

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2012 Regular Session of the General Assembly.

## SENATE ENROLLED ACT No. 345

AN ACT to amend the Indiana Code concerning education.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 20-20-40 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

### **Chapter 40. Restraint and Seclusion Commission**

**Sec. 1. As used in this chapter, "behavioral intervention plan" means a plan that is agreed upon by the case conference committee (as defined in IC 20-35-7-2) and incorporated into a student's individualized education program (as defined in IC 20-18-2-9) and that describes the following:**

- (1) The pattern of behavior that impedes the student's learning or the learning of others.**
- (2) The purpose or function of the behavior as identified in a functional behavioral assessment.**
- (3) The positive interventions and supports, and other strategies, to:
  - (A) address the behavior; and**
  - (B) maximize consistency of implementation across people and settings in which the student is involved.****
- (4) If applicable, the skills that will be taught and monitored in an effort to change a specific pattern of behavior of the student.**

**The behavioral intervention plan seeks to maximize consistency of**

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implementation across people and settings in which the student is involved.

**Sec. 2.** As used in this chapter, "chemical restraint" means the administration of a drug or medication to manage a student's behavior or restrict a student's freedom of movement that is not a standard treatment and dosage for the student's medical or psychiatric condition.

**Sec. 3.** As used in this chapter, "commission" refers to the commission on seclusion and restraint in schools established by section 11 of this chapter.

**Sec. 4. (a)** As used in this chapter, "mechanical restraint" means the use of:

- (1) a mechanical device;
- (2) a material; or
- (3) equipment;

attached or adjacent to a student's body that the student cannot remove and that restricts the freedom of movement of all or part of the student's body or restricts normal access to the student's body.

**(b)** The term does not include:

- (1) mechanical devices;
- (2) a material; or
- (3) equipment;

used as prescribed by a doctor.

**Sec. 5. (a)** As used in this chapter, "physical restraint" means physical contact between a school employee and a student:

- (1) in which the student unwillingly participates; and
- (2) that involves the use of a manual hold to restrict freedom of movement of all or part of a student's body or to restrict normal access to the student's body.

**(b)** The term does not include:

- (1) briefly holding a student without undue force in order to calm or comfort the student, or to prevent unsafe behavior, such as running into traffic or engaging in a physical altercation;
- (2) physical escort; or
- (3) physical contact intended to gently assist or prompt a student in performing a task or to guide or assist a student from one (1) area to another.

**Sec. 6.** As used in this chapter, "positive behavior intervention and support" means a systematic approach that:

- (1) uses evidence based practices and data driven decision

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making to improve school climate and culture; and  
 (2) includes a range of systematic and individualized strategies to reinforce desired behavior and diminish reoccurrence of problem behavior;  
 to achieve improved academic and social outcomes and increase learning for all students.

**Sec. 7.** As used in this chapter, "school corporation" includes a charter school that is not a virtual charter school.

**Sec. 8.** As used in this chapter, "school employee" means an individual employed by a school corporation or an accredited nonpublic school.

**Sec. 9.** As used in this chapter, "seclusion" means the confinement of a student alone in a room or area from which the student physically is prevented from leaving. The term does not include a supervised time-out or scheduled break, as described in a student's individualized education program, in which an adult is continuously present in the room with the student.

**Sec. 10.** As used in this chapter, "time-out" means a behavior reduction procedure in which access to reinforcement is withdrawn for a certain period of time. Time-out occurs when the ability of a student to receive normal reinforcement in the school environment is restricted.

**Sec. 11. (a)** The commission on seclusion and restraint in schools is established.

**(b)** The commission has the following nine (9) members:

- (1) The designee of the state superintendent, who serves at the pleasure of the state superintendent.
- (2) A representative of the Autism Society of Indiana, chosen by the organization, who serves a two (2) year term.
- (3) A representative of the Arc of Indiana, chosen by the organization, who serves a two (2) year term.
- (4) A representative of the Indiana Council of Administrators of Special Education, chosen by the organization, who serves a two (2) year term.
- (5) A representative of Mental Health America of Indiana, chosen by the organization, who serves a two (2) year term.
- (6) A parent of a student with a disability, nominated by a member described in subdivisions (1) through (5) and approved by a majority of the members described in subdivisions (1) through (5), who serves a two (2) year term.
- (7) A parent of a student who does not have a disability, nominated by a member described in subdivisions (1) through

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(5) and approved by a majority of the members described in subdivisions (1) through (5), who serves a two (2) year term.

(8) One (1) accredited nonpublic school administrator nominated by the Indiana Non-public Education Association, who serves a two (2) year term.

(9) One (1) public school superintendent nominated by the Indiana Association of Public School Superintendents, who serves a two (2) year term.

(c) Each member of the commission who is not a state employee is entitled to the minimum salary per diem provided by IC 4-10-11-2.1(b). A member who is not a state employee is also entitled to reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties, as provided in the state travel policies and procedures established by the Indiana department of administration and approved by the budget agency.

Sec. 12. (a) The designee of the state superintendent under section 11(b)(1) of this chapter serves as chairperson of the commission.

(b) The commission shall meet at least annually on the call of the chairperson, and may meet as often as is necessary. The chairperson shall provide not less than fourteen (14) days notice of a meeting to the members of the commission and to the public.

(c) The affirmative votes of at least five (5) members of the commission are necessary for the commission to take action. The votes of the commission must be recorded.

(d) All commission meetings shall be open to the public, and each meeting must include opportunities for public comment.

(e) The department shall provide staff support for the commission.

Sec. 13. (a) The commission has the following duties:

(1) To adopt rules concerning the following:

(A) The use of restraint and seclusion in a school corporation or an accredited nonpublic school, with an emphasis on eliminating or minimizing the use of restraint and seclusion.

(B) The prevention of the use of types of restraint or seclusion that may harm a student, a school employee, a school volunteer, or the educational environment of the school.

(C) Requirements for notifying parents.

(D) Training regarding the use of restraint and seclusion,



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including the frequency of training and what employees must be trained.

(E) The distribution of the seclusion and restraint policy to parents and the public.

(F) Requirements for the reporting of incidents of restraint and seclusion in the annual school performance report.

(2) Before August 1, 2013, to develop a model restraint and seclusion plan for schools that includes the following elements:

(A) A statement on how students will be treated with dignity and respect and how appropriate student behavior will be promoted and taught.

(B) A statement ensuring that the school will use prevention, positive behavior intervention and support, and conflict deescalation to eliminate or minimize the need for use of any of the following:

- (i) Seclusion.
- (ii) Chemical restraint.
- (iii) Mechanical restraint.
- (iv) Physical restraint.

(C) A statement ensuring that any behavioral intervention used will be consistent with the student's most current behavioral intervention plan, or individualized education program, if applicable.

(D) Definitions for restraint and seclusion, as defined in this chapter.

(E) A statement ensuring that if a procedure listed in clause (B) is used, the procedure will be used:

- (i) as a last resort safety procedure, employed only after another, less restrictive procedure has been implemented without success; and
- (ii) in a situation in which there is an imminent risk of injury to the student, other students, school employees, or visitors to the school.

(F) An indication that restraint or seclusion may be used only for a short time period, or until the imminent risk of injury has passed.

(G) A documentation and recording requirement governing instances in which procedures listed in clause (B) are used, including:

- (i) how every incident will be documented and debriefed;
- (ii) how responsibilities will be assigned to designated

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employees for evaluation and oversight; and  
 (iii) designation of a school employee to be the keeper of such documents.

(H) A requirement that the student's parent must be notified as soon as possible when an incident involving the student occurs that includes use of procedures listed in clause (B).

(I) A requirement that a copy of an incident report must be sent to the student's parent after the student is subject to a procedure listed in clause (B).

(J) Required recurrent training for appropriate school employees on the appropriate use of effective alternatives to physical restraint and seclusion, including the use of positive behavioral intervention and support and conflict deescalation. The training must include the safe use of physical restraint and seclusion in incidents involving imminent danger or serious harm to the student, school employees, or others. Consideration must be given to available school resources and the time commitments of school employees.

(b) The model policy developed by the commission must take into consideration that implementation and reporting requirements for accredited nonpublic schools may vary, and the model plan must provide accredited nonpublic schools flexibility with regards to accountability under and implementation of the plan adopted by an accredited nonpublic school under section 14 of this chapter.

Sec. 14. A school corporation or accredited nonpublic school shall adopt a restraint and seclusion plan that incorporates, at a minimum, the elements of the model plan developed under section 13 of this chapter. The school corporation's or accredited nonpublic school's plan must become effective not later than July 1, 2014.

Sec. 15. (a) Nothing in this chapter may be construed to prevent a school employee from stopping a physical altercation, acting to prevent physical harm to a student or another individual, or acting to address an emergency until the emergency is over, whether or not the school employee has received training under this chapter.

(b) This chapter may not be construed to give rise to a cause of action, either civil or criminal, against the state, the department, a school corporation, an accredited nonpublic school, the commission, or a member of the commission.



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**(c) In all matters relating to the plan adopted under section 14 of this chapter, school corporation or accredited nonpublic school personnel have qualified immunity with respect to an action taken to promote student conduct under a plan adopted under section 14 of this chapter if the action is taken in good faith and is reasonable.**

**Sec. 16. The commission shall adopt rules under IC 4-22-2 to carry out the purposes of this chapter.**

SECTION 2. IC 34-13-3-3, AS AMENDED BY P.L.125-2011, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. A governmental entity or an employee acting within the scope of the employee's employment is not liable if a loss results from the following:

- (1) The natural condition of unimproved property.
- (2) The condition of a reservoir, dam, canal, conduit, drain, or similar structure when used by a person for a purpose that is not foreseeable.
- (3) The temporary condition of a public thoroughfare or extreme sport area that results from weather.
- (4) The condition of an unpaved road, trail, or footpath, the purpose of which is to provide access to a recreation or scenic area.
- (5) The design, construction, control, operation, or normal condition of an extreme sport area, if all entrances to the extreme sport area are marked with:
  - (A) a set of rules governing the use of the extreme sport area;
  - (B) a warning concerning the hazards and dangers associated with the use of the extreme sport area; and
  - (C) a statement that the extreme sport area may be used only by persons operating extreme sport equipment.

This subdivision shall not be construed to relieve a governmental entity from liability for the continuing duty to maintain extreme sports areas in a reasonably safe condition.

- (6) The initiation of a judicial or an administrative proceeding.
- (7) The performance of a discretionary function; however, the provision of medical or optical care as provided in IC 34-6-2-38 shall be considered as a ministerial act.
- (8) The adoption and enforcement of or failure to adopt or enforce a law (including rules and regulations), unless the act of enforcement constitutes false arrest or false imprisonment.
- (9) An act or omission performed in good faith and without malice under the apparent authority of a statute which is invalid if the employee would not have been liable had the statute been

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(10) The act or omission of anyone other than the governmental entity or the governmental entity's employee.

(11) The issuance, denial, suspension, or revocation of, or failure or refusal to issue, deny, suspend, or revoke any permit, license, certificate, approval, order, or similar authorization, where the authority is discretionary under the law.

(12) Failure to make an inspection, or making an inadequate or negligent inspection, of any property, other than the property of a governmental entity, to determine whether the property complied with or violates any law or contains a hazard to health or safety.

(13) Entry upon any property where the entry is expressly or impliedly authorized by law.

(14) Misrepresentation if unintentional.

(15) Theft by another person of money in the employee's official custody, unless the loss was sustained because of the employee's own negligent or wrongful act or omission.

(16) Injury to the property of a person under the jurisdiction and control of the department of correction if the person has not exhausted the administrative remedies and procedures provided by section 7 of this chapter.

(17) Injury to the person or property of a person under supervision of a governmental entity and who is:

(A) on probation; or

(B) assigned to an alcohol and drug services program under IC 12-23, a minimum security release program under IC 11-10-8, a pretrial conditional release program under IC 35-33-8, or a community corrections program under IC 11-12.

(18) Design of a highway (as defined in IC 9-13-2-73), toll road project (as defined in IC 8-15-2-4(4)), tollway (as defined in IC 8-15-3-7), or project (as defined in IC 8-15.7-2-14) if the claimed loss occurs at least twenty (20) years after the public highway, toll road project, tollway, or project was designed or substantially redesigned; except that this subdivision shall not be construed to relieve a responsible governmental entity from the continuing duty to provide and maintain public highways in a reasonably safe condition.

(19) Development, adoption, implementation, operation, maintenance, or use of an enhanced emergency communication system.

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(20) Injury to a student or a student's property by an employee of a school corporation if the employee is acting reasonably under a:

- (A) discipline policy adopted under IC 20-33-8-12; or
- (B) restraint and seclusion plan adopted under IC 20-20-40-14.**

(21) An act or omission performed in good faith under the apparent authority of a court order described in IC 35-46-1-15.1 that is invalid, including an arrest or imprisonment related to the enforcement of the court order, if the governmental entity or employee would not have been liable had the court order been valid.

(22) An act taken to investigate or remediate hazardous substances, petroleum, or other pollutants associated with a brownfield (as defined in IC 13-11-2-19.3) unless:

- (A) the loss is a result of reckless conduct; or
- (B) the governmental entity was responsible for the initial placement of the hazardous substances, petroleum, or other pollutants on the brownfield.

(23) The operation of an off-road vehicle (as defined in IC 14-8-2-185) by a nongovernmental employee, or by a governmental employee not acting within the scope of the employment of the employee, on a public highway in a county road system outside the corporate limits of a city or town, unless the loss is the result of an act or omission amounting to:

- (A) gross negligence;
- (B) willful or wanton misconduct; or
- (C) intentional misconduct.

This subdivision shall not be construed to relieve a governmental entity from liability for the continuing duty to maintain highways in a reasonably safe condition for the operation of motor vehicles licensed by the bureau of motor vehicles for operation on public highways.

(24) Any act or omission rendered in connection with a request, investigation, assessment, or opinion provided under IC 36-9-28.7.

**SECTION 3. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "commission" refers to the commission on seclusion and restraint in schools established by IC 20-20-40-11, as added by this act.**

**(b) Before May 31, 2013, the organizations set forth in IC 20-20-40-11(b)(2) through IC 20-20-40-11(b)(5), as added by this act, shall select their representatives to serve on the**

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**commission and submit the names and contact information for the representatives to the department of education.**

**(c) The individual designated by the state superintendent of public instruction to serve on the commission under as IC 20-20-40-11(b)(1), added by this act, shall call the initial meeting of the commission before July 1, 2013.**

**(d) This SECTION expires July 1, 2013.**

**SECTION 4. An emergency is declared for this act.**

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President of the Senate

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President Pro Tempore

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Speaker of the House of Representatives

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Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

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