

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Education

BILL: SB 62

INTRODUCER: Senator Book

SUBJECT: Students with Disabilities in Public Schools

DATE: March 11, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Graf	Sikes	ED	Pre-meeting
2.			AED	
3.			AP	

I. Summary:

SB 62 revises the use of restraint techniques on students with disabilities in public schools, prohibits the use of specified physical restraint techniques and placing students in seclusion, and specifies responsibilities for school districts, schools, the Department of Education (DOE), and the Commissioner of Education (commissioner). Specifically, the bill:

- Defines exclusionary and nonexclusionary time; establishes conditions under which a student may be placed in exclusionary or nonexclusionary time; and specifies related documentation, reporting and monitoring of such incidents.
- Requires each school district to:
 - Develop policies and procedures regarding physical safety and security of all students and school personnel.
 - Report procedures for training related to restraint and specifies the components of such training.
 - Publicly post its policies on all emergency procedures, including the district's policies on the use of restraint.
- Requires a school to conduct a review of incidents of restraint, and related interventions and school personnel training.
- Requires the DOE to maintain data on exclusionary and nonexclusionary time incidents, and requires that redacted copies of documentation on the use of restraint and exclusionary and nonexclusionary time be updated monthly and made available to the public through the DOE's website by October 1, 2019.
- Requires the commissioner to develop recommendations to incorporate instruction regarding emotional or behavioral disabilities into continuing education or inservice training requirements for instructional personnel.

The bill takes effect July 1, 2019.

II. Present Situation:

Federal law provides individuals with disabilities protections against discrimination, including specific provisions for students with disabilities. The Individuals with Disabilities Education Act (IDEA) was originally signed into law by President Gerald Ford as the Education for All Handicapped Children Act (Pub. Law 94-142) in 1975.¹ The purpose of the IDEA includes ensuring that all children with disabilities have available to them a free appropriate public education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living; and ensuring that the rights of children with disabilities and parents of such children are protected.²

Florida law specifies conditions regarding the use of restraint and seclusion on students with disabilities; and requires documentation, reporting, and monitoring of the use of such techniques.³

The Use of Restraint and Seclusion

Florida law does not currently define restraint and seclusion, but guidance by the Florida Department of Education (department or DOE) specifies that all documenting, reporting, and monitoring requirements for restraint must be based on the definitions issued by the Office for Civil Rights (OCR) in the United States Department of Education.⁴

Restraint

According to the DOE's guidance:⁵

- Physical restraint immobilizes or reduces the ability of a student to move his or her torso, arms, legs, or head freely. The term physical restraint does not include a physical escort.⁶ A physical escort means a temporary touching or holding of the hand, wrist, arm, shoulder, or back for the purpose of inducing a student who is acting out to walk to a safe location.
- Mechanical restraint is the use of any device or equipment to restrict a student's freedom of movement. The term does not include devices implemented by trained school personnel or devices used by a student that have been prescribed by an appropriate medical or related service professional and are used for specific and approved purposes for which such devices were designed.

School personnel are prohibited from using a mechanical restraint or a physical or manual restraint that restricts a student's breathing.⁷ Additionally, school personnel may not close, lock,

¹ U.S. Department of Education, *History of the IDEA*, <https://sites.ed.gov/idea/about-idea> (last viewed March 7, 2019).

² U.S. Department of Education, *IDEA Purpose*, <https://sites.ed.gov/idea/about-idea> (last viewed March 7, 2019).

³ Section 1003.573, F.S.

⁴ Florida Department of Education, Bureau of Exceptional Education and Student Services, *Guidelines for the Use, Documentation, Reporting, and Monitoring of Restraint and Seclusion with Students with Disabilities*, Technical Assistance Paper FY 2011-165 (Oct. 14, 2011), available at <https://info.fldoe.org/docushare/dsweb/Get/Document-6212/dps-2011-165.pdf>, at 2.

⁵ *Id.*

⁶ A physical escort means a temporary touching or holding of the hand, wrist, arm, shoulder, or back for the purpose of inducing a student who is acting out to walk to a safe location. *Id.*

⁷ Section 1003.573(4), F.S.

or physically block a student in a room that is unlit and does not meet the rules of the State Fire Marshall for seclusion time-out rooms.⁸ School districts began reporting incidents of restraint and seclusion at the beginning of the 2010-2011 school year.⁹

Since the inception of the reporting system through July 31, 2018, there have been 72,019 incidents of restraint reported.¹⁰

School Year	Number of Students	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

Seclusion

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.¹¹ Seclusion 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 purpose of calming.¹²

Since the inception of the reporting system through July 31, 2018, there have been 20,188 incidents of seclusion reported.¹³

School Year	Number of Students	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

⁸ *Id.* at (5); Rule 69A-58.0084, F.A.C.

⁹ Florida Department of Education, *Senate Bill 62 Analysis* (Feb. 05, 2019), at 4.

¹⁰ *Id.*; see also email from Florida Department of Education (Feb. 14, 2019).

¹¹ U.S. Department of Education, Office of Civil Rights, *Dear Colleague Letter: Restraint and Seclusion of Students with Disabilities* (Dec. 28, 2016), available at <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201612-504-restraint-seclusion-ps.pdf>, at 7.

¹² *Id.*

¹³ Florida Department of Education, *Senate Bill 62 Analysis* (Feb. 05, 2019), at 4; see also email from Florida Department of Education (Feb. 14, 2019).

School District Responsibilities

Each school district must develop policies and procedures that are consistent with Florida law regarding the use of restraint and seclusion on students with disabilities and that govern specified topics, such as:¹⁴

- Incident-reporting procedures.
- 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.
- Training programs relating to manual or physical restraint and seclusion.
- The district's plan for reducing the use of restraint and seclusion particularly in settings in which it occurs frequently or with students who are restrained repeatedly,¹⁵ and for reducing the use of prone restraint and mechanical restraint.

School Responsibilities

Florida law requires a school to prepare an incident report within 24 hours after a student is released from restraint or seclusion.¹⁶ The incident report must contain information specified in law, such as:¹⁷

- The name, age, grade, ethnicity, and disability of the student restrained or secluded.
- The date and time of the event and the duration of the restraint or seclusion.
- A description of the type of restraint used in terms established by the department.
- A description of the incident containing information specified in law.

A school must notify the parent or guardian of a student each time manual or physical restraint or seclusion is used.¹⁸ Such notification must be in writing and provided before the end of the school day on which the restraint or seclusion occurs.¹⁹ Reasonable efforts must also be taken to notify the parent or guardian by telephone or computer e-mail, or both, and these efforts must be documented.²⁰ The school must obtain and keep in its records the parent's or guardian's signed acknowledgement that he or she was notified of his or her child's restraint or seclusion.²¹ A school must also provide the parent or guardian with the completed incident report in writing by mail within three school days after a student was manually or physically restrained or secluded;

¹⁴ Section 1003.573(3)(a), F.S.

¹⁵ The recurrent use of seclusion or restraint for an individual student indicates the need for a functional behavioral assessment (FBA) and should trigger a review and possible revision of that student's individual educational plan (IEP) and Behavioral Intervention Plan (BIP). For example, students with limited communication skills may exhibit aggressive behaviors in an effort to communicate. The FBA should be used to identify such situations and a BIP should be developed to address the need(s) through appropriate instructional techniques. Florida Department of Education, Bureau of Exceptional Education and Student Services, *Guidelines for the Use, Documentation, Reporting, and Monitoring of Restraint and Seclusion with Students with Disabilities*, Technical Assistance Paper FY 2011-165 (Oct. 14, 2011), available at <https://info.fldoe.org/docushare/dsweb/Get/Document-6212/dps-2011-165.pdf>, at 15.

¹⁶ *Id.* at (1)(a). If the student's release occurs on a day before the school closes for the weekend, a holiday or another reason, the incident report must be completed by the end of the school day on the day the school reopens. *Id.*

¹⁷ *Id.* at (b).

¹⁸ *Id.* at (c).

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

and the school must obtain, and keep in its records, the parents' or guardian's signed acknowledgment that he or she received a copy of the incident report.²²

In addition, Florida law requires monitoring of the use of manual or physical restraint or seclusion on students to occur at the classroom, building, district, and state levels.²³

Documentation of the incident report and the notification to the parent or guardian must be provided to the school principal, the district director of Exceptional Student Education, and the bureau chief of the Bureau of Exceptional Education and Student Services electronically each month that school is in session.²⁴

Florida Department of Education Responsibilities

The DOE is required to maintain aggregate data of incidents of manual or physical restraint and seclusion and disaggregate data for analysis by county, school, student exceptionality, and other variables, including the type and method of restraint or seclusion used.²⁵ This information must be updated monthly.²⁶ The department is also required to establish standards for documenting, reporting, and monitoring the use of manual or physical restraint or mechanical restraint, and occurrences of seclusion.²⁷ Such standards must be provided to the school districts by October 1, 2011.²⁸

Commissioner of Education Responsibilities

The commissioner is required to develop recommendations to incorporate instruction regarding autism spectrum disorder, Down syndrome, and other developmental disabilities into continuing education or in-service training requirements for personnel.²⁹ These recommendations must address:³⁰

- Early identification and intervention methods.
- Curriculum planning and curricular and instructional modifications, adaptations, and specialized strategies and techniques.
- The use of available state and local resources.
- The use of positive behavioral supports to deescalate problem behaviors.
- Appropriate use of manual physical restraint and seclusion techniques.

²² Section 1003.573(1)(d), F.S.

²³ *Id.* at (2)(a).

²⁴ *Id.* at (b).

²⁵ *Id.* at (c).

²⁶ *Id.*

²⁷ *Id.* at (d).

²⁸ *Id.*; see also Florida Department of Education, Bureau of Exceptional Education and Student Services, *Guidelines for the Use, Documentation, Reporting, and Monitoring of Restraint and Seclusion with Students with Disabilities*, Technical Assistance Paper FY 2011-165 (Oct. 14, 2011), available at <https://info.fldoe.org/docushare/dsweb/Get/Document-6212/dps-2011-165.pdf>, at 18-19.

²⁹ Section 1012.582(1), F.S.

³⁰ *Id.*

III. Effect of Proposed Changes:

SB 62 revises the use of restraint techniques on students with disabilities in public schools, prohibits the use of specified physical restraint techniques and placing students in seclusion, and specifies responsibilities for school districts, schools, the Department of Education (DOE), and the Commissioner of Education (commissioner). Specifically, the bill:

- Defines exclusionary and nonexclusionary time; establishes conditions under which a student may be placed in exclusionary or nonexclusionary time; and specifies related documentation, reporting and monitoring of such incidents.
- Requires each school district to:
 - Develop policies and procedures regarding physical safety and security of all students and school personnel.
 - Report procedures for training related to restraint and specifies the components of such training.
 - Publicly post its policies on all emergency procedures, including the district's policies on the use of restraint.
- Requires a school to conduct a review of incidents of restraint, and related interventions and school personnel training.
- Requires the DOE to maintain data on exclusionary and nonexclusionary time incidents, and requires that redacted copies of documentation on the use of restraint and exclusionary and nonexclusionary time be updated monthly and made available to the public through the DOE's website by October 1, 2019.
- Requires the commissioner to develop recommendations to incorporate instruction regarding emotional or behavioral disabilities into continuing education or inservice training requirements for instructional personnel.

The bill defines student to mean a student with a disability.

The Use of Restraint and Seclusion

Restraint

The bill defines the following terms related to restraint:

- Restraint means the use of a mechanical or physical restraint which may be used only when all other behavioral strategies and intervention techniques have been exhausted.
- Mechanical restraint means the use of a device that restricts a student's freedom of movement. The term includes, but is not limited to the use of straps, belts, tie-downs, and chairs with straps. However, the term mechanical restraint does not include the use of any of the following:
 - Medical protective equipment.
 - Behavioral protective equipment, including helmets, gloves, wraps, calming blankets and other devices that are used temporarily to prevent severe tissue damage caused by behavioral excess.
 - Physical equipment or orthopedic appliances, surgical dressings or bandages, or supportive body bands or other restraints necessary for ongoing medical treatment in the educational setting.
 - Devices used to support functional body position or proper balance, or to prevent a

- person from falling out of a bed or wheelchair, except when such device is used for a purpose other than supporting a body position or proper balance, such as coercion, discipline, convenience, or retaliation, to prevent imminent risk of serious injury or death of the student or others, or for any behavior management reason.³¹
- Equipment used for safety during transportation
 - Physical restraint is 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 bill limits the use of physical restraint to only when there is an imminent risk of serious injury or death to the student or others and only for the period of time necessary to eliminate such risk. Moreover, the bill specifies that physical restraint:

- Must be used only to protect the safety of students, school personnel, or others.
- May not be used for student discipline, to correct student noncompliance, or for the convenience of school district staff.
- Must only be used for the period needed to provide such protection.

The bill specifies that the degree of force applied during physical restraint must be the only degree of force necessary to protect the student or others from serious injury or death.

The bill also clarifies that school personnel who have received training that is not associated with their employment with the school district, such as a former law enforcement officer who is now a teacher, must receive training in the specific district-approved techniques and may not apply techniques or procedures acquired elsewhere. Specifically, school personnel may not use any of the following physical restraint techniques on a student:

- Pain inducement to obtain compliance.
- Bone locks.
- Hyperextension of joints.
- Peer restraint.
- Pressure or weight on the chest, lungs, sternum, diaphragm, back, or abdomen causing chest compression.
- Straddling or sitting on any part of the body or any maneuver that places pressure, weight, or leverage on the neck or throat, on an artery, or on the back of the 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.
- A technique that involves spraying or pushing anything on or into the mouth, nose, eyes, or any part of the face or body with anything, including soft objects such as pillows or washcloths.
- Any maneuver that involves punching, hitting, poking pinching, or shoving.
- Prone or supine restraint.

The codification of impermissible physical restraint techniques may provide additional protection for students with disabilities who are subject to restraint.

³¹ SB 62 defines an imminent risk of serious injury or death as the impending risk of a significant injury, such as a laceration, bone fracture, substantial hematoma, or injury to an internal organ, or death.

Seclusion

The bill prohibits the use of seclusion of students by school personnel. The bill defines seclusion to mean the removal of a student from an educational environment, involuntarily confining the student in a room or area, and preventing the student from leaving the area by locking or artificially blocking the door.

The bill excludes exclusionary time from the definition of seclusion. This prohibition may propel school personnel to consider effective and appropriate intervention strategies to address student behavior in the school setting.

Exclusionary and Nonexclusionary Time

The bill authorizes the placement of a student in exclusionary or nonexclusionary time. The bill defines:

- Exclusionary time to mean the period during which a student is removed from an event, activity, or instructional environment to encourage reflection on behavior and allow space and time for understanding of choices and consequences.
- Nonexclusionary time to mean a period during which a student remains in the event or instructional environment, but is redirected from the activities so that he or she has an opportunity to reflect on the behavior and is given space and time for understanding of choices and consequences.

The bill specifies that school personnel may place a student in exclusionary or nonexclusionary time only if all of the following conditions are met:

- The exclusionary time or nonexclusionary time is part of a positive behavioral intervention plan developed for the student from a functional behavioral assessment and referenced in the student's individualized behavior intervention plan.
- There is documentation that the exclusionary nonexclusionary time was preceded by the use of other positive behavioral supports that were not effective.
- The exclusionary or nonexclusionary time 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 exclusionary or nonexclusionary time area.
- An adult observes the student on a constant basis for the duration of the exclusionary or nonexclusionary time.
- The exclusionary or nonexclusionary time area and process are free of any action that is likely to embarrass or humiliate the student.

The bill also specifies that exclusionary or nonexclusionary time may not be used for a period that exceeds one minute for each year of a student's age or until the student is calm enough to return to his or her seat, whichever is shorter. Additionally, exclusionary or nonexclusionary time may not be used as a punishment or negative consequence of a student's behavior.

The bill provides that documentation, reporting, and monitoring provisions specified in Florida law related to the use of restraint also apply to exclusionary and nonexclusionary time.

The establishment of exclusionary and nonexclusionary time may provide school personnel with additional intervention methods and tools to reduce disruption during instructional time or other activities and may assist students reflect on their behavior.

School District Responsibilities

The bill requires school districts to develop policies and procedures that provide for the physical safety and security of all students and school personnel and which treat all students with respect and dignity in an environment that promotes a positive school culture and climate. This is consistent with DOE's guidance.³² The bill specifies that the policies and procedures adopted by the school districts must also include the following:

- A description of escalating behavioral strategies that may be used.
- Allowable use of restraint on students.
- Training procedures relating to restraint.
- The district's timeframe for completing the newly established training procedures in the use of restraint on students.
- Analysis of data to determine trends.
- Ongoing reduction of the use of restraint.

Additionally, the bill requires each school district to publicly post its policies on all emergency procedures, including its policies on the use of seclusion and restraint at the beginning of each school year. Such policies and procedures may assist with reducing the use of restraint techniques by public schools.

Training for the Use of Restraint

Each school district must report its procedures for training in the use of restraint to the DOE by publishing the procedures in the district's special policies and procedures manual. The bill specifies that the school district training in the use of restraint must include all of the following:

- Procedures for deescalating a problem behavior before the problem behavior increases to a level or intensity necessitating physical intervention.
- Information regarding the risks associated with restraint and procedures for assessing individual situations and restraint and procedures for assessing individual situations and students in order to determine whether the use of restraint is appropriate and sufficiently safe.
- The actual use of specific techniques that range from the least to most restrictive, with ample opportunity for trainees to demonstrate proficiency in the use of such techniques.
- Techniques for implementing restraint with multiple staff members working as a team.

³² DOE guidance recognizes that there are instances in which students pose a threat to the safety of themselves or others and that it is the purpose of restraint and seclusion to prevent such injury to self and or others. Seclusion and restraint procedures are not to be used to punish a student, as a deterrent, or to teach a student a lesson. DOE guidance states that it is important to recognize that the use of restraint and seclusion may have an emotional impact on students and such interventions should only be used in emergency situations when an imminent risk of serious injury or death to the student or others exists and in a manner that conveys respect for the dignity of the student. Florida Department of Education, Bureau of Exceptional Education and Student Services, *Guidelines for the Use, Documentation, Reporting, and Monitoring of Restraint and Seclusion with Students with Disabilities*, Technical Assistance Paper FY 2011-165 (Oct. 2011), available at <https://info.fldoe.org/docushare/dsweb/Get/Document-6212/dps-2011-165.pdf>, at 1.

- Techniques for assisting a student in reentering the instructional environment and reengaging in learning.
- 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 recitation.

The establishment of school district training protocol on the use of restraint may provide school personnel with additional resources and knowledge related to the techniques and the use of restraint and deescalating disruptive student behavior.

School Responsibilities

The bill modifies information included in incident reports prepared by public schools to also include specified information on exclusionary or nonexclusionary time.

Additionally, the bill requires a school to conduct a review if a student is restrained more than twice during a semester. Such review must include:

- The incidents in which restraint was used and an analysis of how future incidents may be avoided.
- The student's functional behavioral assessment and positive behavioral intervention plan by the school personnel and parent within two weeks before the end of the semester.
- The training provided to school personnel concerning the use of restraint.

Such review process may assist the schools in reducing the use of restraint on students.

Florida Department of Education Responsibilities

The bill requires redacted copies of any documentation prepared by a school related to the use of restraint or exclusionary or nonexclusionary time to be updated monthly and made available to the public through the DOE's website by October 1, 2019.

The bill also requires the DOE to make the aggregate-level data maintained by the department on the incidents of restraint and exclusionary and nonexclusionary time, disaggregated by county, school, student exceptionality, and other variables, available to the public through the DOE's website by October 1, 2019. This may provide the public with access to policies, procedures, and data related to the use of restraint as well as exclusionary and nonexclusionary time.

The bill requires the DOE to establish and provide to school districts standards for documenting, reporting, and monitoring the use of and occurrences of exclusionary or nonexclusionary time.

Commissioner of Education Responsibilities

The bill requires the commissioner to develop recommendations that incorporate instruction regarding emotional or behavioral disabilities into continuing education or inservice training requirements for instructional personnel. The bill also modifies the information specified in law, which must be addressed in such recommendations. Specifically, the bill requires such

recommendations to also address the appropriate use of physical restraint and effective classroom behavior management strategies, including, but not limited to, differential reinforcement, precision commands, minimizing attention or access to other reinforcers, and exclusionary and nonexclusionary time methods.

Accordingly, the bill may help instructional personnel to be informed and trained in strategies to teach students with emotional or behavioral disabilities.

The bill takes effect July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the Department of Education, school districts will incur costs associated with certification and refresher training in district-approved techniques for manual physical restraint.³³ Such costs are currently indeterminable.³⁴

³³ Florida Department of Education, *Senate Bill 62 Analysis* (Feb. 5, 2019), at 8.

³⁴ *Id.*

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1003.573 and 1012.582.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.