

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/HB 149 **Students with Disabilities in Public Schools**

SPONSOR(S): Early Learning & Elementary Education Subcommittee, DuBose, Plasencia, and others

TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 192

FINAL HOUSE FLOOR ACTION: 118 Y's

0 N's

GOVERNOR'S ACTION: Approved

SUMMARY ANALYSIS

CS/HB 149 passed the House on April 14, 2021, and subsequently passed the Senate on April 26, 2021.

For students with disabilities in public schools, the bill revises requirements relating to the use of seclusion and restraint and creates a pilot program for the use of video cameras in certain classrooms.

Use of Seclusion and Restraint on Students with Disabilities

The bill defines terms related to seclusion, physical restraint, and mechanical restraint, and specifies when such techniques may be used.

The bill prohibits placing a student in seclusion. A student may be restrained only by authorized personnel and only for the time necessary to protect the student and others and only after all positive behavior interventions and supports are exhausted. The bill prohibits the use of restraint techniques and devices, including straightjackets, zip ties, handcuffs, and tie-downs, in a way that obstructs or restricts breathing or blood flow or places a student in a facedown position with the student's hands restrained behind the student's back. The bill prohibits the use of any restraint technique designed to inflict pain to induce compliance.

School districts must adopt policies and procedures related to positive behavior interventions and supports and train authorized personnel on how to use such techniques. The bill requires school districts to develop a crisis intervention plan for a student who is restrained more than once during a semester.

The bill revises data on restraint usage and incidents that must be submitted to the Department of Education and requires monthly publication of the data in a de-identified format.

Video Cameras in Public School Classrooms Pilot Program

The bill implements a pilot program for video recording in classrooms in which a majority of the students are provided special education services in Broward County public schools. At the written request of a parent, the school district must install a video camera and record all areas of the classroom except for the restroom or any other area where students change their clothes.

The bill provides circumstances under which the video recording may be viewed and limits who may view the recording to: school employees involved with an alleged incident of abuse or neglect or the investigation of such an incident; the parent of a student who is involved in the alleged incident; law enforcement if the incident is reported; and representatives of the Department of Children and Families (DCF) as a part of a child abuse investigation. The bill requires anyone who views the video to report suspected child abuse to the DCF.

The bill has an indeterminate fiscal impact but can be absorbed within existing resources. See Fiscal Comments.

The bill was approved by the Governor on June 21, 2021, ch. 2021-140, L.O.F., and will become effective on July 1, 2021.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present Situation

Federal and State Guidance on the Use of Seclusion and Restraint

In 2012, the U.S. Department of Education published the *Restraint and Seclusion: Resource Document*. The document encourages states to review current policies on the use of restraint and seclusion in schools to help ensure that every student is safe and protected.¹ The document lays out guiding principles for crafting restraint and seclusion policies. The principles suggest that every effort should be made to prevent the need for the use of restraint and seclusion and that any behavioral intervention must be consistent with a child's rights to be treated with dignity and free from abuse.² Restraint or seclusion should only be used when a student poses an imminent danger of serious physical harm to self or others and not as a routine behavior management strategy.³ Schools are encouraged to create a behavioral framework including the use of positive behavior interventions and supports (PBIS), which should have the end goal of rendering restraint and seclusion unnecessary.⁴

In response to state legislation enacted in 2011,⁵ the Florida Department of Education (DOE) issued *Technical Assistance Paper Guidelines for the Use, Documentation, Reporting, and Monitoring of Restraint and Seclusion with Students with Disabilities* (TAP 2011-165) to guide school districts regarding the use of seclusion and restraint with students with disabilities.⁶ These guidelines cover:⁷

- When seclusion or restraint might be used.
- Considerations when selecting a training program for restraint.
- What should be documented.
- Parent notification and reporting.
- Monitoring use.

Similar to the 2012 federal guidance, the DOE guidelines stress the importance of students with disabilities being treated with respect and dignity in an environment that provides for the physical safety and security of students and staff. According to the *TAP 2011-165*, it is important to recognize that the use of seclusion and restraint may have an emotional impact on students and should not be used to punish a student or as a deterrent. Seclusion and restraint should only be used in emergency situations when an imminent risk of serious injury or death to the student or others exists.⁸

Use of Seclusion and Restraint on Students with Disabilities

Florida law authorizes district school boards, each teacher, and other members of school staff to control and discipline students.⁹ Additionally, teachers must keep order in the classroom and in other assigned places.¹⁰ For students with disabilities, school districts are required to develop policies and procedures

¹ U.S. Department of Education, *Restraint and Seclusion: Resource Document* (May 2012), available at <https://www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf>.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ Chapter 2011-175, L.O.F.

⁶ Florida Department of Education, Technical Assistance Paper, *Guidelines for the Use, Documentation, Reporting, and Monitoring of Restraint and Seclusion with Students with Disabilities* (Oct. 14, 2011), available at <https://info.fldoe.org/docushare/dsweb/Get/Document-6212/dps-2011-165.pdf>.

⁷ *Id.*

⁸ *Id.* at A-1.

⁹ Section 1003.32, F.S.

¹⁰ *Id.*

for training staff in the use of seclusion and restraint.¹¹ The Florida Department of Education (DOE) must develop standards for documenting, reporting, and monitoring the use of seclusion and restraint.¹²

School personnel are prohibited from:

- Using a mechanical physical restraint on a student or manual physical restraint that restricts a student's breathing.¹³
- Closing, locking, or physically blocking a student in a room that is unlit and does not meet the rules of the State Fire Marshal for seclusion time-out rooms.¹⁴

District Policies and Procedures

Current law requires school districts to develop seclusion and restraint policies and procedures regarding:¹⁵

- Incident reporting procedures, data collection and monitoring regarding the occurrences of seclusion or restraint, and monitoring and reporting of collected data.
- Training programs relating to seclusion and manual or physical restraint.
- The district's plan for selecting personnel to be authorized to use seclusion and restraint.
- The district's plan for reducing the use of seclusion and restraint, which must include activities, skills, and resources needed to achieve that goal.

Reporting and Monitoring

A school must prepare an incident report within 24 hours after a student is released from seclusion or restraint.¹⁶ Among other factors, the report must include:¹⁷

- The duration and type of the restraint or seclusion.
- The student's behavior leading up to and precipitating the decision to use restraint or seclusion.
- Any injuries, visible marks, or possible medical emergencies that may have occurred during the restraint or seclusion.

Each time restraint or seclusion is used, schools must notify the parent or guardian of the student in writing before the end of the school day and make reasonable efforts to notify them by telephone or email.¹⁸ Parents must also be provided a complete incident report in writing by mail within 3 days after an incident.¹⁹

The use of manual restraint or seclusion on students must be monitored at the classroom, building, district, and state levels.²⁰ Documentation related to any incidents reported must be provided to the principal, the school district's director of Exceptional Student Education, and the DOE's Bureau of Exceptional Education and Student Services each month that the school is in session.²¹

DOE Seclusion and Restraint Data

Florida school districts began reporting incidents of seclusion and restraint in the 2010-2011 school year. Since that time and through the 2019-2020 school year, a total of 21,489 incidents of seclusion

¹¹ Section 1003.573(3)(a), F.S.

¹² Section 1003.573(2), F.S.

¹³ Section 1003.573(4), F.S.

¹⁴ Section 1003.573(5), F.S.

¹⁵ Section 1003.573(3), F.S.

¹⁶ Section 1003.573(1)(a), F.S.

¹⁷ Section 1003.573(1)(b), F.S.

¹⁸ Section 1003.573(1)(c), F.S.

¹⁹ Section 1003.573(1)(d), F.S.

²⁰ Section 1003.573(2)(a), F.S.

²¹ Section 1003.573(2)(b), F.S.

and 86,969 incidents of restraint were reported.²² However, the number of incidents has generally decreased every school year since the enactment of the law.

| School Year Reported | # of Students | Seclusion Incidents |
|----------------------|---------------|---------------------|
| 2010-11 | 1,321 | 4,637 |
| 2011-12 | 1,448 | 4,245 |
| 2012-13 | 1,237 | 3,024 |
| 2013-14 | 885 | 2,272 |
| 2014-15 | 732 | 2,262 |
| 2015-16 | 638 | 1,563 |
| 2016-17 | 503 | 1,351 |
| 2017-18 | 349 | 834 |
| 2018-19 | 303 | 744 |
| 2019-20 | 214 | 557 |
| Total | 7,630 | 21,489 |

| School Year Reported | # of Students | Restraint Incidents |
|----------------------|---------------|---------------------|
| 2010-11 | 3,580 | 10,683 |
| 2011-12 | 4,369 | 9,789 |
| 2012-13 | 4,096 | 9,551 |
| 2013-14 | 3,479 | 8,964 |
| 2014-15 | 3,229 | 8,199 |
| 2015-16 | 3,437 | 7,696 |
| 2016-17 | 3,239 | 8,770 |
| 2017-18 | 3,136 | 8,367 |
| 2018-19 | 3,077 | 8,650 |
| 2019-20 | 2,536 | 6,300 |
| Total | 34,178 | 86,969 |

Positive Behavior Intervention Plan

A positive behavior intervention plan (PBIP) is a written proactive plan that is part of a child's individualized education plan (IEP) and includes strategies to help reduce or prevent the likelihood of challenging behaviors from occurring.²³ The PBIP is developed by individuals knowledgeable about the student and is regularly reviewed by the student's IEP team.²⁴ A PBIP should include the following:²⁵

- Environmental changes to reduce or eliminate challenging behaviors.
- Strategies for teaching new skills to replace challenging behaviors.
- Skills training to increase student understanding of positive behavior strategies.
- Support that will be provided to help the student practice the new strategies across different settings within the school.

Crisis Intervention Plan

A crisis intervention plan (CIP) is an action plan that is part of a child's IEP and includes strategies for immediate action when a student with mental health or behavior challenges is at risk of harm to self or others.²⁶ The CIP is developed by individuals knowledgeable about the student and is regularly

²² Email from Bethany Swanson, Legislative Affairs, Florida Department of Education, RE: Education Committee – HB 149 Bill Analysis – 2019-2020 Seclusion & Restraint Incidents (Feb. 9, 2021); Email from Bethany Swanson, Legislative Affairs, Florida Department of Education, RE: Restraint and Seclusion (Dec. 13, 2019).

²³ Pacer Center, Action Information Sheet: PHP-c141, *Behavior Intervention or Crisis Plans* (2014), available at <https://www.pacer.org/webinars/cmh/Behavior-Intervention-or-Crisis-Plans.pdf>.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

reviewed by the student's IEP team.²⁷ The CIP clearly delineates steps that school personnel must take to support a student experiencing a crisis, such as what to expect from the student, health concerns of the student, whom to contact for assistance, how the CIP team can best work together during the crisis, and how the CIP team will know when a crisis has ended.²⁸

Video Cameras in Public Schools

Schools are increasingly using security cameras as a tool to monitor and improve student safety.²⁹ The DOE's *Florida Safe School Design Guidelines* recommends the use of video camera surveillance systems to monitor areas including entry points and the building's perimeter.³⁰ Florida school districts also use video camera monitoring systems in school buses.³¹

Texas was the first of three states to enact legislation allowing video camera recordings in special education classrooms.³² Laws in Texas and West Virginia mandate video cameras while Georgia's law is permissive.³³ In Texas, advocates and parents of students with disabilities are generally supportive of the law,³⁴ but school districts are challenged by the cost of cameras and how best to communicate with parents about the availability of video monitoring.³⁵ As of March 2020, Dallas Independent School District had equipped 56 of its 479 special education classrooms with video cameras and received 11 requests to review recordings.³⁶

There does not appear to be a consensus on the use of video cameras in special education classrooms. Advocates of requiring video cameras in special education classrooms suggest this will protect students who cannot speak out about their experiences in the classroom, decreasing student abuse by teachers.³⁷ However, others raise concerns that installing video cameras in special education classrooms may drive the student abuse "underground."³⁸

Education Records

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official government business.³⁹ This right applies to the official business of

²⁷ *Id.*

²⁸ *Id.*

²⁹ U.S. Department of Education, *Balancing Student Privacy and School Safety, A Guide to the Family Educational Rights Privacy Act for Elementary and Secondary Schools* (October 2007), available at <https://www2.ed.gov/policy/gen/guid/fpco/brochures/elsec.pdf>.

³⁰ See Florida Department of Education, *Florida Safe School Design Guidelines: Strategies to Enhance Security and Reduce Vandalism* (2003), at 30, available at <http://www.fldoe.org/core/fileparse.php/7738/urlt/2003SafeSchoolDesign.pdf>.

³¹ Florida Department of Education, *Florida School Bus Specifications* (2020), at III-10, available at <http://www.fldoe.org/core/fileparse.php/7585/urlt/2020FLSchoolBusSpec.pdf>.

³² National Conference of State Legislatures, Education Legislation Bill Tracking Database, <https://www.ncsl.org/research/education/education-bill-tracking-database.aspx> (follow "NCSL Education Legislation" hyperlink, then search topic "All Topics," search states "All States," search keyword "camera," search status "Enacted," and search year "All").

³³ *Id.*

³⁴ Steffi Lee, *Parents want clarity on law requiring cameras in special ed classrooms*, KXAN, Sept. 24, 2018, available at <https://www.kxan.com/news/parents-want-clarity-on-law-requiring-cameras-in-special-ed-classrooms/>.

³⁵ Eva-Marie Ayala, *Should every special-education classroom be recorded? Dallas ISD trustees are debating cameras*, The Dallas Morning News, Nov. 11, 2019, available at <https://www.dallasnews.com/news/education/2019/11/11/should-every-special-education-classroom-be-recorded-dallas-schools-trustees-are-debating-cameras/>.

³⁶ Eva-Marie Ayala, *Will Dallas be the first big-city district to require video cameras in all special education classrooms?*, The Dallas Morning News, March 4, 2020, <https://www.dallasnews.com/news/education/2020/03/04/dallas-will-put-cameras-in-all-special-education-classrooms-but-some-worry-about-privacy/>.

³⁷ Sara C. Heintzelman and Justin M. Bathon, *Caught on Camera: Special Education Classrooms and Video Surveillance*, 12 INT'L J. OF EDUC. POLICY AND LEADERSHIP (2017), available at <https://files.eric.ed.gov/fulltext/EJ1166871.pdf>.

³⁸ TASH, *Will Cameras in Classrooms Make Schools Safer?* (Jan. 2015), available at <https://tash.org/wp-content/uploads/2015/01/Cameras-in-School-Final.pdf>.

³⁹ Fla. Const. art. I, s. 24(a).

any public body, officer, or employee of the state, including public school records.⁴⁰ However, Florida law incorporates the Family Educational Rights and Privacy Act⁴¹ (FERPA) and expressly exempts education records of individual students from public records requirements.⁴² Thus, education records may not be released without written parental consent.⁴³ In *WFTV, Inc. v. School Board of Seminole County*, the 5th District Court of Appeal applied this exemption to a school bus surveillance videotape, determining that the record was confidential and exempt from a public records request, even with personally identifying information redacted.⁴⁴

Effect of the Bill

Use of Seclusion and Restraint on Students with Disabilities

To provide greater clarity regarding seclusion and restraint requirements, the bill defines the following terms:

- "Crisis Intervention Plan" means an individualized action plan for school personnel to implement when a student exhibits dangerous behavior that may lead to imminent risk of serious injury.
- "Imminent risk of serious injury" means the threat posed by dangerous behavior that may cause serious physical harm to self or others.
- "Restraint" means the use of a mechanical or physical restraint.
- "Mechanical restraint" means the use of a device that restricts a student's freedom of movement. The term does not include the use of devices prescribed or recommended by physical or behavioral health professionals when used for indicated purposes.
- "Physical restraint" means the use of manual restraint techniques that involve significant physical force applied by a teacher or other staff member to restrict the movement of all or part of a student's body. The term does not include briefly holding a student in order to calm or comfort the student or physically escorting a student to a safe location.
- "Positive behavior interventions and supports" means the use of behavioral interventions to prevent dangerous behaviors that may cause serious physical harm to the student or others.
- "Seclusion" means the involuntary confinement of a student in a room or area alone and preventing the student from leaving the room or area. The term does not include timeout used as a behavior management technique intended to calm a student.
- "Student" means a child with an IEP enrolled in kindergarten through grade 12 in a school as defined in s. 1003.01(2), F.S., or the Florida School for the Deaf and Blind. The term does not include students in prekindergarten, students who reside in residential care facilities under s. 1003.58, F.S., or students participating in a Florida Department of Juvenile Justice education program under s. 1003.52, F.S.

The bill prohibits placing a student in seclusion.

Authorized school personnel may only restrain a student when there is an imminent risk of serious injury to students, school personnel, or others. Restraint may be used only after all positive behavior interventions and supports have been exhausted. Restraint may not be used for student discipline or to correct student noncompliance. The bill prohibits the use of any restraint technique used to inflict pain to induce compliance.

⁴⁰ *Id.*

⁴¹ 20 U.S.C. s. 1232g(a)(4). Education records means those records, files, documents, and other materials which contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution.

⁴² See Section 1002.221(1), F.S.

⁴³ Section 1002.221(2)(a), F.S.

⁴⁴ *WFTV, Inc. v. Sch. Bd. of Seminole*, 874 So. 2d 48, 58 (Fla. 5th DCA 2004).

The degree of force applied during physical restraint cannot exceed the amount of force necessary to protect the student or others from imminent risk of serious injury and all restraint must stop as soon as the threat posed by the dangerous behavior is over. The bill prohibits the use of restraint techniques and devices, including straightjackets, zip ties, handcuffs, and tie-downs, in a way that obstructs or restricts breathing or blood flow or places a student in a facedown position with the student's hands restrained behind the student's back.

Every school district must adopt PBIS and identify all school personnel authorized to use the interventions and supports. At the beginning of each school year, a school district must publicly post its policies and procedures regarding positive behavior interventions and supports. Any revisions made to the policies and procedures must be filed with the bureau chief of the DOE's Bureau of Exceptional Education and Student Services within 90 days after the revision. The bill expands the type of activities that may be included in a school district's restraint reduction plan to include data analysis and ongoing reduction of the use of restraint.

School districts must provide annual training to all school personnel authorized to use PBIS and must publish the procedures for training in the district's special policies and procedures manual. The training must include:

- The use of PBIS.
- Risk assessment procedures to identify when restraint may be used.
- Examples when positive behavior interventions and support techniques have failed to reduce the imminent risk of serious injury.
- Examples of safe and appropriate restraint techniques and how to use these techniques with multiple staff members working as a team.
- Instruction in the district's documentation and reporting requirements.
- Procedures to identify and deal with possible medical emergencies arising during the use of restraint.
- Cardiopulmonary resuscitation.

The bill requires schools to develop CIPs for students who are restrained more than one time during a semester. The CIP must be developed by a team composed of the student's parent, school personnel, and physical and behavioral health professionals. The CIP must include: specific PBIS to use in response to dangerous behaviors that create a threat of imminent risk of serious injury; known physical and behavioral health concerns that limit the use of restraint on the student; and a timetable for review and update of the CIP. The school must provide a copy of the CIP to the student's parent.

The bill revises the information that must be included in a restraint incident report to include: the date the person using restraint on a student was last trained on PBIS use; the date the crisis intervention plan was reviewed; and whether changes were recommended at that review. The DOE must publish monthly de-identified restraint incident data on its website beginning October 1, 2021.

Video Cameras in Public School Classrooms Pilot Program

The bill creates s. 1003.574, F.S., which institutes a 3-year Video Cameras in Public School Classrooms Pilot Program in Broward County public schools beginning with the 2021-2022 school year. The bill requires the Broward County School District to provide a video camera to any public school with a self-contained classroom for the remainder of the school year upon the written request of a parent of a student in the classroom. The bill defines "self-contained classroom" as a classroom at a public school in which a majority of the students in regular attendance are provided special education services and are assigned to one or more such classrooms for at least 50 percent of the instructional day. The pilot program does not include self-contained classrooms in which the only students receiving special education services are those who have been deemed gifted.

Before the video camera is placed in the classroom, the bill requires written notification to:

- the parent of each student assigned to the self-contained classroom,

- each student who is assigned to the self-contained classroom,
- the school district, and
- each employee assigned to work with any of the students in the self-contained classroom.

The video camera must be operational within 30 days of receipt of the parent's request and must be capable of recording, through both video and audio, all areas of the self-contained classroom and any room attached to that classroom. The bill prohibits the recording of a restroom or an area where a student may change his or her clothes; however, entrances, exits, and hallways to those areas must be recorded. The video camera may be shut off when students are not present in the classroom.

The bill limits the use of video recordings to ensuring the health, safety, and well-being of students receiving special education services. A school may not allow regular, continuous, or continual monitoring of the video recording. The bill requires a school to retain the video footage for at least 3 months after the date the video was recorded or until the conclusion of any investigation or any legal proceedings that result from the recording, including exhaustion of all appeals.

The school must conceal the identities of all students who are not involved with an incident that gives rise to a request for viewing. The bill defines "incident" to mean an event, circumstance, act, or omission that results in the abuse or neglect of a student by an employee of a public school, school district, or another student. The school must protect the confidentiality of all student records contained within the footage. As an education record, the recording would not be subject to public records laws.

The bill limits those who may view a video recording from a self-contained classroom to:

- a school or school district employee who is involved in the alleged incident;
- a parent of a student who is involved in an alleged incident;
- a school or school district employee as part of an investigation into an alleged incident;
- a law enforcement officer as part of an investigation into an alleged incident that has been reported to the law enforcement agency; and
- the Department of Children and Families (DCF) as part of a child abuse or neglect investigation.

The school must make the recording available for viewing within 7 days after receiving a request and a person who requests to view a recording must do so within 30 days of receiving notice that his or her request for viewing has been granted. The bill provides that incidental viewing by a school employee or contractor does not violate this section.

If any person viewing the recording suspects that child abuse has occurred, the bill requires any viewer to report the suspected child abuse to the DCF.

Any individual may appeal to the State Board of Education an action by a school or school district which the individual alleges violates this section, and the state board must grant a hearing within 45 days of receiving an appeal. The video cameras in a self-contained classroom and recordings associated with them may not:

- limit the access of the parent of a student, under the FERPA⁴⁵ or any other law, to a video recording regarding his or her student;
- waive any immunity from liability of a school district or an employee of a school district; or
- create any liability for a cause of action against a school or school district or an employee of a school or school district carrying out the duties and responsibilities under the pilot.

Unless a parent withdraws his or request in writing, the video camera must be operational for the remainder of the current school year. If the student whose parent made the request is no longer in attendance at the school, the school may discontinue video camera monitoring but must notify parents of the other students in the classroom at least 5 days prior to discontinuing monitoring. At the end of the

⁴⁵ 20 U.S.C. s. 1232g.

school year, the school must notify parents of students in the classroom that video camera monitoring will not continue during the next school year unless a parent requests monitoring in writing.

Continuing Education and Inservice Training for Teaching Students with Disabilities

The bill requires the Commissioner of Education to develop recommendations for incorporating emotional and behavioral disabilities into the recommendations for continuing education and inservice training for teaching students with developmental disabilities. The bill adds PBIS and the use of effective classroom behavior management strategies to the recommended areas the commissioner must address.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
None.
2. Expenditures:
See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
None.
2. Expenditures:
See Fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

School districts may incur costs associated with training and developing policies and procedures regarding restraint. The Borward County School District may incur costs associated with video camera pilot program with respect to installing and maintaining video cameras. The DOE may incur costs associated with publishing monthly incident data and providing additional training for effective classroom behavior management strategies. The fiscal impact is indeterminate but can be absorbed with existing resources.