

New Legislation Adds Restrictions and Requirements
Regarding Work with Students with Disabilities

By

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Introduction

In your mind's eye, imagine a middle-school student with significant behavior regulation issues. We will call him Billy. Billy's special education program includes placement for most of the school day in a positive behavioral support classroom. Despite those supports, he is prone to engage in highly disruptive behaviors, particularly when facing academic challenges. When these behaviors occur, Billy's teacher's instruction and his fellow students' learning are disrupted, sometimes for extended periods of time. Consequently, his IEP also includes an aversive intervention plan that allows school staff to isolate him in an adjacent setting when positive behavioral interventions fail to end the disruptions. Billy's teacher spends so much time and energy first anticipating and then dealing with Billy's disruptions that she is exhausted half way through the school year.

Under current law, can staff continue to isolate Billy when allowed by his IEP? *Yes.* Will use of such isolation be allowed in his IEP after new state legislation takes effect this summer? *Only if Billy is determined to need "more advanced educational planning" and his parent agrees that isolation should be part of his IEP.*

The answers to these questions differ because, effective July 24, 2015, the Washington State Legislature has significantly restricted the ability of school districts to use isolation and restraint to manage student problematic behaviors. In this article, we refer to this legislation as "SHB 1240." We describe how SHB 1240 will work, below.

SHB 1240

In adopting SHB 1240, the Legislature found that isolation and restraint of students provides no educational benefits. In essence, the bill prohibits the use of isolation or restraint for all students, including those with and without disabilities, unless circumstances pose an imminent likelihood of serious harm to the student who is acting out or other persons. The bill accomplishes this by:

1. Continuing the existing definition of "isolation" in RCW 28A.600.485 but adding that the term does not include a student's voluntary use of a quiet space for self-calming or temporary removal of a student from his regular instructional area to an unlocked area as part of a "positive behavior support plan" (a term which is not defined in the bill or, in the view of the authors of this article, elsewhere in special education law);

2. Continuing the existing definition of “restraint” in RCW 28A.600.485, but adding that the term includes use of restraint devices that restrict freedom of movement, while excluding the following from the amended definition of restraint devices:
 - a. prescribed medical, orthopedic, or therapeutic devices that are used as prescribed, such as to enable a student to achieve proper body posture, or to allow a student to safely participate in activities; and
 - b. seat harnesses used to safely transport students.
3. Prohibiting provisions in individualized education programs (“IEPs”) or Section 504 Plans authorizing the use of restraint or isolation as a planned behavioral intervention, unless a student’s needs require “more advanced educational planning” (which is also a term not defined in the bill or, in the view of the authors of this article, elsewhere in special education law) and the student’s parent or guardian agrees to such provisions. *Because Billy engages in highly disruptive behavior but does not engage in dangerous or injurious behaviors, his school team will only be able to continue to use isolation to help manage the disruptions if both of the conditions stated in this paragraph are met.*
4. Stating that use of isolation or restraint is otherwise only permitted when reasonably necessary to control spontaneous behavior that “poses an imminent ‘likelihood of serious harm,’” as that term is defined in RCW 70.96B.010. RCW 70.96B.010 provides that the “likelihood of serious harm” means:
 - a. a “substantial risk” at any moment of:
 - i. harm to the acting student, as evidenced by threats or attempts of self-harm;
 - ii. harm to another person, as evidenced by behavior that has caused harm or created a reasonable fear of harm;
 - iii. physical harm to the property of others, as evidenced by behavior that has caused substantial loss or damage to property; or
 - b. the student has threatened the physical safety of another and has a history of one or more violent acts.

Note that this option only addresses *spontaneous behavior*. It does not provide another option for managing *unpredictably dangerous behaviors*.

5. Requiring that authorized use of isolation or restraint be closely monitored to prevent harm to the acting student and discontinued when the likelihood of serious harm dissipates.

6. Requiring all school districts to adopt a policy providing for use of the least amount of restraint and isolation that is necessary to protect students and staff.
7. Requiring districts to review incidents of use of restraint or isolation of the student with parents/guardian; and review each use of isolation or restraint with staff members to determine if proper procedures were followed and to identify training or support that may be needed to help such students avoid similar incidents. In our imagined scenario, will additional training or support avoid Billy's disruptive behaviors? *We certainly don't know.*
8. Requiring staff to inform administration as soon as possible following use of isolation or restraint and to submit a written report within two business days regarding such use. These written reports have been required in Washington since 2013 and now must include recommendations regarding the nature and amount of resources that may be necessary to avoid similar circumstances in the future. Will additional resources solve Billy's disruptive behaviors? *We certainly don't know.*
9. By January 1, 2016 and annually thereafter, requiring all districts to submit a report to the Office of Superintendent of Public Instruction (OSPI) that summarizes each district's incidents resulting in use of isolation and restraint. These reports must state by school the number of such incidents, the number of students involved in the incidents, and the types of isolation and restraint used. OSPI must post the resulting data on its website and may use the information to investigate training needs of districts.

The authors are concerned about the negative effects these new restrictions are likely to have on students who are educated in environments in which students like Billy present substantially disruptive and/or potentially dangerous behaviors that fall short of the bill's authorizations to use isolation and restraint. We are also concerned that the bill restricts the authority of IEP teams to make decisions concerning management of highly disruptive student behaviors since special education law authorizes IEP teams to make such decisions despite parental objections. While such behaviors may still be addressed on a limited basis through existing student discipline procedures, the barring of a planned response to students with foreseeably disruptive, but not necessarily harmful physical behaviors, is likely to increase the strain on staff working with such students and those students' peers. We fear that more teachers who have a Billy in their classroom will burn out and stop teaching special education altogether.

We believe the bill's requirements to consider and document training and resource recommendations for purposes of avoiding future incidents may unrealistically suggest that dangerous and/or disruptive student behavior is inherently preventable with sufficient resources, as opposed to unavoidable manifestations of some students' disabilities. Finally, we are concerned about the increased programmatic costs and legal risks that these new restrictions and the related disputes about the exact meaning and implementation of the new requirements will present to school districts.

We anticipate that administrators and staff in your district will have similar and/or additional concerns, particularly if you think about your students who are like our Billy. Nevertheless, **we believe that each district must begin planning now for how it will deal with these new restrictions and requirements.** As mentioned above, the new requirements and restrictions go into effect on July 24, 2015. We believe that such planning should include (i) consultation with your district's legal counsel regarding the legal requirements of the bill, which are only summarized in this article; (ii) development of a strategy and timeline to review all IEPs that currently include aversive interventions and make adjustments that made necessary by SSB 1240; (iii) development and then timely delivery of training of staff to enable them to comply with the restrictions imposed by SSB 1240; (iv) identification of persons responsible for assuring your district implements the procedural and substantive obligations imposed by SSD 1240; and (v) setting up a mechanism that monitors consistent compliance with these obligations over time.