

The following is a summary of the changes to Section 118.305 of the Wisconsin Statutes on addressing the use of seclusion and restraint in schools. These changes went into 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>. Unless expressly noted, requirements apply to all students, with and without individualized education programs.

Application and Definitions

- Section 118.305 requirements now apply to private schools where a student is placed by a local educational agency, as well as private schools participating in the Special Needs Scholarship Program.
- “Incident” is defined 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.
- “Parent” is specifically defined as “the parent of the student, including a natural parent, a guardian, or an individual acting as parent in the absence of a parent or guardian.”

Individualized Education Plans (IEPs)

- IEP teams no longer need to consider whether or not future use of seclusion or physical restraint is anticipated, and the terms “seclusion” or “physical restraint” need not be included in a student’s IEP.
- The student’s IEP team must now meet after the second time seclusion or restraint is used within the same school year.
 - The IEP team must meet as soon as practicable after the second time but no later than 10 school days after the incident.
 - The IEP team must review and revise the IEP as necessary to ensure that the IEP includes appropriate positive behavioral interventions, supports, and other strategies to address the behavior of concern. Those supports, interventions, and strategies must be based on a functional behavioral assessment of that behavior.

Required Meeting after Incident

- Whenever a covered individual or a law enforcement officer uses seclusion or physical restraint on a student at school, the principal (or designee) must meet with the covered individuals who participated in the incident to discuss all of the following:
 - The events preceding, during, and following the use of the seclusion or physical restraint; and
 - How to prevent the need for seclusion or physical restraint, including
 - Factors that may have contributed to the escalation of behaviors;
 - Alternatives to physical restraint such as de-escalation techniques and possible interventions; and
 - Other strategies that the school principal or designee deems appropriate.
- Note: This meeting is required for all incidents involving students with and without IEPs.
- Note: Covered individual is defined as a school employee, an individual under contract to provide services for the benefit of the school or their employee, or a student teacher under the supervision of a school employee.
- Note: Changes to the student's IEP must be made through an IEP team meeting.

Training Requirements

- No covered individual may use physical restraint on a student unless they have received the following training (the first, second, and sixth bullets are new training components) :
 - 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.

- Note: The unforeseen emergency exception still applies, which states that a covered individual who has not received the required training may use physical restraint on a student at school only in an emergency and only if the covered individual who has received training is not immediately available due to the unforeseen nature of the emergency.

Restraint

- Prone restraints are expressly prohibited.
- The use of vehicle safety restraints when used as intended during the transport of a student in a moving vehicle is permissible and is not considered a mechanical restraint.

Seclusion

- A door connecting the room or area in which the student is secluded to other rooms or areas cannot have a lock on it. Locks are expressly prohibited.

Notice

- Whenever a covered individual or a law enforcement officer uses seclusion or physical restraint on a student, the principal or designee must, as soon as practicable, and no later than one business day after the incident, notify the parent of the incident and the availability of the written report.
- The above notice requirement also applies whenever a covered individual or a law enforcement officer uses seclusion or physical restraint on a student placed at a private school by a local education agency (LEA). The administrator of the private school or designee must provide the notice to the parent within the required timeline.
- Note: the notice requirement now expressly applies when a law enforcement officer uses seclusion or physical restraint, and to students attending private schools through LEA placement.

Written Report

- Within two business days after the incident, the principal or designee must consult with the covered individuals and any law enforcement officer present during the incident and prepare a written report containing all of the following information:
 - 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 the covered individuals and any law enforcement officers present during the incident.
- The principal or designee must retain a copy of the report and provide a copy to the parent within 3 business days of the incident through first class mail, electronic transmission, or hand delivery.
- The written report requirements also apply whenever a covered individual or a law enforcement officer uses seclusion or physical restraint on a student placed at a private school by an LEA. The administrator of the private school or designee must fulfill these requirements.
- Note: The written report requirement now expressly applies when a law enforcement officer uses seclusion or physical restraint and when seclusion or physical restraint is used on a student placed at a private school by an LEA.
- Note: The written report must now be provided to the parent through one of the three specified ways.

Data Reporting

- 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.
- Note these reporting requirement applies to incidents involving students placed at a private school by an LEA, as well as private schools participating in the Special Needs Scholarship Program.