

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL: CS/CS/SB 2118

INTRODUCER: Children, Families, and Elder Affairs Committee and Education Pre-K-12 Committee and Senator Gardiner

SUBJECT: Individuals with Developmental Disabilities

DATE: April 19, 2010 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	deMarsh-Mathues	Matthews	ED	Fav/CS
2.	Walsh	Walsh	CF	Fav/CS
3.			EA	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill makes changes to the law related to persons with developmental disabilities. The bill provides that all persons with developmental disabilities have a right to be free from all abuse, neglect, and exploitation, regardless of the setting. The bill requires staff training in facilities licensed by the Agency for Persons with Disabilities to include the reporting of abuse, neglect, exploitation, and abandonment.

The bill also provides for:

Child Care Personnel Training

- Requires the 40-clock-hour child course to include the identification and support of children with developmental disabilities;

Seclusion and Restraint

- Provides for incident reports involving the use of restraints for students with disabilities, monitoring the incidence of restraint use, and reporting requirements;
- Requires school districts to develop policies and procedures for incident reporting and data collection, monitoring, and reporting;

Regional Autism Centers

- Requires regional autism centers to disseminate information about the resources for services to persons with developmental disabilities and to provide support to state agencies in the development of training for early child care providers and educators;

Instructional Personnel

- Directs the Commissioner of Education to develop recommendations to incorporate autism spectrum disorder and other developmental disabilities awareness instruction into continuing education or inservice training for instructional personnel; and
- Requires course curricula recommendations to be incorporated into existing requirements for continuing education or inservice training, beginning in the 2010-2011 school year.

This bill substantially amends sections 393.067, 393.13, 402.305, and 1004.55 and creates sections 1003.573 and 1012.582 of the Florida Statutes.

II. Present Situation:**Persons with Developmental Disabilities**

The law authorizes services to be provided to persons with developmental disabilities,¹ which are administered by the Agency for Persons with Disabilities (APD).² Additionally, the law provides for the rights of persons with developmental disabilities.³ Current law provides for the licensure of facilities by the APD.⁴ The law requires an applicant for licensure to certify that the facility or program staff will receive training to detect and prevent sexual abuse of residents and clients.⁵ Additionally, the APD may conduct inspections to determine compliance with staff training requirements by foster care facilities, group home facilities, residential habilitation centers, and comprehensive transitional education programs.⁶

Child Care Licensing

Florida's child care licensing regulations⁷ generally govern the health, safety, sanitation, nutrition, physical surroundings, and child development needs of children receiving child care services; child care personnel requirements (e.g., training, professional credentials, and background screening); and staff-to-children ratios.⁸ Except for certain facilities that are exempt from licensure under s. 402.316, F.S., (i.e., faith-based child care facilities), all child care facilities in the state must be licensed.⁹ Specialized child care facilities for the care of mildly ill

¹ Developmental disability means a disorder or syndrome that is attributable to retardation, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely. *See* s. 393.063(9), F.S.

² ch. 393, F.S.

³ s. 393.13(3), F.S.

⁴ s. 393.067, F.S.

⁵ s. 393.067(4)(h), F.S.

⁶ s. 393.067(9), F.S.

⁷ The licensure or registration of child care providers is administered by DCF's Child Care Services Program Office or, in seven counties (Alachua, Brevard, Broward, Hillsborough, Palm Beach, Pinellas, and Sarasota), by local licensing agencies that have licensing standards meeting or exceeding the state's minimum standards. *See* ss. 402.306 and 402.307, F.S.

⁸ *See, e.g.,* ss. 402.305, 402.313, and 402.3131, F.S.

⁹ ss. 402.305 and 402.312, F.S.

children and large family child care homes must also be licensed.¹⁰ Depending on local requirements, family day care homes must either be licensed or registered.¹¹

The introductory child care mandated training program for all child care facility personnel must be 40-clock-hours and include:¹²

- Child care facility rules and regulations;
- Health, safety, and nutrition;
- Identifying and reporting child abuse and neglect;
- Child growth and development, including typical and atypical language, cognitive, motor, social, and self-help skills development;
- Behavioral development observation and screening;
- Specialized areas, including computer technology for professional and classroom use and early literacy and language development; and
- Recognition and prevention of shaken baby syndrome, prevention of sudden infant death syndrome, and early childhood brain development within specified topic areas.

Finally, child care personnel are also required to have five additional clock-hours of training in early literacy and language development of children from birth to five years of age.¹³

All child care facility personnel must begin the 40-clock-hour introductory child care training within 90 days of employment in the child care industry.¹⁴ Child care personnel must successfully complete such training within one year after the date on which the training began, as evidenced by passage of a competency examination.¹⁵

Seclusion and Restraint

In the recent report on seclusions and restraint laws applicable to children in public and private schools, the U.S. General Accounting Office (GAO) noted the following:¹⁶

- There are no federal laws restricting the use of seclusion and restraints¹⁷ in public and private schools and widely divergent laws at the state level.
- Although the GAO could not determine whether allegations were widespread, the GAO did find hundreds of cases of alleged abuse and death related to the use of these methods on school children during the past two decades.

¹⁰ ss. 402.305(17), 402.312, and 402.3131, F.S.

¹¹ ss. 402.312 and 402.313, F.S.

¹² s. 402.305(2)(d), F.S.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Seclusions and Restraints: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers*, GAO-09-719T, May 19, 2009. Testimony before the Committee on Education and Labor, U.S. House of Representatives, see <http://www.gao.gov/highlights/d09719thigh.pdf>.

¹⁷ *Id.* For purposes of the report, the GAO used the Centers for Medicare and Medicaid Services' (CMS) definitions of seclusion and restraint, which apply to all hospitals participating in the Medicare and Medicaid programs. 42 C.F.R § 482.13(e)(1)(i)-(ii). The CMS definitions were used because there are no federal statutes that apply to seclusion or restraint in the context of public or private schools.

- Although the GAO continues to receive new allegations from parents and advocacy groups, the GAO could not find a single Web site, federal agency, or other entity that collects information on the use of these methods or the extent of their alleged abuse.

The Congressional Research Service (CRS) issued a report that examined the legal issues related to the use of restraint and seclusion in public schools, including their application both to children covered by the Individuals with Disabilities Education Act (IDEA) and to those not covered by IDEA. The report noted the following.¹⁸

- Although federal law does not contain general provisions relating to the use of seclusion and restraints, certain uses of seclusion and restraints in health care facilities that receive federal funds and in certain non-medical, community-based facilities for children and youth are prohibited by the Children's Health Act of 2000;¹⁹ and
- Several recent reports have documented instances of deaths and injuries resulting from the use of seclusion or restraints in schools, but there is no general reporting requirement so the exact parameters of the problem are unknown.²⁰

*IDEA*²¹

Federal law requires states to make a free appropriate public education available to all children with disabilities residing in the state between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school.²² The state educational agency must exercise general supervision over all educational programs for children with disabilities in the state, including all programs administered by other state or local agencies, and ensure that the programs meet the educational standards of the state educational agency.²³

The IDEA provides federal funds to help state and local education agencies meet their obligation to educate students with disabilities. To be eligible to receive these federal funds, states must comply with numerous requirements, including the state's obligation to enact a policy that ensures that every student with a disability will receive a free, appropriate public education.²⁴ Under the IDEA, federal special education funds are distributed through three state grant programs and several discretionary grant programs.

Due Process Safeguards

States receiving IDEA funds must comply with detailed procedural requirements, including identifying, evaluating, and making placements for students with disabilities and for developing an individualized education program for each student.²⁵ States must also provide students with disabilities and their parents with certain procedural safeguards, including: notice of any

¹⁸ *The Use of Seclusion and Restraint in Public Schools: The Legal Issues*, Congressional Research Service, April 14, 2009. See http://www.spannj.org/information/CRS_Report_on_Legal_Issues_in_Seclusion_&_Restraints.pdf.

¹⁹ *Id.*

²⁰ *Id.*

²¹ 20 U.S.C. § 1400 et seq., as amended by the Individuals with Disabilities Education Improvement Act of 2004, P.L.108-446.

²² 20 U.S.C. § 1412

²³ 34 C.F.R. s. 300.149

²⁴ 20 U.S.C. § 1412(a)

²⁵ 20 U.S.C. § 1412

proposal or refusal to change the student's identification, evaluation, or educational placement; the opportunity to present a complaint and to have an impartial due process hearing; and the right to keep the student in his or her current educational placement pending administrative or judicial review proceedings.²⁶ A student with a disability and his or her parents also have the right to bring a civil action in state court, if they are aggrieved by the decision of the state administrative hearing officer relating to a due process hearing or alternative placement.²⁷

*Seclusion and Restraint*²⁸

When the behavior of a child with a disability impedes the child's learning or the learning of others, the individual educational plan (IEP) team must consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.²⁹ The CRS noted that nothing in IDEA specifically addresses the use of seclusion and restraints, and the U.S. Department of Education has stated that "[w]hile IDEA emphasizes the use of positive behavioral interventions and supports to address behavior that impedes learning, IDEA does not flatly prohibit the use of mechanical restraints or other aversive behavioral techniques for children with disabilities.³⁰ The Department also noted that state law may address whether restraints may be used and, if restraints are allowed, the "critical inquiry is whether the use of such restraints or techniques can be implemented consistent with the child's IEP and the requirement that IEP teams consider the use of positive behavioral interventions and supports when the child's behavior impedes the child's learning or that of others."³¹

Exceptional Students

Under current state law, an exceptional student is any student who has been determined eligible for a special program in accordance with SBE rule and includes students who are gifted and students with disabilities.³² The law further defines the term "exceptional students with disabilities."³³

Reasonable Force

Current law requires the State Board of Education (SBE) to adopt standards for the use of reasonable force by district school board personnel to maintain a safe and orderly learning environment.³⁴ These standards must be distributed to each school to provide guidance to district school board personnel. A teacher or other member of the instructional staff, a principal or his or her designated representative, or a school bus driver is not civilly or criminally liable for any

²⁶ 20 U.S.C. § 1415 (b), (c), (d), (e),(f), and (j). There is an exception to keeping a student in his or her current placement if it involves an alternative educational setting.

²⁷ 20 U.S.C. § 1415(i)(2)

²⁸ *Id.*

²⁹ 20 U.S.C. §1414(d)(3)(B). See also http://www.pbis.org/school/pbis_and_the_law/default.aspx.

³⁰ *The Use of Seclusion and Restraint in Public Schools: The Legal Issues*, Congressional Research Service, April 14, 2009.

³¹ *Id.* A recent measure (H.R.4247, Keeping All Students Safe Act) passed the U.S. House of Representatives on March 3, 2010, See <http://thomas.loc.gov/cgi-bin/bdquery/z?d111:HR04247:@@L&summ2=m&>.

³² s. 1003.01(3)(a), F.S.

³³ Exceptional students with disabilities are those who have an intellectual disability; autism spectrum disorder; speech impairment; language impairment; orthopedic impairment; other health impairment; traumatic brain injury; visual impairment; emotional or behavioral disability; specific learning disability, including, but not limited to, dyslexia, dyscalculia, or developmental aphasia; students who are deaf or hard of hearing or dual sensory impaired; students who are hospitalized or homebound; children with developmental delays ages birth through 5 years, or children, ages birth through 2 years, with established conditions that are identified in State Board of Education rules.

³⁴ s. 1006.11, F.S.

action carried out in accordance with SBE and district school board rules regarding the control, discipline, suspension, and expulsion of students, including any exercise of authority by teachers and principals.³⁵

In 2008, the Department of Education (DOE) published guidelines related to the use of manual physical restraints in special education programs.³⁶ Although the DOE proposed a rule related to the use of reasonable force in 2008 and 2009 after holding public hearings, the State Board of Education has not yet adopted a rule.³⁷

Seclusion

Rule 69A-58.0084, F.A.C., provides uniform firesafety standards for seclusion time-out rooms for educational facilities.

Regional Autism Centers³⁸

The law designates seven regional autism centers (Centers for Autism and Related Disabilities or CARDs) to provide nonresidential resource and training services for persons of all ages and all levels of intellectual functioning who have autism; a pervasive developmental disorder that is not otherwise specified; who have an autistic-like disability; who have a dual sensory impairment; or who have a sensory impairment with other handicapping conditions.³⁹

Each center must be operationally and fiscally independent, provide services within its geographical region of the state, and coordinate services within and between state and local agencies provided by those agencies or school districts.

Each center must provide:

- Expertise in autism, autistic-like behaviors, and sensory impairments;
- Individual and direct family assistance;
- Technical assistance and consultation services;
- Professional training programs; and
- Public education programs.

Instructional Personnel

Current law directs the DOE, public postsecondary educational institutions, public school districts, public schools, and professional organizations to establish a coordinated system of

³⁵ *Id.* See also ss. 1003.32, 1006.09, and 1012.75, F.S.

³⁶ DOE, *Guidelines for the Use of Manual Physical Restraints in Special Education Programs*, June 3, 2008. See <http://www.pbis.org/common/cms/documents/PhysicalRestraintTAP2008.pdf>.

³⁷ Proposed rule 6A-605271 was on the SBE agenda for approval on May 19, 2009, but was deferred. See http://www.fldoe.org/board/meetings/2009_05_19/agenda.asp and http://www.fldoe.org/board/meetings/2009_05_19/605271.pdf.

³⁸ s. 1004.55, F.S.

³⁹ The locations of current CARDs include: College of Medicine at Florida State University; College of Medicine at the University of Florida; University of Florida Health Science Center at Jacksonville; Louis de la Parte Florida Mental Health Institute at the University of South Florida; Mailman Center for Child Development and the Department of Psychology at the University of Miami; College of Health and Public Affairs at the University of Central Florida; and Department of Exceptional Student Service at Florida Atlantic University.

professional development.⁴⁰ Each school district is required to develop a professional development system which must include inservice activities for instructional personnel focused on specific areas.⁴¹

III. Effect of Proposed Changes:

Persons with Developmental Disabilities

This bill amends Florida's bill of rights of persons with developmental disabilities to provide that all persons with developmental disabilities have a right to be free from all abuse (not just sexual abuse), neglect, and exploitation, regardless of the setting.

The bill also requires staff training in facilities licensed by the APD to include the reporting of abuse, neglect, exploitation, and abandonment. Inspections would include a determination of compliance with these training requirements.

Child Care Personnel Training

The bill requires the 40-clock-hour child course to include developmental disabilities, including autism spectrum disorder⁴² and Down syndrome,⁴³ and the early identification, use of available state and local resources, classroom integration, and positive behavioral support for children with developmental disabilities. The bill also requires that the introductory course cover the recognition and care of infants and toddlers with developmental disabilities.

Seclusion and Restraint

The bill would require a school incident report within 24 hours after the student is released from seclusion or a restraint. The bill specifies the contents of the incident report, including the type of restraint used, the student's behavior leading up to and precipitating the decision to use manual physical restraint or seclusion, the specific positive behavioral strategies used to prevent and deescalate the behavior, and evidence of attempts to notify the student's parent. A parent would receive the report within three days after the incident and a school would retain evidence of the parent's receipt of the incident report.

Under the bill, a parent would be notified each time a manual physical restraint or seclusion is used with his or her child. The bill specifies the monitoring requirements at the classroom, building, district, and state levels.

Districts would be required to develop policies and procedures for incident reporting and data collection, monitoring, and reporting.

⁴⁰ s. 1012.98, F.S.

⁴¹ *Id.*

⁴² Pursuant to s. 627.6686(2)(b), F.S., relating to insurance coverage, autism spectrum disorder (ASD) means any of the following disorders as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association: autistic disorder; Asperger's syndrome; and pervasive developmental disorder not otherwise specified. *See also* National Institute of Mental Health, *Autism Spectrum Disorders (Pervasive Developmental Disorders)*, <http://www.nimh.nih.gov/health/publications/autism/complete-index.shtml>.

⁴³ Pursuant to s. 409.906(26), F.S., relating to optional Medicaid services, Down syndrome is a genetic disorder caused by the presence of extra chromosomal material on chromosome 21. Causes of the syndrome may include Trisomy 21, Mosaicism, Robertsonian Translocation, and other duplications of a portion of chromosome 21.

The bill prohibits school personnel from using mechanical or manual physical restraints which restrict a student's breathing. In addition, school staff may not close, lock, or block a student in an unlit room that does not meet State Fire Marshal standards for seclusion time-out rooms.

Regional Autism Centers

The bill requires regional autism centers to also disseminate information regarding resources for services with developmental disabilities and support to state agencies in the development of training for early child care providers and educators.

Instructional Personnel

The bill directs the Commissioner of Education to develop recommendations to incorporate autism spectrum disorder and other developmental disabilities awareness instruction into continuing education or inservice training for instructional personnel.

Course curricula recommendations would be incorporated into existing requirements for continuing education or inservice training, beginning in the 2010-2011 school year. The requirements may not add to the total hours currently required for continuing education or inservice training.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The cost associated with training for private child care personnel is unknown.

C. Government Sector Impact:

The costs associated with the additional responsibilities for the CARD centers and to meet the child care training requirements are indeterminate.

Course curricula recommendations would be incorporated into existing requirements for continuing education or inservice training, beginning in the 2010-2011 school year. However, the bill provides that the requirements may not add to the total hours currently required for continuing education or inservice training.

There may also be additional workload costs associated with the requirements for districts to comply with the restraints and seclusion reporting and monitoring requirements in the bill. The fiscal impact associated with the prohibitions for specific types of restraint and seclusion is unknown.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Lines 270- 272: Rule 69A-58.0084, F.A.C., provides uniform firesafety standards for seclusion time-out rooms for educational facilities. That rule does not address lighting. If the bill intends for seclusion time-out rooms to be lit, the Division of State Fire Marshal will need to amend its rule. If that is not the intent, then the bill should be amended to replace the word “and” with “or” on line 271 to clarify.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Children, Families, and Elder Affairs on April 19, 2010:

The Committee Substitute for CS/SB 2118 adds the following provisions

- Prohibits school staff from using physical restraints which restrict a student’s breathing
- Prohibits school staff from placing a student in an unlit room that does not meet State Fire Marshal standards for seclusion time-out rooms.

CS by Education Pre-K – 12 Committee on April 6, 2010:

The committee substitute:

- Deletes the definitions, legislative intent and findings, protocols, and training and certification requirements related to the restraint, time-out, and seclusion of students with disabilities;
- Deletes the requirement for the biannual review of the functional behavioral assessment and the positive behavioral intervention plan;
- Provides that all persons with developmental disabilities have a right to be free from all abuse, neglect, and exploitation, regardless of the setting;
- Requires staff training in facilities licensed by the APD to include the reporting of abuse, neglect, exploitation, and abandonment.
- Requires the 40-clock-hour child course for child care personnel to include identification and support for children with developmental disabilities;

- Requires regional autism centers to disseminate information about the resources for services with developmental disabilities and to provide support to state agency training development for early child care providers and educators;
- Directs the Commissioner of Education to develop recommendations to incorporate autism spectrum disorder and other developmental disabilities awareness instruction into continuing education or inservice training for instructional personnel; and
- Requires course curricula recommendations to be incorporated into existing requirements for continuing education or inservice training, beginning in the 2010-2011 school year.

B. Amendments:

None.