

Revisions to Wisconsin’s Law on the Use of Seclusion and Physical Restraint in Schools

June 24, 2020

The following is a summary of the key changes to Section 118.305 of the Wisconsin Statutes addressing the use of seclusion and physical restraint in schools. These took effect on March 4, 2020, and were made pursuant to 2019 Wisconsin Act 118. A copy of the Act may be found here: <https://docs.legis.wisconsin.gov/2019/related/acts/118>.

Under both previous and current law, the use of seclusion or physical restraint is prohibited unless a student’s behavior presents a clear, present, and imminent risk to the physical safety of the student or others, and it is the least restrictive intervention feasible. “Seclusion” means the involuntary confinement of students, apart from other students, in a room or area from which the student is physically prevented from leaving. “Physical restraint” means a restriction that immobilizes or reduces the ability of a student to freely move his or her torso, arms, legs, or head.

Unless expressly noted, requirements apply to all students, with or without disabilities and individualized education programs (IEPs).

Previous Law (2011 Act 125)	Current Law (2019 Act 118)
Applicability and definitions	
Under previous law, requirements applied to public schools and private schools participating in the Special Needs Scholarship Program (SNSP).	Under current law, requirements apply to public schools, private schools participating in the SNSP, and private schools where students are placed by public school districts.
Under previous law, the term “incident” was not defined.	“Incident” is defined under current law as an occurrence of a covered individual or a law enforcement officer using seclusion or physical restraint on a student. It is considered one incident if immediately following the use of seclusion or restraint, the student’s behavior presents a clear, present, and imminent physical safety risk, and the covered individual or law enforcement officer resumes the use of seclusion or physical restraint.

<p>Under previous law, reporting requirements did not expressly apply when seclusion or physical restraint was utilized by a law enforcement officer in a school.</p>	<p>Under current law, schools are expressly required to include incidents of seclusion or physical restraint by law enforcement officers in schools when documenting incidents, notifying parents, and developing and providing a written report.</p>
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Individualized Education Programs (IEPs)

<p>Under previous law, if a the IEP team of a student with a disability determined the use of either seclusion or physical restraint could reasonably be anticipated for the student, the student’s IEP was required to incorporate the terms “seclusion” or “physical restraint.”</p>	<p>Act 118 repealed the section of the law including the requirement for IEPs to incorporate the use of the terms “seclusion” or “physical restraint” if an IEP team determines their use could reasonably be anticipated. As such, IEPs are no longer are required to contain these terms.</p> <p>Under current law, after the second incident of seclusion or physical restraint in a school year with a student with a disability, the student’s IEP team must meet within 10 school days of the incident to review the IEP. The IEP must include appropriate positive behavior interventions and supports based on a FBA of the behavior(s) of concern.</p>
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Seclusion

<p>Under previous law, the door to the room or area used for seclusion could not be capable of being locked.</p>	<p>Under current law, locks are not allowed on rooms or areas being used for seclusion.</p>
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Physical Restraint

<p>Under previous law, maneuvers include those that do not give adequate attention and care to protecting a student’s head, those that cause chest compression, and those that place pressure or weight on the</p>	<p>Under current law, maneuvers that place a student in a prone position are expressly prohibited.</p>
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<p>student's neck, throat, an artery, the back of a student's head or neck, or otherwise obstruct the student's circulation or breathing were prohibited.</p> <p>The use of prone restraint, while not feasibly permissible given the above conditions, was not expressly prohibited.</p>	<p>Maneuvers including those that do not give adequate attention and care to protecting a student's head, those that cause chest compression, and those that place pressure or weight on the student's neck, throat, an artery, the back of a student's head or neck, or otherwise obstruct the student's circulation or breathing continue to be prohibited.</p>
<p>Under previous law, the use of chemical and mechanical restraints are not allowed.</p> <p>Previous law did not expressly exclude the use of vehicle safety restraints while transporting a student in a moving vehicle from being considered a mechanical restraint.</p>	<p>Current law continues to prohibit the use of chemical and mechanical restraints.</p> <p>Current law expressly states the appropriate use of vehicle safety restraints when used as intended while transporting a pupil in a moving vehicle is not considered mechanical restraint.</p>
<p>Required meeting after each incident of seclusion or physical restraint</p>	
<p>Under previous law, there was no requirement for school staff to meet and "debrief" following an incident of seclusion or physical restraint.</p>	<p>Current law requires after each incident of seclusion or physical restraint, the principal or designee must meet with the covered individuals who participated in the incident to discuss the events preceding, during, and following the use of seclusion or physical restraint and how to prevent the need for seclusion and restraint. This conversation must include factors that may have contributed to the escalation of the student's behaviors, alternatives to physical restraint such as de-escalation techniques and possible interventions, and other strategies that the school principal or designee determines are appropriate.</p>

Notification, Documentation, and Reporting Requirements

<p>Under previous law, after each incident of seclusion or physical restraint by a covered individual, the school principal or designee is required to notify the student's parent of the incident as soon as possible or within one business day of the incident. The law did not expressly include incidents of seclusion or physical restraint involving law enforcement officers in the notification requirement.</p> <p>Previous law did not expressly require private schools to notify districts or parents when seclusion or physical restraint was used by staff or law enforcement officers with students who were placed in the private school by their school districts.</p>	<p>Current law continues to require the school principal or designee to notify the student's parent of the incident as soon as possible or within one business day of the incident. The law expressly requires school staff to notify parents of all incidents of seclusion or physical restraint involving law enforcement officers.</p> <p>Current law requires administrators of private schools or their designee to notify parents and the public school district as soon as practicable, but no later than one business day following an incident of seclusion or physical restraint by a covered individual or law enforcement officer <i>on a student placed in the private school by a school district</i>. Private schools are also required to prepare a report, and send it to the student's parent and the public school district.</p>
<p>Under previous law, after each incident of seclusion or physical restraint at school, within two business days after the incident and after consulting with the covered individuals present during the incident, the school principal or designee was to prepare a written report. The report contained the student's name, the date, time, and duration of the use of seclusion or physical restraint, a description of the incident including a description of the actions of the student before, during, and after the incident, and the names and titles of covered individuals present during the incident.</p> <p>The principal or designee was to inform the parent of the availability of the written report when notifying the parent of the</p>	<p>Current law requires the principal to consult with covered individuals and law enforcement officers present during the incident prior to completing the written report. All elements continue to be required in the written report as under previous law.</p> <p>In addition to the names and titles of covered individuals present during each incident, the names and titles of any law enforcement officers present during the incident must be included in the written report.</p> <p>The principal or designee is required to retain the report and within three business days of the incident, send the report to the student's parent by first class mail or by</p>

<p>incident. The report was required to be made available to the parent within three business days of the incident.</p>	<p>electronic transmission, or hand deliver the report to the student's parent.</p>
<p>Physical Restraint – Training Requirements</p>	
<p>Under previous law, a covered individual was not permitted to use physical restraint on a pupil at a public school or a SNSP school unless the covered individual has received training that includes specific components, listed below.</p> <p>Previous training requirements:</p> <ul style="list-style-type: none"> • Methods of preventing the need for physical restraint; • Instruction in the identification and description of dangerous behavior indicating the need for physical restraint, and in methods of evaluating risk of harm to determine whether physical restraint is needed; • Experience in administering and receiving various types of physical restraint; • Instruction on the effects of physical restraint on the person restrained, methods of monitoring signs of physical distress, and techniques for determining when medical assistance may be needed; • Instruction in documenting and reporting incidents of physical restraint; and • Demonstration of proficiency in administering physical restraint. 	<p>Current law requires training to include:</p> <ul style="list-style-type: none"> • Evidence-based instruction related to positive behavioral supports and interventions, safe physical escort, understanding antecedents, de-escalation, conflict prevention, and conflict management; • Evidence-based techniques, including debriefing, that have been shown to prevent or reduce the use of physical restraint; • An identification and description of dangerous behavior that may indicate the need for physical restraint and methods of evaluating risk of harm in order to determine whether physical restraint is warranted; • Instruction regarding the effects of physical restraint on the person restrained in monitoring signs of physical distress, and in obtaining medical assistance; • Instruction in documenting and reporting incidents of physical restraint; and • A requirement that the trainee demonstrate his or her ability to identify prohibited techniques in administering physical restraint.

Reporting Requirements

Under previous law, annually by September 1st, the principal or designee must submit to the school board a report on the number of incidents of seclusion and physical restraint in the previous year, the total number of students involved in the incidents, and the total number of students with disabilities involved in the incidents.

Previous law did not require schools to report this information to DPI.

Under current law, annually by October 1st, the principal or designee must submit to the governing body a report that includes data disaggregated as follows:

- The number of incidents of seclusion during the previous school year;
- The total number of students who were involved in incidents of seclusion during the previous school year;
- The number of students with disabilities who were involved in incidents of seclusion during the previous school year;
- The number of incidents of physical restraint during the previous school year;
- The total number of students who were involved in incidents of physical restraint during the previous school year; and
- The number of students with disabilities who were involved in incidents of physical restraint during the previous school year.

Annually by December 1st, each governing body that receives a report must submit to the state superintendent a report that contains the above disaggregated information for each school under the governing body's charge.

Reporting requirements expressly apply to incidents involving students placed at a private school by a local education agency, as well as private schools participating in the Special Needs Scholarship Program.