SENATE
STATE OF MINNESOTA
EIGHTY-EIGHTH LEGISLATURE

S.F. No. 1083

(SENATE AUTHORS: CLAUSEN and Johnson)

DATE	D-PG	OFFICIAL STATUS
03/05/2013	574	Introduction and first reading Referred to Education
03/21/2013	1361a	Comm report: To pass as amended and re-refer to Finance

A bill for an act

relating to education; clarifying use of restrictive procedures; appropriating money; amending Minnesota Statutes 2012, sections 125A.0941; 125A.0942.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2012, section 125A.0941, is amended to read:

125A.0941 DEFINITIONS.

(a) The following terms have the meanings given them.

(b) "Emergency" means a situation where immediate intervention is needed to protect a child or other individual from physical injury ~~or to prevent serious property damage~~. Emergency does not mean circumstances such as: a child who does not respond to a task or request and instead places his or her head on a desk or hides under a desk or table; a child who does not respond to a staff person's request unless failing to respond would result in physical injury to the child or other individual; or an emergency incident has already occurred and no threat of physical injury currently exists.

(c) "Physical holding" means physical intervention intended to hold a child immobile or limit a child's movement, where body contact is the only source of physical restraint, and where immobilization is used to effectively gain control of a child in order to protect ~~the~~ a child or other ~~person~~ individual from physical injury. The term physical holding does not mean physical contact that:

(1) helps a child respond or complete a task;

(2) assists a child without restricting the child's movement;

(3) is needed to administer an authorized health-related service or procedure; or

(4) is needed to physically escort a child when the child does not resist or the child's resistance is minimal.

(d) "Positive behavioral interventions and supports" means interventions and strategies to improve the school environment and teach children the skills to behave appropriately.

(e) "Prone restraint" means placing a child in a face down position.

(f) "Restrictive procedures" means the use of physical holding or seclusion in an emergency. Restrictive procedures must not be used to punish or otherwise discipline a child.

(g) "Seclusion" means confining a child alone in a room from which egress is barred. Egress may be barred by an adult locking or closing the door in the room or preventing the child from leaving the room. Removing a child from an activity to a location where the child cannot participate in or observe the activity is not seclusion.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 2. Minnesota Statutes 2012, section 125A.0942, is amended to read:

125A.0942 STANDARDS FOR RESTRICTIVE PROCEDURES.

Subdivision 1. **Restrictive procedures plan.** (a) Schools that intend to use restrictive procedures shall maintain and make publicly accessible a restrictive procedures plan for children with disabilities that ~~includes~~ at least ~~the following~~:

(1) lists the ~~list of~~ restrictive procedures the school intends to use;

(2) describes how the school will implement a range of positive behavior strategies and provide links to mental health services;

(3) describes how the school will monitor and review the use of restrictive procedures, including:

(i) conducting post-use debriefings, consistent with subdivision 3, paragraph (a), clause (5); and

(ii) convening an oversight committee to undertake a quarterly review of the use of restrictive procedures based on patterns or problems indicated by similarities in the time of day, day of the week, duration of the use of a procedure, the individuals involved, or other factors associated with the use of restrictive procedures; the number of times a restrictive procedure is used schoolwide and for individual children; the number and types of injuries, if any, resulting from the use of restrictive procedures; whether restrictive procedures are used in nonemergency situations; the need for additional staff training; and proposed actions to minimize the use of restrictive procedures; and

~~(3)~~ (4) includes a written description and documentation of the training staff completed under subdivision 5.

(b) Schools annually must publicly identify oversight committee members who must at least include:

(1) a mental health professional, school psychologist, or school social worker;

(2) an expert in positive behavior strategies;

(3) a special education administrator; and

(4) a general education administrator.

Subd. 2. **Restrictive procedures.** (a) Restrictive procedures may be used only by a licensed special education teacher, school social worker, school psychologist, behavior analyst certified by the National Behavior Analyst Certification Board, a person with a master's degree in behavior analysis, other licensed education professional, highly qualified paraprofessional under section 120B.363, or mental health professional under section 245.4871, subdivision 27, who has completed the training program under subdivision 5.

(b) A school shall make reasonable efforts to notify the parent on the same day a restrictive procedure is used on the child, or if the school is unable to provide same-day notice, notice is sent within two days by written or electronic means or as otherwise indicated by the child's parent under paragraph (d).

(c) ~~When restrictive procedures are used twice in 30 days or when a pattern emerges and restrictive procedures are not included in a child's individualized education program or behavior intervention plan,~~ The district must hold a meeting of the individualized education program team, conduct or review a functional behavioral analysis, review data, consider developing additional or revised positive behavioral interventions and supports, consider actions to reduce the use of restrictive procedures, and modify the individualized education program or behavior intervention plan as appropriate. The district must hold the meeting: within ten calendar days after district staff use restrictive procedures on two separate school days within 30 calendar days or a pattern of use emerges and the child's individualized education program or behavior intervention plan does not provide for using restrictive procedures in an emergency; or at the request of a parent or the district after restrictive procedures are used. The district must review use of restrictive procedures at a child's annual individualized education program meeting when the child's individualized education program provides for using restrictive procedures in an emergency.

(d) If the individualized education program team under paragraph (c) determines that existing interventions and supports are ineffective in reducing the use of restrictive procedures or the district uses restrictive procedures on a child on ten or more school days during the same school year, the team, as appropriate, either must consult with other professionals working with the child; consult with experts in behavior analysis, mental health, communication, or autism; consult with culturally competent professionals;

review existing evaluations, resources, and successful strategies; or consider whether to reevaluate the child.

(e) At the individualized education program meeting under paragraph (c), the team must review any known medical or psychological limitations, including any medical information the parent provides voluntarily, that contraindicate the use of a restrictive procedure, consider whether to prohibit that restrictive procedure, and document any prohibition in the individualized education program or behavior intervention plan.

~~(d)~~ (f) An individualized education program team may plan for using restrictive procedures and may include these procedures in a child's individualized education program or behavior intervention plan; however, the restrictive procedures may be used only in response to behavior that constitutes an emergency, consistent with this section. The individualized education program or behavior intervention plan shall indicate how the parent wants to be notified when a restrictive procedure is used.

Subd. 3. **Physical holding or seclusion.** (a) Physical holding or seclusion may be used only in an emergency. A school that uses physical holding or seclusion shall meet the following requirements:

(1) ~~the~~ physical holding or seclusion ~~must be~~ is the least intrusive intervention that effectively responds to the emergency;

(2) physical holding or seclusion is not used to discipline a noncompliant child;

(3) physical holding or seclusion ~~must end~~ ends when the threat of harm ends and the staff determines ~~that~~ the child can safely return to the classroom or activity;

~~(3)~~ (4) staff ~~must~~ directly ~~observe~~ observes the child while physical holding or seclusion is being used;

~~(4)~~ (5) each time physical holding or seclusion is used, the staff person who implements or oversees the physical holding or seclusion ~~shall document~~ documents, as soon as possible after the incident concludes, the following information:

(i) a description of the incident that led to the physical holding or seclusion;

(ii) why a less restrictive measure failed or was determined by staff to be inappropriate or impractical;

(iii) the time the physical holding or seclusion began and the time the child was released; and

(iv) a brief record of the child's behavioral and physical status;

~~(5)~~ (6) the room used for seclusion must:

(i) be at least six feet by five feet;

(ii) be well lit, well ventilated, adequately heated, and clean;

(iii) have a window that allows staff to directly observe a child in seclusion;

(iv) have tamperproof fixtures, electrical switches located immediately outside the door, and secure ceilings;

(v) have doors that open out and are unlocked, locked with keyless locks that have immediate release mechanisms, or locked with locks that have immediate release mechanisms connected with a fire and emergency system; and

(vi) not contain objects that a child may use to injure the child or others;

~~(6)~~ (7) before using a room for seclusion, a school must:

(i) receive written notice from local authorities that the room and the locking mechanisms comply with applicable building, fire, and safety codes; and

(ii) register the room with the commissioner, who may view that room; and

~~(7)~~ (8) until August 1, ~~2013~~ 2015, a school district may use prone restraints with children age five or older ~~under the following conditions~~ if:

(i) ~~a~~ the district has provided to the department a list of staff who have had specific training on the use of prone restraints;

(ii) ~~a~~ the district provides information on the type of training that was provided and by whom;

(iii) ~~prone restraints may~~ only ~~be used by~~ staff who ~~have~~ received specific training use prone restraints;

(iv) each incident of the use of prone restraints is reported to the department within five working days on a form provided by the department; and

(v) ~~a~~ the district, ~~prior to~~ before using prone restraints, must review any known medical or psychological limitations that contraindicate the use of prone restraints.

~~The department will report back to the chairs and ranking minority members of the legislative committees with primary jurisdiction over education policy by February 1, 2013, on the use of prone restraints in the schools. Consistent with item (iv),~~ The department must collect data on districts' use of prone restraints and publish the data in a readily accessible format on the department's Web site on a quarterly basis.

(b) ~~The department must develop a statewide plan by February 1, 2013, to reduce districts' use of restrictive procedures that includes~~ By March 1, 2014, stakeholders must recommend to the commissioner specific and measurable implementation and outcome goals for reducing the use of restrictive procedures and the commissioner must submit to the legislature a report on districts' progress in reducing the use of restrictive procedures that recommends how to further reduce these procedures and eliminate the use of prone restraints. The statewide plan includes the following components: measurable goals; the resources, training, technical assistance, mental health services, and collaborative efforts needed to significantly reduce districts' use of prone restraints; and recommendations

to clarify and improve the law governing districts' use of restrictive procedures. The ~~department must convene~~ commissioner must consult with interested stakeholders ~~to develop the statewide plan and identify the need for technical assistance~~ when preparing the report, including representatives of advocacy organizations, special education directors, intermediate school districts, school boards, day treatment providers, county social services, state human services department staff, mental health professionals, and autism experts. ~~To assist the department and stakeholders under this paragraph, school districts must report summary data to the department by July 1, 2012, on districts' use of restrictive procedures during the 2011-2012 school year, including data on the number of incidents involving restrictive procedures, the total number of students on which restrictive procedures were used, the number of resulting injuries, relevant demographic data on the students and school, and other relevant data collected by the district.~~ By June 30 each year, districts must report summary data on their use of restrictive procedures to the department, in a form and manner determined by the commissioner.

Subd. 4. **Prohibitions.** The following actions or procedures are prohibited:

(1) engaging in conduct prohibited under section 121A.58;

(2) requiring a child to assume and maintain a specified physical position, activity, or posture that induces physical pain;

(3) totally or partially restricting a child's senses as punishment;

(4) presenting an intense sound, light, or other sensory stimuli using smell, taste, substance, or spray as punishment;

(5) denying or restricting a child's access to equipment and devices such as walkers, wheelchairs, hearing aids, and communication boards that facilitate the child's functioning, except when temporarily removing the equipment or device is needed to prevent injury to the child or others or serious damage to the equipment or device, in which case the equipment or device shall be returned to the child as soon as possible;

(6) interacting with a child in a manner that constitutes sexual abuse, neglect, or physical abuse under section 626.556;

(7) withholding regularly scheduled meals or water;

(8) denying access to bathroom facilities; and

(9) physical holding that restricts or impairs a child's ability to breathe, restricts or impairs a child's ability to communicate distress, places pressure or weight on a child's head, throat, neck, chest, lungs, sternum, diaphragm, back, or abdomen, or results in straddling a child's torso.

Subd. 5. **Training for staff.** (a) To meet the requirements of subdivision 1, staff who use restrictive procedures shall complete training in the following skills and knowledge areas:

(1) positive behavioral interventions;

(2) communicative intent of behaviors;

(3) relationship building;

(4) alternatives to restrictive procedures, including techniques to identify events and environmental factors that may escalate behavior;

(5) de-escalation methods;

(6) standards for using restrictive procedures only in an emergency;

(7) obtaining emergency medical assistance;

(8) the physiological and psychological impact of physical holding and seclusion;

(9) monitoring and responding to a child's physical signs of distress when physical holding is being used; ~~and~~

(10) recognizing the symptoms of and interventions that may cause positional asphyxia when physical holding is used~~.~~;

(11) district policies and procedures for timely reporting and documentation of each incident involving use of a restricted procedure; and

(12) schoolwide programs on positive behavior strategies.

(b) The commissioner, after consulting with the commissioner of human services, must develop and maintain a list of training programs that satisfy the requirements of paragraph (a). The commissioner also must develop and maintain a list of experts to help individualized education program teams reduce the use of restrictive procedures. The district shall maintain records of staff who have been trained and the organization or professional that conducted the training. The district may collaborate with children's community mental health providers to coordinate trainings.

Subd. 6. **Behavior supports.** School districts are encouraged to establish effective schoolwide systems of positive behavior interventions and supports. Nothing in this section or section 125A.0941 precludes the use of reasonable force under sections 121A.582; 609.06, subdivision 1; and 609.379.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 3. **APPROPRIATION.**

$..... is appropriated from the general fund in fiscal year 2014 to the commissioner of education to: help school districts address the needs of children subject to a high use of prone restraints under Minnesota Statutes, sections 125A.0941 and 125A.0942; and

work with the commissioner of human services to coordinate appropriations, resources, and staff expertise to help these children.

EFFECTIVE DATE. This section is effective July 1, 2013.