified time.  
96 Either a student is contingently removed from the reinforcing  
97 environment or the reinforcing environment is contingently  
98 removed for some stipulated duration. A time-out setting may not  
99 be locked and the exit may not be blocked. Physical force or  
100 threats may not be used to place a student in time-out.

101 (2) LEGISLATIVE FINDINGS AND INTENT.—

102 (a) The Legislature finds that public schools have a  
103 responsibility to ensure that each student is treated with  
104 respect and dignity in a trauma-informed environment that  
105 provides for the physical safety and security of students and  
106 others.

107 (b) The Legislature finds that students, educators, and  
108 families are concerned about the use of seclusion and restraint,  
109 particularly when used on students in special education  
110 programs. Seclusion and restraint refer to safety procedures in  
111 which a student is isolated from others or physically held in  
112 response to serious problem behavior that places the student or  
113 others at risk of injury or harm. There is concern that these  
114 procedures are prone to misapplication and abuse and place a  
115 student at an equal or greater risk than the risk of the  
116 student's problem behavior. Particular concerns include:

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117 1. Seclusion or restraint is inappropriately selected and  
 118 implemented as treatment or behavioral intervention rather than  
 119 as a safety procedure;

120 2. Seclusion or restraint is inappropriately used for  
 121 behaviors, such as noncompliance, threats, or disruption, which  
 122 do not place the student or others at risk of injury or harm;

123 3. Students, peers, or staff may be injured or physically  
 124 harmed during attempts to conduct seclusion or restraint;

125 4. Risk of injury or harm is increased because seclusion or  
 126 restraint is implemented by staff who are not adequately  
 127 trained;

128 5. The use of seclusion or restraint may inadvertently  
 129 result in reinforcing or strengthening the problem behavior; and

130 6. Seclusion or restraint is implemented independent of  
 131 comprehensive, function-based behavioral intervention plans.

132  
 133 Moreover, there are concerns about the inadequate documentation  
 134 of seclusion or restraint procedures, the failure to notify  
 135 parents when seclusion or restraint is applied, and the failure  
 136 to use data to analyze and address the cause of the  
 137 precipitating behavior.

138 (c) The Legislature finds that the majority of problem  
 139 behaviors that are currently used to justify seclusion or  
 140 restraint could be prevented with early identification and  
 141 intensive early intervention. The need for seclusion or  
 142 restraint is, in part, a result of insufficient investment in  
 143 prevention efforts. The Legislature further finds that the use  
 144 of seclusion or restraint may produce trauma in students. For  
 145 such students, who are already experiencing trauma, the use may

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146 cause retraumatization. Left unaddressed, the lasting effects of  
 147 childhood trauma place a heavy burden on individuals, families,  
 148 and communities. Research has shown that trauma significantly  
 149 increases the risk of mental health problems, difficulties with  
 150 social relationships and behavior, physical illness, and poor  
 151 school performance.

152 (d) The Legislature intends that students be free from the  
 153 abusive and unnecessary use of seclusion or restraint in the  
 154 public schools. The Legislature further intends to prevent, and  
 155 achieve an ongoing reduction of, the use of manual physical  
 156 restraint in the public schools and, specifically, to prohibit  
 157 the use of seclusion, prone and supine restraint, and mechanical  
 158 restraint on students. The Legislature also intends that manual  
 159 physical restraint be used only when an imminent risk of serious  
 160 injury or death exists; that manual physical restraint not be  
 161 employed as punishment, for the convenience of staff, or as a  
 162 substitute for a positive behavior-support plan; and that, when  
 163 used, persons applying manual physical restraint impose the  
 164 least possible restrictions and discontinue the restraint as  
 165 soon as the threat of imminent risk of serious injury or death  
 166 ceases.

167 (3) MANUAL PHYSICAL RESTRAINT.—Manual physical restraint  
 168 shall be used only in an emergency when there is an imminent  
 169 risk of serious injury or death to the student or others.

170 (a) Manual physical restraint shall be used only for the  
 171 period needed in order to eliminate the imminent risk of serious  
 172 injury or death to the student or others.

173 (b) The degree of force applied during manual physical  
 174 restraint must be only that degree of force necessary to protect

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175 the student or others from bodily injury.

176 (c) Manual physical restraint shall be used only by school  
 177 personnel who are qualified and certified to use the district-  
 178 approved methods for the appropriate application of specific  
 179 restraint techniques. School personnel who have received  
 180 training that is not associated with their employment with the  
 181 school district, such as a former law enforcement officer who is  
 182 now a teacher, shall be certified in the specific district-  
 183 approved techniques and may not apply techniques or procedures  
 184 acquired elsewhere.

185 (d) School personnel may not manually physically restrain a  
 186 student except when an imminent risk of serious injury or death  
 187 to the student or others exists.

188 (e) School personnel may not use any of the following  
 189 manual physical restraint techniques on a student:

- 190 1. Prone and supine restraint.
- 191 2. Pain inducement to obtain compliance.
- 192 3. Bone locks.
- 193 4. Hyperextension of joints.
- 194 5. Peer restraint.
- 195 6. Mechanical restraint.
- 196 7. Pressure or weight on the chest, lungs, sternum,  
 197 diaphragm, back, or abdomen, causing chest compression.
- 198 8. Straddling or sitting on any part of the body or any  
 199 maneuver that places pressure, weight, or leverage on the neck  
 200 or throat, on any artery, or on the back of the student's head  
 201 or neck or that otherwise obstructs or restricts the circulation  
 202 of blood or obstructs an airway.
- 203 9. Any type of choking, including hand chokes, and any type

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204 of neck or head hold.

205 10. Any technique that involves pushing anything on or into  
 206 the student's mouth, nose, eyes, or any part of the face or that  
 207 involves covering the face or body with anything, including soft  
 208 objects such as pillows or washcloths.

209 11. Any maneuver that involves punching, hitting, poking,  
 210 pinching, or shoving.

211 12. Any type of mat or blanket restraint.

212 13. Water or lemon sprays.

213 (f) The school shall ensure that a student is medically  
 214 evaluated by a physician, nurse, or other qualified medical  
 215 professional as soon as possible after the student has been  
 216 manually physically restrained by school personnel.

217 (4) SECLUSION; TIME-OUT.-

218 (a) School personnel may not place a student in seclusion.

219 (b) School personnel may place a student in time-out if the  
 220 following conditions are met:

- 221 1. The time-out is part of a positive behavioral  
 222 intervention plan developed for that student from a functional  
 223 behavioral assessment and referenced in the student's individual  
 224 education plan.
- 225 2. There is documentation that the time-out was preceded by  
 226 the use of other positive behavioral supports that were not  
 227 effective.
- 228 3. The time-out takes place in a classroom or in another  
 229 environment where class educational activities are taking place.
- 230 4. The student is not physically prevented from leaving the  
 231 time-out area.
- 232 5. The student is observed on a constant basis by an adult

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233 for the duration of the time-out.

234 6. The time-out area and process are free of any action  
 235 that is likely to embarrass or humiliate the student.

236 (c) Time-out may not be used for a period that exceeds 1  
 237 minute for each year of a student's age and time-out must end  
 238 immediately when the student is calm enough to return to his or  
 239 her seat.

240 (d) Time-out may not be used as a punishment or negative  
 241 consequence of a student's behavior.

242 (5) TRAINING AND CERTIFICATION.-

243 (a) Each school district shall report its training and  
 244 certification procedures to the department by publishing the  
 245 procedures in the district's special policies and procedures  
 246 manual.

247 (b) Training for initial certification in the use of manual  
 248 physical restraint must include:

249 1. Procedures for deescalating problem behaviors before the  
 250 problems increase to a level or intensity necessitating physical  
 251 intervention.

252 2. Information regarding the risks associated with manual  
 253 physical restraint and procedures for assessing individual  
 254 situations and students in order to determine if the use of  
 255 manual physical restraint is appropriate and sufficiently safe.

256 3. The actual use of specific techniques that range from  
 257 the least to most restrictive, with ample opportunity for  
 258 trainees to demonstrate proficiency in the use of such  
 259 techniques.

260 4. Techniques for implementing manual physical restraint  
 261 with multiple staff members working as a team.

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262 5. Techniques for assisting a student to reenter the  
 263 instructional environment and again engage in learning.

264 6. Instruction in the district's documentation and  
 265 reporting requirements.

266 7. Procedures to identify and deal with possible medical  
 267 emergencies arising during the use of manual physical restraint.

268 8. Cardiopulmonary resuscitation.

269 (c) School districts shall provide refresher certification  
 270 training courses in manual physical restraint techniques at  
 271 least annually to all staff members who have successfully  
 272 completed the initial certification program. The district must  
 273 identify those persons to be certified and maintain a record  
 274 that includes the name and position of the person certified, the  
 275 date of the most recent certification, an indication of whether  
 276 it was an initial certification or a refresher certification,  
 277 and whether the individual successfully completed the  
 278 certification and achieved proficiency.

279 (d) School district policies regarding the use of manual  
 280 physical restraint must address whether it is appropriate for an  
 281 employee working in specific settings, such as a school bus  
 282 driver, school bus aide, job coach, employment specialist, or  
 283 cafeteria worker, to be certified in manual physical restraint  
 284 techniques. In the case of school resource officers or others  
 285 who may be employed by other agencies when working in a school,  
 286 administrators shall review each agency's specific policies to  
 287 be aware of techniques that may be used.

288 (6) STUDENT-CENTERED FOLLOWUP.-If a student is manually  
 289 physically restrained more than twice during a school year, the  
 290 school shall review the student's functional behavioral

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291 assessment and positive behavioral intervention plan.

292 (7)(~~1~~) DOCUMENTATION AND REPORTING.—

293 (a) At the beginning of each school year, a school district  
 294 shall provide a copy of its policies on all emergency  
 295 procedures, including its policies on the use of manual physical  
 296 restraint, to each student's parent or guardian. The student's  
 297 parent or guardian must sign a form indicating that he or she  
 298 has read and received the district's policies, which the  
 299 student's school shall retain on file.

300 (b)(~~a~~) A school shall prepare an incident report within 24  
 301 hours after a student is released from a restraint ~~or seclusion~~.  
 302 If the student's release occurs on a day before the school  
 303 closes for the weekend, a holiday, or another reason, the  
 304 incident report must be completed by the end of the school day  
 305 on the day the school reopens.

306 (c)(~~b~~) The following must be included in the incident  
 307 report:

- 308 1. The name of the student restrained ~~or secluded~~.
- 309 2. The age, grade, ethnicity, and disability of the student  
 310 restrained or secluded.
- 311 3. The date and time of the event and the duration of the  
 312 restraint or seclusion.
- 313 4. The location at which the restraint ~~or seclusion~~  
 314 occurred.
- 315 5. A description of the type of restraint used in terms  
 316 established by the Department of Education.
- 317 6. The name of the person using or assisting in the  
 318 restraint ~~or seclusion~~ of the student.
- 319 7. The name of any nonstudent who was present to witness

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320 the restraint ~~or seclusion~~.

321 8. A description of the incident, including:

322 a. The context in which the restraint ~~or seclusion~~  
 323 occurred.

324 b. The student's behavior leading up to and precipitating  
 325 the decision to use manual or physical restraint ~~or seclusion~~,  
 326 including an indication as to why there was an imminent risk of  
 327 serious injury or death to the student or others.

328 c. The specific positive behavioral strategies used to  
 329 prevent and deescalate the behavior.

330 d. What occurred with the student immediately after the  
 331 termination of the restraint ~~or seclusion~~.

332 e. Any injuries, visible marks, or possible medical  
 333 emergencies that may have occurred during the restraint ~~or~~  
 334 ~~seclusion~~, documented according to district policies.

335 f. The results of the medical evaluation and a copy of any  
 336 report by the medical professionals conducting the evaluation,  
 337 if available. If the medical report is not available within 24  
 338 hours, the district must submit the medical report separately as  
 339 soon as it is available.

340 g.~~f~~ Evidence of steps taken to notify the student's parent  
 341 or guardian.

342 (d)(~~e~~) A school shall notify the parent or guardian of a  
 343 student each time manual or physical restraint ~~or seclusion~~ is  
 344 used. Such notification must be in writing and provided before  
 345 the end of the school day on which the restraint ~~or seclusion~~  
 346 occurs. Reasonable efforts must also be taken to notify the  
 347 parent or guardian by telephone or computer e-mail, or both, and  
 348 these efforts must be documented. The school shall obtain, and

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349 keep in its records, the parent's or guardian's signed  
 350 acknowledgment that he or she was notified of his or her child's  
 351 restraint ~~or seclusion~~.

352 ~~(e)(4)~~ A school shall also provide the parent or guardian  
 353 with the completed incident report in writing by mail within 3  
 354 school days after a student was manually or physically  
 355 restrained ~~or secluded~~. The school shall obtain, and keep in its  
 356 records, the parent's or guardian's signed acknowledgment that  
 357 he or she received a copy of the incident report.

358 ~~(8)(2)~~ MONITORING.—

359 (a) ~~Monitoring of~~ The use of manual or physical restraint  
 360 ~~or seclusion~~ on students shall be monitored ~~occur~~ at the  
 361 classroom, building, district, and state levels.

362 (b) Any documentation prepared by a school pursuant to ~~as~~  
 363 ~~required in~~ subsection (7) ~~(1)~~ shall be provided to the school  
 364 principal, the district director of Exceptional Student  
 365 Education, and the bureau chief of the Bureau of Exceptional  
 366 Education and Student Services ~~electronically~~ each week ~~month~~  
 367 that the school is in session.

368 (c) Each week that a school is in session, the school shall  
 369 send a redacted copy of any incident report and other  
 370 documentation prepared pursuant to subsection (7) to the  
 371 Advocacy Center for Persons with Disabilities, Inc.

372 ~~(d)(e)~~ The department shall maintain aggregate data of  
 373 incidents of manual or physical restraint ~~and seclusion~~ and  
 374 disaggregate the data for analysis by county, school, student  
 375 exceptionality, and other variables, including the type and  
 376 method of restraint or seclusion used. This information shall be  
 377 updated monthly and made available to the public through the

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378 department's website no later than January 31, 2013.

379 ~~(e)(4)~~ The department shall establish standards for  
 380 documenting, reporting, and monitoring the use of manual or  
 381 physical restraint or mechanical restraint, and occurrences of  
 382 seclusion. These standards shall be provided to school districts  
 383 ~~by October 1, 2011.~~

384 ~~(9)(3)~~ SCHOOL DISTRICT POLICIES AND PROCEDURES.—

385 (a) Each school district shall develop policies and  
 386 procedures that are consistent with this section and that govern  
 387 the following:

388 1. Allowable use of manual physical restraint on students.

389 2. Personnel authorized to use manual physical restraint.

390 3. Training procedures.

391 ~~4.1~~ Incident-reporting procedures.

392 ~~5.2~~ Data collection and monitoring, including when, where,  
 393 and why students are restrained or secluded; the frequency of  
 394 occurrences of such restraint or seclusion; and the prone or  
 395 mechanical restraint that is most used.

396 ~~6.3~~ Monitoring and reporting of data collected.

397 ~~7.4~~ Training programs relating to manual or physical  
 398 restraint and seclusion.

399 ~~8.5~~ The district's plan for selecting personnel to be  
 400 trained.

401 ~~9.6~~ The district's plan for reducing the use of restraint  
 402 and seclusion particularly in settings in which it occurs  
 403 frequently or with students who are restrained repeatedly, and  
 404 for reducing the use of prone restraint and mechanical  
 405 restraint. The plan must include a goal for reducing the use of  
 406 restraint and seclusion and must include activities, skills, and

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407 resources needed to achieve that goal. Activities may include,  
408 but are not limited to:

- 409 a. Additional training in positive behavioral support and  
410 crisis management;  
411 b. Parental involvement;  
412 c. Data review;  
413 d. Updates of students' functional behavioral analysis and  
414 positive behavior intervention plans;  
415 e. Additional student evaluations;  
416 f. Debriefing with staff;  
417 g. Use of schoolwide positive behavior support; and  
418 h. Changes to the school environment.

419 10. Analysis of data to determine trends.

420 11. Ongoing reduction of the use of manual physical  
421 restraint.

422 (b) Any revisions that a school district makes to its ~~to~~  
423 ~~the district's~~ policies and procedures, which are ~~must be~~  
424 prepared as part of the school district's ~~its~~ special policies  
425 and procedures, must be filed with the bureau chief of the  
426 Bureau of Exceptional Education and Student Services ~~no later~~  
427 ~~than January 31, 2012.~~

428 ~~(4) PROHIBITED RESTRAINT. School personnel may not use a~~  
429 ~~mechanical restraint or a manual or physical restraint that~~  
430 ~~restricts a student's breathing.~~

431 ~~(5) SECLUSION. School personnel may not close, lock, or~~  
432 ~~physically block a student in a room that is unlit and does not~~  
433 ~~meet the rules of the State Fire Marshal for seclusion time out~~  
434 ~~rooms.~~

435 Section 2. This act shall take effect July 1, 2012.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

Did not speak

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/16/12  
Meeting Date

Topic Seclusion and Restraints

Bill Number SB 144  
(if applicable)

Name Mary-Lynn Cullen

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title Legislative Liaison

Address 1674 University Pkwy.

Phone 941-928-0278

Sarasota Fl. 34243  
City State Zip

E-mail A.L. Children @ AOL.com

Speaking:  For  Against  Information

Representing Advocacy Institute For Children

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

**This form is part of the public record for this meeting.**

S-001 (10/20/11)



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Children, Families, and Elder Affairs, *Chair*  
Budget - Subcommittee on Criminal and Civil Justice  
Appropriations  
Community Affairs  
Military Affairs, Space, and Domestic Security  
Reapportionment  
Transportation

### SENATOR RONDA STORMS

10th District

February 16, 2012

The Honorable Mike Haridopolos  
Senate President  
409 The Capitol  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Dear President Haridopolos:

Please excuse my absence to the Senate Committee on Children, Families, and Elder Affairs on February 16, 2012 as my presence is required to present bills in multiple committees.

Thank you for your understanding, and if you should have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronda Storms".

Ronda Storms  
Florida Senate  
District 10

RRS/hrh

CC: Renai Farmer, Staff Director

#### REPLY TO:

- Lithia Oaks Business Center, 421 Lithia Pinecrest Road, Brandon, Florida 33511 (813) 651-2189 FAX: (813) 651-2188
- 413 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5072  
Internet Address: [storms.ronda.web@flsenate.gov](mailto:storms.ronda.web@flsenate.gov)

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**MIKE HARIDOPOLOS**  
President of the Senate

**MICHAEL S. "MIKE" BENNETT**  
President Pro Tempore

# CourtSmart Tag Report

**Room:** SB 401

**Case:**

**Type:**

**Caption:** Children, Families, and Elder Affairs Committee

**Judge:**

**Started:** 2/16/2012 10:47:10 AM

**Ends:** 2/16/2012 10:48:10 AM

**Length:** 00:01:01

**10:47:15 AM** Meeting called to order by Vice Chair Senator Rich

**10:47:21 AM** Roll Call

**10:47:48 AM** SB 144, Seclusion and Restraint on Students with Disabilities in Public Schools by Senator Flores

**10:48:02 AM** SB 144 Seclusion and Restraint on Students with Disabilities in Public Schools by Senator Flores  
(Temporarily Postponed)

**10:48:05 AM** Adjourn