State of Minnesota

HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH
SESSION

HOUSE FILE NO. 1621

March 12, 2009
Authored by Davnie, Abeler, Tillberry, Slocum, Greiling and others
The bill was read for the first time and referred to the Committee on K-12 Education Policy and Oversight

A bill for an act

relating to education; requiring schools to develop a plan and comply with requirements on using restrictive procedures for children with disabilities; proposing coding for new law in Minnesota Statutes, chapter 125A; repealing Minnesota Statutes 2008, sections 121A.66; 121A.67, subdivision 1; Minnesota Rules, parts 3525.0210, subparts 5, 6, 9, 13, 17, 29, 30, 46, 47; 3525.1100, subpart 2, item F; 3525.2900, subpart 5.

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

Section 1. **[125A.094] RESTRICTIVE PROCEDURES FOR CHILDREN WITH DISABILITIES.**

The use of restrictive procedures for children with disabilities is governed by sections 125A.0941 and 125A.0942, and must be consistent with this chapter.

Sec. 2. **[125A.0941] DEFINITIONS.**

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

(b) "Emergency" means a situation in which immediate intervention is needed to protect a child or other individual from physical injury or to prevent serious property damage.

(c) "Positive behavioral interventions and supports" means those interventions and strategies used to improve the school environment and teach children the skills likely to increase their ability to behave appropriately.

(d) "Physical holding" means physical intervention intended to hold a child immobile or limit a child's movement and where body contact is the only source of physical restraint. The term "physical holding" does not mean physical contact:

(1) used to help a child respond or complete a task;

(2) used to comfort or assist a child without restricting the child's movement;

(3) needed to administer an authorized health-related treatment; or

(4) needed to physically escort a child.

(e) "Restrictive procedures" means the use of physical holding or seclusion in an emergency that is involuntary or unintended by the child, deprives the child of mobility, or is aversive to that child.

(f) "Seclusion" means confining a child alone in a locked room from which the child can not exit but from which the child may be quickly removed if a fire or other disaster occurs. Time-out is not seclusion.

(g) "Time-out" means removing a child from an activity to a location where the child cannot participate or observe the activity and includes moving or ordering a child to an unlocked room.

Sec. 3. **[125A.0942] STANDARDS FOR RESTRICTIVE PROCEDURES.**

Subdivision 1. **Restrictive procedures plan.** (a) Schools shall keep on file or as part of the district's total special education systems plan an allowable restrictive procedures plan for children that is available for public viewing and includes at least the following:

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

(2) how the school will control the use of restrictive procedures;

(3) how the school will monitor the use of restrictive procedures, including conducting debriefings after their use and convening an oversight committee;

(4) a description and written verification of the training that staff completed before implementing restrictive procedures, consistent with subdivision 5; and

(5) how the school will review the use of restrictive procedures on a child and system wide basis within a school or district and the frequency of such reviews.

(b) In reviewing the use of restrictive procedures the school or district may consider:

(1) any pattern or problems indicated by similarities in the time of day, day of the week, duration of the use of a procedure, individuals involved, or other factors regarding the use of restrictive procedures, consistent with subdivision 5;

(2) any injuries resulting from the use of restrictive procedures;

(3) actions needed to correct deficiencies in how the school implements restrictive procedures;

(4) an assessment of when restrictive procedures could be avoided; and

(5) proposed actions to limit use of physical holding or seclusion.

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, other licensed professional, paraprofessional under section 120B.363, or mental health professional under section 245.4871, subdivision 27, who has completed a formal mental health crisis prevention and intervention training program under subdivision 5.

(b) A district may use restrictive procedures after less intrusive alternatives fail or if staff regards a less intrusive alternative as inappropriate or impractical under the circumstances.

(c) A school shall make reasonable efforts to notify the parent on the same day a restrictive procedure is used on the child.

(d) When restrictive procedures are used twice in 30 days or when a pattern emerges, the district must hold a meeting of the individualized education plan team, conduct or review a functional behavioral analysis, review data, develop additional or revised positive behavioral interventions and support, propose actions to reduce the use of restrictive procedures, and modify the individualized education plan or behavior intervention plan as appropriate. At the meeting, the team must review any known medical or psychological limitations that contraindicate the use of a restrictive procedure.

(e) An individualized education plan team may plan for using restrictive procedures and may refer to these procedures in a child's individualized education plan.

(f) Restrictive procedures may be referred to in the child's individualized education plan but are not considered part of the pupil's behavior intervention plan and can only be used in an emergency, consistent with this section. The individualized education plan shall indicate how the parent wants to be notified when a restrictive procedure is used.

Subd. 3. **Physical holding or seclusion.** 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 the least intrusive intervention that will effectively respond to the emergency;

(2) physical holding or seclusion must end when the threat of harm ends and the staff determines that the child can safely return to the classroom or activity, and if holding or seclusion exceeds 60 minutes, school staff must contact either a qualified professional under subdivision 2, paragraph (a), the school principal, or the parent;

(3) staff must constantly and directly observe the child during the use of physical holding or seclusion;

(4) the staff person who implements or is responsible for overseeing the physical holding or seclusion shall document its use as soon as possible after the incident concludes and the documentation must include at least the following:

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

(ii) why a less restrictive measure failed or was inappropriate or impractical;

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

(iv) brief documentation of the child's behavioral change and change in physical status;

(5) the room used for seclusion must:

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

(ii) be well lit, well ventilated, 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; and

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

(i) receive written notice from local authorities regarding its compliance with applicable building, fire, and safety codes; and

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

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, except at a level of intrusiveness that does not exceed:

(i) placing a hand in front of a child's eyes as a visual screen; or

(ii) playing music through earphones worn by the child at a sound level that does not cause discomfort;

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

(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 the temporary removal of 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 a child's ability to breathe.

Subd. 5. **Training for staff.** (a) To meet the requirements of subdivision 1, paragraph (a), clause (4), staff who use restrictive procedures shall successfully complete training in the following skills and knowledge areas before using restrictive procedures with a child:

(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) avoiding power struggles;

(7) documentation standards for using restrictive procedures;

(8) obtaining emergency medical assistance;

(9) time limits for restrictive procedures;

(10) obtaining approval for using restrictive procedures;

(11) appropriate use of restrictive procedures approved for the program, including simulated experiences involving physical restraint;

(12) thresholds for using and stopping restrictive procedures;

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

(14) monitoring and responding to a child's physical signs of distress; and

(15) recognizing the symptoms of and interventions that may cause positional asphyxia.

(b) The commissioner, after consulting with the commissioner of human services, must develop and maintain a list of recommended training programs. 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 a child's community mental health providers to coordinate trainings.

(c) Training under this subdivision must be updated at least every two school years.

Subd. 6. **Records.** For purposes of monitoring and review, a school using restrictive procedures shall make data available upon request, consistent with data practices laws, on the number and types of restrictive procedures used. Schools annually shall submit to the

commissioner aggregate data on the use of restrictive procedures. The commissioner shall issue an annual report by December 31 on the use of restrictive procedures in Minnesota.

Subd. 7. **Behavior supports.** School districts must establish effective school wide systems of positive behavior supports and may use restrictive procedures only in emergencies. Nothing in this section precludes the use of reasonable force under sections 121A.582 and 609.379.

Sec. 4. **REPEALER.**

(a) Minnesota Statutes 2008, sections 121A.66; and 121A.67, subdivision 1, are repealed.

(b) Minnesota Rules, parts 3525.0210, subparts 5, 6, 9, 13, 17, 29, 30, 46, and 47; 3525.1100, subpart 2, item F; and 3525.2900, subpart 5, are repealed.

Sec. 5. **EFFECTIVE DATE.**

Sections 1 to 4 are effective July 1, 2010.

121A.66 DEFINITIONS.

Subdivision 1. **Application.** For the purposes of providing instruction to children with a disability under sections 125A.03 to 125A.24, 125A.26 to 125A.48, 125A.65, this section, and section 121A.67, the following terms have the meanings given them.

Subd. 2. **Aversive procedure.** "Aversive procedure" means the planned application of an aversive stimulus.

Subd. 3. **Aversive stimulus.** "Aversive stimulus" means an object that is used, or an event or situation that occurs immediately after a specified behavior in order to suppress that behavior.

Subd. 4. **Deprivation procedure.** "Deprivation procedure" means the planned delay or withdrawal of goods, services, or activities that the person would otherwise receive.

Subd. 5. **Emergency.** "Emergency" means a situation in which immediate intervention is necessary to protect a pupil or other individual from physical injury or to prevent serious property damage.

Subd. 6. **Positive behavioral interventions and supports.** "Positive behavioral interventions and supports" means those strategies used to improve the school environment and teach pupils skills likely to increase pupil ability to exhibit appropriate behaviors.

Subd. 7. **Time-out.** "Time-out" means:

(1) a contingent observation, which is not a regulated intervention, and involves instructing the pupil to leave the school activity during the school day and not participate for a period of time, but to observe the activity and listen to the discussion from a time-out area within the same setting;

(2) an exclusionary time-out, which is not a regulated intervention, and involves instructing the pupil to leave the school activity during the school day and not participate in or observe the classroom activity, but to go to another area from which the pupil may leave; or

(3) a locked time-out, which is a regulated intervention, and involves involuntarily removing the pupil from the school activity during the school day and placing the pupil in a specially designed and continuously supervised isolation room that the pupil is prevented from leaving.

121A.67 AVERSIVE AND DEPRIVATION PROCEDURES.

Subdivision 1. **Rules.** The commissioner, after consultation with interested parent organizations and advocacy groups, the Minnesota Administrators for Special Education, the Minnesota Association of School Administrators, Education Minnesota, the Minnesota School Boards Association, the Minnesota Police Officers Association, a representative of a bargaining unit that represents paraprofessionals, the Elementary School Principals Association, and the Secondary School Principals Association, must amend rules governing the use of aversive and deprivation procedures by school district employees or persons under contract with a school district. The rules must:

(1) promote the use of positive behavioral interventions and supports and must not encourage or require the use of aversive or deprivation procedures;

(2) require that planned application of aversive and deprivation procedures only be instituted after completing a functional behavior assessment and developing a behavior intervention plan that is included in or maintained with the individual education plan;

(3) require educational personnel to notify a parent or guardian of a pupil with an individual education plan on the same day aversive or deprivation procedures are used in an emergency or in writing within two school days if district personnel are unable to provide same-day notice;

(4) establish health and safety standards for the use of locked time-out procedures that require a safe environment, continuous monitoring of the child, ventilation, adequate space, a locking mechanism that disengages automatically when not continuously engaged by school personnel, and full compliance with state and local fire and building codes, including state rules on time-out rooms;

(5) contain a list of prohibited procedures;

(6) consolidate and clarify provisions related to behavior intervention plans;

(7) require school districts to register with the commissioner any room used for locked time-out, which the commissioner must monitor by making announced and unannounced on-site visits;

(8) place a student in locked time-out only if the intervention is:

(i) part of the comprehensive behavior intervention plan that is included in or maintained with the student's individual education plan, and the plan uses positive behavioral interventions and supports, and data support its continued use; or

(ii) used in an emergency for the duration of the emergency only; and

(9) require a providing school district or cooperative to establish an oversight committee composed of at least one member with training in behavioral analysis and other appropriate education personnel to annually review aggregate data regarding the use of aversive and deprivation procedures.