

Frequently Asked Questions about 2011 Act 125
Addressing the Use of Physical Restraint and Seclusion in Public Schools
Revised November 25, 2015

Definitions & Coverage

1. **What does “at school” mean?** The term “at school” refers to the day-to-day operations of a school and any school-related activities. This would include, for example, field trips, sporting events, after school clubs and the transport of students.
2. **Does Act 125 apply to 3K and 4K programs?** The seclusion and restraint law defines “school” as “a public school, including a charter school.” If a 4K program is operated by the school district, Act 125 applies. This would include the reporting, documentation and staff training requirements. Any staff contracted with the school district would fall under the requirements.
3. **Does Act 125 apply to students placed in private schools by their IEP teams?** The requirements of 2011 Act 125 do not apply to private schools, even when an Individualized Education Program (IEP) team determines a private school to be a student’s appropriate educational placement. The Act’s prohibitions and conditions apply to the use of seclusion or physical restraint by covered individuals on a student “at school.” The Act defines the term “school” as “a public school, including a charter school.” When an IEP team places children at private schools, public school districts remain responsible for the provision of a free, appropriate public education (FAPE) by ensuring IEPs are being implemented.
4. **Does the Act allow the use of restraint or seclusion in the case of property damage?** The Act permits the use of seclusion and or physical restraint only when 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. Property damage alone, without the threat of an imminent risk to the safety of the student or others, would not be a sufficient basis for the use of physical restraint or seclusion.

Seclusion

5. **Are pressure and release type mechanisms permitted under Act 125?** Pressure hold type locks are not allowed. Under Act 125, no door to a room or area used for seclusion may be capable of being locked. All locks are prohibited, including locks built into doorknobs, padlocks, etc. Some schools have installed hold-down type locks that require pressure to be applied to a button or switch and release immediately when pressure is removed. These types of locks are NOT permitted under the Act, even if schools had previously obtained a waiver from a local inspector. Schools must remove locks from doors to rooms or areas designated to be used for seclusion.
6. **If locks cannot be used on seclusion room doors, may staff hold the door shut?** Act 125 does not prohibit staff from holding the door of a seclusion room shut. However, it is very

important for schools to determine whether it is a good, safe idea to do so for a particular student. The decision about holding a door shut will need to be determined on an individualized, case-by-case basis.

To avoid struggles with the door, some districts have installed doors with handles on the outside that allow staff to hold the door shut, but where the door immediately opens slightly upon release. The door does not have a handle on the inside so a student cannot pull or engage in a struggle with the door. The student must be visible to staff at all times. In addition, it would be important for staff to determine whether this would be safe and appropriate on an individualized basis.

7. **Does the prohibition on locks apply only to the seclusion room or does it apply to a room that has a seclusion room located within it?** The prohibition does not apply to doors of classrooms where a seclusion room may be located. No locks are allowed on the door to the seclusion room. Even though the prohibition does not apply to the doors of the classroom, a student must never be left alone in a seclusion room. When a child is in seclusion, Act 125 requires constant supervision of the student.
8. **Is sending a student to the hallway or the principal's office considered seclusion?** No, unless the student is apart from other students and is physically prevented from leaving the area. Seclusion is defined as "the involuntary confinement of a pupil, apart from other pupils, in a room or area from which the pupil is physically prevented from leaving."
9. **What does "physically prevented from leaving" mean?** When a student is not allowed to leave a secluded setting by physical means, i.e. blocking doorway, holding the door closed, restraint, etc. the student is being physically prevented from leaving.
10. **If a student is placed in a small room with an unlocked door to either work on school work or to take a break would this be considered seclusion?** If a student is not physically prevented from leaving a room or area, it is not considered seclusion.
11. **If a student is displaying unsafe behaviors, how can school staff provide adequate access to bathroom facilities, drinking water, necessary medications, and regularly scheduled meals?** Act 125 requires students have "adequate" access, not necessarily immediate access. If a student's behavior is dangerous, it may not be safe to take the student to the bathroom at that exact moment. However, staff should ensure the student is able to have access to these necessities as soon as safely possible. The duration of any seclusion or physical restraint should be very short. School staff should think about this in terms of minutes. By only using seclusion or physical restraint in crisis situations and for very short periods of time, staff will be able to ensure students have adequate access.

Physical Restraint

12. **Are prone physical restraints permitted under the Act?**

The Act does not specifically prohibit "prone" restraints. However, it prohibits maneuvers or techniques that:

- Do not give adequate attention and care to protecting the pupil's head;

- Cause chest compression by placing pressure or weight on the student’s chest, lungs, sternum, diaphragm, back or abdomen;
- Place pressure or weight on the student’s neck or throat, on an artery, or on the back of the student’s head or neck, or that otherwise obstruct the student’s circulation or breathing; or
- Constitute corporal punishment.

Each student’s Individualized Education Program (IEP) team must consider the student’s unique educational, behavioral and medical needs when determining the safety and appropriateness of any intervention. The IEP team is in the best position to make decisions about whether a particular restraint maneuver contains any of these prohibited elements.

Concern with the safety of face-down, prone-type restraints is widespread given the high likelihood of restricting the breathing of the person being restrained. An example of a recent document expressing this concern is the following excerpt from the Spring 2012 U.S. Department of Education publication titled “Restraint and Seclusion: Resource Document” available at: <http://www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf>

Restraint or seclusion should never be used in a manner that restricts a child’s breathing or harms the child.

Prone (i.e., lying face down) restraints or other restraints that restrict breathing should never be used because they can cause serious injury or death. Breathing can also be restricted if loose clothing becomes entangled or tightened or if the child’s face is covered by a staff member’s body part (e.g., hand, arm, or torso) or through pressure to the abdomen or chest. Any restraint or seclusion technique should be consistent with known medical or other special needs of a child. School districts should be cognizant that certain restraint and seclusion techniques are more restrictive than others, and use the least restrictive technique necessary to end the threat of imminent danger of serious physical harm. A child’s ability to communicate (including for those children who use only sign language or other forms of manual communication or assistive technology) also should not be restricted unless less restrictive techniques would not prevent imminent danger of serious physical harm to the student or others. In all circumstances, the use of restraint or seclusion should never harm a child.

13. **Are bus harnesses permitted under the Act?** While transporting students on a moving vehicle, bus harnesses may be required for safety purposes. For a student with

a disability, the use of any safety equipment during transportation must be documented in the student's IEP.

14. **Are weighted blankets, vests, etc. considered mechanical restraints?** A weighted vest used properly for sensory support under the direction and oversight of appropriate medical or therapeutic staff would not be considered a mechanical restraint. For example, school-based occupational therapists often design and oversee the use of sensory items. Use of such sensory supports must be included in the IEP. More information about the use of this type of equipment may be found in the department's Occupational Therapy and Physical Therapy Resource and Planning Guide, available at: http://sped.dpi.wi.gov/sped_occ_ther.
15. **May staff redirect students by touch if a student is running down the hall, running outside, or climbing the bleachers in gym?** Touching students to redirect them is not considered physical restraint. The Act specifically states that touching or holding a student's hand, arm, shoulder or back to calm, comfort, or redirect a student is not considered physical restraint. Only when staff members immobilize or restrict the ability of a student to freely move is a maneuver considered physical restraint.

IEP Requirements

16. **Is it advisable to have a disclaimer or general statement in the IEPs of all students with behavioral needs that seclusion or physical restraint could potentially be used?** No, it is not advisable to include disclaimers or general statements in IEPs. Under IDEA, IEPs must be individualized and interventions must be based on the unique needs of each student. Act 125 requires that when an IEP team determines the use of seclusion or restraint may be *reasonably* anticipated for the student, the IEP must include appropriate positive interventions and supports and other strategies that address the behavioral concerns based on a functional behavioral assessment; and clear statements that the use of restraint and/or seclusion may be used as an intervention. It is not reasonable to assume all students for whom behavior is a concern would exhibit the type of significant, dangerous behavior where the use of seclusion or physical restraint might be considered.

Additionally, Act 125 includes a requirement addressing the unanticipated use of seclusion or physical restraint with students with disabilities. The first time that seclusion or physical restraint is used on a student, the student's IEP team must meet as soon as possible after the incident. The IEP team must review the student's IEP to make sure that it contains appropriate positive behavioral interventions, supports, and other strategies to address the behavior, and revise if necessary.

Notification and Reporting Requirements

17. **What is the process for completing the required written incident report?** The principal or her/his designee fills out the report after consultation with involved staff. The designee can be any staff member the principal chooses, including a teacher or a paraprofessional. While the principal may choose to designate this task, the principal

is ultimately responsible for knowing the information and ensuring all requirements are met, including notifying the parent within one business day of the incident.

18. **Is there a required form for the written incident report?** The department does not require a specific incident report form, but examples are provided on our website at http://sped.dpi.wi.gov/sped_sbseclusion. School districts should minimally ensure the form they choose to use includes the student's name, the date, time and duration of the use of physical restraint or seclusion, 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 school staff present at the time of the incident.
19. **Are schools required to send the incident report home? Are schools required to contact the parent a second time when the incident report becomes available?** The school is not required to send the report home, however within one business day of the incident the parents must be notified of the incident and the availability of the written report. The report must include the student's name; the date, time and duration of the incident; a description of the incident including details of the student's behavior before and after the incident; and the names and titles of all school staff present during the incident. The school must make the report available for the parents' review within three business days of the incident. At the time the principal or designee initially notifies the parent of the incident, the parent must be made aware of the availability of the report.

The Act does not require schools to contact the parent a second time. If a parent requests the report be sent home, the school should provide a copy.

20. **Do schools have to report their data on seclusion and physical restraint to DPI?** The Act does not require districts to submit seclusion and physical restraint data to DPI. The law requires each school to report the data annually, by Sept. 1, to the school board.

The principal or designee must submit a report containing:

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

The annual report to the school board contains the same data as is required in the U.S. Department of Office of Civil Rights cyclical data collection on seclusion and physical restraint. DPI is not involved with this data collection. More information about this is available at <http://www2.ed.gov/about/offices/list/ocr/whatsnew.html>.

21. **Is there a required format for the annual report to the school board?** Although the law specifies the information that must be included in the annual report, it does not require a specific form.

22. **Must the information in the annual report be broken down by school?** Yes. The Act requires the information be broken down by school in the annual report to the school board. The school district may decide to compile this information in one report as long as each school's data is included separately. Otherwise each school may submit the information individually to the school board.
23. **Is the required annual report to the school board subject to open records?** The report is subject to an open record request. An open record request should be granted unless disclosure could lead to a release of confidential pupil record information. Since the Act does not require the report to identify the student names, in most cases, the open record request should be granted. However, if a school has very few students with a disability, for example, five or fewer, the disclosure of the report as submitted to the school board might not be permitted. The district may be able to release some of the data by combining data sets. For example, a district could respond to the request by providing the number of incidents and students by district instead of by school. In addition to a small cell size, there may be other reasons or situations where disclosure might lead to a release of confidential pupil record information. Therefore, each open record request should be reviewed by the school district to determine if the release is permissible, and it may be advisable for the school district to consult with its attorney. For more information on Wisconsin's pupil record law, see <http://sped.dpi.wi.gov/sites/default/files/imce/sspw/pdf/srconfid.pdf>.
24. **Does restraint or seclusion by a police officer need to be documented and reported?** The law states that "whenever seclusion or physical restraint is used on a pupil at school," the notification and reporting requirements apply. Therefore, these requirements also apply to incidents involving police officers or liaisons. However, keep in mind police officers and liaisons are not covered individuals under the Act, so other provisions do not apply. Police have their own training and protocols to respond to crisis situations.
25. **Does an incident of seclusion need to take place in a "seclusion room" in order to be counted as an incident?** No. Seclusion is defined as the involuntary confinement of a student, apart from other students, in a room or area from which the student is physically prevented from leaving. When a student is secluded, the law requires that the room or area be free of objects or fixtures that may injure the student and that the door is incapable of being locked. While the use of seclusion would be inappropriate if a student was secluded in a room that did not comply with the above requirements, the incident should still be documented and counted.
26. **What constitutes an incident? If a child is restrained, released, and then immediately becomes unsafe again necessitating restraint, would this be counted as two incidents or one?** The number of incidents reported would depend on what is reasonable under the circumstances. If a student is restrained because of an imminent safety risk, and upon release, immediately creates an unsafe situation requiring the hold to be reapplied, then this would be considered one incident. The duration of the

incident would be from the time restraint was first used until it ends and it is no longer required for safety purposes.

Training Requirements

27. **Who should be trained on the requirements of Act 125?** A staff member who will be in contact with students should be trained on the Act's requirements. This does not necessarily mean all staff members need to be trained on seclusion/physical restraint requirements outlined in the Act.
28. **Who should receive training in the use of physical restraint?** The law requires at least one staff member in each school where restraint might be used to be trained. It does not specify who must be trained. Schools should carefully consider which staff members should receive training. Administrators, security/safety personnel, regular education staff, student services and special education staff should be considered. The district may wish to consider training several people within a school. In the rare event physical restraint is needed in a situation, it is helpful to have more than one trained person available to ensure safety for students and staff alike.
29. **How does one know when there is a clear, present and imminent risk to the physical safety of the student or others?** Staff members present during an incident are generally in the best position to make this determination. One of the key components of the required training is to identify dangerous behavior and evaluating the risk of harm so staff members are prepared to identify situations where student behavior is escalating, as well as techniques for de-escalation. Verbal or noncompliant behavior usually would not meet the standard of a clear, present and imminent risk to the physical safety of the student or others.
30. **What resources are available to assist school staff in monitoring signs of distress?** Under Act 125, training programs must include instruction regarding the effects of physical restraint, monitoring signs of physical distress, and obtaining medical assistance. Resources may be obtained through the providers of training programs.
31. **What kind of documentation should the school keep about staff training?** Training programs will provide documentation such as certificates of participation upon completion. The law does not require a particular format. Districts should maintain documentation of the dates of training, who participated and when it "expires" or the provider requires refreshers.

Questions related to the content of this document may be directed to the [Special Education Team](#), (608) 266-1781.