

FINAL BILL REPORT

SHB 1240

C 206 L 15
Synopsis as Enacted

Brief Description: Concerning restraint or isolation of students, including students with disabilities, in public schools.

Sponsors: House Committee on Education (originally sponsored by Representatives Pollet, Santos, S. Hunt, Orwall, Senn, Lytton, Robinson, Walsh, Griffey, Goodman, Buys and Tarleton).

House Committee on Education
Senate Committee on Early Learning & K-12 Education

Background:

Special Education.

Each school district is required to provide an appropriate educational opportunity to children with disabilities, meaning those children who have been determined eligible for special education due to a disability. Two federal laws require school districts to provide individualized education and support services to these children. The Individuals with Disabilities Education Improvement Act (IDEA) requires that districts provide to each public school child who receives special education an Individualized Education Program (IEP). An IEP guides the delivery of special education supports and services designed to meet the child's unique needs. The Rehabilitation Act of 1973, Section 504 Plan requires that districts provide to each qualified student with a disability regular or special education services and related services designed to meet the student's individual educational needs.

Student Restraint or Isolation Laws.

State law encourages parents and teachers to use methods of correction and restraint that are not dangerous to children. The physical discipline of a child is allowed when reasonable and moderate and inflicted by a parent, teacher, or guardian for purposes of restraining or correcting the child. The following actions are presumed unreasonable when used to correct or restrain a child:

- throwing, kicking, burning, or cutting a child;
- striking a child with a closed fist;
- shaking a child under age 3;
- interfering with a child's breathing;
- threatening a child with a deadly weapon; or

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- doing any other act that is likely to cause and which does cause bodily harm greater than transient pain or minor temporary marks.

In 2013 legislation was enacted that placed certain requirements on the restraint or isolation (R or I) of students who have an IEP or Section 504 plan and who are participating in school-sponsored instruction or activities.

- When school staff releases a student from R or I, the school must conduct follow-up procedures, including:
 - reviewing the incident with the student and the student's parent or guardian to address the student's behavior; and
 - reviewing the incident with the staff member involved to discuss whether proper procedures were followed.
- School employees, resource officers, or school security officers who use chemical spray, mechanical restraint, or physical force on a student must inform the administrator and file a written report to the district office.
- The principal must make a reasonable effort to verbally inform the parent or guardian about the R or I within 24 hours and provide written notification postmarked within five days. Schools must provide this notification in a language other than English if the school customarily provides school-related information to parents in languages other than English.
- Schools that are required to develop an IEP must include within the plan procedures for notification of a parent or guardian about incidents of R or I. Parents or guardians of children who have an IEP or Section 504 plan must be provided a copy of the district policy on the use of R or I.

Conditions for the Use of Restraint or Isolation.

The Office of the Superintendent of Public Instruction (OSPI) is required to establish, in rule, eligibility criteria for special education programs for children with disabilities, including the use of aversive interventions.

By rule, the use of aversive interventions that involve "isolation," meaning excluding a student from his or her regular instructional area and isolating the student within a room or any other form of enclosure, are subject to the following conditions:

- The isolation, including the duration of its use, must be addressed in the student's aversive intervention plan.
- The enclosure must be ventilated, lighted, and temperature controlled from inside or outside for purposes of human occupancy.
- The enclosure must permit continuous visual monitoring of the student from outside the enclosure.
- An adult responsible for supervising the student must remain in visual or auditory range of the student.
- Either the student must be capable of releasing himself or herself from the enclosure or the student must continuously remain within view of an adult responsible for supervising the student.

By rule, the use of aversive interventions that involve "physical restraint," meaning involving physically restraining or immobilizing a student by binding or otherwise attaching the

student's limbs together or by binding or otherwise attaching any part of the student's body to an object, are subject to the following conditions:

- The restraint must only be used when and to the extent it is reasonably necessary to protect the student, other persons, or property from serious harm.
- The restraint, including the duration of its use, must be addressed in the student's aversive intervention plan.
- The restraint must not interfere with the student's breathing.
- An adult responsible for supervising the student must remain in visual or auditory range of the student.
- Either the student must be capable of releasing himself or herself from the restraint or the student must continuously remain within view of an adult responsible for supervising the student.

Summary:

Requirements related to restraint of students with IEPs or Section 504 plans are made applicable to all students. An IEP or Section 504 plan may not include the use of R or I as a planned behavior intervention, unless a student's individual needs require more specific advanced educational planning and the student's parent or guardian agrees. All other plans may refer to the district policy on R or I. It is stated that these requirements are not intended to limit the provision of a free appropriate public education under Part B of the IDEA or Section 504 of the Rehabilitation Act.

The R or I of any student is permitted only when reasonably necessary to control spontaneous behavior that poses an imminent likelihood of serious harm, meaning:

- there is evidence of a substantial risk that the student will inflict physical harm upon his or her own person, upon another, or upon the property of others; or
- the student has threatened the physical safety of another and has a history of one or more violent acts.

When a student is placed in R or I, the student must be closely monitored to prevent harm to the student, and the R or I must be discontinued as soon as the likelihood of serious harm has dissipated. Each school district must adopt a policy providing for the least amount of R or I appropriate to protect the safety of students and staff under such circumstances.

Schools are required to follow-up after incidents of R or I:

- with the student and the parent or guardian, to review the appropriateness of the response; and
- with the staff member who administered the R or I, to review what training or support the staff member needs to help the student avoid similar incidents.

Schools are required to report incidents of isolation, in addition to incidents of restraint, and reports must include any recommendations for changing the nature or amount of resources available to the student and staff members in order to avoid further incidents. Beginning January 1, 2016, and by January 1 annually, each district must summarize the written reports received by the schools and submit the summaries to the OSPI. For each school, the district summary must include the number of individual incidents of R or I, the number of students involved in the incidents, the number of injuries to students and staff, and the types of R or I

used. No later than 90 days after receipt, the OSPI must publish the data to its website. The OSPI may use the data to investigate the training, practices, and other efforts used by schools and districts to reduce the use of R or I.

Excluding a student from his or her regular instructional area is removed from the definition of "isolation." Isolation does not include the voluntary use by a student of a quiet space for self-calming, or the 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. The definition of "restraint" is modified to include the use of devices to restrict a student's freedom of movement, but not the appropriate use of a prescribed medical, orthopedic, or therapeutic device when used as intended, such as to achieve proper body position, balance, or alignment or to permit a student to safely participate in activities. The definition of "restraint device" is modified to exclude a seat harness used to safely transport students, and the term must not be construed as encouraging the use of these devices.

For purposes of the OSPI rules on special education eligibility criteria, the term "aversive interventions" is changed to "positive behavior interventions."

Votes on Final Passage:

House	68	29	
Senate	43	3	(Senate amended)
House			(House refused to concur)
Senate	48	0	(Senate amended)
House	71	27	(House concurred)

Effective: July 24, 2015