

SHB 1240 - S AMD 459

By Senators Litzow, McAuliffe, Dammeier

ADOPTED 4/21/2015

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that there is no
4 educational or therapeutic benefit to children from physically
5 restraining or isolating them as part of their public school programs
6 when not necessary for immediate safety. The use of seclusion or
7 restraints in nonemergency situations poses significant physical and
8 psychological danger to students and school staff. The legislature
9 declares that it is the policy of the state of Washington to prohibit
10 the planned use of aversive interventions, to promote positive
11 interventions when a student with disabilities is determined to need
12 specially designed instruction to address behavior, and to prohibit
13 schools from physically restraining or isolating any student except
14 when the student's behavior poses an imminent likelihood of serious
15 harm to that student or another person.

16 **Sec. 2.** RCW 28A.155.020 and 2007 c 115 s 2 are each amended to
17 read as follows:

18 There is established in the office of the superintendent of
19 public instruction an administrative section or unit for the
20 education of children with disabilities who require special
21 education.

22 Students with disabilities are those children whether enrolled in
23 school or not who through an evaluation process are determined
24 eligible for special education due to a disability.

25 In accordance with part B of the federal individuals with
26 disabilities education improvement act and any other federal or state
27 laws relating to the provision of special education services, the
28 superintendent of public instruction shall require each school
29 district in the state to insure an appropriate educational
30 opportunity for all children with disabilities between the ages of
31 three and twenty-one, but when the twenty-first birthday occurs
32 during the school year, the educational program may be continued

1 until the end of that school year. The superintendent of public
2 instruction, by rule, shall establish for the purpose of excess cost
3 funding, as provided in RCW 28A.150.390, 28A.160.030, and 28A.155.010
4 through 28A.155.160, functional definitions of special education, the
5 various types of disabling conditions, and eligibility criteria for
6 special education programs for children with disabilities, including
7 referral procedures, use of ((aversive)) positive behavior
8 interventions, the education curriculum and statewide or
9 district-wide assessments, parent and district requests for special
10 education due process hearings, and procedural safeguards. For the
11 purposes of RCW 28A.155.010 through 28A.155.160, an appropriate
12 education is defined as an education directed to the unique needs,
13 abilities, and limitations of the children with disabilities who are
14 enrolled either full time or part time in a school district. School
15 districts are strongly encouraged to provide parental training in the
16 care and education of the children and to involve parents in the
17 classroom.

18 Nothing in this section shall prohibit the establishment or
19 continuation of existing cooperative programs between school
20 districts or contracts with other agencies approved by the
21 superintendent of public instruction, which can meet the obligations
22 of school districts to provide education for children with
23 disabilities, or prohibit the continuation of needed related services
24 to school districts by the department of social and health services.

25 This section shall not be construed as in any way limiting the
26 powers of local school districts set forth in RCW 28A.155.070.

27 **Sec. 3.** RCW 28A.600.485 and 2013 c 202 s 2 are each amended to
28 read as follows:

29 (1) The definitions in this subsection apply throughout this
30 section unless the context clearly requires otherwise.

31 (a) "Isolation" means ((excluding a student from his or her
32 regular instructional area and)) restricting the student alone within
33 a room or any other form of enclosure, from which the student may not
34 leave. It does not include a student's voluntary use of a quiet space
35 for self-calming, or temporary removal of a student from his or her
36 regular instructional area to an unlocked area for purposes of
37 carrying out an appropriate positive behavior intervention plan.

38 (b) "Restraint" means physical intervention or force used to
39 control a student, including the use of a restraint device to

1 restrict a student's freedom of movement. It does not include
2 appropriate use of a prescribed medical, orthopedic, or therapeutic
3 device when used as intended, such as to achieve proper body
4 position, balance, or alignment, or to permit a student to safely
5 participate in activities.

6 (c) "Restraint device" means a device used to assist in
7 controlling a student, including but not limited to metal handcuffs,
8 plastic ties, ankle restraints, leather cuffs, other hospital-type
9 restraints, pepper spray, tasers, or batons. Restraint device does
10 not mean a seat harness used to safely transport students. This
11 section shall not be construed as encouraging the use of these
12 devices.

13 (2) ~~The provisions of this section apply ((only to any restraint~~
14 ~~of a student who has an individualized education program or plan~~
15 ~~developed under section 504 of the rehabilitation act of 1973 that~~
16 ~~results in a physical injury to a student or a staff member, any~~
17 ~~restraint of a student who has an individualized education program or~~
18 ~~plan developed under section 504 of the rehabilitation act of 1973,~~
19 ~~and any isolation of a student who has))~~ to all students, including
20 those who have an individualized education program or plan developed
21 under section 504 of the rehabilitation act of 1973. The provisions
22 of this section apply only to incidents of restraint or isolation
23 that occur while a student ((who has an individualized education
24 program or plan developed under section 504 of the rehabilitation act
25 of 1973)) is participating in school-sponsored instruction or
26 activities.

27 (3)(a) An individualized education program or plan developed
28 under section 504 of the rehabilitation act of 1973 must not include
29 the use of restraint or isolation as a planned behavior intervention
30 unless a student's individual needs require more specific advanced
31 educational planning and the student's parent or guardian agrees. All
32 other plans may refer to the district policy developed under
33 subsection (3)(b) of this section. Nothing in this section is
34 intended to limit the provision of a free appropriate public
35 education under Part B of the federal individuals with disabilities
36 education improvement act or section 504 of the federal
37 rehabilitation act of 1973.

38 (b) Restraint or isolation of any student is permitted only when
39 reasonably necessary to control spontaneous behavior that poses an
40 imminent likelihood of serious harm, as defined in RCW 70.96B.010.

1 Restraint or isolation must be closely monitored to prevent harm to
2 the student, and must be discontinued as soon as the likelihood of
3 serious harm has dissipated. Each school district shall adopt a
4 policy providing for the least amount of restraint or isolation
5 appropriate to protect the safety of students and staff under such
6 circumstances.

7 (4) Following the release of a student from the use of restraint
8 or isolation, the school must implement follow-up procedures. These
9 procedures must include: (a) Reviewing the incident with the student
10 and the parent or guardian to address the behavior that precipitated
11 the restraint or isolation and the appropriateness of the response;
12 and (b) reviewing the incident with the staff member who administered
13 the restraint or isolation to discuss whether proper procedures were
14 followed and what training or support the staff member needs to help
15 the student avoid similar incidents.

16 ((+4)) (5) Any school employee, resource officer, or school
17 security officer who uses ((~~any chemical spray, mechanical~~)
18 isolation or restraint((~~, or physical force~~)) on a student during
19 school-sponsored instruction or activities must inform the building
20 administrator or building administrator's designee as soon as
21 possible, and within two business days submit a written report of the
22 incident to the district office. The written report ((~~should~~)) must
23 include, at a minimum, the following information:

24 (a) The date and time of the incident;

25 (b) The name and job title of the individual who administered the
26 restraint or isolation;

27 (c) A description of the activity that led to the restraint or
28 isolation;

29 (d) The type of restraint or isolation used on the student,
30 including the duration; ((~~and~~))

31 (e) Whether the student or staff was physically injured during
32 the restraint or isolation incident and any medical care provided;
33 and

34 (f) Any recommendations for changing the nature or amount of
35 resources available to the student and staff members in order to
36 avoid similar incidents.

37 ((+5)) (6) The principal or principal's designee must make a
38 reasonable effort to verbally inform the student's parent or guardian
39 within twenty-four hours of the incident, and must send written
40 notification as soon as practical but postmarked no later than five

1 business days after the restraint or isolation occurred. If the
2 school or school district customarily provides the parent or guardian
3 with school-related information in a language other than English, the
4 written report under this section must be provided to the parent or
5 guardian in that language.

6 (7)(a) Beginning January 1, 2016, and by January 1st annually,
7 each school district shall summarize the written reports received
8 under subsection (5) of this section and submit the summaries to the
9 office of the superintendent of public instruction. For each school,
10 the school district shall include the number of individual incidents
11 of restraint and isolation, the number of students involved in the
12 incidents, the number of injuries to students and staff, and the
13 types of restraint or isolation used.

14 (b) No later than ninety days after receipt, the office of the
15 superintendent of public instruction shall publish to its web site
16 the data received by the districts. The office of the superintendent
17 of public instruction may use this data to investigate the training,
18 practices, and other efforts used by schools and districts to reduce
19 the use of restraint and isolation."

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20 On page 1, line 2 of the title, after "schools;" strike the
21 remainder of the title and insert "amending RCW 28A.155.020 and
22 28A.600.485; and creating a new section."

EFFECT: Specifies in the intent section that physically
restraining or isolating a student has no educational or therapeutic
benefit "when not necessary for immediate safety."

States in the definition of isolation that it does not include
temporary removal of a student from his or her regular instructional
area to an unlocked area for purposes of carrying out an appropriate
positive behavior intervention plan.

Specifies in the definition of restraint that it does not include
appropriate use of a prescribed medical, orthopedic, or therapeutic
device when used as intended and provides examples.

Provides that an IEP or section 504 plan may include the use of
restraint or isolation as a planned behavior intervention if a

student's individual needs require more specific advanced educational planning and the student's parent or guardian agrees.

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