



**To:** Senator Judy Seeberger

**From:** Ann Marie Lewis, Senate Counsel (ann.marie.lewis@mnsenate.gov)

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**RE:** Restrictive Procedures Statutes

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### **Definitions (Section 125A.0941)**

Minnesota Statutes, section 125A.0941 defines several terms related to restrictive procedures such as seclusion. “**Restrictive procedures**” is defined as the use of **physical holding** or **seclusion** in an emergency. It prohibits the use of restrictive procedures as punishment or discipline.

“**Physical holding**” is defined as physical intervention intended to hold a child immobile or limit a child’s movement, where body contact is the only source of physical restraint, and where immobilization is used to effectively gain control of a child in order to protect a child or other individual from physical injury. The statute goes on to say what is not physical holding. Physical holding is not physical contact that:

- (1) helps a child respond or complete a task;
- (2) assists a child without restricting the child’s movement;
- (3) is needed to administer an authorized health-related service or procedure; or
- (4) is needed to physically escort a child when the child does not resist or the child’s resistance is minimal.

“**Seclusion**” is defined as confining a child alone in a room from which egress is barred. Egress may be barred by an adult locking or closing the door in the room or preventing the child from leaving the room. Seclusion is not removing a child from an activity to a location where the child cannot participate in or observe the activity.

“**Emergency**” is defined as a situation where immediate intervention is needed to protect a child or other individual from physical injury.

### **Standards for Restrictive Procedures (Section 125A.0942)**

Minnesota Statutes, section 125A.0942 establishes the requirements and limitations applicable to restrictive procedures. The section also addresses behavior supports and reasonable force. The requirements can be broken down into five buckets:

- (1) restrictive procedure plans;

- (2) use of restrictive procedures;
- (3) physical holding and seclusion;
- (4) prohibited actions; and
- (5) staff training.

#### **I. Restrictive Procedures Plans (125A.0942, subd. 1)**

A school using restrictive procedures must have a publicly available plan that:

- (1) lists allowed restrictive procedures;
- (2) describes positive behavior strategies and provide mental health service links;
- (3) details staff training on de-escalation;
- (4) explains the monitoring and review processes, including post-use debriefing, quarterly oversight committee review to track patterns, injuries, staff training needs, nonemergent use of restrictive procedures, disproportionality by race, gender, or disability status, and the role of police or school resource officers;
- (5) includes written documentation on staff training; and
- (6) identifies the oversight committee members that includes a mental health professional, school psychologist, or school social worker; positive behavior strategies expert, special education administrator, and a general education administrator.

#### **II. Use of Restrictive Procedures (125A.0942, subd. 2)**

Restrictive procedures may only be used by certain trained, licensed professionals or paraprofessionals. The training required is detailed in **subdivision 5**. A school must notify the parents the same day or within two days of using a restrictive procedure.

##### **A. District IEP or IFSP Meetings (125A.0942, subd. 2, paragraph (c))**

As appropriate, a district must hold a meeting of the individualized education program (IEP) or individualized family service plan (IFSP) team, conduct functional behavioral analyses, consider positive behavioral interventions and supports, consider actions to reduce the use of restrictive procedures, and modify the IEP, IFSP, or behavior intervention plan (BIP).

If a restrictive procedure is used on two separate school days within 30 days, or shows a pattern of use, and the child's IEP, IFSP, or BIP doesn't provide for the use, or at the parent or district's request after a restrictive procedure is used, an IEP or IFSP meeting must be held to review interventions, supports, and possibly review the IEP, IFSP, or BIP.

At a child's annual IEP or IFSP team meeting, the district must review use of restrictive procedures when the child's IEP or IFSP provides for using restrictive procedures in an emergency.

##### **B. Considerations During the IEP or IFSP Meetings (125A.0942, subd. 2, paragraphs (d), (e), and (f))**

If existing interventions and supports are ineffective in reducing the use of restrictive procedures, the IEP or IFSP team must consult other professionals working with the child, experts in behavior analysis, mental health communication or autism, culturally competent professionals, review resources, and consider reevaluating the child.

The IEP or IFSP team must review known medical or psychological limitations, including parent volunteered medical information, that contraindicate the use of restrictive procedures. A prohibition must be documented in the child's IEP, IFSP, or BIP. An IEP or IFSP team may plan to use restrictive procedures and include the procedures in the child's IEP, IFSP, or BIP. However, use is limited to behavior that constitutes an emergency.

### **III. Physical Holding or Seclusion (125A.0942, subd. 3)**

Physical holding or seclusion must comply with the following requirements:

- (1) used only in an emergency and the least intrusive intervention to respond to the emergency;
- (2) cannot be used for discipline;
- (3) holding or seclusion must end with the threat of harm ends;
- (4) requires constant staff observation;
- (5) detailed staff incident reporting; and
- (6) seclusion room requirements include observation window, size, lighting, ventilation, compliance with building, fire, and safety codes, and registration with the commissioner of education.

The commissioner of education must collect district data and stakeholder recommendations for reducing the use of restrictive procedures. The commissioner must submit to the legislature a report on districts' progress in reducing the use of restrictive procedures that recommends how to further reduce these procedures and eliminate the use of seclusion.

### **IV. Prohibited Actions (125A.0942, subd. 4)**

The following actions are prohibited:

- (1) corporal punishment, prone restraints, and certain physical holds prohibited under section 121A.58;
- (2) pain-inducing positions;
- (3) sensory deprivation or aversive stimuli as punishment;
- (4) restricting or denying access to medical equipment or assistive technology, except to prevent damage to property or injury;
- (5) abusive behaviors considered maltreatment of minors under chapter 260E;
- (6) withholding meals, water, or bathroom access;
- (7) restricting breathing or communication;
- (8) prone restraint; and
- (9) seclusion for children birth through grade 3 beginning September 1, 2024.

### **V. Staff Training (125A.0942, subd. 5)**

A staff person who uses restrictive procedures must be trained in the following skills and knowledge areas:

- (1) positive behavioral interventions;
- (2) communication intent of behaviors;
- (3) relationship building;
- (4) alternatives to restrictive procedures;
- (5) de-escalation;
- (6) emergency standards;
- (7) emergency medical assistance
- (8) physiological and psychological effects of physical holding and seclusion;

- (9) signs of distress and positional asphyxia;
- (10) reporting and documentation requirements.

#### **VI. Behavior Supports and Reasonable Force (125A.0942, subd. 6)**

Schools are encouraged to establish schoolwide positive behavioral support systems. Use of reasonable force must be reported to the Department of Education as a restrictive procedure, including physical holding or seclusion by an unauthorized or untrained staff person. The commissioner must recommend, by February 1, 2024, a plan to urgently end seclusion statewide with timelines, resources, and training needs identified.



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