

FABA Response to Florida House Bill 81

DRAFT 02 – October 23, 2009

The Florida Association for Behavior Analysis (FABA) respectfully submits its comments and recommendations regarding House Bill 81. Reviewers are encouraged to first review these documents that are the foundation for the comments and recommendations contained herein:

- FABA Statement on the Right to Effective Behavioral Intervention in Florida Schools
- FABA Statement on the Use of Restraint and Seclusion in Florida Schools

Note: Underlined text is the actual language in the bill.

Lines 35 and 36

1003.573 Use, prevention, and reduction of seclusion and restraint on students with disabilities in public schools

- FABA Comment: The bill should address special education student (with disabilities) and general education students (without disabilities) in public schools.
- FABA Comment: The bill should exclude students with disabilities who attend highly specialized schools or reside in institutional settings because of their challenging behavior problems.

Lines 39 to 42

Definitions: (b) "Imminent risk of serious injury or death" means the impending risk of a significant injury, such as a laceration, bone fracture, substantial hematoma, or other injury to internal organs, or death.

- FABA Comment: Use of restraint or seclusion should also be permitted to quickly intervene with a clearly identified precursor behavior (e.g., verbal and physical threat) that has preceded escalation to severe injury, valuable property destruction, elopement, etc. It is better to immediately intervene with precursor behaviors rather than wait until someone suffers a fractured bone or laceration to an artery.

Lines 43 to 46

Definitions: (c) "Manual physical restraint" means use of physical restraint techniques that involve physical force applied by a teacher or other staff member to restrict the movement of all or part of a student's body.

- FABA Comment: Replace with revision of the APD Rule 65 G-8 definition of Manual Restraint – such as, “the use of hands or body to immobilize a person’s freedom of movement or normal access to his or her body for more than two minutes. Repeated applications and releases of manual restraint in order to circumvent the time limit are prohibited.”
- FABA Comment: Exclude the use of:
 - physical contact for the purposes of instruction (e.g., hand-over-hand positioning, physical prompting, guided practice, physically blocking or preventing an error response)
 - guiding the physical movement of students, such as the temporary holding of an individual to help him or her participate in educational or daily living activities,

holding a student's hand or arm to escort the student safely from one area to another

- brief holds in order to prevent an impulsive behavior that threatens the student's immediate safety (i.e., running in front of a car)
- physical guidance, or safe holding, during an escort, transport or carry when a disruptive student physically resists leaving an area or when breaking up a fight on school grounds
- brief physical guidance or redirection, or brief safe holding, when a student physically resists movement to time out, when a student attempts to escape from time out, or when returning a student who did escape time out

Lines 47 to 51

Definitions: (d) "Mechanical restraint" means a physical device used to restrict a student's movement or restrict the normal function of a student's body. Objects that fall within the term "mechanical restraint" include straps, belts, tie-downs, calming blankets, and chairs with straps. The term does not include... (refer to lines 52 to 67).

- FABA Comment: Review the APD Rule 65 G-8 definition.
- FABA Comment: Define "behavioral protective devices" such as gloves and helmets.

Lines 72 to 78

Definitions: (f) "Seclusion" means removing a student from an educational environment, involuntarily confining the student in a room or area, and preventing the student from leaving the room or area if achieved by locking the door or otherwise physically blocking the student's way, threatening physical force or other consequences, or using physical force. The term does not include the use of time-out.

- FABA Comment: Time-out procedures need to be carefully separated from Seclusion. Replace with revision of the APD Rule 65 G-8 definition of Seclusion, such as, "enforced isolation or confinement of an individual in a room or area. It does not mean *time out* or *time out from positive reinforcement*, or isolation resulting from medical conditions or symptoms of illness.

Lines 80 to 88

(h) "Time-out" means a procedure in which access to varied sources of reinforcement is removed or reduced for a particular time period contingent on a response. The opportunity to receive reinforcement is contingently removed for a specified time. Either a student is contingently removed from the reinforcing environment or the reinforcing environment is contingently removed for some stipulated duration.

A time-out setting may not be locked and the exit may not be blocked.

Physical force or threats may not be used to place a student in time-out.

- FABA Comment: Time-out is an empirically-validated intervention procedure. IDEIA and NCLB mandate the use of interventions based on extensive and rigorous scientific research. HB 81 should not restrict the appropriate use of time-out procedures.
- FABA Comment: Replace with revision of the APD Rule 65 G-8 definition of Time Out
- FABA Comment: Include definitions and common classroom examples differentiating:

- social time out (e.g., at desk, no removal)
- contingent observation time out in same room
- removal to another classroom with students that are approx. 2 years older or younger than the student’s peer group
- exclusionary time out behind a barrier in the classroom
- exclusionary time out by removal to another area (e.g., hallway) or room (office, empty classroom)
- open door time out
- closed, secured door time out (isolation time out)

Lines 114 to 117

(b) The Legislature finds...

use of seclusion or restraint may inadvertently result in reinforcing or strengthening the problem behavior;

and seclusion or restraint is implemented independent of comprehensive, function-based behavioral intervention plans.

- FABA Comment: Clarify: “may inadvertently result in reinforcing or strengthening the problem behavior”
- FABA Comment: Replace language above with: seclusion or restraint should not be implemented independent of comprehensive, function-based behavioral intervention plans
- FABA Comment: Seclusion (isolation time) and restraint:
 - may be used by appropriately trained educational professionals as part of a planned, approved and comprehensive behavior support plan that is designed and monitored by competent behavioral professionals (i.e., BCBAs) with all essential safeguards and in accordance with recognized professional standards.
 - should NOT be relegated to unplanned, reactive responses to crises, or banned altogether because of careless, unplanned misuse by untrained people.
 - have a value and function in overall treatment of serious problem behavior, both as a means of safely reducing imminent risk of harm to the individual and others when used correctly, and in their role as a decelerative procedure as a form of timeout. Their role in safely and effectively intervening with the most intractable and severe problems should be preserved.

Lines 145 to 153

(g) The Legislature also intends that manual physical restraint shall be used only when an imminent risk of serious injury or death exists; that manual physical restraint shall not be employed as punishment, for the convenience of staff, or as a substitute for a positive behavior-support plan; and that, when used, persons applying manual physical restraint shall impose the least possible restrictions and shall discontinue the restraint as soon as the threat of imminent risk of serious injury or death ceases.

- FABA Comment: Although restraint should only be used as an emergency procedure it’s application could constitute a decelerative effect, (i.e. reduce the likelihood of future responses.)
- FABA Comment: Because “positive behavior intervention plan” is used in IDEIA and related Florida DOE documents, substitute it for “positive behavior-support.”

Lines 154 to 156

(3) MANUAL PHYSICAL RESTRAINT.--Manual physical restraint shall be used only in an emergency when there is an imminent risk of serious injury or death to the student or others.

- FABA Comment: Refer to feedback on lines 114 to 117.

Lines 175 to 178

(e) School personnel may not under any circumstances use any of the following manual physical restraint techniques on a student:

1. Prone and supine restraint.

6. Mechanical restraint.

- FABA Comment: Manual and mechanical prone and supine restraint and mat restraint should be permitted (see conditions described in feedback to lines 114 to 117).
- FABA Comment: In some cases, these alternatives may prove to be the safest alternative. Prohibiting safe alternatives will lead to increased use of law enforcement in our schools, Baker Acts and psychiatric hospitalizations, exclusion of children from schools, and overuse of medication.

Line 200

(e) School personnel may not under any circumstances use any of the following manual physical restraint techniques on a student:

13. Water or lemon sprays.

- FABA Comment: Remove this language as it is not relevant to this legislation.

Lines 205 to 206

(4) SECLUSION; TIME-OUT.--

(a) School personnel may not place a student in seclusion

- FABA Comment: Refer to feedback on lines 114 to 117.

Lines 207-208 and 213-217

(b) School personnel may place a student in time-out if the following conditions are met:

2. There is documentation that the time-out was preceded by other interventions that used positive behavioral supports that were not effective.

- FABA Comment: Because “positive behavior intervention” is used in IDEIA and related Florida DOE documents, substitute this language: 2. There is documentation that the time-out was preceded by positive behavioral interventions that were not effective.

Lines 207-208 and 218-219

(b) School personnel may place a student in time-out if the following conditions are met:

4. The student is not physically prevented from leaving the time-out area.

- FABA Comment: Permitting the student to voluntarily exit the time-out area will negate the essential feature of time-out.

Lines 224 to 227

(c) Time-out may not be used for a period that exceeds 1 minute for each year of a student's age, and time-out must end immediately when the student is calm enough to return to his or her seat.

- FABA Comment: There is no empirical evidence for the assertion that time-out length is related to age. The literature shows that short time-out periods can be effective with all ages.
- FABA Comment: There is no empirical evidence that "...time-out must end immediately when the student is calm enough to return to his or her seat." In some cases, a "protection contingency" (e.g., one minute of calm behavior) may be required before the child is released from time-out. This decision should be based on objective behavioral data.

Lines 228 to 229

(d) Time-out may not be used as a punishment or negative consequence of a student's behavior.

- FABA Comment: It is agreed that time out should not be used as a form of retribution (or punishment.) However, there is ample research evidence that when time-out is correctly implemented as part of a BIP for a behavior maintained by positive reinforcement, it can decrease the problem behavior.

Lines 230 to 274

(5) TRAINING AND CERTIFICATION.--

- FABA Comment: When the use of seclusion (isolation timeout) or restraint is warranted, personnel should complete competency-based training and maintain skills through annual or more frequent refresher (recertification) training.

Lines 279 to 337

(7) DOCUMENTATION AND REPORTING.—

- FABA Comment: Some elements of the documenting and reporting procedures are warranted. For example, parents should be provided timely reports. However, the complete documentation and reporting requirements are extremely detailed and will result in much additional paperwork for educators.
- FABA Comment: These procedures should be reviewed and tested by district- and school-level professionals in order to streamline them for efficient and effective use. This will increase compliance to such requirements.

Line 338

(8) MONITORING.--

- FABA Comment: Systematic monitoring by schools, districts, and the state should be required. Outcome data should be frequently used to make decisions to modify related procedures and to minimize the use of unnecessary restraint and seclusion.
- FABA Comment: Outcome data from all school districts should be evaluated as part of evidence-based research on the prevalence, fidelity, and related outcomes of emergency procedures in schools.

Lines 347 to 350

(c) A school shall send to the Advocacy Center for Persons with Disabilities, Inc., a redacted copy of any incident report and other documentation prepared as required in subsection (7) each week that the school is in session.

- FABA Comment: Recommend sending redacted copies of each incident report of the use of seclusion or manual restraint to either the District School Board, or DOE, as an alternative to the AdVocacy Center. Effective monitoring by the school, district and DOE should adequately govern the appropriate use of seclusion and restraint.

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