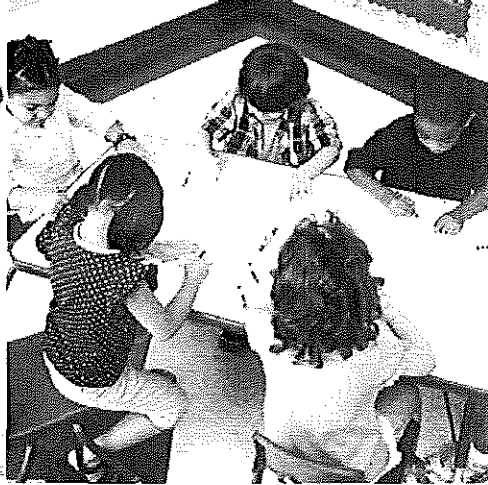
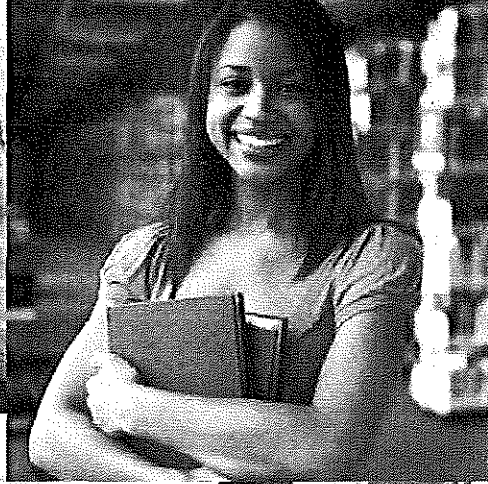
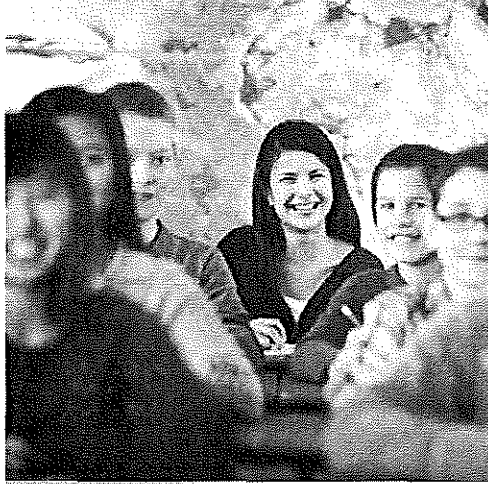


RESTRAINT AND SECLUSION: RESOURCE DOCUMENT

U.S. Department of Education



This document was produced under U.S. Department of Education Contract No. ED-OSE-09-O-0058 with the American Institutes for Research. Renee Bradley served as the contracting officer's representative. This resource document contains websites and resources created by a variety of organizations. These websites and resources are provided for the user's convenience. No official endorsement by the U.S. Department of Education of any product, commodity, service or enterprise mentioned in this report or on websites referred to in this report is intended or should be inferred. The views expressed herein do not necessarily represent the positions or policies of the Department of Education and no official endorsement of them by the Department is intended or should be inferred.

U.S. Department of Education

Arne Duncan

Secretary

May 2012

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This resource is available on the Department's Web site at: www.ed.gov/policy/restraintseclusion

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THE SECRETARY OF EDUCATION
WASHINGTON, DC 20202

May 15, 2012

As education leaders, our first responsibility must be to ensure that schools foster learning in a safe and healthy environment for all our children, teachers, and staff. To support schools in fulfilling that responsibility, the U.S. Department of Education has developed this document that describes 15 principles for States, school districts, schools, parents, and other stakeholders to consider when developing or revising policies and procedures on the use of restraint and seclusion. These principles stress that every effort should be made to prevent the need for the use of restraint and seclusion and that any behavioral intervention must be consistent with the child's rights to be treated with dignity and to be free from abuse. The principles make clear that restraint or seclusion should never be used except in situations where a child's behavior poses imminent danger of serious physical harm to self or others, and restraint and seclusion should be avoided to the greatest extent possible without endangering the safety of students and staff. The goal in presenting these principles is to help ensure that all schools and learning environments are safe for all children and adults.

As many reports have documented, the use of restraint and seclusion can have very serious consequences, including, most tragically, death. Furthermore, there continues to be no evidence that using restraint or seclusion is effective in reducing the occurrence of the problem behaviors that frequently precipitate the use of such techniques. Schools must do everything possible to ensure all children can learn, develop, and participate in instructional programs that promote high levels of academic achievement. To accomplish this, schools must make every effort to structure safe environments and provide a behavioral framework, such as the use of positive behavior interventions and supports, that applies to all children, all staff, and all places in the school so that restraint and seclusion techniques are unnecessary.

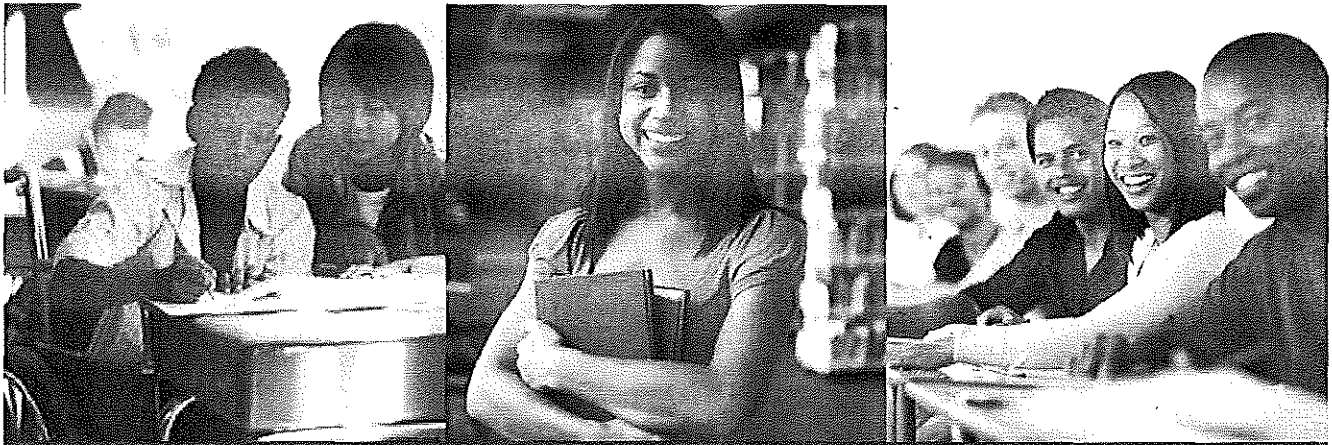
I hope you find this document helpful in your efforts to provide a world-class education to America's children. Thank you for all you do to support our schools, families, and communities and for your work on behalf of our nation's children.

Arne Duncan

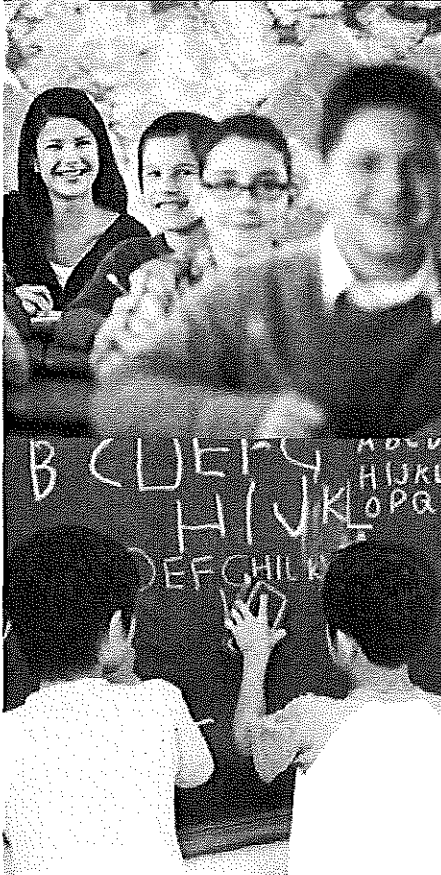
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Restraint and Seclusion: Resource Document¹



School should be a safe and healthy environment in which America's children can learn, develop, and participate in instructional programs that promote high levels of academic achievement.

The foundation of any discussion about the use of restraint and seclusion is that every effort should be made to structure environments and provide supports so that restraint and seclusion are unnecessary. As many reports have documented, the use of restraint and seclusion can, in some cases, have very serious consequences, including, most tragically, death. There is no evidence that using restraint or seclusion is effective in reducing the occurrence of the problem behaviors that frequently precipitate the use of such techniques.

Physical restraint or seclusion should not be used except in situations where the child's behavior poses imminent danger of serious physical harm to self or others and restraint and seclusion should be avoided to the greatest extent possible without endangering the safety of students and staff. Schools should never use mechanical restraints to restrict a child's



1 The U.S. Department of Education issues this Resource Document to provide guidance, and describe fifteen principles that States, school districts, school staff, parents, and other stakeholders may find helpful to consider when States, localities, and districts develop practices, policies, and procedures on the use of restraint and seclusion in schools. Our goal in providing this information is to inform States and school districts about how they can help to ensure that schools are safe learning environments for all students. As guidance, the extent to which States and school districts implement these principles in furtherance of that goal is a matter for State and local school officials to decide using their professional judgment, especially in applying this information to specific situations and circumstances. This document does not set forth any new requirements, does not create or confer any rights for or on any person or require specific actions by any State, locality, or school district.

We are interested in making this document as informative and useful as possible. If you are interested in commenting on this document, please e-mail your comments to Restraint_Seclusion@ed.gov or write to us at the following address: US Department of Education, 550 12th Street SW, PCP Room 4160, Washington, DC 20202-2600.

freedom of movement.² In addition, schools should never use a drug or medication to control behavior or restrict freedom of movement unless it is (1) prescribed by a licensed physician, or other qualified health professional acting under the scope of the professional's authority under State law; and (2) administered as prescribed by the licensed physician or other qualified health professional acting under the scope of the professional's authority under State law. Teachers, administrators, and staff understand that students' social behavior can affect their academic learning. In many high-performing schools effective academic instruction is combined with effective behavior supports to maximize academic engagement and, thus, student achievement. Students are more likely to achieve when they are (1) directly taught school and classroom routines and social expectations that are predictable and contextually relevant; (2) acknowledged clearly and consistently for their displays of positive academic and social behavior; and (3) treated by

2 As the definition on page six of this document makes clear, "mechanical restraint" as used in this document does not include devices implemented by trained school personnel, or utilized by a student that have been prescribed by an appropriate medical or related services professional and are used for the specific and approved purposes for which such devices were designed.

others with respect. (Algozzine, R., Wang, C., and Violette, C., 2011; McIntosh, K., Chard, D., Boland, J., and Horner, R., 2006). Building effective behavioral supports in schools also involves several ongoing interrelated activities, including (1) investing in the whole school rather than just students with problem behavior; (2) focusing on preventing the development and occurrence of problem behavior; (3) reviewing behavioral data regularly to adapt school procedures to the needs of all students and their families; and (4) providing additional academic and social behavioral supports for students who are not making expected progress (Sugai, G., Horner, R., Algozzine, R., Barrett, S., Lewis, T., Anderson, C., Bradley, R., Choi, J. H., Dunlap, G., Eber, L., George, H., Kincaid, D., McCart, A., Nelson, M., Newcomer, L., Putnam, R., Riffel, L., Rovins, M., Sailor, W., Simonsen, B. (2010)).

Positive behavior interventions and supports (PBIS) is a multi-tiered school-wide approach to establishing the social culture that is helpful for schools to achieve social and academic gains while minimizing problem behavior for all children. Over 17,000 schools across the country are implementing PBIS, which provides a framework for decision-making that guides the implementation of evidence-based academic and behavioral practices throughout the entire school, frequently resulting in significant

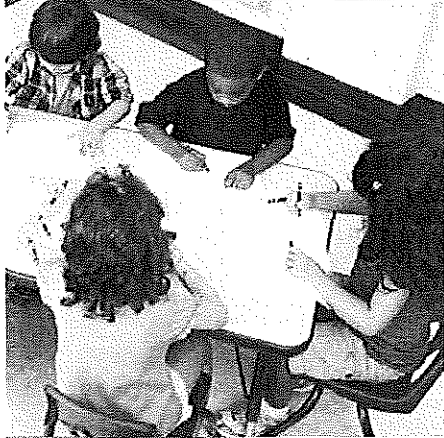


Restraint or seclusion should not be used as routine school safety measures; that is, they should not be implemented except in situations where a child's behavior poses imminent danger of serious physical harm to self or others and not as a routine strategy implemented to address instructional problems or inappropriate behavior (e.g., disrespect, noncompliance, insubordination, out of seat), as a means of coercion or retaliation, or as a convenience.

reductions in the behaviors that lead to office disciplinary referrals, suspensions, and expulsions. While the successful implementation of PBIS typically results in improved social and academic outcomes, it will not eliminate all behavior incidents in a school (Bradshaw, C., Mitchell, M., and Leaf, P. (2010); Muscott, H., and Mann, E. (in press); Lassen, S., Steele, M., and Sailor, W. (2006)). However, PBIS is an important preventive framework that can increase the capacity of school staff to support all children, including children with the most complex behavioral needs, thus reducing the instances that require intensive interventions.



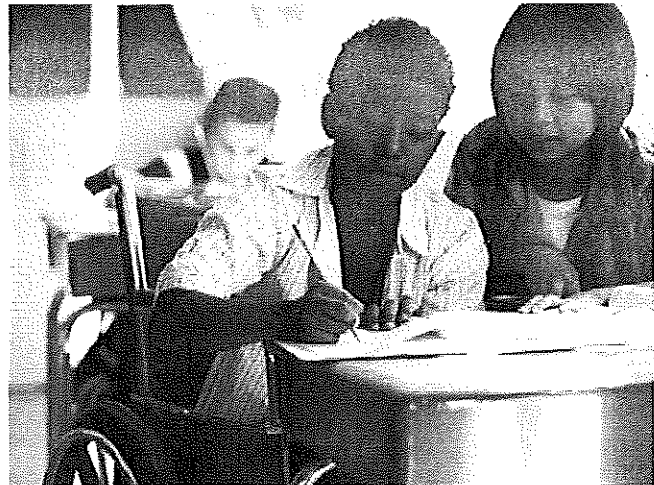
Background



On July 31, 2009, Secretary of Education Arne Duncan sent a letter to Chief State School Officers stating that he was deeply troubled about the current use and effects of restraint and seclusion, which were the subject of testimony before the Education and Labor Committee in the U.S. House of Representatives' hearing examining the abusive and potentially deadly application of restraint and seclusion techniques in schools.

In his letter, Secretary Duncan encouraged each State to review its current policies and guidelines on the use of restraint and seclusion in schools to help ensure that every student is safe and protected, and, if appropriate, to develop or revise its policies and guidelines. In addition, Secretary Duncan urged the Chiefs to publicize these policies and guidelines so that administrators, teachers, and parents understand and consent to the limited circumstances under which these techniques may be used; ensure that parents are notified when these interventions occur; provide the resources needed to successfully implement the policies; and hold school districts accountable for adhering to the guidelines. The letter went on to highlight the use of PBIS as an important preventive approach that can increase the capacity of the school staff to support children with the most complex behavioral needs, thus reducing the instances that require intensive interventions.

Subsequently, the U.S. Department of Education (the Department) asked its regional Comprehensive Centers to collect each State's statutes, regulations, policies, and guidelines regarding the use of restraint and seclusion, and posted that information on the Department's Web site.³ Additionally, the Department's Office for Civil Rights revised the *Civil Rights Data Collection* beginning with school year 2009-2010 to require reporting of the total number of students subjected to restraint or seclusion disaggregated by race/ethnicity, sex, limited English proficiency status, and disability, and to collect the total number of times that restraint or seclusion occurred.⁴



Additionally, in 2009, the Substance Abuse and Mental Health Services Administration (SAMHSA) of the U.S. Department of Health and Human Services (DHHS), asked the Department's Office of Special Education Programs (OSEP) to review a paper commissioned by SAMHSA (with the assistance of an expert work group) addressing the issue of restraint and seclusion in schools. Based on Secretary Duncan's letter to the Chief State School Officers and the experiences of SAMHSA with reducing, and in some cases eliminating, the use of restraint and seclusion in mental health facilities, the Department determined that it would be beneficial to all children if information and technical assistance were provided to State departments of education, local school districts, and preschool, elementary, and secondary schools regarding limiting the use of restraint and seclusion to situations involving imminent danger of serious physical harm to children or others.⁵

³ A revised version of that information is included in this document as Attachment A.

⁴ These data are available at <http://ocrdata.ed.gov>.

⁵ More detail about these efforts is included later in this document.

The purpose of this Resource Document is to present and describe 15 principles for State, district, and school staff; parents; and other stakeholders to consider when States, localities, and districts develop policies and procedures, which should be in writing on the use of restraint and seclusion. The principles are based on the nine principles that Secretary of Education Arne Duncan articulated in a 2009 letter to Chairman Christopher Dodd, Chairman George Miller, and Representative Cathy McMorris Rodgers in response to proposed legislation on restraint and seclusion. In his letter, the Secretary affirmed the Department's position that restraint and seclusion should not be used except when necessary to protect a child or others from imminent danger of serious physical harm. Since the Secretary issued his 2009 letter, the Department, working with the Department of Health and Human Services, further developed

In cases where a student has a history of dangerous behavior for which restraint or seclusion was considered or used, a school should have a plan for: (1) teaching and supporting more appropriate behavior; and (2) determining positive methods to prevent behavioral escalations that have previously resulted in the use of restraint or seclusion.

and refined the principles. The Department and the Department of Health and Human Services urge States; local districts, and schools to adopt policies that consider these 15 principles as the framework for the development and implementation of policies and procedures related to restraint and seclusion to help ensure that any use of restraint or seclusion in schools does not occur, except when there is a threat of imminent danger of serious physical harm to the student or others, and occurs in a manner that protects the safety of all children and adults at a school. The goal in presenting these principles is to help ensure that all schools and all learning environments are safe for all children and adults. This Resource Document discusses the context within which these principles were developed, lists the principles, and highlights the current state of practice and implementation considerations for each principle. Additionally, this document provides a synopsis of ongoing efforts by Federal agencies to address national concerns about using restraint and seclusion in schools. Two attachments at the end of this document provide information about State policies on the use of restraint and seclusion in our nation's public schools and an annotated resource guide on the use of restraint and seclusion in schools.

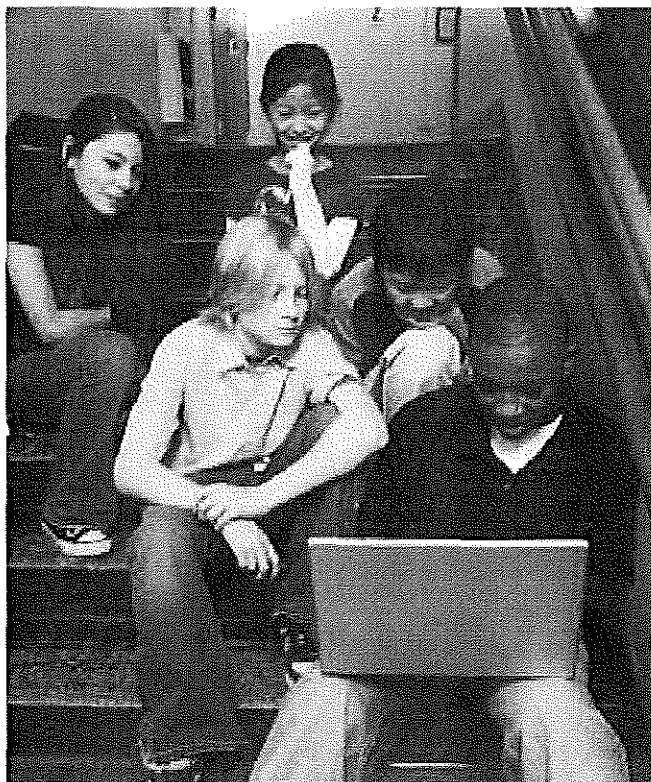
OTHER SIGNIFICANT FEDERAL ACTIVITY REGARDING THE USE OF RESTRAINT AND SECLUSION IN SCHOOLS

U.S. Government Accountability Office Report

The U.S. House of Representatives' Committee on Education and Labor requested the U.S. Government Accountability Office (GAO) to review the available evidence on the use of restraint and seclusion

that resulted in death and abuse at public and private schools and treatment centers. The GAO reviewed applicable Federal and State laws, interviewed knowledgeable State officials and recognized experts, and examined available evidence of abuse allegations from parents, advocacy organizations, and the media for the period between 1990 and 2009. These evidence reviews also involved the examination of selected closed cases, including police and autopsy reports and school policies on restraint or seclusion related to these cases.

The GAO report, titled *Examining the Abusive and Deadly Use of Seclusion and Restraint in Schools* (issued May 19, 2009), included three sets of findings. First, the GAO found that there were no current Federal regulations, but a wide variety of divergent State regulations, governing the use of restraint and seclusion in public and private schools. Second, the



GAO reported that there were no reliable national data on when and how often restraint and seclusion are being used in schools, or on the extent of abuse resulting from the use of these practices in educational settings nationally. However, the GAO identified several hundred cases of alleged abuse, including deaths that were related to the use of restraint or seclusion of children in public and private schools. Finally, the GAO provided detailed documentation of the abuse of restraint or seclusion in a sample of 10 closed cases that resulted in criminal convictions, findings of civil or administrative liability, or a large financial settlement. The GAO further observed that problems with untrained or poorly trained staff were often related to many instances of alleged abuse.

Congressional Hearings and Proposed Legislation

The GAO report was presented to the U.S. House of Representatives' Committee on Education and Labor at a hearing on restraint and seclusion on May 19, 2009. Testimony at this and other hearings, together with related work by the Committee, led to the drafting of proposed Federal legislation on the use of restraint and seclusion in schools.

The 111th Congress considered legislation on the use of restraint and seclusion in schools. The House bill (H.R. 4247) was titled *Keeping All Students Safe Act*, and two Senate bills were introduced, *Preventing Harmful Restraint and Seclusion in Schools Act* (S. 2860) and *Keeping All Students Safe Act* (S. 3895). In April, 2011, H.R. 4247 was reintroduced in the 112th Congress as H.R. 1381. And in December, 2011, S. 2020, *Keeping All Students Safe Act*, was introduced in the 112th Congress. The shared purposes of these bills were to (1) limit the use of restraint and seclusion in schools to cases where there

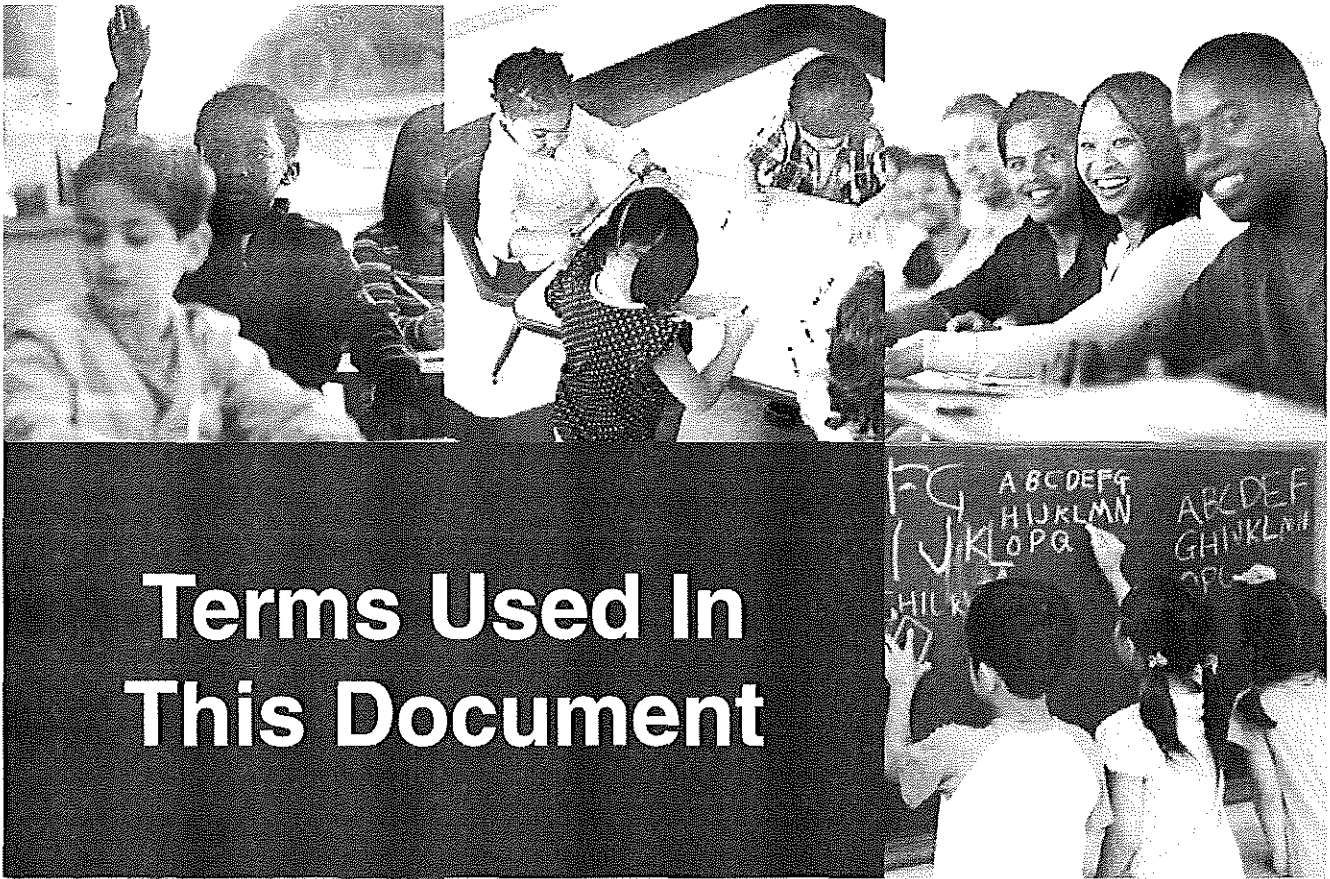
First, the GAO found that there were no current Federal regulations, but a wide variety of divergent State regulations, governing the use of restraint and seclusion in public and private schools.

is imminent danger of physical injury to the student or others at school; (2) provide criteria and steps for the proper use of restraint or seclusion; and (3) promote the use of positive reinforcement and other, less restrictive behavioral interventions in school. These measures also would have authorized support to States and localities in adopting more stringent oversight of the use of restraint and seclusion in schools, and would have established requirements for collecting data on the use of these practices in schools. Both the House and Senate bills were introduced and debated by their respective chambers in the 111th Congress, but only the House bill had passed when the Congressional session ended in December 2010. Therefore, no legislation related to restraint and seclusion in schools was enacted by the 111th Congress, nor has action on such legislation been taken, to date, in the 112th Congress.

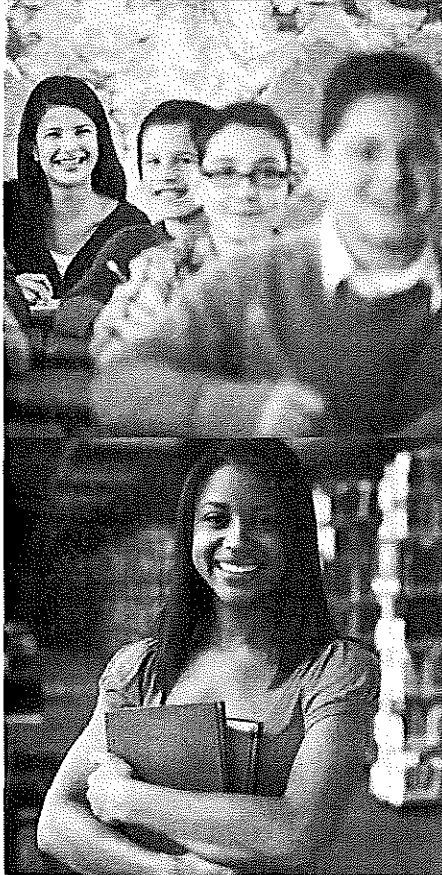


Congressional Research Service Report

In October, 2010, the Congressional Research Service issued a report to Congress titled *The Use of Seclusion and Restraint in Public Schools: The Legal Issues*. The report focused on the legal issues regarding the use of seclusion and restraint in schools, including their use with children covered by the Individuals with Disabilities Education Act (IDEA) and with children not covered by IDEA. The report addressed (1) definitions (*Civil Rights Data Collection* definitions); (2) constitutional issues; (3) IDEA judicial decisions related to seclusion and restraint; (4) State laws and policies; and (5) Federal legislation.



Terms Used In This Document



The Department's Office for Civil Rights (OCR) began collecting data on the use of restraint and seclusion in schools as part of the Department's 2009-2010 *Civil Rights Data Collection* (CRDC) and defined key terms related to restraint and seclusion.

References in this document to “restraint” encompass the terms “physical restraint” and “mechanical restraint” as defined in the CRDC. References to “seclusion” encompass “seclusion” as defined in the CRDC. According to the GAO report, each of these types of restraint is currently being used in schools.

The CRDC defines *physical restraint* as:

- A personal restriction that immobilizes or reduces the ability of a student to move his or her torso, arms, legs, or head freely. The term physical restraint does not include a physical escort. Physical escort means a temporary touching or holding of the hand, wrist, arm, shoulder, or back for the purpose of inducing a student who is acting out to walk to a safe location.

The CRDC defines *mechanical restraint* as:

- The use of any device or equipment to restrict a student’s freedom of movement. This term does not include devices implemented by trained school personnel, or utilized by a student that have been prescribed by an appropriate medical or related services professional and are used for the specific and approved purposes for which such devices were designed, such as:
 - Adaptive devices or mechanical supports used to achieve proper body position, balance, or alignment to allow greater freedom of mobility than would be possible without the use of such devices or mechanical supports;
 - Vehicle safety restraints when used as intended during the transport of a student in a moving vehicle;
 - Restraints for medical immobilization; or
 - Orthopedically prescribed devices that permit a student to participate in activities without risk of harm.

The CRDC defines *seclusion* as:

- The involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving. It does not include a timeout, which is a behavior management technique that is part of an approved program, involves the monitored separation of the student in a non-locked setting, and is implemented for the purpose of calming.

A copy of the 2009-2010 CRDC and the OCR definitions of restraint and seclusion can be found at the following Web site: <http://www2.ed.gov/about/offices/list/ocr/whatsnew.html>. Restraint and seclusion data are available at <http://ocrdata.ed.gov>.⁶

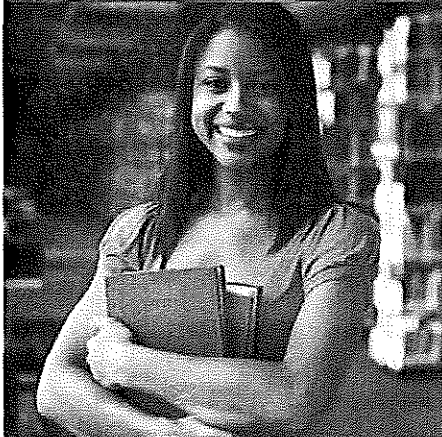
⁶ As these terms are used in this document, “restraint” does not include behavioral interventions used as a response to calm and comfort (e.g., proximity control, verbal soothing) an upset student and “seclusion” does not include classroom timeouts, supervised in-school detentions, or out-of-school suspensions.



Fifteen Principles⁷



The Department, in collaboration with SAMHSA, has identified 15 principles that we believe States, local school districts, preschool, elementary, and secondary schools, parents, and other stakeholders should consider as the framework for when States, localities, and districts develop and implement policies and procedures, which should be in writing related to restraint and seclusion to ensure that any use of restraint or seclusion in schools does not occur, except when there is a threat of imminent danger of serious physical harm to the student or others, and occurs in a manner that protects the safety of all children and adults at school.



The Department recognizes that States, localities, and districts may choose to exceed the framework set by the 15 principles by providing additional protections from restraint and seclusion.

FIFTEEN PRINCIPLES

1. Every effort should be made to prevent the need for the use of restraint and for the use of seclusion.
 2. Schools should never use mechanical restraints to restrict a child's freedom of movement, and schools should never use a drug or medication to control behavior or restrict freedom of movement (except as authorized by a licensed physician or other qualified health professional).
 3. Physical restraint or seclusion should not be used except in situations where the child's behavior poses imminent danger of serious physical harm to self or others and other interventions are ineffective and should be discontinued as soon as imminent danger of serious physical harm to self or others has dissipated.
 4. Policies restricting the use of restraint and seclusion should apply to all children, not just children with disabilities.
 5. Any behavioral intervention must be consistent with the child's rights to be treated with dignity and to be free from abuse.
 6. Restraint or seclusion should never be used as punishment or discipline (e.g., placing in seclusion for out-of-seat behavior), as a means of coercion or retaliation, or as a convenience.
 7. Restraint or seclusion should never be used in a manner that restricts a child's breathing or harms the child.
 8. The use of restraint or seclusion, particularly when there is repeated use for an individual child, multiple uses within the same classroom, or multiple uses by the same individual, should trigger a review and, if appropriate, revision of strategies currently in place to address dangerous behavior;⁸ if positive behavioral strategies are not in place, staff should consider developing them.
 9. Behavioral strategies to address dangerous behavior that results in the use of restraint or seclusion should address the underlying cause or purpose of the dangerous behavior.
 10. Teachers and other personnel should be trained regularly on the appropriate use of effective alternatives to physical restraint and seclusion, such as positive behavioral interventions and supports and, only for cases involving imminent danger of serious physical harm, on the safe use of physical restraint and seclusion.
-
- ⁷ This Resource Document addresses the restraint or seclusion of any student regardless of whether the student has a disability. Federal laws, including the IDEA, the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, as amended, must be followed in any instance in which a student with a disability is restrained or secluded, or where such action is contemplated. This Resource Document does not, however, address the legal requirements contained in those laws.
-
- ⁸ As used in this document, the phrase "dangerous behavior" refers to behavior that poses imminent danger of serious physical harm to self or others.

Every effort should be made to prevent the need for the use of restraint and for the use of seclusion.

11. Every instance in which restraint or seclusion is used should be carefully and continuously and visually monitored to ensure the appropriateness of its use and safety of the child, other children, teachers, and other personnel.
12. Parents should be informed of the policies on restraint and seclusion at their child's school or other educational setting, as well as applicable Federal, State, or local laws.
13. Parents should be notified as soon as possible following each instance in which restraint or seclusion is used with their child.
14. Policies regarding the use of restraint and seclusion should be reviewed regularly and updated as appropriate.
15. Policies regarding the use of restraint and seclusion should provide that each incident involving the use of restraint or seclusion should be documented in writing and provide for the collection of specific data that would enable teachers, staff, and other personnel to understand and implement the preceding principles.



Following is additional information about each of the 15 principles.

1. Every effort should be made to prevent the need for the use of restraint and for the use of seclusion.

All children should be educated in safe, respectful, and non-restrictive environments where they can receive the instruction and other supports they need to learn and achieve at high levels. Environments can be structured to greatly reduce, and in many cases eliminate, the need to use restraint or seclusion. SAMHSA notes in its *Issue Brief #1: Promoting Alternatives to the Use of Seclusion and Restraint*, that with leadership and policy and programmatic change, the use of seclusion and restraint can be prevented and in some facilities has been eliminated. One primary method is to structure the environment using a non-aversive effective behavioral system such as PBIS. Effective positive behavioral systems are comprehensive, in that they are comprised of a framework or approach for assisting school personnel in adopting and organizing evidence-based behavioral interventions into an integrated continuum that enhances academic and social behavioral outcomes for all students. The PBIS prevention-oriented framework or approach applies to all students, all staff, and all settings. When integrated with effective academic instruction, such systems can help provide the supports children need to become actively engaged in their own learning and academic success. Schools successfully implementing comprehensive behavioral systems create school-wide environments that reinforce appropriate behaviors while reducing instances of dangerous behaviors that may lead to the need to use restraint or seclusion. In

schools implementing comprehensive behavioral systems, trained school staff use preventive assessments to identify where, under what conditions, with whom, and why specific inappropriate behavior may occur, as well as implement de-escalation techniques to defuse potentially violent dangerous behavior. Preventive assessments should include (1) a review of existing records; (2) interviews with parents, family members, and students; and (3) examination of previous and existing behavioral intervention plans. Using these data from such assessments helps schools identify the conditions when inappropriate behavior is likely to occur and the factors that lead to the occurrence of these behaviors; and develop and implement preventive behavioral interventions that teach appropriate behavior and modify the environmental factors that escalate the inappropriate behavior. The use of comprehensive behavioral systems significantly decreases the likelihood that restraint or seclusion would be used, supports the attainment of more appropriate behavior, and, when implemented as described, can help to improve academic achievement and behavior.

2. **Schools should never use mechanical restraints to restrict a child's freedom of movement, and schools should never use a drug or medication to control behavior or restrict freedom of movement (except as authorized by a licensed physician or other qualified health professional).**

Schools should never use mechanical restraints to restrict a child's freedom of movement. In addition, schools should never use a drug or medication to control behavior or restrict freedom of movement unless it is (1) prescribed by a licensed physician, or other qualified health

Schools should never use mechanical restraints to restrict a child's freedom of movement, and schools should never use a drug or medication to control behavior or restrict freedom of movement (except as authorized by a licensed physician or other qualified health professional).

professional acting under the scope of the professional's authority under State law; and (2) administered as prescribed by the licensed physician or other qualified health professional acting under the scope of the professional's authority under State law.

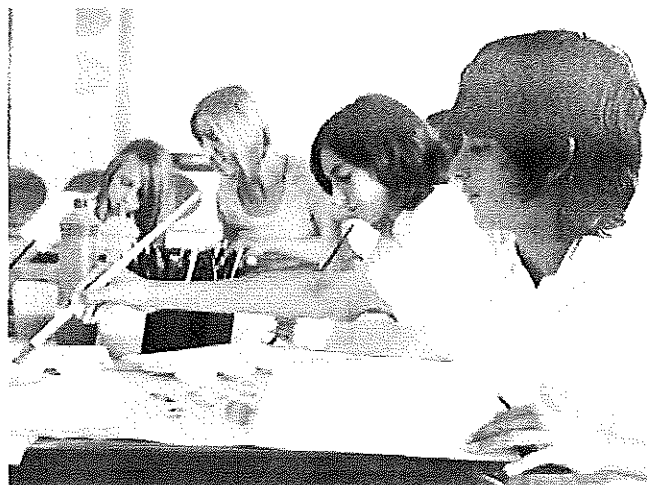
3. **Physical restraint or seclusion should not be used except in situations where the child's behavior poses imminent danger of serious physical harm to self or others and other interventions are ineffective and should be discontinued as soon as imminent danger of serious physical harm to self or others has dissipated.**

Physical restraint or seclusion should be reserved for situations or conditions where

there is imminent danger of serious physical harm to the child, other children, or school or program staff. These procedures should not be used except to protect the child and others from serious harm and to defuse imminently dangerous situations in the classroom or other non-classroom school settings (e.g., hallways, cafeteria, playground, sports field), and only should be used by trained personnel. Physical restraint or seclusion should not be used as a response to inappropriate behavior (e.g., disrespect, noncompliance, insubordination, out of seat) that does not pose imminent danger of serious physical harm to self or others, nor should a child be restrained and secluded simultaneously as this could endanger the child. In addition, planned behavioral strategies should be in place and used to: (1) de-escalate potentially violent dangerous behavior; (2) identify and support competing positive behavior to replace dangerous behavior; and (3) support appropriate behavior in class and throughout the school, especially if a student has a history of escalating dangerous behavior.

4. Policies restricting the use of restraint and seclusion should apply to all children, not just children with disabilities.

Behavior that results in the rare use of restraint or seclusion -- that posing imminent danger of serious physical harm to self or others -- is not limited to children with disabilities, children with a particular disability, or specific groups of children (e.g., gender, race, national origin, limited English proficiency, etc.) without disabilities. Thus, to the extent that State and local policies address the use of restraint or seclusion, those policies, including assessment and prevention strategies, should apply to all children



in the school, all staff who work directly or indirectly with children, and across all settings under the responsibility of the school.

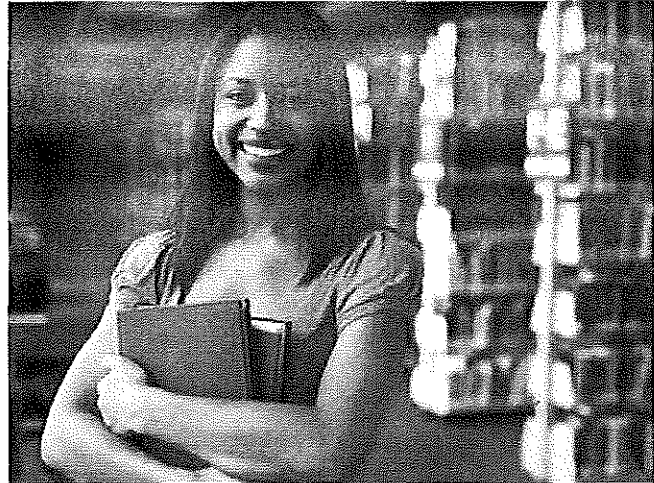
5. Any behavioral intervention must be consistent with the child's rights to be treated with dignity and to be free from abuse.

Every child deserves to be treated with dignity, be free from abuse, and treated as a unique individual with individual needs, strengths, and circumstances (e.g., age, developmental level, medical needs). *The use of any technique that is abusive is illegal and should be reported to the appropriate authorities.* Schools should consider implementing an evidence-based school-wide system or framework of positive behavioral interventions and supports. Key elements of a school-wide system or framework include (1) universal screening to identify children at risk for behavioral problems; (2) use of a continuum of increasingly intensive behavioral and academic interventions for children identified as being at risk; (3) an emphasis on teaching and acknowledging school-wide and individual expected behaviors and social skills; and (4) systems to monitor the responsiveness of

individual children to behavioral and academic interventions. Increases in children's academic achievement and reductions in the frequency of disciplinary incidents can be realized when school-wide frameworks are implemented as designed and are customized to match the needs, resources, context, and culture of students and staff.

- 6. Restraint or seclusion should never be used as punishment or discipline (e.g., placing in restraint for out-of-seat behavior), as a means of coercion, or retaliation, or as a convenience.**

Restraint or seclusion should not be used as routine school safety measures; that is, they should not be implemented except in situations where a child's behavior poses imminent danger of serious physical harm to self or others and not as a routine strategy implemented to address instructional problems or inappropriate behavior (e.g., disrespect, noncompliance, insubordination, out of seat), as a means of coercion or retaliation, or as a convenience. Restraint or seclusion should only be used for limited periods of time and should cease immediately when the imminent danger of serious physical harm to self or others has dissipated. Restraint or seclusion should not be used (1) as a form of punishment or discipline (e.g., for out-of-seat behavior); (2) as a means to coerce, retaliate, or as a convenience for staff; (3) as a planned behavioral intervention in response to behavior that does not pose imminent danger of serious physical harm to self or others; or (4) in a manner that endangers the child. For example, it would be inappropriate to use restraint or seclusion for (1) failure to follow expected classroom or



school rules; (2) noncompliance with staff directions; (3) the use of inappropriate language; (4) to "punish" a child for inappropriate behavior; or (5) staff to have an uninterrupted time together to discuss school issues.

- 7. Restraint or seclusion should never be used in a manner that restricts a child's breathing or harms the child.**

Prone (i.e., lying face down) restraints or other restraints that restrict breathing should never be used because they can cause serious injury or death. Breathing can also be restricted if loose clothing becomes entangled or tightened or if the child's face is covered by a staff member's body part (e.g., hand, arm, or torso) or through pressure to the abdomen or chest. Any restraint or seclusion technique should be consistent with known medical or other special needs of a child. School districts should be cognizant that certain restraint and seclusion techniques are more restrictive than others, and use the least restrictive technique necessary to end the threat of imminent danger of serious physical harm. A child's ability to communicate (including for those children who use only sign language or other

forms of manual communication or assistive technology) also should not be restricted unless less restrictive techniques would not prevent imminent danger of serious physical harm to the student or others. In all circumstances, the use of restraint or seclusion should never harm a child.

8. **The use of restraint or seclusion, particularly when there is repeated use for an individual child, multiple uses within the same classroom, or multiple uses by the same individual, should trigger a review and, if appropriate, a revision of behavioral strategies currently in place to address dangerous behavior; if positive behavioral strategies are not in place, staff should consider developing them.**

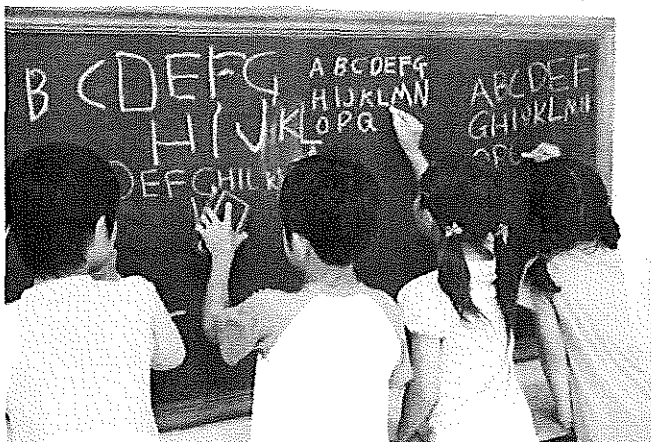
In cases where a student has a history of dangerous behavior for which restraint or seclusion was considered or used, a school should have a plan for (1) teaching and supporting more appropriate behavior; and (2) determining positive methods to prevent behavioral escalations that have previously resulted in the use of restraint or seclusion. Trained personnel should develop this plan in concert with parents and relevant professionals by using practices such as functional behavioral assessments (FBAs) and behavioral intervention plans (BIPs). An FBA is used to analyze environmental factors, including any history of trauma (e.g., physical abuse), that contribute to a child's inappropriate (e.g., disrespect, noncompliance, insubordination, out-of-seat) behaviors. FBA data are used to develop positive behavioral strategies that emphasize redesigning environmental conditions, which may include changes in staff approaches and

techniques, so that appropriate behavior is more likely to occur and inappropriate and dangerous behavior is less likely to occur.

When restraint or seclusion is repeatedly used with a child, used multiple times within the same classroom, or used multiple times by the same individual, a review of the student's BIP should occur, the prescribed behavioral strategies should be modified, if needed; and staff training and skills should be re-evaluated. The need for the review is based on the individual needs of the child and the determination should include input from the family; a review could be necessitated by a single application of restraint or seclusion. This review may entail conducting another FBA to refine the BIP or examining the implementation of the current plan. If the student has a history of dangerous behavior and has been subjected to restraint or seclusion, a review and plan should be conducted prior to the student entering any program, classroom, or school. In all cases the reviews should consider not only the effectiveness of the plan, but also the capability of school staff to carry out the plan. Furthermore, if restraint or seclusion was used with a child who does not have an FBA and BIP, an FBA should be conducted and, if needed, a BIP developed and implemented that incorporates positive behavioral strategies for that child, including teaching positive behaviors. The long-term goal of FBAs and BIPs is to develop and implement preventive behavioral interventions, including increasing appropriate positive behaviors, that reduce the likelihood that restraint or seclusion will be used with a child in the future.

9. **Behavioral strategies to address dangerous behavior that results in the use of restraint or seclusion should address the underlying cause or purpose of the dangerous behavior.**

Behavioral strategies, particularly when implemented as part of a school-wide program of positive behavioral supports, can be used to address the underlying causes of dangerous behavior and reduce the likelihood that restraint or seclusion will need to be used. Behavior does not occur in a vacuum but is associated with conditions, events, requirements, and characteristics of a given situation or setting. An FBA can identify the combination of antecedent factors (factors that immediately precede behavior)



and consequences (factors that immediately follow behavior) that are associated with the occurrence of inappropriate behavior. Information collected through direct observations, interviews, and record reviews help to identify the function of the dangerous behavior and guide the development of BIPs. A complete BIP should describe strategies for (1) addressing the characteristics of the setting and events; (2) removing antecedents that trigger dangerous

behavior; (3) adding antecedents that maintain appropriate behavior; (4) removing consequences that maintain or escalate dangerous behaviors; (5) adding consequences that maintain appropriate behavior; and (6) teaching alternative appropriate behaviors, including self regulation techniques, to replace the dangerous behaviors.

10. **Teachers and other personnel should be trained regularly on the appropriate use of effective alternatives to physical restraint and seclusion, such as positive behavioral interventions and supports and, only for cases involving imminent danger of serious physical harm, on the safe use of physical restraint and seclusion.**

Positive behavioral strategies should be in place in schools and training in physical restraint and seclusion should first emphasize that every effort should be made to use positive behavioral strategies to prevent the need for the use of restraint and seclusion. School personnel working directly with children should know the school's policies and procedures for the safe use of physical restraint and seclusion, including both proper uses (e.g., as safety measures to address imminent danger of physical harm) and improper uses (e.g., as punishment or to manage behavior) of these procedures. In addition, school personnel should be trained in how to safely implement procedures for physical restraint and seclusion and only trained personnel should employ these interventions; as well as how to collect and analyze individual child data to determine the effectiveness of these procedures in increasing appropriate behavior and decreasing inappropriate behavior. These data

should inform the need for additional training, staff support, or policy change, particularly when data indicate repeated use of these interventions by staff.

School personnel also should receive training on the school's policies and procedures for the timely reporting and documentation of all instances in which restraint or seclusion are used. At a minimum, training on the use of physical restraint and seclusion and effective alternatives should be provided at the beginning and middle of each school year. However, such training should be conducted more often if there are enrolled students with a history or high incidence of dangerous behavior who may be subjected to physical restraint or seclusion procedures. In addition, school administrators should evaluate whether staff who engage in multiple uses of restraint or seclusion need additional training. All school personnel should receive comprehensive training on school-wide programs of positive behavioral supports and other strategies, including de-escalation techniques, for preventing dangerous behavior that leads to the use of restraint or seclusion. Training for principals and other school administrators should cover how to develop, implement, and evaluate the effectiveness of school-wide behavioral programs. Training for teachers, paraprofessionals, and other personnel who work directly with children should be ongoing and include refreshers on positive behavior management strategies, proper use of positive reinforcement, the continuum of alternative behavioral interventions, crisis prevention, de-escalation strategies, and the safe use of physical restraint and seclusion.

Behavioral strategies, particularly when implemented as part of a school-wide program of positive behavioral supports, can be used to address the underlying causes of dangerous behavior and reduce the likelihood that restraint or seclusion will need to be used.

Use and prevention training should be accompanied by regular supervised practice. Like quarterly fire drills, all staff members should be expected to regularly and frequently review and practice approaches to prevent the conditions that result in the use of restraint or seclusion and in the use of specific and planned physical restraint or seclusion procedures. A team of trained personnel should monitor practice sessions to check for adherence to and documentation of planned procedures.

- 11. Every instance in which restraint or seclusion is used should be carefully and continuously and visually monitored to ensure the appropriateness of its use and the safety of the child, other children, teachers, and other personnel.**

If restraint or seclusion is used, the child should be continuously and visually observed and monitored while he or she is restrained or placed in seclusion. Only school personnel who

have received the required training on the use of restraint and seclusion should be engaged in observing and monitoring these children. Monitoring should include a procedural checklist and recordkeeping procedures. School staff engaged in monitoring should be knowledgeable regarding (1) restraint and seclusion procedures and effective alternatives; (2) emergency and crisis procedures; (3) strategies to guide and prompt staff members engaged in restraint or seclusion procedures; and (4) procedures and processes for working as a team to implement, monitor, and debrief uses of restraint or seclusion. Monitoring staff should receive training to ensure that the use of physical restraint or seclusion does not harm the child or others, and that procedures are implemented as planned. For example, those observing the application of a restraint should confirm that the restraint does not cause harm to the child, such as restricting the child's breathing. Continuous monitoring of restraint includes, for example: (1) continuous assessment of staff and student status, including potential physical injuries; (2) termination of restraint or seclusion when imminent danger of serious physical harm to self or others has dissipated; (3) evaluation of how procedures are being implemented; and (4) consideration of opportunities for redirection and defusing the dangerous behavior. In developing procedures, States, districts, and schools should consider having school health personnel promptly assess the child after the imposition of restraints or seclusion.

Trained school staff should also inspect and prepare the seclusion area before a child is placed in seclusion. For example, the area should be free of any objects a child could use

to injure him- or herself or others. School staff should either be inside the area or outside by a window or another adjacent location where staff can continuously observe the child and confirm that the child is not engaging in self-injurious behavior. When a child is in seclusion, trained school staff should constantly watch the child. Such observation and monitoring is critical in determining when the imminent danger of serious physical harm to self or others has dissipated so that the restraint or seclusion can be immediately discontinued. Proper observation and monitoring and written documentation of the use of restraint or seclusion helps to ensure the continued safety of the child being restrained or secluded as well as the safety of other children and school personnel.

12. Parents should be informed of the policies on restraint and seclusion at their child's school or other educational setting, as well as applicable Federal, State or local laws.

All parents should receive, at least annually, written information about the policies and procedures for restraint and seclusion issued by the State, district, or school. This information should be included, for example, in the district's or school's handbook of policies and procedures or other appropriate and widely distributed school publications. Schools, districts, and States are encouraged to involve parents when developing policies and procedures on restraint and seclusion. These written descriptions should include the following: (1) a statement that mechanical restraint should not be used, that schools should never use a drug or medication to control behavior or restrict freedom of movement (except as authorized by a licensed

In addition, preventive strategies to reduce the likelihood that restraint or seclusion will need to be used with a child should be established, documented, and communicated to the child's parents.

physician or other qualified health professional), and physical restraint and seclusion should not be used except in situations where the child's behavior poses an imminent danger of serious physical harm to self or others and should be discontinued as soon as the imminent danger of serious physical harm to self or others has dissipated; (2) definitions of restraint and seclusion; (3) information on the procedures for determining when restraint or seclusion can and cannot be properly used in school settings; (4) information on the procedural safeguards that are in place to protect the rights of children and their parents; (5) a description of the alignment of a district's and school's policies and procedures with applicable State or local laws or regulations; (6) procedures for notifying parents when restraint or seclusion has been used with their child; and (7) procedures for notifying parents about any changes to policies and procedures on restraint or seclusion. If policy or procedural changes are made during the school year staff

and family members should be notified immediately. In addition, preventive strategies to reduce the likelihood that restraint or seclusion will need to be used with a child should be established, documented, and communicated to the child's parents. Parents also should be encouraged to work with schools and districts to ensure planned behavioral strategies are in place and used to (1) de-escalate potentially violent dangerous behavior; (2) identify and support competing positive behavior to replace dangerous behavior; and (3) support appropriate behavior in class and throughout the school, especially if a student has a history of escalating dangerous behavior.

13. Parents should be notified as soon as possible following each instance in which restraint or seclusion is used with their child.

Parents should be informed about the school's procedures for promptly notifying parents and documenting each time that restraint or seclusion is used with their child. The meaning of "as soon as possible" notification should be determined by the State, district, or school and included in the information on restraint and seclusion that is provided to parents. Documenting that parents have been notified as soon as possible, ideally on the same school day, when restraint or seclusion has been used ensures that parents are fully informed about their child's behavior and the school's response and helps parents participate as informed team members who can work with their child's teachers and other school staff to determine whether the behavioral supports at school and at home, including prevention and de-escalation strategies, are effective.

14. Policies regarding the use of restraint and seclusion should be reviewed regularly and updated as appropriate.

States, districts, and schools should not only establish and publish policies and procedures on the use of restraint and seclusion, but also should periodically review and update them as appropriate. This review should be conducted by a team (that includes parents) with expertise related to PBIS, and educating and supporting students with dangerous behaviors in schools and community settings. The review should consider and examine (1) available data on the use of these practices and their outcomes (i.e., the review should examine the frequency of the use of restraint and the use of seclusion across individual children, groups of children (e.g., gender, race, national origin, disability status and type of disability, limited English proficiency, etc.)), settings, individual staff, and programs and consider whether policies for restraint and seclusion are being applied consistently; (2) the accuracy and consistency with which restraint and seclusion data are being collected, as well as the extent to which these data are being used to plan behavioral interventions and staff training; (3) whether procedures for using these practices are being implemented with fidelity; (4) whether procedures continue to protect children and adults; and (5) whether existing policies and procedures for restraint and seclusion remain properly aligned with applicable State and local laws. The school should maintain records of its review of restraint and seclusion data and any resulting decisions or actions regarding the use of restraint and seclusion.



15. Policies regarding the use of restraint and seclusion should provide that each incident involving the use of restraint or seclusion should be documented in writing and provide for the collection of specific data that would enable teachers, staff, and other personnel to understand and implement the preceding principles.

Each incident of the use of restraint and of the use of seclusion should be properly documented for the main purposes of preventing future need for the use of restraint or seclusion and creating a record for consideration when developing a plan to address the student's needs and staff training needs. For example, a school should maintain a written log of incidents when restraint or seclusion is used. Appropriate school staff should prepare a written log entry describing each incident, including details of the child's dangerous behavior, why this behavior posed an imminent danger of serious physical harm to self or others, possible factors contributing to the dangerous behavior, the effectiveness of restraint or seclusion in de-escalating the situation and staff response to such behavior. Best practices and existing State policies and

procedures indicate that documentation of each use of restraint or seclusion frequently includes (1) start and end times of the restraint or seclusion; (2) location of the incident; (3) persons involved in the restraint or seclusion; (4) the time and date the parents were notified; (5) possible events that triggered the behavior that led to the restraint or seclusion; (6) prevention, redirection, or pre-correction strategies that were used during the incident; (7) a description of the restraint or seclusion strategies that were used during the incident; (8) a description of any injuries or physical damage that occurred during the incident; (9) how the child was monitored during and after the incident; (10) the debriefing that occurred with staff following the incident; (11) the extent to which staff adhered to the procedural implementation guidelines (if established by the State, district, or school); and (12) follow-up that will occur to review or develop the student's BIP.

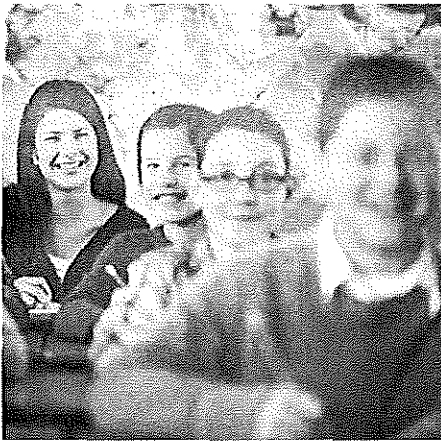
For individual children, these data should be periodically reviewed to determine whether (1) there are strategies in place to address the dangerous behavior at issue; (2) the strategies in place are effective in increasing appropriate behaviors; and (3) new strategies need to be developed, or current strategies need to be revised or changed to prevent reoccurrences of the dangerous behavior(s).

Data on the frequency of use of restraint and seclusion for all children should be periodically reviewed at school leadership meetings, grade-level meetings, and other meetings of school staff. Data to be reviewed at these meetings should include information, consistent with privacy laws, about the frequency and duration

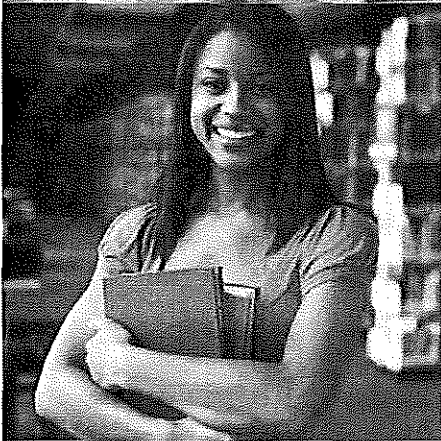
of restraint and seclusion incidents across individual children, groups of children (e.g., gender, race, national origin, disability status and type of disability, limited English proficiency, etc.), settings, individual staff, and programs, as well as the number and proportion of children who were restrained or placed in seclusion since the last meeting and for the year to date. Such

States, districts, and schools should not only establish and publish policies and procedures on the use of restraint and seclusion, but also should periodically review and update them as appropriate.

reviews should be used to determine whether state, district, and school policies are being properly followed, whether procedures are being implemented as intended, and whether the school staff should receive additional training on the proper use of restraint and seclusion or PBIS. States, districts, and schools should consider making these data public, ensuring that personally identifiable information is protected.



Federal Agency Efforts to Address Concerns



To date, Federal efforts to address concerns about the use of restraint and seclusion in schools have included the following four interrelated policy initiatives: (1) articulating principles to emphasize that physical restraint and seclusion should not be used except to protect a child or others from imminent danger of serious physical harm; (2) developing a dear colleague letter and this Resource Document that will be used to provide States, districts, and schools with information related to the proper and improper use of restraint and seclusion; (3) collecting, analyzing, and publishing restraint and seclusion incident data from every State; and (4) publishing State regulations, policies, and guidance on the use of restraint and seclusion.

A summary of these Federal efforts is presented below.

DEPARTMENT OF EDUCATION EFFORTS

Letters from the Secretary

Secretary of Education Arne Duncan issued two letters articulating the Department's position on the use of restraint and seclusion.

The first letter was sent to Chief State School Officers on July 31, 2009 urging each State to review its current policies and guidelines on the use of restraint and seclusion in schools, and, if appropriate, to develop or revise them to ensure the safety of students. The letter highlighted a school-wide system of PBIS as an important preventive approach that can increase the capacity of school staff to support children with complex behavioral needs, thus reducing the instances that require the use of restraint and seclusion. The letter also explained that the Department would be contacting each State to discuss the State's plans to ensure the proper use of restraint and seclusion to protect the safety of children and others at school.

On December 8, 2009, the Secretary sent a letter to Chairman Dodd, Chairman Miller, and Representative McMorris Rodgers. This letter expressed the Department's appreciation of Congressional efforts to limit the use of restraint and seclusion. The letter also articulated a list of nine principles that the Secretary believed would be useful for Congress to consider in the context of any legislation on restraint and seclusion. Additionally, the letter informed Congress that the Department was reviewing information about each State's laws, regulations, policies, and guidance on restraint and seclusion.

Review of State Policies and Procedures

The Department's Regional Comprehensive Technical Assistance Centers collected information on the policies and procedures on restraint and seclusion in each of the 50 States, eight territories, Bureau of Indian Education, and District of Columbia. These data were summarized and presented in a public report released in February 2010 and updated through a review of State Web sites in August 2011.

The first letter was sent to Chief State School Officers on July 31, 2009 urging each State to review its current policies and guidelines on the use of restraint and seclusion in schools, and, if appropriate, to develop or revise them to ensure the safety of students.

Office for Civil Rights

The Department's OCR enforces certain civil rights laws prohibiting discrimination on the basis of race, color, national origin, sex, and disability by recipients of Federal financial assistance from the Department and certain public entities. In September 2009, OCR announced in the *Federal Register* that it would include, for the first time, questions on restraint and seclusion in the *Civil Rights Data Collection (CRDC)*. The CRDC now collects school- and district-level information about students in public schools that includes (1) the number of

students by race/ethnicity, sex, Limited English Proficiency (LEP) status, and disability status subjected to physical restraint; (2) the number of students by race/ethnicity, sex, LEP status, and disability status subjected to mechanical restraint; (3) the number of students by race/ethnicity, sex, LEP status, and disability status subjected to seclusion; and (4) the total number of incidents of physical restraint, mechanical restraint, and seclusion by disability status. The data collection tables can be found at <http://ocrdata.ed.gov/Downloads.aspx>. The CRDC restraint and seclusion data are available at <http://ocrdata.ed.gov>. The data were released in two parts, in September 2011 and March 2012.

Office of Special Education Programs

OSEP has a long history of investments in national centers and projects that support school-wide behavioral frameworks in schools. Notably, in 1997, OSEP began funding the Technical Assistance Center on Positive Behavioral Interventions and Supports. The ongoing work of this center has led to the development and implementation of School-wide Positive Behavioral Interventions and Supports (SWPBIS). Now widely used throughout the country, SWPBIS is a framework for organizing evidence-based behavioral interventions into an integrated, multi-tiered continuum that maximizes academic and behavioral outcomes for all students.

SWPBIS is organized around six core principles: (1) invest first in the prevention of the social behavior that impedes student academic and social success in schools; (2) build a positive whole-school social culture by defining, teaching, and acknowledging clearly defined behavioral expectations for all students; (3) establish and apply consistently a continuum of consequences for problem behavior that prevents the inadvertent

reward of problem behavior; (4) establish and apply consistently a multi-tiered continuum of evidence-based behavioral practices that supports behavioral success for all students, especially those students with more complex behavior support challenges; (5) collect and use data continuously to screen and monitor progress of all students, make instructional and behavioral decisions, and solve problems; and (6) invest in the organizational infrastructure and capacity to enable effective, efficient, and relevant implementation of evidence-based practices. These six core principles offer school administrators, teachers, and other school staff practical guidelines for implementing comprehensive behavioral systems that help prevent the need to use restraint and seclusion in school.



A growing body of evaluation and experimental research supports the following conclusions about the impact of SWPBIS implementation. Schools throughout the country are able to adopt and implement SWPBIS practices. When SWPBIS is implemented as intended, schools experienced reductions in problem behaviors (e.g., behavior that results in office referrals, suspensions). SWPBIS implementation enhances the impact of effective instruction on

academic outcomes. When SWPBIS is implemented as intended, students and staff members report improved school safety and organizational health. Furthermore, SWPBIS is sustainable when initial implementation is done as intended.



OSEP's Technical Assistance Center on PBIS has assisted States and local districts with the implementation of SWPBIS in over 17,000 schools across the United States. Each of these schools has a team that has gone through, or is going through, formal training on SWPBIS practices. Teams benefit from local coaching provided by district school psychologists, social workers, counselors, administrators, and special educators. States and districts have been successful in implementing and sustaining SWPBIS by actively and formally developing State, local, and school capacity for coordination, training, coaching, and evaluation. This capacity building, in turn, supports continual improvement, effective outcomes, and efficient and accurate implementation, and maximizes student academic and behavior outcomes for all students. The center's technical assistance supports participating local districts and schools in identifying, adopting, and sustaining SWPBIS effectively.

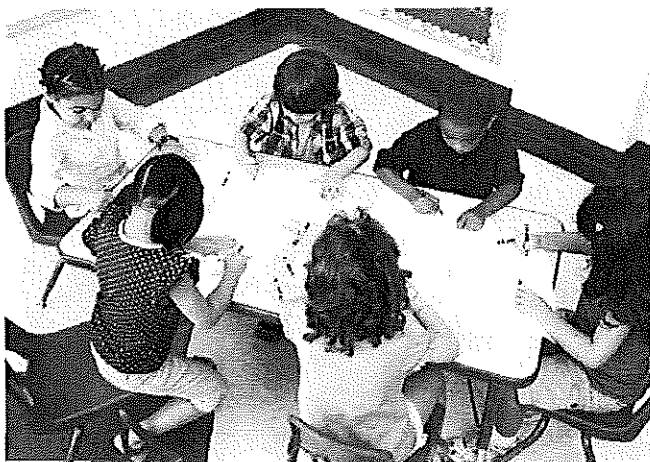
DEPARTMENT OF HEALTH AND HUMAN SERVICES EFFORTS

Children's Health Act

Although restraint and seclusion have been used in mental health settings and other medical facilities for many years, these practices have become more controversial because of tragic outcomes such as deaths and serious injuries. In 2000, Congress passed the Children's Health Act, which required DHHS to draft regulations under Title V of the Public Health Service Act for the use of restraint and seclusion in medical facilities and in residential non-medical community-based facilities for children and youth. The Act set minimum standards for the use of restraint and seclusion, which stipulate that (1) restraint and seclusion are crisis response interventions and may not be used except to ensure immediate physical safety and only after less restrictive interventions have been found to be ineffective; (2) restraint and seclusion may not be used for discipline or convenience; (3) mechanical restraints are prohibited; (4) restraint or seclusion may be imposed only by individuals trained and certified in their application; and (5) children being restrained or secluded must be continuously monitored during the procedure. The Children's Health Act also required DHHS to draft regulations for States to use in training individuals in facilities covered under the Federal law.⁹

⁹ Regulations implementing Part H (Requirements Relating to the Rights of Residents of Certain Facilities) of Title V of the Public Health Service (PHS) Act have been promulgated, although regulations implementing Part I (Requirements relating to the rights of Residents of Certain Non-Medical, Community-Based Facilities for Children and Youth) of Title V of the PHS Act have not yet been promulgated. Moreover, regulations have not been issued regarding training of facility staff.

The Children's Health Act of 2000 (CHA) (Pub. L. 106-310) amended title V of the PHS Act to add two new parts (Parts H and I) that established minimum requirements for the protection and the promotion of rights of residents of certain facilities to be free from the improper use of seclusion or restraint. Consistent with section 3207 of the Children's Health Act, the Centers for Medicare and Medicaid Services (CMS) issued regulations setting forth patient rights to be free of medically unnecessary restraint and seclusion in several types of health care facilities and programs, including: hospitals, in a final rule published at 71 Fed. Reg. 71378 (Dec. 8, 2006) that also applies to critical access hospitals; hospices, in a final rule published at 73 Fed. Reg. 32088 (June 5, 2008); Medicaid managed care, in a final rule published at 67 Fed. Reg. 40989 (June 14, 2002); programs of all-inclusive care for the elderly (PACE), in a final rule published at 71 Fed. Reg. 71244 (Dec. 8, 2006); and psychiatric residential treatment facilities for individuals under age 21, in an interim final rule published at 66 Fed. Reg. 7148 (Jan. 22, 2001). CMS has also proposed regulations governing the use of restraint and seclusion in Community Mental Health Centers, at 76 Fed. Reg. 35684 (June 17, 2011).



SAMHSA

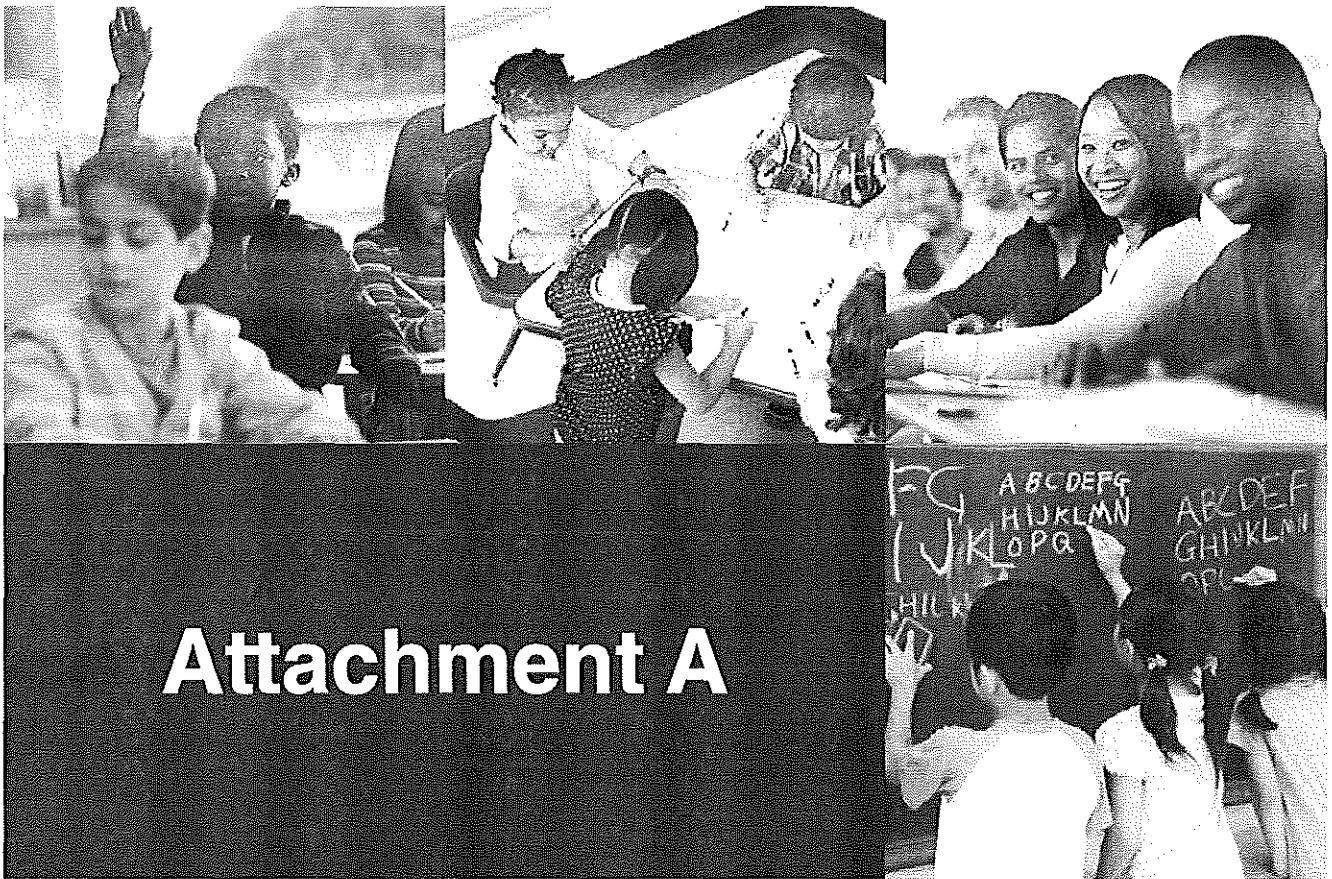
As part of SAMHSA's continuing efforts to provide guidance on the Children's Health Act, in 2002, the agency developed the Six Core Strategies¹⁰ model, which defines specific interventions to prevent or reduce the use of restraint and seclusion in health-care settings. This model curriculum includes the following six core components:

- Leadership toward organizational change
- The use of data to inform practice
- Workforce Development: In-service training, supervision, and mentoring
- Use of primary prevention tools
- Supporting roles for persons served and advocates in programs
- Debriefing tools

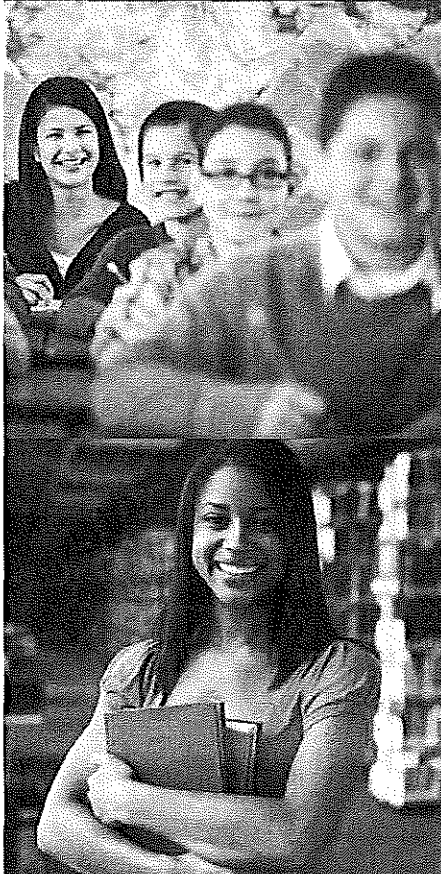
While mainly used for training in healthcare settings, these six components have been found to be applicable in school settings. Furthermore, the policy concerns exemplified in these core components have contributed to the Department's interagency collaboration with SAMHSA to address the use of restraint and seclusion in school settings across the country.

¹⁰ NASMHPD published the first training curriculum on *Six Core Strategies⁶ to Reduce the Use of Seclusion and Restraint in Inpatient Facilities* in 2002. Since then, the Six Core Strategies⁶ have been formally evaluated, and the evidence indicates they likely meet criteria for inclusion on SAMHSA's National Registry of Evidence-Based Programs and Practices. <http://www.grafton.org/Newsletter/art%20lebel.pdf>

LeBel, J; Huckshorn, K.A.; Caldwell, B. (2010). *Restraint use in residential programs: Why are the best practices ignored?* *Child Welfare* 89(2), 169-187.



Attachment A



Revised Summary of Restraint and Seclusion Statutes, Regulations, Policies and Guidance, by State: Information as Reported to the Regional Comprehensive Centers and Gathered from Other Sources

This attachment is intended to be accessed through the Internet. If this document is being printed, pages 30-32 will not contain URLs.

State or District	Statutes and Regulations Addressing Restraint and Seclusion*	Policies and Guidance Addressing Restraint and Seclusion*
Alabama	No state statute or regulations addressing seclusion and restraint.	Please see State Web site for further information.
Alaska	Please see State Web site for further information.	No policies or guidance addressing seclusion and restraint.
Arizona	No state statute or regulations addressing seclusion and restraint.	Please see State Web site for further information.
Arkansas	Please see State Web site for further information.	Please see State Web site for further information.
California	Please see State Web site for further information.	Please see State Web site for further information.
Colorado	Please see State Web site for further information.	Please see State Web site for further information.
Connecticut	Please see State Web site for further information.	Please see State Web site for further information.
Delaware	Please see State Web site for further information.	Please see State Web site for further information.
District of Columbia	Please see District Web site for further information.	Please see District Web site for further information.
Florida	Please see State Web site for further information.	Please see State Web site for further information.
Georgia	Please see State Web site for further information.	Please see State Web site for further information.
Hawaii	Please see State Web site for further information.	Please see State Web site for further information.
Idaho*	Please see State Web site for further information.	Please see State Web site for further information.
Illinois	Please see State Web site for further information.	Please see State Web site for further information.
Indiana	No state statute or regulations addressing seclusion and restraint.	Please see State Web site for further information.
Iowa	Please see State Web site for further information.	Please see State Web site for further information.
Kansas	No state statute or regulations addressing seclusion and restraint.	Please see State Web site for further information.
Kentucky	No state statute or regulations addressing seclusion and restraint.	Please see State Web site for further information.
Louisiana*	Please see State Web site for further information.	No policies or guidance addressing seclusion and restraint.

State or District	Statutes and Regulations Addressing Restraint and Seclusion*	Policies and Guidance Addressing Restraint and Seclusion*
Maine	Please see State Web site for further information.	Please see State Web site for further information.
Maryland	Please see State Web site for further information.	Please see State Web site for further information.
Massachusetts	Please see State Web site for further information.	Please see State Web site for further information.
Michigan	Please see State Web site for further information.	Please see State Web site for further information.
Minnesota	Please see State Web site for further information.	Please see State Web site for further information.
Mississippi	No state statute or regulations addressing seclusion and restraint.	Please see State Web site for further information.
Missouri	Please see State Web site for further information.	Please see State Web site for further information.
Montana	Please see State Web site for further information.	Please see State Web site for further information.
Nebraska	Please see State Web site for further information.	Please see State Web site for further information.
Nevada	Please see State Web site for further information.	No policies or guidance addressing seclusion and restraint.
New Hampshire	Please see State Web site for further information.	Please see State Web site for further information.
New Jersey*	No state statute or regulations addressing seclusion and restraint.	Please see State Web site for further information.
New Mexico	No state statute or regulations addressing seclusion and restraint.	Please see State Web site for further information.
New York	Please see State Web site for further information.	Please see State Web site for further information.
North Carolina	Please see State Web site for further information.	Please see State Web site for further information.
North Dakota	Please see State Web site for further information.	No policies or guidance addressing seclusion and restraint.
Ohio	No state statute or regulations addressing seclusion and restraint.	Please see State Web site for further information.
Oklahoma*	No state statute or regulations addressing seclusion and restraint.	Please see State Web site for further information.
Oregon	Please see State Web site for further information.	Please see State Web site for further information.

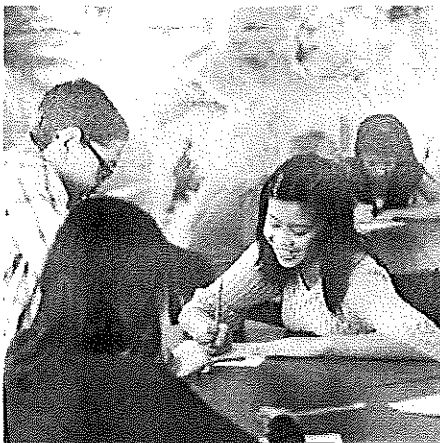
State or District	Statutes and Regulations Addressing Restraint and Seclusion*	Policies and Guidance Addressing Restraint and Seclusion*
Pennsylvania	Please see State Web site for further information.	Please see State Web site for further information.
Rhode Island	Please see State Web site for further information.	No policies or guidance addressing seclusion and restraint.
South Carolina	No state statute or regulations addressing seclusion and restraint.	Please see State Web site for further information.
South Dakota*	No state statute or regulations addressing seclusion and restraint.	No policies or guidance addressing seclusion and restraint.
Tennessee	Please see State Web site for further information.	Please see State Web site for further information.
Texas	Please see State Web site for further information.	Please see State Web site for further information.
Utah	Please see State Web site for further information.	No policies or guidance addressing seclusion and restraint.
Vermont	Please see State Web site for further information.	Please see State Web site for further information.
Virginia	Please see State Web site for further information.	Please see State Web site for further information.
Washington	Please see State Web site for further information.	Please see State Web site for further information.
West Virginia	No state statute or regulations addressing seclusion and restraint.	Please see State Web site for further information.
Wisconsin	Please see State Web site for further information.	Please see State Web site for further information.
Wyoming*	Please see State Web site for further information.	No policies or guidance addressing seclusion and restraint.

NOTE: In August 2009, the Regional Comprehensive Centers conducted research on each state's laws, regulations, guidance, and policies regarding the use of restraint and seclusion in schools and confirmed the information obtained with the states. The information in this report was updated by researchers at the American Institutes for Research in May 2012 and was current as of this date.

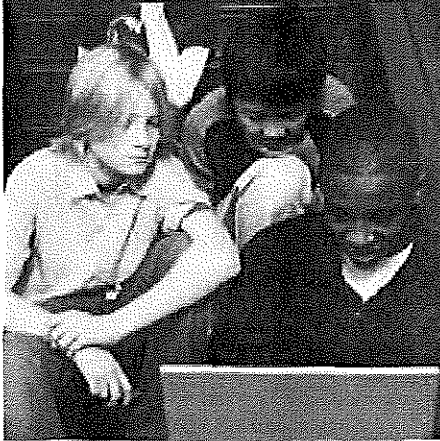
* Proposed or enacted laws and supporting regulations describing the implementation of the laws, originating from the State legislature.

x Statements or documents that set out the state views and expectations related to school district duties and responsibilities, originating from the State executive office.

* State restraint and seclusion statutes, regulations, policies, or guidance are still in development.



Attachment B



Restraint and Seclusion: Resource Document Resources with Annotations

This document contains links to Web sites and information created and maintained by public and private organizations other than the U.S. Department of Education. This information is provided for the reader's convenience. The U.S. Department of Education does not control or guarantee the accuracy, relevance, timeliness, or completeness of this outside information. Some of this information is presented as examples of information that may be relevant. Further, the inclusion of information or addresses, or Web sites for particular items does not reflect their importance, nor is it intended to endorse any views expressed, or products or services offered.



Federal Resources

Duncan, A. (2009, July 31). Letter from Education Secretary Arne Duncan to the Council of Chief State School Officers (CCSSO). Retrieved from <http://www2.ed.gov/policy/elsec/guid/secletter/090731.html>

In this letter to the CCSSO, Education Secretary Arne Duncan responds to the testimony issued by the Government Accountability Office on “Seclusions and Restraints: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers.” He encourages the CCSSO to develop or review and, if appropriate, revise their State policies and guidelines to ensure that every student in every school under their jurisdiction is safe and protected from being unnecessarily or inappropriately restrained or secluded. He also urges them to publicize these policies and guidelines so that administrators, teachers, and parents understand and consent to the limited circumstances under which these techniques may be used; ensure that parents are notified when these interventions do occur; provide the resources needed to successfully implement the policies and hold school districts accountable for adhering to the guidelines; and to have the revised policies and guidance in place prior to the start of the 2009–2010 school year.

Duncan, A. (2009, December 8). Letter from Education Secretary Arne Duncan to Chairman Christopher J. Dodd, Chairman George Miller, and Representative Cathy McMorris Rodgers. Retrieved from <http://www2.ed.gov/policy/gen/guid/secletter/091211.html>

In this letter, Education Secretary Arne Duncan applauds the efforts of Chairman Christopher J.

Dodd, Chairman George Miller, and Representative Cathy McMorris Rodgers to develop legislation to limit the use of physical restraint and seclusion in schools and other educational settings that receive Federal funds, except when it is necessary to protect a child or others from imminent danger. He reports that the U.S. Department of Education has identified a number of principles that may be useful for Congress to consider in the context of any legislation on this issue. These principles are listed in the letter.

The following legislation was introduced in the 111th and 112th Congresses, concerning limitations on the use of restraint and seclusion in schools and other educational settings:

- S. 2020, 112th Congress
- H.R. 1381, 112th Congress
- S. 3895, 111th Congress
- H.R. 4247, 111th Congress
- S. 2860, 111th Congress

Jones, N. L. & Feder, J. (2010). *The use of seclusion and restraint in public schools: The legal issues*. Washington, DC: Congressional Research Service. Retrieved from http://assets.opencrs.com/rpts/R40522_20101014.pdf

This research report was prepared by the Congressional Research Service for the members and committees of Congress. It was prepared because of congressional interest in the use of seclusion and restraint in schools, including passage of H.R. 4247 and the introduction of S. 2860, 111th Congress, first session. This report focuses on the legal issues concerning the use of seclusion and restraint in schools, including their application both to children covered by the

Individuals with Disabilities Education Act (IDEA) and to those not covered by IDEA. It refers to reports that document instances of deaths and injuries resulting from the use of seclusion or restraints in schools. This report notes that the IDEA requires a free appropriate public education for children with disabilities, and an argument could be made that some uses of seclusion and restraint would violate this requirement. The passage of S. 2860 in the Senate would establish minimum safety standards in schools to prevent and reduce the inappropriate use of restraint and seclusion.

Kutz, G. D. (2009). *Seclusions and restraints: Selected cases of death and abuse at public and private schools and treatment centers.* (GAO-09-719T). Washington, DC: U.S. Government Accountability Office, Forensic Audits and Special Investigations. Retrieved from <http://www.gao.gov/new.items/d09719t.pdf>

This report addresses the recent testimony of the Government Accountability Office (GAO) before the Congressional Committee on Education and Labor regarding allegations of death and abuse at residential programs for troubled teens. It cites other reports that indicate that vulnerable children are being abused in other settings, through the use of restraint and seclusion in schools. This report provides an overview of seclusion and restraint laws applicable to children in public and private schools, discusses whether allegations of student death and abuse from the use of these methods are widespread, and examines the facts and circumstances surrounding cases in which a student died or suffered abuse as a result of being secluded or restrained. The report is a review of Federal and State laws and abuse

allegations from advocacy groups, parents, and the media from the past two decades. The report found no Federal law restricting the use of seclusion and restraint, and found hundreds of cases of alleged abuse and death related to the use of these methods on school children; examples are provided.

U.S. Department of Education. (2010) *Summary of seclusion and restraint statutes, regulations, policies and guidance, by State and territory: Information as reported to the regional Comprehensive Centers and gathered from other sources.* Washington, DC: Author. Retrieved from <http://www2.ed.gov/policy/seclusion/seclusion-state-summary.html>

This summary documents the results of the Department of Education's 2009 request that the States report on their laws, regulations, guidance, and policies regarding the use of seclusion and restraints in schools. The document includes the descriptive information as verified by each State and territory, and a summary of this information.

U.S. Department of Health and Human Services Substance Abuse and Mental Health Services Administration Jan Lebel (2011) *The business case for preventing and reducing restraint and seclusion use.* Washington, DC: Retrieved from <http://store.samhsa.gov/shin/content//SMA11-4632/SMA11-4632.pdf>

This document asserts that restraint and seclusion are violent, expensive, largely preventable, adverse events. The document also makes a number of claims, including the following: (1) the rationale for the use of restraint and seclusion is inconsistently understood and contribute to a cycle of workplace violence that can reportedly claim as much as 23 to

50 percent of staff time, account for 50 percent of staff injuries, increase the risk of injury to consumers and staff by 60 percent, and increase the length of stay, potentially setting recovery back at least 6 months with each occurrence; (2) restraint and seclusion increases the daily cost of care and contributes to significant workforce turnover reportedly ranging from 18 to 62 percent, costing hundreds of thousands of dollars to several million; (3) restraint and seclusion procedures raise the risk profile to an organization and incur liability expenses that can adversely impact the viability of the service; (4) many hospitals and residential programs, serving different ages and populations, have successfully reduced their use and redirected existing resources to support additional staff training, implement prevention-oriented alternatives, and enhance the environment of care; and (5) significant savings result from reduced staff turnover, hiring and replacement costs, sick time, and liability-related costs.

Associated Resources

American Association of School Administrators. (2010, March 2). Letter to U.S. House of Representatives. Retrieved from http://www.aasa.org/uploadedFiles/Policy_and_Advocacy/files/HR4247LetterMarch2010.pdf

In this letter to the U.S. House of Representatives, the American Association of School Administrators (AASA) urges the House not to pass restraint and seclusion measure H.R. 4247. The AASA states that the need to establish these particular Federal regulations for seclusion and restraint has not been established by objective, carefully gathered and analyzed data, and that the voices of teachers and administrators have not been heard. The letter notes that the Office for Civil Rights within the U.S.

Department of Education is preparing to gather more objective information, and asks the House to wait for these objective results. The AASA also describes the report recently released by the U.S. Department of Education, which confirms that 31 States already have policies in place to oversee the use of seclusion and restraint and 15 more are in the process of adopting policies and protections. Given this substantial State action, AASA questions the need for Federal involvement on this issue. Finally, the letter protests the tone of H.R. 4247, which it describes as relentlessly negative toward teachers and administrators.

The Council for Children with Behavioral Disorders. (2009). *Physical restraint and seclusion procedures in school settings*. Arlington, VA: Council for Exceptional Children. Retrieved from <http://www.ccbd.net/sites/default/files/CCBD%20Summary%20on%20Restraint%20and%20Seclusion%207-8-09.pdf>

This document is a summary of policy recommendations from two longer and more detailed documents available from the Council for Children with Behavioral Disorders (CCBD) regarding the use of physical restraint and seclusion procedures in schools. CCBD is the division of the Council for Exceptional Children (CEC) committed to promoting and facilitating the education and general welfare of children and youth with emotional or behavioral disorders. In this document, CCBD states that while restraint and seclusion can be effective when dealing with children with behavioral issues, they should not be implemented except as a last resort when a child or others are in immediate danger. CCBD further recommends that new legislation or regulations be established to formally require that data on restraint and seclusion be reported to outside agencies, such as State or provincial departments of education.

The document also notes that additional research is needed on the use of physical restraint and seclusion with children or youth across all settings.

Dunlap, G., Ostry, C., & Fox, L. (2011). *Preventing the Use of Restraint and Seclusion with Young Children: "The Role of Effective, Positive Practices"*. Issue Brief. Technical Assistance Center on Social Emotional Intervention for Young Children. University of South Florida, 13301 North Bruce B Downs Boulevard MHC2-1134, Tampa, FL 33612. Web site: <http://www.challengingbehavior.org>. Retrieved from <http://www.eric.ed.gov/ERICWebPortal/contentdelivery/servlet/ERICServlet?accno=ED526387>

The purpose of this document is to review what constitutes restraint and seclusion, what should be done as an alternative, and discuss positive strategies that can be used to prevent behaviors that could lead to considerations of these invasive and potentially-dangerous practices.

Hague, B. (2010, February 18). *Stricter standards sought for use of seclusion and restraint by schools*. (Recording). Wisconsin Radio Network. Retrieved from <http://www.wrn.com/2010/02/stricter-standards-sought-for-use-of-seclusion-and-restraint-by-schools/>

This interview discusses a Wisconsin State capitol hearing on how best to deal with students with special needs who become disruptive. The organization, Disability Rights Wisconsin, claims that the State's department of education is not doing enough to curtail excessive use of restraint and seclusion; the State department of education

disagrees. The interview reports that the State Senate is discussing legislation to restrict the use of restraint and seclusion, but the department of education is arguing that this legislation will go too far and prevent teachers and administrators from maintaining a safe classroom. The Senate intends to require that all teachers and other personnel be required to receive training in PBIS to reduce the need for seclusion and restraint, and claims that this will make schools safer and improve academic performance. The piece also notes concerns about the costs to districts of implementing additional training, as well as potential lawsuits.

Horner, R. & Sugai, G. (2009). *Considerations for seclusion and restraint use in school-wide positive behavior supports*. Eugene, OR: OSEP Technical Assistance Center on Positive Behavioral Interventions and Support. Retrieved from http://www.pbis.org/common/pbisresources/publications/Seclusion_Restraint_inBehaviorSupport.pdf

The PBIS Center defines seclusion and restraint as safety procedures in which a student is isolated from others (seclusion) or physically held (restraint) in response to serious problem behavior that places the student or others at risk of injury or harm. This document expresses concern regarding these procedures being prone to misapplication and abuse, potentially placing students at equal or more risk than their problem behavior. The specific concerns are listed and recommendations are made to promote effective policies. School-wide positive behavior support (SWPBS) is one of the major recommendations, defined as a systems approach to establishing the whole-school social culture and intensive individual behavior supports needed for schools to achieve social and academic gains while minimizing problem

behavior for all students. SWPBS emphasizes four integrated elements: socially valued and measurable outcomes, empirically validated and practical practices, systems that efficiently and effectively support implementation of these practices, and continuous collection and use of data for decision-making. These elements are described in detail along with supporting research.

The Legal Center for People with Disabilities and Older People. (2007). *Public report of an investigation into the improper use of restraint and/or seclusion of students with disabilities at Will Rogers elementary school*. Denver, CO: Author. Retrieved from http://66.147.244.209/~tashorg/wp-content/uploads/2011/01/The-Legal-Center_PA-Investigation.pdf

The Legal Center for People with Disabilities and Older People (the Legal Center) is the Protection and Advocacy System for Colorado. This report presents the results of the investigation conducted by the Legal Center into the circumstances surrounding the use of seclusion and restraint of five elementary school students. The Legal Center received complaints that students with a range of emotional, mental health, and developmental disabilities were subjected to improper use of restraint and seclusion by school staff at Will Rogers Elementary School. The information produced in the course of this investigation supports the conclusion that the five students were repeatedly subjected to improper restraint and seclusion in violation of the Colorado Department of Education restraint/seclusion rules. Based on this, the Legal Center recommends a number of actions be taken by District 11 and staff at Will Rogers Elementary school.

Morrison, L. & Moore, C. (2007). *Restraint and seclusion in California schools: A failing grade*. Oakland, CA: Protection & Advocacy, Inc. (PAI). Retrieved from <http://www.disabilityrightsca.org/pubs/702301.htm>

PAI conducted an in-depth investigation into allegations of abusive restraint and seclusion practices involving seven students in five public schools and one non-public school in California. The investigations revealed both the failure of school personnel to comply with existing regulations and the inability of current law to sufficiently regulate the use of these dangerous practices. PAI released this report to reinforce compliance with current regulatory requirements and to challenge schools and the education system to bring standards regarding behavioral restraint and seclusion of students into line with current practices in all other settings. The report notes that there are strict guidelines limiting the use of restraint and seclusion to extreme situations where there is an imminent risk of serious physical harm to an individual and only for the duration and to the extent necessary to protect the individual.

National Association of State Mental Health Program Directors (NASMHPD): Huckshorn, K. (2005). *Six core strategies to reduce the use of seclusion and restraint planning tool*. Retrieved from http://www.hogg.utexas.edu/uploads/documents/SR_Plan_Template.pdf

This planning tool guides the design of a seclusion and restraint reduction plan that incorporates the use of a prevention approach, includes six core strategies to reduce the use of seclusion and restraint described in the NASMHPD curriculum, and ascribes to the principles of continuous quality improvement. It

may also be used as a monitoring tool to supervise implementation of a reduction plan and identify problems, issues barriers and successes.

National Disability Rights Network. (2009, January). *School is not supposed to hurt: Investigative report on abusive restraint and seclusion in schools*. Retrieved from <http://www.napas.org/images/Documents/Resources/Publications/Reports/SR-Report2009.pdf> (Updated in 2010)

This report is divided into two sections. The first identifies the problems attributed to restraint or seclusion. It includes a “Chronicle of Harm” detailing treatment of children of all ages and in every corner of the nation – urban, suburban, and rural, in wealthy and poor school districts, as well as in private schools. It outlines the problems associated with the use of restraint or seclusion, and details the proven risks to children associated with the use of these aversive techniques. Contributing factors are identified, such as the lack of appropriate training for teachers and other school personnel in the use of positive behavioral supports that address children’s behavioral and other issues in a humane and effective way.

The second section of this report proposes solutions to the use of restraint or seclusion by highlighting the best practices in education and the use of positive behavioral supports. Included is a catalogue of advocacy activities that have been undertaken by P&As to protect children with disabilities. These activities range from educating parents, students, and school personnel, to investigating and litigating when abuses occur, to working for strong State and federal laws to protect these vulnerable children. An update to this report and follow-up letter are available at: National Disability Rights Network,

Not Supposed to Hurt: Update on Progress in 2009, at <http://ndrn.org/images/Documents/Resources/Publications/Reports/School-is-Not-Supposed-to-Hurt-NDRN.pdf>

National Disability Rights Network, School Is Not Supposed to Hurt: The U.S. Department of Education Must Do More to Protect School Children from Restraint and Seclusion, March 2012, at http://ndrn.org/images/Documents/Resources/Publications/Reports/School_is_Not_Supposed_to_Hurt_3_v7.pdf

Samuels, C. A. (2009). Use of seclusion, restraints on students at issue: Watchdog agency preparing report on practices. *Education Week*, 28(29), 6. Retrieved from <http://www.edweek.org/ew/articles/2009/04/17/29restrain.h28.html>

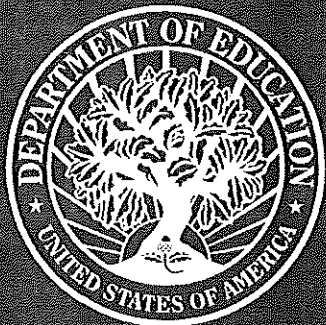
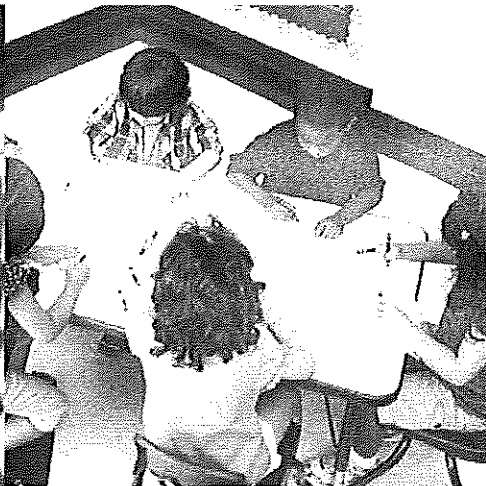
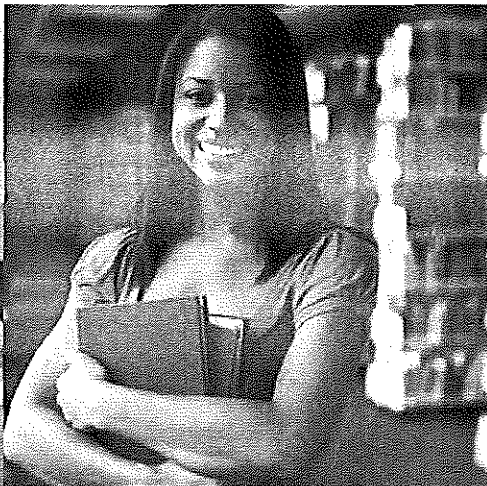
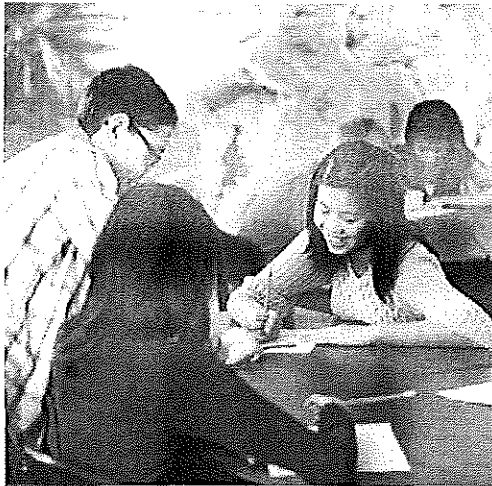
This article reports that many States lack policies related to seclusion or restraint in schools, and that the Federal government does not require record-keeping on the practices. The article details the efforts of advocacy groups for people with disabilities to keep the issue of restraint and seclusion as a priority for the Federal government and the national media. Organizations are trying to get Federal economic stimulus funds as a source of money to pay for the professional development that they say would foster a positive school environment. Advocates believe that such training for educators would prevent problems from escalating to the point that secluding students or physically restraining them is needed. Advocates, as well as educational organizations, agree that more training is necessary to reduce the use of restraint and seclusion in school. The article presents a discussion by several organizations’ representatives on ways to provide this training.

Shank, C., Greenberg, J., & Lebens, M. (2011). *Keep school safe for everyone: A report on the restraint and seclusion of children with disabilities in Oregon schools*. Portland, OR: Disability Rights Oregon is the Protection & Advocacy System for Oregon. Retrieved from <http://www.disabilityrightsoregon.org/results/DRO-Keep%20School%20Safe%20for%20Everyone%20Report.pdf>

The Disability Rights Oregon (DRO) gathered information from parents and schools about the use of physical restraint and seclusion in Oregon and provided policy recommendations on the use of these practices in the State. The DRO report found that the use of physical restraint and seclusion varied considerably across Oregon school districts. For example, some Oregon districts had adopted appropriate policies and were trying to follow them. Other districts, however, had not adopted any policies at all. Furthermore, many Oregon districts were found to have policies that were inconsistent with their own administrative rules. This report also details stories of Oregon children who were restrained and secluded and had experienced psychological and physical injuries resulting from the use of these practices at school. In addition, the report provides a list of policy recommendations on physical restraint and seclusion. The report notes that its recommended policies are generally consistent with policies contained in Federal legislation. The DRO concludes that its recommended policies will provide enforceable minimum safety standards, provide administrative review and independent oversight, and help make Oregon's schools safe for all students and staff.

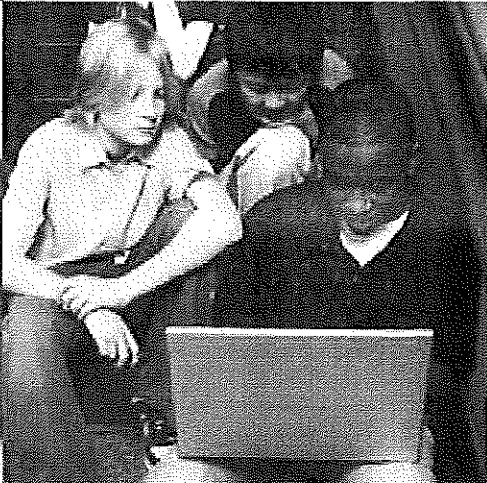
Southern Tier Independence Center, Disabled Abuse Coalition. (2009). *Abuse and neglect of children with disabilities in New York non-residential public schools*. Binghamton, NY: Author. Retrieved from http://www.ndrn.org/images/Documents/Issues/Restraint_and_Seclusions/NDRN_Children_with_Disabilities_2009.pdf

This document responds to reports by families and advocates indicating a pattern of discriminatory treatment toward children with disabilities who are neglected or abused in non-residential public schools in New York. The document notes that, under New York law, these schools are allowed to use physical restraints, including straps, "take-downs," and "time-out rooms," for unlimited periods of time as punishment for minor infractions, including any behavior that may "disrupt the order of the school." However, such restraints are often used by poorly trained staff, and the potential for serious injury is high. The document states that experts in special education universally agree that restraints should not be used except as emergency measures for children who are immediately and seriously dangerous to themselves or others, and that use of restraints under those circumstances should trigger an immediate comprehensive response to investigate antecedents to the problem behavior and develop proactive plans to address it. Thus, the STIC argues that New York State needs to enact stringent legislation to regulate the use of physical restraint, provide training requirements for public non-residential school aides that are strictly enforced, and empower State and local police and child-protective authorities to immediately accept and promptly investigate all complaints of abuse and neglect and to file criminal charges when warranted.



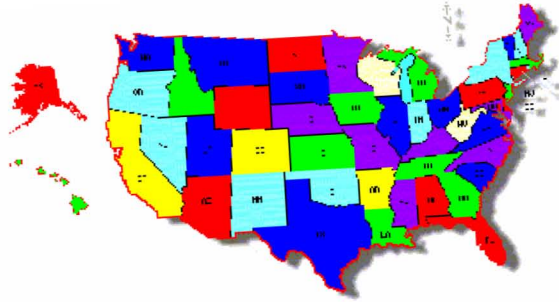
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How Safe Is The Schoolhouse?

An Analysis of State Seclusion and Restraint Laws and Policies



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January 16, 2012
DRAFT

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published by The Autism National Committee, www.autcom.org



This report honors the memory of all the children who have suffered the pain of restraint, seclusion, and aversives, and all those who have perished or been injured. It honors every parent and family member who has had to know their anguish. It honors the advocates, school staff, and community members who have worked to ensure that positive environments prevail in education. The report is written with deepest gratitude to my friends and colleagues who provided insights about their state practices. I give my warmest thanks to my family and friends for their patience with this project.

Important Introductory Information

About the Report. This report presents interim research for a law review article. The report analyzes and compares state approaches to seclusion and restraint. It also examines the impact on the states of federal Congressional action, particularly the bill introduced by George Miller two years ago. Its intent is to provide information and analysis. It is not a comprehensive review of all elements of seclusion/restraint statutes, however.

The report analyzes state “laws” (statutes, regulations, and executive orders) and voluntary nonbinding guidelines, which lack the force of law and can be easily changed by the state Department of Education. Only laws create mandatory legal protections for children, and therefore, the report focuses on them.

Important Technical Details. The report uses 51 “states” to include the District of Columbia. Rather than footnote each state law every time, the report relies on a bibliography of state materials at the end. All information in the maps and charts appears in the text, although it is in another format. I tried to select colors for the maps that also show up as different shades in black and white. (Hopefully, I was successful.) The terms dark, medium, and light in the map legends are provided for people using black and white copies. Finally, state terminology was harmonized as much as possible. For example, the term “physical harm” is used in the report synonymously with bodily injury, bodily harm, and physical injury.

About the Author. Jessica Butler is the Congressional Affairs Coordinator for the Autism National Committee (www.autcom.org). She is the mother of a child with autism and an attorney who lives in Virginia. She served as Chair of the Board of Directors of the Council of Parent Attorneys and Advocates in 2007-08, and on the Board of Directors from 2004-2009. She was a principal coordinator of COPAA’s Congressional Affairs program in 2004-2009. She is the author of UNSAFE IN THE SCHOOLHOUSE: ABUSE OF CHILDREN WITH DISABILITIES (COPAA 2009), which describes over 180 cases in which students were subjected to restraint and seclusion. This report, HOW SAFE IS THE SCHOOLHOUSE?, was authored entirely by Jessica Butler. It represents only Jessica’s views. It is not a statement on behalf of any other person, entity, or organization. You can reach Jessica at jessica@jnba.net.

Important Copyright Information. HOW SAFE IS THE SCHOOLHOUSE? is copyrighted by Jessica Butler. The report represents a great deal of research and work. I hope it will add to the body of knowledge about restraint and seclusion. Please feel free to copy, share, post, and redistribute the report with two conditions. First, please do not remove my name and email address from the report. If you photocopy or extract the charts, maps, or other parts of the report, please leave my name and email address on them. Second, if you use information from the report in writing other materials, please credit Jessica Butler, jessica@jnba.net. Thank you very much. If you have questions, feel free to contact me.

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Bibliography of State Laws and Materials

Summary of State Laws and Guidelines, State By State.

This section provides a summary of some key elements of restraint/seclusion law on a state-by-state basis.

Executive Summary

This provides a summary of some of the information in the report. The report itself is detailed, but does not cover every element of a potential seclusion/restraint law. The report uses 51 “states” to include the District of Columbia.

- Seclusion and restraint are highly dangerous interventions that have led to death, injury, and trauma in children. They should be restricted to only rare emergencies where they must be deployed to protect someone from physical harm.
- There is no federal law to protect children from seclusion/restraint. Bills have been introduced by Congressman George Miller and Senator Tom Harkin. With no single federal law, American children are covered by a patchwork of state laws, regulations, nonbinding guidelines, and even silence.

An Overview of State Laws

- In 2009, there were only 22 states with statutes and regulations providing meaningful protections against restraint and/or seclusion. Today, there are 29. These have the force of law and must be obeyed. Even the 29 states offer varying protections, with key safeguards present in some states and missing in others. There are 13 states with nonbinding guidelines, but these lack the force of law and can be readily changed without using the rulemaking or legislative process. They are not the equivalent of statutes or regulations.
- Only 14 states by law limit restraint to emergencies involving an immediate risk of physical harm or serious physical harm. Many states have no laws or have loopholes that allow restraint to be used with little limitation.
- The definition of seclusion determines what is regulated in the state. There are 32 states that would define seclusion (or isolation) as a room or space a child is prevented from exiting (door is locked, blocked by furniture or staff, etc.). By law, 5 states ban all seclusion. Another 6 by law permit seclusion only to prevent immediate threats of physical harm. The remaining 36 states lack laws limiting seclusion to physical safety emergencies.
- Certain requirements are needed to ensure that seclusion/restraint are used only as a last resort and only as long as an emergency lasts. Only 15 states by law require that less intrusive methods either fail or be deemed ineffective before seclusion/restraint are used. The remaining 36 states lack this legal requirement, allowing personnel to quickly escalate to restraint/seclusion. Only 14 states by law prohibit restraint and/or seclusion from continuing after the emergency ends. Some children have remained in

seclusion/restraint until they can sit perfectly still, show a happy face, pull apart socks or do other socks unrelated to an emergency.

- States increasingly prohibit three types of restraint due to their severe risks: restraint that restricts breathing, mechanical restraint, and chemical restraint. Only 20 states have laws specifically restricting restraints that impede breathing and/or prone restraint. There are 15 states that ban all restraints that impair breathing. By law, 15 states ban mechanical restraints; 10 ban chemical ones.
- Children locked in closets, bathrooms, and other rooms and spaces unobserved have been killed, injured, and traumatized. But of the states allowing seclusion, only 16 require staff to continuously watch a child in a seclusion room. Another 5 permit occasional monitoring. Other states lack laws that require monitoring.
- Parents must be notified promptly of seclusion/restraint, so they can provide care for concussions, hidden injuries, other injuries, and trauma. Only 12 states by law require schools to take steps to notify the parent on the same day the event occurs. Six more require notification within 24 hours or the same calendar day. But other states delay far longer. There are 27 states with no legal requirement to tell parents that a child was restrained/secluded.
- Data collection is very important. In its 2009 report, the GAO found that there was no single entity that collected information on the use of seclusion/restraint or the extent of their alleged abuse. Nearly 33,000 students were restrained/secluded in Texas and California in 2007-08. Yet, only 13 states collect minimal data on the use of restraint/seclusion each year.

**Congressional Bills Strengthen State Laws;
10 States Either Adopted New Laws or Strengthen Old Ones**

- In December 2009, when Congressman George Miller introduced the first national restraint/seclusion bill, 22 states had laws providing meaningful protections from seclusion and/or restraint. The Miller bill appears to have had a substantial impact, causing states to adopt and strengthen restraint/seclusion laws to incorporate several of its features. In the two years since introduction, 7 states adopted laws and 3 overhauled their existing laws. All 10 incorporated important features from Congressman Miller's bill, although to varying degrees.
- The bill introduced by Senator Tom Harkin in 2011 is stronger in certain respects than Congressman Miller's bill, and equal to it in others. Together, the two national bills are likely to provide a basis of support for those states which wish to strengthen their laws and likely to cause others to keep their laws strong. Stronger national policy decisions appear to be mirrored in stronger state action, and weaker national policy decisions could be mirrored in weaker state action.

Some Important Sample State Provisions

- The report concludes with some examples of important state law protections for children. One provision ensures that children are not denied the ability to communicate that they cannot breathe or medical distress while in restraint/seclusion. Another ensures that no more force than necessary is used during seclusion. A third requires schools to refrain from using restraint/seclusion when it is medically or psychologically contraindicated. A fourth prohibits retaliation.

HOW SAFE IS THE SCHOOLHOUSE?
AN ANALYSIS OF STATE SECLUSION AND RESTRAINT LAWS AND POLICIES

by Jessica Butler

HOW SAFE IS THE SCHOOLHOUSE? AN ANALYSIS OF STATE SECLUSION AND RESTRAINT LAWS AND POLICIES

In 2009, the Government Accountability Office (GAO) documented the use of seclusion and restraint upon hundreds of school children, resulting in death, injury, and trauma. Stories included a 7 year old dying after being held face down for hours by staff, 5 year olds tied to chairs with duct tape and suffering broken arms and bloody noses, and a 13 year old who hung himself while unattended in a seclusion room. Most of the incidents involved children with disabilities.¹ Staff are also injured and traumatized by these techniques.

For over two decades, evidence of the vast physical and psychological toll caused by restraint and seclusion has accumulated.² In 2009, the National Disability Rights Network (NDRN) catalogued the use of abusive interventions against children in over 2/3 of states,³ and state protection and advocacy agencies also published reports.⁴ The Council of Parent Attorneys and Advocates (COPAA) documented 185 episodes in which aversive techniques were used, often on young children.⁵ In 2005, TASH and the Alliance to Prevent Restraint, Aversive Interventions, and Seclusion published the *In the Name of Treatment*.⁶ The Council for Exceptional Children's Council for Children with Behavioral Disorders has described the "wide variety of injuries and deaths [that] have occurred while students are in seclusion environments including suicide, electrocution, and self injury due to cutting, pounding, and head banging"⁷ and the "widespread" use of restraint in educational and other environments.⁸

In December 2009, Congressman George Miller (then-Chair of the Education & Labor Committee), introduced a House bill to protect children from restraint, seclusion, and other aversives. Although it passed the House, the bill did not become law. In April 2011, he reintroduced the Keeping All Students Safe Act, H.R. 1381. In December 2011, Senator Tom Harkin (Chair, Senate Health Education Labor and Pensions Committee) introduced a Senate

¹ UNITED STATES GOVERNMENT ACCOUNTABILITY OFFICE, SECLUSIONS AND RESTRAINTS, SELECTED CASES OF DEATH AND ABUSE AT PUBLIC AND PRIVATE SCHOOLS AND TREATMENT CENTERS 5-8 (2009).

² See H.R. REP. NO. 111-417, PREVENTING HARMFUL RESTRAINT AND SECLUSION IN SCHOOLS ACT 14 (2009).

³ NATIONAL DISABILITY RIGHTS NETWORK, SCHOOL IS NOT SUPPOSED TO HURT (2009).

⁴ See, e.g., DISABILITY RIGHTS CALIFORNIA, RESTRAINT & SECLUSION IN CALIFORNIA SCHOOLS: A FAILING GRADE (June 2007); ALABAMA DISABILITIES ADVOCACY PROGRAM, SECLUSION AND RESTRAINT IN ALABAMA SCHOOLS (June 2009); MICHIGAN PROTECTION AND ADVOCACY SERVICE, INC., SAFE AND PROTECTED? RESTRAINT AND SECLUSION REMAIN UNREGULATED AND UNDERREPORTED IN MICHIGAN SCHOOLS (2009).

⁵ JESSICA BUTLER, UNSAFE IN THE SCHOOLHOUSE: ABUSE OF CHILDREN WITH DISABILITIES (Council of Parent Attorneys & Advocates 2009).

⁶ TASH AND THE ALLIANCE TO PREVENT RESTRAINT, AVERSIVE INTERVENTIONS, AND SECLUSION, IN THE NAME OF TREATMENT: A PARENT'S GUIDE TO PROTECTING YOUR CHILD FROM THE USE OF RESTRAINT, AVERSIVE INTERVENTIONS, AND SECLUSION (2005).

⁷ Council for Children with Behavioral Disorders, *Position Summary on the Use of Physical Restraint Procedures in School Settings*, 34 BEHAVIORAL DISORDERS 223, 224 (2009).

⁸ Council for Children with Behavioral Disorders, *Position Summary on the Use of Seclusion in School Settings*, 34 BEHAVIORAL DISORDERS 235, 236 (2009).

bill, also named the Keeping All Students Safe Act, S. 2020.

But at present, there is no federal restraint and seclusion statute; state laws govern. They vary widely--a patchwork of laws, regulations, voluntary guidance, and complete silence covering the nation. Parents and the public are often ignorant of what the state laws are.

This report has three purposes. First, it examines the current state laws regarding seclusion/restraint. Second, the report analyzes the effect the national Congressional efforts have had on state law, particularly those states which have enacted laws or strengthened them since Congressman Miller's bill was introduced two years ago. Finally, the report explores particular state requirements which provide important protections against restraint and seclusion.

This report concentrates on the states because state law presently controls the issue. This is not to suggest that state activities may substitute for federal action. Some state laws are strong; others weak or nonexistent. Where a child lives still determines the protection he/she gets. For example, there are three states within 25 miles of Memphis, Tennessee. Tennessee limits seclusion/restraint to emergency threats of physical harm, requires continuous visual monitoring of students, and provides an array of protections. Arkansas provides somewhat more limited protections for children in seclusion, allows seclusion for reasons other than protecting physical safety, and does not seek to regulate restraint. Mississippi has no limits whatsoever.

I. A PATCHWORK OF STATE LEGAL PROTECTIONS AGAINST SECLUSION/RESTRAINT

Meaningful Protections In Law

There are 29 states with statutes and regulations providing meaningful protections against restraint and/or seclusion. These have the force of law and must be obeyed.

The states are Alabama, Arkansas (seclusion only), California, Colorado, Connecticut, Florida, Georgia, Iowa, Illinois, Louisiana, Massachusetts, Maryland, Maine, Minnesota, Montana, North Carolina, New Hampshire, Nevada, New York, Ohio (executive order limiting physical restraint), Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, Washington, West Virginia and Wyoming. Of these, 7 were adopted after the Miller bill was introduced in December 2009 (Alabama, Florida, Georgia, Louisiana, Vermont, West Virginia, and Wyoming), and 3 were substantially strengthened (New Hampshire, Oregon, and Tennessee).⁹

Only 29 states provide meaningful protection against either restraint or seclusion by law.

⁹ To provide meaningful protection, a state has to fall in one of two categories. First, it provides multiple protections against restraint and/or seclusion for students. Second, it has few protections but strictly limits the intervention to emergency threats of physical harm. Some states provide greater protections than others. Florida was classified in this group because it has one of the strongest data collection provisions in the country, requires parental notification, bans restraint that interferes with breathing, and has other features. While it does not explicitly limit restraint to threats of physical harm, it implicitly does so, requiring schools to report why each incident

For ease, the term “law” is used to encompass statutes, regulations, and executive orders, because they have the force of law.

Even the 29 states offer varying protections, with key safeguards present in some states and missing in others. Two protect against either restraint or seclusion--but not both. Others protect more against restraint than seclusion or vice versa, meaning that the intervention chosen by staff determines the degree of protection.¹⁰ Of the 29 states, 7 have statutes, 6 have statutes and regulations, and 17 have regulations alone.¹¹ Typically, state regulations are more easily changed than statutes, requiring State Department of Education approval rather than a vote by two houses of a legislature and approval by the Governor. Accordingly, weaker federal seclusion/restraint proposals have the potential to weaken state regulations, and stronger federal proposals, to strengthen them.

Of the states with meaningful laws, 13 cover all students; 15 protect students with disabilities--the most commonly reported victims of these abusive techniques. In addition, New Hampshire protects all students from restraint and students with disabilities from seclusion. Ideally, all children should be protected from restraint/seclusion. Nonetheless, because these techniques have been used frequently upon children with disabilities, and they have disproportionately suffered death, injury, and trauma, special care is often taken to protect their rights and safety.¹²

involved a threat of serious bodily injury. Nonetheless, because it lacks an express limit on the use of seclusion/restraint, the Florida statute was near the boundary.

¹⁰ For example, Ohio regulates only restraint; Arkansas, only seclusion; Illinois, limits restraint to emergency threats of physical harm but permits seclusion to maintain order; Wyoming restricts seclusion to threats of physical harm but does not regulation when restraint may be used.

¹¹ States with statutes only include Florida, Minnesota, Louisiana, North Carolina, Nevada, Oregon, and Tennessee. The states with both statutes and regulations are California, Connecticut, Illinois, New Hampshire, Texas, and Wyoming. Finally, the states that have regulations alone are Alabama, Arkansas, Colorado, Georgia, Iowa, Massachusetts, Maryland, Maine, Montana, New York, Ohio (Executive Order), Pennsylvania, Rhode Island, Utah, Vermont, Washington, and West Virginia. New Hampshire’s Special Education regulations were revised in December 2010, although the seclusion/restraint regulation is similar to original 2008 regulation. In September 2010, the state had adopted a new restraint statute. The statute overrides the regulations where there is a conflict. The regulations remain the controlling document for seclusion, which was not in the statute.

¹² This disproportionate impact is readily apparent from the wealth of literature and reports documenting harm to students with disabilities and the paucity of reports focusing on children without disabilities. All of the children in the GAO report who died had disabilities; the GAO stated that almost all of the reports it received involved students with disabilities. The 13 states that protect students with disabilities, often through the state special education or disability regulations, are Arkansas, California, Colorado, Connecticut, Florida, Louisiana, Maine, Minnesota, Montana, Nevada, Pennsylvania, Texas, and Washington. The 15 states that protect all students are Alabama, Georgia, Iowa, Illinois, Massachusetts, Maryland, North Carolina, New York, Ohio, Oregon, Rhode Island, Tennessee, Vermont, West Virginia, and Wyoming. New Hampshire is divided, with its special education regulations protecting students with disabilities from seclusion and its statute protecting all students from restraint.

Weak Protections in Law

Another 7 states have statutes or regulations providing such a limited, weak form of protection that they are not even remotely akin to those providing meaningful protection. Some do not even protect children, but simply authorize conduct. They include Alaska (allows “reasonable and necessary physical restraint” to protect from physical injury, obtain a weapon, maintain order, or protect property); Delaware (autism regulation provides some protection but permits committees to authorize use of abusive interventions and appears to have no limits on interventions used in non-emergencies or on students without autism); Hawaii (authorizes use of reasonable force to prevent injury to person or property, including implementing “therapeutic behavior plans” contained in a child’s IEP); Michigan (statute permits “reasonable physical force” to prevent threats of physical harm or destruction of property; obtain a weapon; or maintain order; restraint is not otherwise limited); Missouri (bans solitary locked seclusion awaiting law enforcement); and Washington, D.C. (prohibits “unreasonable” restraint). Three of these states, Washington, D.C., Michigan, and Missouri, also have nonbinding guidelines because their laws are so weak.

States Without Protections in Law

There are 13 states with voluntary guidelines that are not legally binding. These documents include guidance approved by the State Board of Education; documents authored by/for the State Department of Education or Director of Special Education; and model principles that schools might consider.

In these state, students lack mandatory legal protection. The guidelines are not statutes or regulations. They do not have the force of law. Such guidelines are readily changed or eliminated, requiring only approval by the state Department of Education, rather than the formal legislative or rulemaking process.¹³ The insufficiency of such guidance is apparent from Vermont’s and Louisiana’s recent replacement of guidelines with laws, and the legislative efforts in Wisconsin and Michigan. Nonetheless, the guidance represents the State’s view that seclusion and restraint are dangerous techniques and that steps should be taken to limit their use. The 13 states are Indiana, Kansas, Kentucky, Michigan, Missouri, Nebraska, New Mexico, Oklahoma, South Carolina, Utah, Virginia, Washington, D.C., and Wisconsin.¹⁴

¹³ At times, some people seem to view such guidelines as the equivalent of statute and regulation. This is likely due to confusion about the proposed Congressional bills, which require states to adopt “policies” incorporating the statutory requirements. States would not be free not free to eliminate or change those federal requirements, and schools within the state must follow the policies. Thus, these mandatory “policies” would differ markedly from the kind of nonbinding guidance currently in place. Accordingly, such nonbinding guidance documents should not be given the same recognition or treatment as actual statutes or regulations.

¹⁴ A few of these documents appear to be directives using “mandatory” language. Nevertheless, they are not binding laws or regulations that protect children. They lack the force of law and may be readily changed. They are similar to any school district guidance or policy. State practice determines whether the State will act to ensure that seemingly-mandatory guidelines are followed and whether there are repercussions for employees or districts that do not adhere to them. But, many of the documents are simply suggested sets of principles, such as those in Indiana (principles “the Department recommends”); Missouri (a “model policy”); Nebraska (“provide[s] information and guidance for Nebraska School districts in creating new, or revising existing policies”); and Utah (“This document is a recommended practices guideline” and consists of “best practices”). Of the guidelines, those

The experience in two states is noteworthy. In 2006, after two children died in restraint, Michigan adopted nonbinding state guidance recommending that school boards adopt voluntary guidelines. After a 2009 statewide survey, Michigan Protection and Advocacy Service (MPAS) concluded that “children remain at risk” and recommended legislation instead. MPAS found that “while some intermediate school districts (ISDs) have tried to apply the voluntary Board policy, most have not.” It further determined that “the Michigan Department of Education has not taken steps necessary to make the voluntary Board policy binding upon school districts or even to learn whether or not the policy is being used anywhere.” MPAS also received stories about restraint and seclusion in 32 of the state’s counties from parents, indicating that the nonbinding guidelines were not enough.¹⁵

Similarly, Wisconsin organizations found that the state’s restraint/seclusion “directives” were insufficient to protect children from seclusion and restraint, making state legislation necessary. The directives lacked the “the force of law” and “sufficient enforcement.” They reported that Wisconsin students continued to be hurt and traumatized by restraint and seclusion.¹⁶

Finally, six states have absolutely nothing: Arizona, Idaho, Mississippi, North Dakota, New Jersey, and South Dakota, despite efforts in at least three of them to take action.¹⁷

by the Chancellor of the District of Columbia Schools may be entitled to the strongest weight, as they consist of prohibitory terms (e.g., mechanical restraints “are not authorized”) rather than permissive terms or factors that schools might consider. Still, they are readily changed and do not have the force of law. Washington, D.C. proposed regulations in 2010 but was unable to enact them.

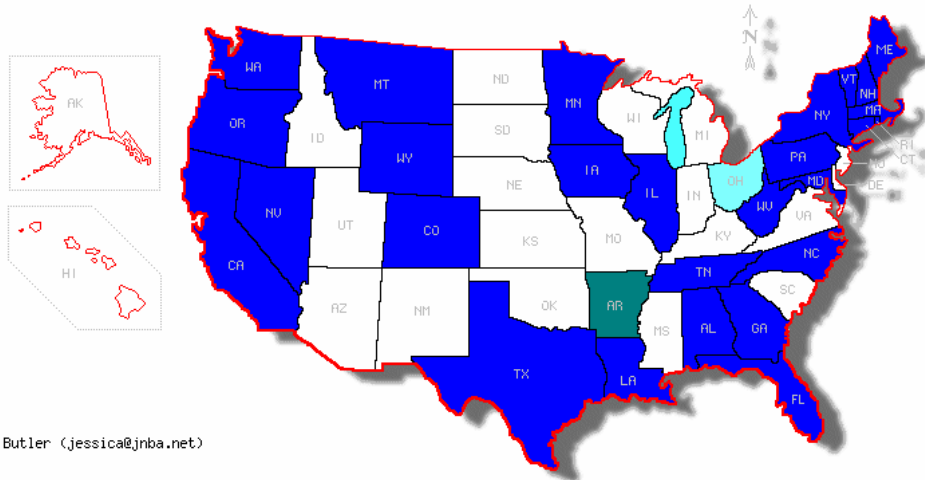
¹⁵ MICHIGAN PROTECTION AND ADVOCACY SERVICE, INC., *SAFE AND PROTECTED? RESTRAINT AND SECLUSION REMAIN UNREGULATED AND UNDERREPORTED IN MICHIGAN SCHOOLS 4-5* (2009).

¹⁶ DISABILITY RIGHTS WISCONSIN, WISCONSIN FACETS, AND WISCONSIN FAMILY TIES, *OUT OF THE DARKNESS... INTO THE LIGHT, NEW APPROACHES TO REDUCING THE USE OF SECLUSION AND RESTRAINT WITH WISCONSIN CHILDREN* (2009).

¹⁷ Each legislative session, the New Jersey legislature has considered Matthew’s Law, named for a child who died after spending much of two years in mechanical restraints. Dave Reynolds, *Teen’s Death Prompts New Restraint And Seclusion Measure*, INCLUSION DAILY EXPRESS, Sept. 19, 2002. Idaho considered adopting regulations but deferred any decision in December 2010. An Arizona stakeholders’ task force drafted recommendations in 2009 but the state never acted upon them.

29 States Have Meaningful Protections By Law.

- - Restraint/Seclusion
- - Seclusion Only
- - Restraint Only

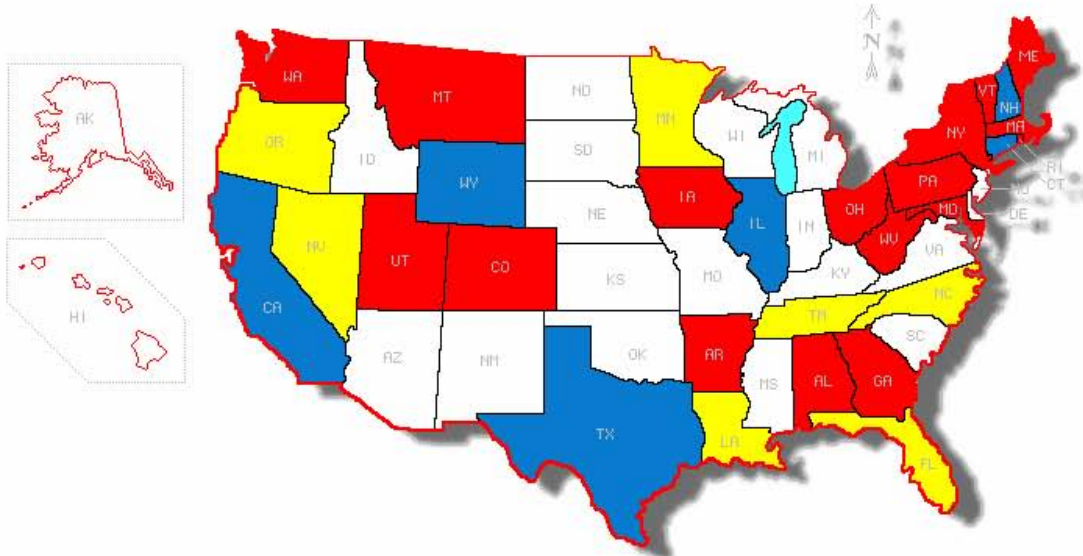


Blue means the state has a law for restraint and seclusion; sea green (medium) for seclusion only; and cyan (light blue) for restraint only.

Jessica Butler, jessica@jnba.net. Please copy, share, and distribute as long as my name remains on the map.

Statute, Regulation, or Both: 29 States with Meaningful Protections

- - Regulation
- - Both
- - Statute



In this map, yellow means the state has only a statute; red, regulation; blue, both regulation and statute.

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II. SECLUSION/RESTRAINT AS EMERGENCY INTERVENTIONS

Given the serious risks involved, restraint and seclusion should be emergency interventions used only when necessary to protect individuals from physical danger. This section of the report analyzes whether states limit restraint and seclusion so that they are emergency interventions, or allow them under other circumstances when no person is at risk.

A. IS RESTRAINT LIMITED TO EMERGENCIES THREATENING PHYSICAL SAFETY?

Of the hundreds of stories the GAO collected, at least 20 involved children who died from restraint. Other children were injured, including suffering broken bones and bloody noses, and traumatized to the point of suffering from post-traumatic stress syndrome.¹⁸ Given the dangers, restraint should only be used in rare emergencies where it must be deployed to protect people from physical danger. Instead, restraint has been used for failing to do class work, being noisy, tearing paper, being unable to pay attention due to disability issues, pushing items off desks, staff convenience, punishment, and similar issues.¹⁹

Only 14 states by law limit restraint to emergencies involving an immediate risk of physical harm or serious physical harm.²⁰ Four require an imminent threat of serious or substantial physical harm/injury: Louisiana; New Hampshire; Oregon; and Rhode Island. Florida appears to implicitly use this standard, although the statute is not explicit, and subject to being ignored.²¹ Nine states require an immediate threat of physical harm: Alabama, Colorado, Connecticut, Georgia, Illinois, Ohio, Pennsylvania, Tennessee, and Vermont.

Only 14 states limit restraint by law to emergencies threatening physical harm.

The remaining 37 states lack such laws. Some have statutes and regulations that permit restraint even when the child is not posing a danger of physical harm to anyone. Others have no limits, allowing states to do as they wish.

Massachusetts and Maryland by regulation allow restraint for threats of serious physical harm or

¹⁸ GAO REPORT at 1, 8, 10-12.

¹⁹ See generally NATIONAL DISABILITY RIGHTS NETWORK, SCHOOL IS NOT SUPPOSED TO HURT (2009); JESSICA BUTLER, UNSAFE IN THE SCHOOLHOUSE: ABUSE OF CHILDREN WITH DISABILITIES (COPAA 2009); Complaint, *Ebonie S. v. Pueblo School District No. 60* (D. Colo. filed Apr. 13, 2009).

²⁰ For purposes of this report, physical harm and bodily harm/injury/danger/safety are treated synonymously. Various state definitions may differ, but they are largely the same.

²¹ Florida's 2011 statute, FLA. STAT. 1003.573, implicitly suggests a serious physical harm standard, by requiring the school to explain in its report why there was an imminent risk of serious harm if seclusion/restraint were used. Florida practitioners confirm that the language's purpose was to impose a physical harm standard. Nonetheless, the statute is not explicit and can be misinterpreted as permitting seclusion/restraint for unlimited purposes.

as stated in a child's Behavioral Intervention Plan (BIP) or Individualized Education Program (IEP).²² Maine does the same, using a physical harm standard. These rules appear superficially strong, but the IEP/BIP loophole lets schools to use restraint for almost any reason. Some staff may even add restraints to IEPs to avoid any questions about whether there was an emergency.

Likewise, California law contains a significant loophole. It authorizes restraint in "emergency" situations, which are defined as spontaneous, unpredictable events posing an imminent threat of serious physical harm. The statute and regulations are worded in such a way that California does not forbid the use of restraint in non-emergencies. Consequently, if restraint is used because of a predictable behavior pattern or a behavior that does not threaten serious physical harm, it is a non-emergency, and protections in the law do not apply.²³

Minnesota, Nevada, Texas, and West Virginia authorize restraint for threats of physical harm or serious destruction of property. Six states by law (Alaska, Iowa, Michigan, Montana, New York, Washington) permit restraint for threats of physical harm, destruction of property, or educational disruption/ maintaining "order." Property destruction and educational disruption are appropriately handled through positive behavioral supports, de-escalation, conflict resolution, and perhaps other adjustments.²⁴ North Carolina by statute allows restraint for threats of physical harm, property destruction, educational disruption, or as stated in the IEP/BIP, another wide loophole.

Many states have no laws or have loopholes that allow restraint to be used with little limitation.

The remaining states have no laws. Seven states with nonbinding, recommended guidelines urge that restraint be limited to threats of physical harm: Indiana, Kansas, Nebraska, Oklahoma (serious physical harm), Virginia, Washington, D.C., and Wisconsin. In addition to physical harm, Utah suggests permitting restraint for serious property damage; New Mexico, destruction of property; and Missouri, destruction of property or as stated in the IEP. These guidelines lack the force of law and are easily changed.

The remaining 12 states do not seek even in voluntary, recommended guidance to limit the reasons for which restraint may be used: Arkansas, Arizona, Delaware,²⁵ Hawaii, Idaho, Kentucky, North Dakota, New Jersey, South Carolina, South Dakota, and Wyoming. Their laws are largely or entirely silent.

²² For children with disabilities, the BIP is often part of the IEP.

²³ See CAL. ED. CODE §§ 56520-56525; CAL. CODE REGS. tit. 5 §3052; Communications with Leslie Morrison, Directing Attorney, Investigations Unit, Disability Rights California (Jan. 2012).

²⁴ To the extent that property destruction threatens physical harm, it should be treated as a physical harm issue.

²⁵ Delaware permits committees to authorize "emergency interventions" for children with autism that may be used if there is a threat of physical harm or destruction of property. But it does not protect other children from emergency interventions. Nor does it limit the use of the same interventions on students with autism for non-emergencies. A Delaware child could be put in restraint or seclusion for tearing a book, failing to follow instructions, or running around. This regulation thus provides almost no protection.

B. IS SECLUSION BANNED OR LIMITED TO EMERGENCIES INVOLVING PHYSICAL SAFETY?

Like restraint, seclusion is highly dangerous, causing death, injuries, and trauma, as the GAO and others have documented. Children have been secluded in locked closets and rooms and in unlocked rooms they cannot exit--often because staff or furniture block the door. Doors may even be altered to prevent children from opening them. Seclusion is often used for non-emergencies and continues long after any emergency has ended. One New York child was secluded alone 75 times in 6 months for whistling, slouching, and hand waving. The staff held the unlocked door shut; the child's hands blistered as he tried to escape.²⁶ Children confined in closets and seclusion rooms have been denied food, water, and access to the restroom.²⁷

States differ markedly in how they define and treat seclusion. Some recognize the danger of seclusion and seek to restrict it either by law or voluntary guidance. By law, 5 states ban all forms of seclusion, which eliminates the tremendous risk of harm that seclusion poses. Another 6 states by law limit seclusion to emergencies involving threats to physical safety. Other states permit seclusion for a wide variety of reasons or even no reason at all, subjecting children to physical and psychological danger and harm.

Seclusion Defined.

Unlike restraint, seclusion is defined differently in different states, leading to some confusion and differences in the degree of protection students receive. Some states regulate only "locked" seclusion and are entirely silent about whether there is any protection against doors blocked by staff, furniture, or through using cheap child-proofing devices that adults can easily open but children with some physical or cognitive disabilities cannot.

32 states would define seclusion as a space a child cannot exit, whether the door is locked or blocked by furniture, staff, etc.

There are 32 states that would define seclusion (or isolation) as a room or space a child is prevented from exiting (door is locked, blocked by furniture or staff, etc.). Twenty-one states do it by law:

Colorado, Connecticut, Georgia, Iowa, Illinois, Louisiana, Maine,²⁸ Massachusetts, Maryland (if alone), Minnesota, Montana, North Carolina (and also a room a child cannot leave due to

²⁶ GAO REPORT at 13.

²⁷ SCHOOL IS NOT SUPPOSED TO HURT at 15-20; CCBD, *Position Summary on the Use of Seclusion in School Settings* at 236.

²⁸ Maine bans any form of seclusion in which the door cannot be opened. It permits the use of what it calls "time-out rooms" in which students are alone, are observed by staff through a window, but children are able to exit the room. These rooms may be used in emergency situations that threaten physical harm or property destruction, or as stated in the IEP/BIP. Under both proposed federal bills, and the definition in this report, these rooms would not be considered "seclusion."

physical or mental incapacity), New Hampshire, Nevada, Oregon, Rhode Island (if without access to staff), Texas (if alone in room), Tennessee, Vermont, Wyoming (definition of “isolation”); and West Virginia (if unsupervised). Eleven states have a similar definition in nonbinding guidance: Indiana, Kansas, Michigan, Missouri, Nebraska, New Mexico, Oklahoma, South Carolina (if child alone), Utah, Virginia, and Washington, D.C. Two states by law limit seclusion to locking a child in a room: Alabama and Florida. In the U.S. Congress, the pending House bill defines seclusion as locked isolation; the Senate bill, as locked isolation or a space from which the child is prevented from leaving.

Unless otherwise stated, this report uses “seclusion” to mean a room or space from which a child is prevented from exiting, whether locked or blocked in some other way.²⁹ For short-hand, these may be referred to as “no-exit rooms.”

Bans on Forms of Seclusion.

By law, 11 states prohibit some form of seclusion. Of these, 5 ban it entirely, forbidding the use of rooms children are prevented from exiting, whether locked or technically unlocked but blocked: Georgia, Maine, Nevada, Pennsylvania, and Texas.³⁰ Given the dangers that seclusion poses, a ban is one important protection for children.

**5 states ban all seclusion;
6 ban locked seclusion, allowing furniture & staff to block doors.**

Another 6 states by law prohibit all or most forms of locked seclusion: Alabama, Arkansas, Montana (except in certain residential treatment facilities), New Mexico (fire code violation), New York, and Wyoming. These states would permit seclusion in spaces children cannot exit, which are as dangerous as those with formal locks.³¹

Six more by law allow locked seclusion only if the lock can automatically release, either through

²⁹ Rooms that are locked or from which children are prevented from exiting are considered “seclusion” in this report even if called something else (e.g., “confinement,” “isolation,” “time-out,” or “quiet room”). These rooms differ from legitimate “time out” spaces which can involve placing a child in a room to calm down that he/she is capable of leaving, usually with staff present. The report definition focuses on the function of the room. For example, Wyoming distinguishes “locked seclusion” (locked space), which it bans, from “isolation” (unlocked space from which a child cannot exit), which it allows under strict conditions. It also has a separate category for “seclusion from the learning environment,” which appears to be a form of time-out. Wyoming’s “isolation” is treated as most states treat “seclusion,” and therefore, this report uses Wyoming’s isolation unless otherwise stated. Where it would make a difference, Wyoming’s locked seclusion and isolation are treated differently in this report.

³⁰ Texas law forbids the use of locked spaces unless there is a threat of bodily harm, and only while awaiting the arrival of law enforcement. It permits time-out, which it defines as an unlocked room from which egress is permitted. Thus, Texas law appears to implicitly forbid unlocked no-exit rooms. But, the absence of an explicit prohibition may be viewed as a loophole that is exploited to use of such rooms.

³¹ California was excluded from the group. By law, locked seclusion is not permitted as an emergency intervention, unless the state has otherwise licensed a facility to use a locked room. Yet, due to a loophole in wording, California permits locked seclusion for non-emergencies, which can include predictable events that threaten serious physical harm or events that do not threaten serious physical harm.

an emergency alarm system or when a person stops holding it: Connecticut, Iowa, Illinois, Florida (fire code referenced), Minnesota, South Carolina (fire code referenced). Most seclusion laws and guidelines are silent about fire, safety, and building codes, although they likely impose limitations on locked doors. When seclusion policies omit these codes, they leave staff and parents unaware and can lead to a belief that locking students in closets and rooms is permissible. Of course, a door that automatically unlocks in an emergency does not eliminate the grave physical or psychological dangers of seclusion.

The remaining 34 states do not ban either locked seclusion or seclusion in rooms children cannot exit.³²

Permitting Seclusion But Restricting It To Physical Safety Emergencies.

While 5 states ban all seclusion, 6 by law limit it to emergencies where it is necessary to prevent an immediate threat of physical harm: Oregon (“serious” physical harm), Colorado, Louisiana (“substantial” physical harm), Tennessee, Vermont, and Wyoming. Florida appears to have implicitly incorporated a serious physical harm standard, by requiring incident reports to explain why the use of seclusion met this standard. Still, the lack of an explicit limitation means some may interpret the law to allow seclusion for other reasons.

The remaining 36 states do not limit seclusion to physical safety emergencies by law, exposing children to serious risk of harm.

³² Two states (Washington, D.C. and Michigan) urge in their nonbinding guidance that children not be locked in rooms, although D.C. would permit staff to physically block the door. Kansas and Nebraska suggest doors that automatically unlock in their voluntary guidance.

There are 14 states that even explicitly permit seclusion by law in non-emergencies, or which have significant loopholes in their laws. [The information in this table is presented in text format on the following pages for readers who require text for disability or other reason.]

14 States Explicitly Permit Seclusion in Non-Emergencies by Law

State	Seclusion Law and/or Loophole
CA ³³	Bans locked seclusion as an emergency intervention for threats of serious physical harm, but does not forbid it under other circumstances. Could be used if behavior pattern is predictable or for other non-emergencies. (Also allows locked seclusion for emergencies if authorized by state license.)
NH	Bans unobserved seclusion in space child cannot exit unless written into IEP. (1) Does not restrict reasons such seclusion can be added to IEP. (2) Does not regulate observed seclusion, allowing staff to use it for any reason. Observation can be by video camera.
MN	Emergency threats of physical harm or serious destruction of property.
MA	Bans locked seclusion unless child has “access” to staff. Access is undefined and could simply be the ability to call or signal for staff.
RI	Bans seclusion unless the child is observed, and it is in BIP. Rhode Island does not regulate observed seclusion, meaning that it can occur for any reason and last for any duration.
WV	Bans seclusion if a child is in an “unsupervised” space she cannot exit. Supervised is undefined and could mean intermittently checking the room. There are no limits on seclusion if the student is “supervised.”
AL	Bans locked seclusion. No regulation of seclusion in rooms where exit is blocked.
IA, MT, NY, IL, ³⁴ AR	Explicitly allow seclusion for any destruction of property or educational disruption (AR requires severe disruption). While time-out in a space child can leave may be appropriate for educational disruption, placing child in a room he cannot exit is not appropriate.
NC	Allows seclusion for threats of physical harm, property destruction, educational disruption, or as stated in IEP/BIP. Can be included in IEP/BIP for any reason.
CT, MD	Allow seclusion for threats of physical harm or as stated in the IEP/BIP. Gives schools freedom to put seclusion in IEP/BIP for any reason. May encourage them to do so to avoid any questions about whether there was an emergency.

³³ See CAL. ED. CODE §§ 56520-56525; CAL. CODE REGS. tit. 5 §3052; Communication with Leslie Morrison, Directing Attorney, Investigations Unit, Disability Rights California (Jan. 2012).

³⁴ Illinois allows seclusion for threats of physical harm or maintaining an orderly environment. Destruction of property likely could be included under the latter.

Information from Above Table in Textual Format

14 States Explicitly Permit Seclusion in Non-Emergencies by Law

Minnesota permits seclusion for emergency threats of physical harm or serious destruction of property. Five states by law permit seclusion for threats of physical harm, destruction of property, or educational disruption: Arkansas (but limiting seclusion to severe occurrences), Iowa, Montana, New York, and Illinois.³⁵ While time-out in a space a child is able to leave may be appropriate for disruptive behavior, seclusion is not.

Other states have statutes or regulations permitting seclusion under broader circumstances. North Carolina permits seclusion for threats of physical harm, property destruction, educational disruption, or as stated in the IEP or BIP. New Hampshire prohibits unobserved seclusion in a space the child cannot exit unless there is a threat of physical harm or it is documented in the IEP after certain conditions are met. This has two loopholes. First, it allows unobserved, locked seclusion for almost any reason when documented in the IEP. Second, it allows seclusion for any reason without any regulation as long as the child is observed. Observation could be by remote video camera, allowing children to languish in rooms for hours.

Massachusetts bans seclusion rooms if students lack “access” to staff, potentially allowing students to be locked in rooms for any reason with little limit as they can call or signal for staff. Rhode Island bans seclusion unless the child is observed, and seclusion has been agreed to in the child’s BIP. Rhode Island does not regulate observed seclusion, meaning that it can occur for any reason and last for any duration. West Virginia is similar, banning seclusion if a child is in an “unsupervised” space she cannot exit. Supervised is undefined and could mean intermittently checking the room. There are no limits on seclusion if the student is “supervised.” Alabama bans locked seclusion, but does not regulate seclusion where the exit is blocked or the child otherwise is prevented from exiting.

California has a significant loophole. It explicitly bans seclusion in “emergency” situations, which are defined as spontaneous, unpredictable events posing an imminent threat of serious physical harm. But California does not forbid the use of seclusion in non-emergencies. Consequently, if seclusion is used due to a predictable behavior pattern or a behavior that does not threaten serious physical harm, it is a non-emergency use, and protections in the law do not apply.³⁶

Two states, Connecticut and Maryland, by law permit seclusion for threats of physical harm or as stated in the BIP/IEP. The IEP/BIP loophole grants schools freedom to use seclusion for non-emergencies, and may encourage them to include seclusion in IEPs to avoid answering questions about whether there was an emergency. According to recent news reports, in 2007, about 2/3 of Connecticut schools had restraint and seclusion practices.³⁷

End of Textual Alternative

³⁵ Illinois allows seclusion for threats of physical harm or maintaining an orderly environment. Destruction of property likely could be included under the latter.

³⁶ See CAL. ED. CODE §§ 56520-56525; CAL. CODE REGS. tit. 5 §3052; Communication with Leslie Morrison, Directing Attorney, Investigations Unit, Disability Rights California (Jan. 2012).

³⁷ Jordan Fenster, *Scream Rooms' May Be More Common Than Parents Know*, NEW HAVEN REGISTER, Jan. 12, 2012.

Loopholes in these laws can have dramatic consequences, as was apparent in the state of Connecticut in January 2012. Connecticut permits seclusion for risks of physical harm or as otherwise stated in the IEP. One school district superintendent appeared to suggest that seclusion rooms were regular requirements in IEPs for children with disabilities:

‘There are no provisions for the use of seclusion time out for students that do not have an IEP,’ according to a {school district} statement issued Wednesday. . . . ‘Unless you have an IEP this is not part of your daily [plan],’ he {the Superintendent} said. ‘The rooms have been used very infrequently for students without an IEP, but generally they try to find another location for the students.’

Rather than seeking to reduce use of the seclusion rooms, in which children were screaming, the district decided they would “be moved to out-of-the-way locations so their use in the future is not disruptive to other students.”³⁸ If seclusion was banned, or strictly limited to emergency threats of physical danger, staff would be extremely unlikely to view seclusion as a regular or appropriate intervention for students with disabilities, or to seek to continue the rooms but hide them in another location.

There are 25 states that lack any legal protections at all. Eight have nonbinding guidance or voluntary principles urging that seclusion be limited to threats of physical harm. They are Indiana, Michigan, Nebraska, Oklahoma, South Carolina, Virginia, Washington, D.C., and Wisconsin. Unfortunately, guidelines also counsel for permitting seclusion under circumstances which would harm children. Kansas urges that seclusion be used for threats of harm or as stated in the BIP/IEP, a wide loophole. Kansas also suggests that seclusion is a legitimate behavior modification techniques unrelated to emergencies as long as it is included in the IEP. Missouri’s guidelines suggests states consider allowing seclusion for threats of physical harm, destruction of property, or as stated in the IEP. Utah advocates for limiting restraint to threats of physical harm or serious destruction of property.

The remaining 14 states do not seek even in recommended guidance to limit seclusion to certain circumstances: Alaska, Arizona, Delaware,³⁹ Hawaii, Idaho, Kentucky (describes seclusion as a behavioral intervention), Mississippi, Ohio, North Dakota, New Jersey, New Mexico (guidance even explicitly describes seclusion as permitted for behavior modification), South Dakota, and Washington. Rather, they are silent or permit seclusion for a wide variety of reasons.

For comparison, Senator Harkin’s bill would ban all seclusion; Congressman Miller’s bill would permit seclusion only if necessary to prevent an imminent threat of physical harm to an individual in an emergency.

³⁸ Shawn R. Beals, *Angry Parents, Scared Students Seek Answers About Farm Hill School 'Scream Rooms,'* HARTFORD COURANT, Jan. 12, 2012. (Square bracketed material in original; curly bracketed material added.)

³⁹ Delaware permits the use of “emergency interventions” for threats of physical harm or destruction of property by children with autism. But it places no limits on the use of seclusion with other children or the non-emergency use of seclusion for children with autism.

C. OTHER STEPS TO ENSURE INTERVENTIONS ARE USED ONLY IN AN EMERGENCY

Several states permit seclusion and/or restraint only as emergency interventions, given the risk of serious harm to children and staff. A number of states allow restraint/seclusion only if less intense interventions have failed, and require them to end when the emergency ends. Both of these approaches have been incorporated in the federal bills proposed by Senator Harkin and Congressman Miller. (In states that ban all seclusion, these two requirements are still relevant for restraint.) In addition, some states explicitly forbid their use for discipline or punishment, a position also mirrored in the federal bills.

Less Restrictive Measures Must Fail.

If less-restrictive methods would resolve an issue, they must be used first. Restraint and seclusion not only expose children to danger, but escalate behaviors and led to a cycle of violence. By contrast, positive interventions, de-escalation, and conflict resolution resolve difficult situations and help prevent and reduce the use of restraint and seclusion.⁴⁰ Research shows that these measures are among the most useful strategies for reducing seclusion and restraint use, according to the National Association of State Mental Health Program Directors (NASMHPD).⁴¹

Only 15 states by law require that less restrictive methods either fail or be deemed ineffective before seclusion/restraint are used: Alabama, California, Colorado, Georgia, Iowa, Louisiana, Massachusetts, Maryland, Minnesota, New Hampshire (restraint only), New York, Oregon, Rhode Island, Vermont, and Connecticut (restraint only; less-restrictive methods need not fail to use restraint when permitted in the IEP). Six of the 15 adopted the requirement after the Miller bill was introduced in 2009.

The remaining 36 states lack this legal requirement, allowing personnel to quickly escalate to restraint/seclusion, even when unnecessary and something else would resolve the problem.

15 state laws require less intensive interventions to fail or be ineffective before S/R are used. This ensures S/R are used only in emergencies, protecting children from unnecessary harm.

⁴⁰ See H.R. REP. NO. 111-417 at 20-21. For example, in one Utah case, a child was repeatedly restrained for smearing fecal matter on the wall and banging his head. A functional behavioral assessment determined that he was doing this because the restraints were the only physical contact he had. School personnel were able to end the behaviors by giving the child hugs and interactions for positive behavior, according to COPAA Executive Director Denise Marshall. Hence, a less restrictive intervention, identified through a functional behavioral assessment, stopped the child from injuring himself, while restraints only encouraged him to do so. Mark Sherman, *Case Study Shows Importance of FBA*, SPECIAL ED. CONNECTIONS (LRP), July 15, 2008.

⁴¹ KEVIN ANN HUCKSHORN, SIX CORE STRATEGIES TO REDUCE THE USE OF SECLUSION AND RESTRAINT AS A PLANNING TOOL (The National Association of State Mental Health Program Directors 2005).

Maine and Montana require less restrictive methods to have been tried, but not necessarily to be ineffective.

This means that 34 states do not by law require any use of less-intrusive interventions before restraint/seclusion are used. Of the 34, 10 states that lack statutes and regulations suggest it in their nonbinding guidance: Kansas, Michigan, Missouri, New Mexico (restraint only), Oklahoma, South Carolina, Utah, Virginia, Washington, D.C., and Wisconsin--signaling the importance of less-restrictive interventions.

Intervention Must End When The Emergency No Longer Exists.

Without the threat of an emergency, there is no need to use seclusion (if permitted at all) or restraint. These interventions should end when the emergency ends. Instead, children have been ordered to sit still in yoga positions, show a happy face, pull apart socks, or do other tasks to end seclusion and/or restraint.⁴²

These requirements have nothing to do with an emergency or safety. Children with autism, intellectual disabilities, and other disabilities may even be unable to do them, even when they threaten no one. Other states or school personnel require that seclusion or restraint continue for required time periods, even if there is no longer an emergency. Of course, if a state bans seclusion, then the requirement is necessary only for restraint.

Only 14 states by law prohibit restraint and/or seclusion from continuing after the emergency ends: Alabama, California, Colorado, Georgia, Illinois (restraint only), Louisiana, Massachusetts, Minnesota, New Hampshire (restraint only); Nevada, Oregon, Rhode Island, Texas,⁴³ Vermont and West Virginia. Two states impose this limit only on restraint and not seclusion.

**Only 14 states by law
require
restraint/seclusion to
stop when the
emergency ends.**

Six states explicitly allow restraint/seclusion to continue even if there is no emergency. They set time limits or require children to be calm or composed, which is often impossible for children with autism and other disabilities. A child may be upset and crying, and yet threaten no one. Some even let the IEP team decide when restraint or seclusion should end, which has nothing to do with an emergency.

⁴² Robert Tomsho, *When Discipline Starts a Fight*, WALL ST. J., July 9, 2007; UNSAFE IN THE SCHOOLHOUSE, Appendix.

⁴³ Although Texas requires only that restraint end when the emergency ends, it effectively also imposes this requirement on seclusion, by allowing seclusion only for emergencies while awaiting the arrival of law enforcement. One law enforcement arrive, the emergency has ended and the child is with law enforcement.

These states are Connecticut (seclusion must end when child is “compose[d]” or 1 hour); Maryland (seclusion must end within 30 minutes; restraint must end within 30 minutes or earlier if child is calm); Iowa (restraint for “reasonable and necessary” period; seclusion for “reasonable” period); Illinois (seclusion ends 30 minutes after behavior resulting in seclusion has ended); Montana (time limit in IEP/BIP); and New Hampshire (IEP team decides when seclusion should end). These types of limits are inappropriate, given the risks posed by seclusion and restraint. Maryland’s durational limit differs from the others in that it sets a hard deadline of 30 minutes under all circumstances. This is designed to protect children. Maryland is to be lauded for this, but the standard can raise some issues if an emergency ends within 5-10 minutes and a child is still in restraint because he/she is not yet calm. Still the 30 minute rule appears designed to ensure the staff take action to promptly end restraint or seclusion.

The other 32 states have no laws at all that require these dangerous techniques to end when there is no longer any emergency.

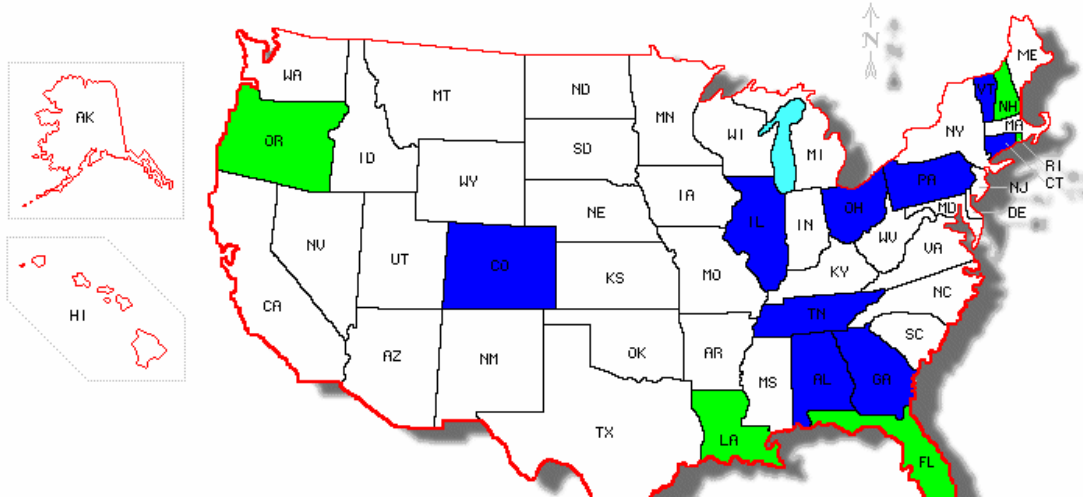
Seven states do have nonbinding guidelines supporting the principle that the intervention should end when the emergency ends: Indiana (restraint only), Missouri, Nebraska, Oklahoma, South Carolina, Washington, D.C., and Wisconsin (restraint only). Such guidance lacks the force of law. Indiana by nonbinding guidance suggests that seclusion end within 30 minutes after the behavior ends or as specified in the IEP. There are 25 states that are wholly silent: Alaska, Arizona, Arkansas, Delaware, Florida, Hawaii, Idaho, Indiana, Kansas, Kentucky, Maine, Michigan, Mississippi, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Pennsylvania, South Dakota, Tennessee, Utah, Virginia, and Wyoming. These states offer no protections by law nor suggest any through voluntary guidelines.

Forbidding Interventions for Punishment or Discipline

At least 18 states have laws indicating that seclusion/restraint may not be used as a means of discipline or punishment. Some also explicitly state that the interventions are not a substitute for educational programming. The states include: Alabama, California, Colorado, Connecticut, Georgia, Iowa, Illinois, Louisiana, Massachusetts, New Hampshire, New York, Oregon, Pennsylvania, Rhode Island, Tennessee, Vermont, Virginia, and Wyoming. Other states may not include this language because limiting restraint/seclusion to threats of physical harm by definition excludes their use as discipline and punishment.

Only 14 States Limit Restraint to Emergency Threats of Physical Harm

- - Serious/Substantial
- - Physical Harm



NOTES

Blue (dark): state limits restraint to emergency threats of imminent physical harm
Green (light): state limits restraint to emergency threats of imminent serious physical harm

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Is Restraint Limited to Immediate Emergency Threats to Physical Safety or Allowed for Non-Emergencies?

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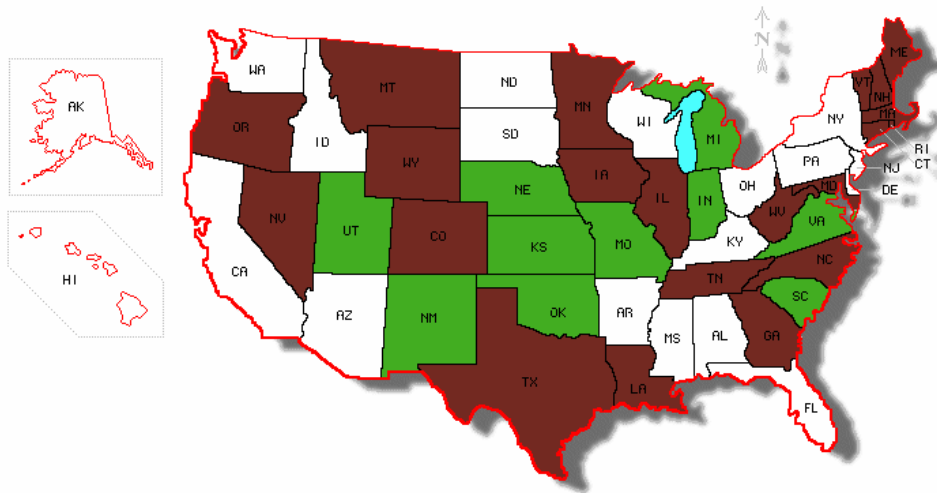
	Emergency Immediate Threat Serious Physical Harm	Emergency Immediate Threat of Physical Harm	Serious Phys. Harm/ Phys. Harm or in IEP	Phys. Harm or Serious DP	Phys. Harm or DP	Phys Harm, DP, or Educational Disruption	Other, including allowing restraint as per IEP or BIP
Total by law	5	8	3	1		5	2
AK							
AL		X					
AR							
AZ							
CA							X (CA permits use of restraint in non-emergencies with little limitation due to law's wording)
CO							
CT		X					
DE							
DC		<i>Guidance - Not law - Can Change</i>					
FL	implied						
GA		X					
HI							
IA						X	
ID							
IL		X					
IN		<i>Voluntary Guidance - Not law - Can Change</i>					
KS		<i>Voluntary Guidance - Not law - Can Change</i>					
KY							
LA	X						
MA			X				

	Emergency Immediate Threat Serious Physical Harm	Emergency Immediate Threat of Physical Harm	Serious Phys. Harm/ Phys. Harm or in IEP	Phys. Harm or Serious DP	Phys. Harm or DP	Phys Harm, DP, or Educational Disruption	Other, including allowing restraint as per IEP or BIP
MD			X				
ME			X				
MI						X	
MN				X			
MO							<i>Voluntary Guidance - Not law - Can Change</i>
MS							
MT						X	
NC							X
ND							
NE		<i>Voluntary Guidance - Not law - Can Change</i>					
NH	X						
NJ							
NM					<i>Voluntary Guidance - Not law - Can Change</i>		
NV				X			
NY						X	
OH		X					
OK	<i>Voluntary Guidance - Not law - Can Change</i>						
OR	X						
PA		X					
RI	X						
SC							
SD							
TN		X					
TX				X			
UT				<i>Voluntary Guidance - Not law - Can Change</i>			

	Emergency Immediate Threat Serious Physical Harm	Emergency Immediate Threat of Physical Harm	Serious Phys. Harm/ Phys. Harm or in IEP	Phys. Harm or Serious DP	Phys. Harm or DP	Phys Harm, DP, or Educational Disruption	Other, including allowing restraint as per IEP or BIP
VA		<i>Voluntary Guidance - Not law - Can Change</i>					
VT		X					
WA						X	
WI		<i>Voluntary Guidance - Not law - Can Change</i>					
WV				X			
WY							

31 States Would Define Seclusion as Rooms/Spaces Child Cannot Exit.

- - By law
- - nonbinding guidance

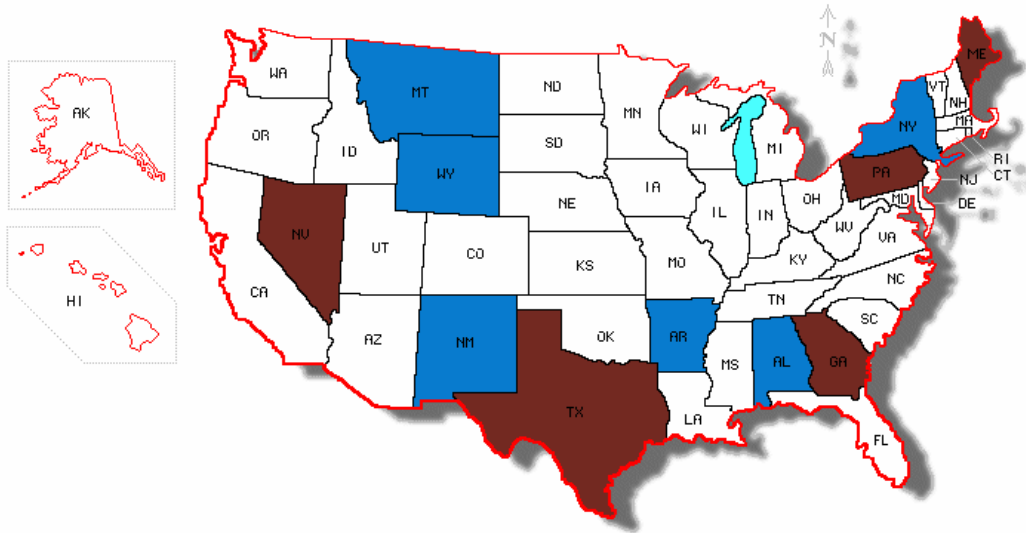


Brown (dark): By law, seclusion is defined as rooms/spaces child prevented from exiting
Green (light): By guidance, state suggests defining seclusion as rooms/spaces child is prevented from exiting

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Law Bans Locked Seclusion or All Seclusion (e.g. blocked doors)

- - All Seclusion Banned
- - Locked Seclusion Ban



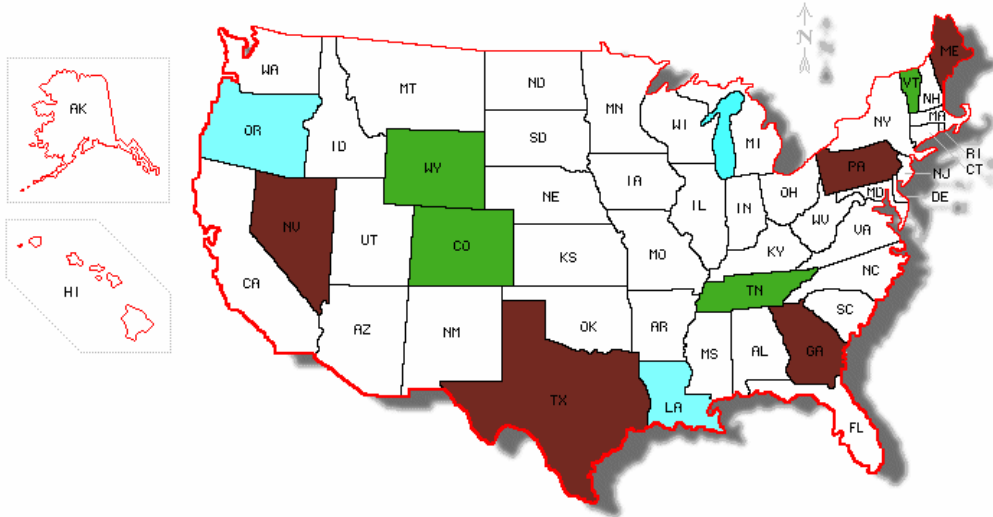
Brown (dark): all seclusion banned by law (includes doors blocked by furniture, staff, child proofing devices, etc.)

Blue (light): locked seclusion banned by law

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By Law, Seclusion is Banned or Limited To Emergency Threats of Physical Harm

- - All Seclusion Banned
- - Emerg Physical Harm
- - Serious Phys Harm



Brown (dark): all seclusion banned

Green (medium): seclusion limited to emergency threats of imminent physical harm

Cyan (light): seclusion limited to emergency threats of imminent serious physical harm

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How is Seclusion Defined, and Is It Banned?

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	Seclusion Means Child Is Prevented from Leaving Room/Space (locked door, door blocked by furniture or staff, childproofing, etc.)	State Bans all No-Exit Rooms	Seclusion Means Locked Room Only	State Bans Only Locked Seclusion	State Requires Locks to Automatically Release	No limit on seclusion
AK						X
AL			X	X		
AR				X		
AZ						X
CA			X	X (except certain licensed facilities)		
CO	X					
CT	X					
DE						X
DC	<i>Guidance - Not law - Can Change</i>					
FL			X			
GA	X	Total Ban				
HI						X
IA	X					
ID						X
IL	X					
IN	<i>Voluntary Guidance - Not law - Can Change</i>					
KS	<i>Voluntary Guidance - Not law - Can Change</i>					
KY						X
LA	X					
MA	X (if child lacks staff "access")					
MD	X (if alone)					
ME		Total Ban				
MI	<i>Voluntary Guidance - Not law - Can Change</i>					
MN	X					
MO	<i>Voluntary Guidance - Not law - Can Change</i>					
MS						X

	Seclusion Means Child Is Prevented from Leaving Room/Space (locked door, door blocked by furniture or staff, childproofing, etc.)	State Bans all No-Exit Rooms	Seclusion Means Locked Room Only	State Bans Only Locked Seclusion	State Requires Locks to Automatically Release	No limit on seclusion
MT	X			X (except certain residential facilities)		
NC	X					
ND						X
NE	<i>Voluntary Guidance - Not law - Can Change</i>					
NH	X					
NJ						X
NM	<i>Voluntary Guidance - Not law - Can Change</i>			X		
NV	X	Total Ban				
NY				X		
OH						X
OK						
OR	X					
PA		Total Ban				
RI	X (if child unobserved)					
SC	<i>Voluntary Guidance - Not law - Can Change</i>					
SD						X
TN	X					
TX	X (if alone in room)	Total Ban				
UT	<i>Voluntary Guidance - Not law - Can Change</i>					
VA	<i>Voluntary Guidance - Not law - Can Change</i>					
VT	X					
WA						
WI						
WV	X iif child is unsupervised)					
WY	X (called "isolation" in WY)			X		

Is Seclusion Banned or Limited to Emergencies Involving Immediate Threats to Physical Safety?

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	Bans Seclusion	Emergency Immediate Threat Serious Physical Harm	Emergency Immediate Threat of Physical Harm	Serious Phys. Harm/ Phys. Harm or in IEP	Phys. Harm or Serious DP	Phys Harm, DP, or Educational Disruption	Other, including allowing Seclusion as per IEP or BIP
Total by law	4	3	6	2	1	5	7
AK							
AL							X (bans locked seclusion; no limits on seclusion where exit is blocked)
AR						X (but only severe educ. disrupt.)	
AZ							
CA							X (CA permits use of seclusion in non-emergencies with little limitation due to law's wording)
CO			X				
CT				X			
DE							
DC			<i>Guidance - Not law - Can Change</i>				
FL		implied					
GA	X						
HI							
IA						X	

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	Bans Seclusion	Emergency Immediate Threat Serious Physical Harm	Emergency Immediate Threat of Physical Harm	Serious Phys. Harm/ Phys. Harm or in IEP	Phys. Harm or Serious DP	Phys Harm, DP, or Educational Disruption	Other, including allowing Seclun as per IEP or BIP
ID							
IL						X	
IN			<i>Voluntary Guidance - Not law - Can Change</i>				
KS							<i>Voluntary Guidance - Not law - Can Change. Regards S as legit. behavior modif. technique, and permits if in IEP for any reason.</i>
KY							
LA		X					
MA							X [1]
MD				X			
ME	X [2]						
MI			<i>Voluntary Guidance - Not law - Can Change</i>				
MN					X		
MO							<i>Voluntary Guidance - Not law - Can Change</i>
MS							

	Bans Seclusion	Emergency Immediate Threat Serious Physical Harm	Emergency Immediate Threat of Physical Harm	Serious Phys. Harm/ Phys. Harm or in IEP	Phys. Harm or Serious DP	Phys Harm, DP, or Educational Disruption	Other, including allowing Seclun as per IEP or BIP
MT						X	
NC							X
ND							
NE			<i>Voluntary Guidance - Not law - Can Change</i>				
NH							X [3]
NJ							
NM							<i>Voluntary Guidance - Not law - Can Change. Considers seclusion legit. behavior modif. technique.</i>
NV	X						
NY						X	
OH							
OK		<i>Voluntary Guidance - Not law - Can Change</i>					
OR		X					
PA	X						
RI							X
SC			<i>Voluntary Guidance - Not law - Can Change</i>				
SD							
TN			X				

	Bans Seclusion	Emergency Immediate Threat Serious Physical Harm	Emergency Immediate Threat of Physical Harm	Serious Phys. Harm/ Phys. Harm or in IEP	Phys. Harm or Serious DP	Phys Harm, DP, or Educational Disruption	Other, including allowing Seclusion as per IEP or BIP
TX	X						
UT					<i>Voluntary Guidance - Not law - Can Change</i>		
VA			<i>Voluntary Guidance - Not law - Can Change</i>				
VT			X				
WA							
WI			<i>Voluntary Guidance - Not law - Can Change</i>				
WV							X [5]
WY			X				

Notes: [1] MA forbids locking children in rooms without access to "staff." If staff is accessible (perhaps by call or signal), MA does not regulate the rooms or limit the reasons they can be used.

[2] Maine permits the use of "time out" rooms that students are able to exit for purposes of time-out, when there is an emergency threat to physical safety or of property destruction, or as otherwise stated in the IEP. The doors are not locked, blocked, or secured in any way. The child is alone, and observed through a window. They are not "seclusion" under either Congressional bill or as defined in this report.

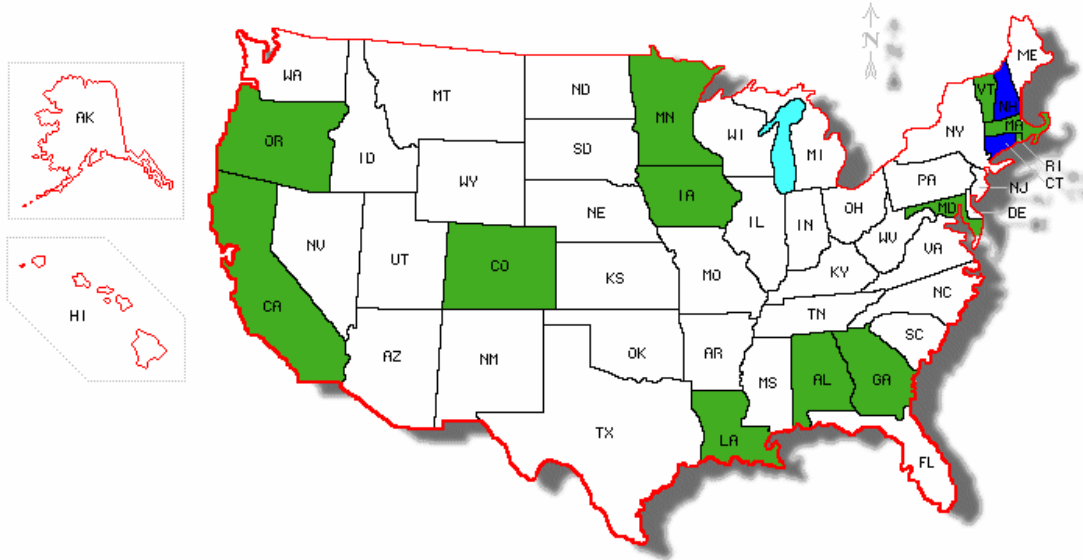
[3] NH effectively permits unobserved seclusion for any reason if permitted by the IEP (after certain conditions are met). It also allows seclusion for any reason as long as the child is observed (e.g. by video camera or window).

[4] RI bans unobserved seclusion. But if the child is being observed, Rhode Island does not regulate the rooms or restrict the reasons for secluding the child.

[5] WV bans unsupervised seclusion, without defining the term (can include occasionally checking a locked room). WV does not regulate seclusion as long as the child is supervised in some manner.

S/R Cannot Be Used Unless Less Intrusive Interventions Have Failed/Been Ineffective

- - Must Fail/Ineffective
- - Restraint only

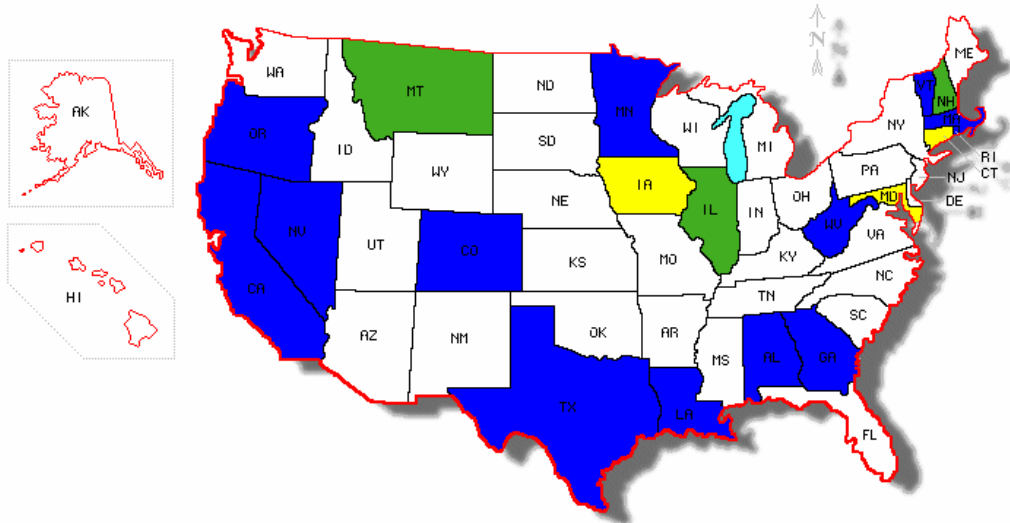


Green (medium): Must Fail/Be Ineffective
Blue (dark): Rule applicable only before restraint is used

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S/R Must End When the Emergency Ends

- - End Emerg Ends.
- - R&S Differ
- - Explicitly longer



Blue (dark): S/R must end when the emergency ends
Green (medium): different rules applied for when seclusion and restraint must end
Yellow (light): S/R are permitted by law to continue after the emergency ends

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**By Law, Does State Permit Seclusion/Restraint Only As a Last Resort
(i.e., after less-intensive interventions have failed or been deemed ineffective?)**

Does State Permit S/R Only as a Last Resort?	Number States	State Names
Less-Intensive Measures Must Fail/ Be Ineffective, by Law	13	AL, CA, CO, GA, IA, LA, MA, MD, MN, NY, OR, RI, and VT.
Try Less-Intensive Measures First; Need Not Fail	2	ME, MT
No Laws Requiring that Less Intensive Interventions Fail. Likely Results in Quicker Escalation to S/R.	34	AK, AR, AZ, DC, DE, FL, HI, ID, IL, IN, KS, KY, MI, MO, MS, NC, ND, NE, NJ, NM, NV, OH, OK, PA, SC, SD, TN, TX, UT, VA, WA, WI, WV, WY.
Must Fail for Restraint; Need Not Fail to use seclusion.	2	CT (Less-restrictive measures must fail for restraint or if seclusion not IEP. Less-restrictive measures need not fail if seclusion in IEP; permits seclusion in IEP for any reason). NH (less-restrictive measures must fail for restraint, no limit for seclusion).

By Law, Does State Require Seclusion/Restraint to Stop When The Emergency Ends?

Does State Permit S/R Only as a Last Resort?	Number States	State Names
By Law, S/R Must End When the Emergency Ends	13	AL, CA, CO, GA, LA, MA, MN, NV, OR, RI, TX, VT, WV.
Other Provision for When S/R Should End.	3	CT (Seclusion must end when child is "compose[d]" or 1 hour). IA (After "reasonable" period). MD (Seclusion must end within 30 minutes; restraint must end within 30 minutes or earlier if child is calm).
No Laws Requiring S/R to Stop When the Emergency Ends.	32	AK, AR, AZ, DC, DE, FL, HI, ID, IN, KS, KY, ME, MI, MO, MS, NC, ND, NE, NJ, NM, NY, OH, OK, PA, SC, SD, TN, UT, VA, WA, WI, WY.
Must Stop When Emergency Ends for Restraint; Need Not Stop for Seclusion.	3	NH (IEP team decides when seclusion ends). MT (IEP decides). IL (seclusion ends 30 minutes after behavior resulting in seclusion has ended).

III. OTHER LIMITS ON RESTRAINT AND SECLUSION

This section analyzes other limits on restraint and seclusion. It includes bans on certain restraints (restraints impeding breathing, mechanical restraints, and chemical restraints); monitoring children in seclusion rooms (when seclusion is permitted); minimum room condition requirements; and the like.

A. BANNING CERTAIN RESTRAINTS

States increasingly prohibit three types of restraint due to their severe risks: restraint that restricts breathing, mechanical restraint, and chemical restraint.

Restraints that Restrict Breathing

Restraints that impede breathing are extraordinarily dangerous without further question. According to the GAO, when a small 14 year old boy would not stay in his seat, a 230 pound teacher put him into prone restraint and lay on top of him, killing him. Jonathan Carey was killed by suffocation after a school aide sat on top of him for being disruptive. The aide and driver of the van stopped at a game store and one of the employee's houses while he lay unconscious in the backseat.⁴⁴

Only 15 states ban all restraints that restrict breathing.

Nonetheless, only 20 states have laws specifically restricting restraints that impede breathing and/or prone restraint. There are 15 states that ban all restraints that impair breathing: Alabama, Colorado, Connecticut, Florida, Iowa, Louisiana, Massachusetts, Maryland, Minnesota, New Hampshire, Rhode Island, Tennessee, Vermont, Washington, and West Virginia. These laws protect children from any restraint that impairs breathing.

A child in prone restraint is pinned in a prone, face-down position. Prone restraint causes suffocation, by compressing the child's ribs so the chest cavity cannot expand and pushing the abdominal organs up so they restrict the diaphragm and limit the space for the lungs to expand.⁴⁵ There are 10 states that ban prone restraint, either by name or by describing the components of the restraint: Georgia, Iowa, Maryland, Minnesota (prone banned effective Aug. 2012), New Hampshire, Ohio, Oregon, Pennsylvania, Wyoming, and West Virginia. Prone restraint is regulated in Massachusetts (limiting prone restraint to staff trained in the technique), and Vermont (allowing prone restraint under certain circumstances if less restrictive restraints would not be effective). Such regulations likely undercut prohibitions on restraints the impede

⁴⁴ GAO REPORT at 10-11.

⁴⁵ DISABILITY RIGHTS CALIFORNIA, THE LETHAL HAZARD OF PRONE RESTRAINT: POSITIONAL ASPHYXIATION (2002); *see also* NDRN, SCHOOL IS NOT SUPPOSED TO HURT at 13 (“Studies and organizations, including the Joint Commission on Accreditation of Healthcare Organizations, have concluded that prone restraint may predispose a patient to suffocation.”)

breathing by exempting prone restraint from the prohibition. They are better than the states that have no protections, but they raise significant issues.

Six states with nonbinding guidance suggest forbidding these techniques: Missouri, Nebraska, New Mexico, Oklahoma, South Carolina, and Washington, D.C. (prone and supine; not mentioning other restraints that impede breathing). These guidelines are not equivalent to statute or regulation, but they do reflect the state's views of the issue.

For comparison, both Congressional bills would ban restraints that restrict breathing; Senator Harkin's bill is somewhat broader, prohibiting all life-threatening restraints.

Mechanical & Chemical Restraint

Mechanical restraints include straightjackets, chairs and furniture that children are locked into, devices that restrain arms, legs, torsos and other body parts, bungee cords and other straps and ties, and duct tape tying children to furniture, among other things. They are dangerous, as the GAO and numerous organizations have found. Children have been left in them for long periods of time, exacerbating the harm.

**15 states ban
mechanical restraints;
10, chemical ones.**

Only 15 states ban mechanical restraints by law: Alabama, Colorado (except armed security officers), Georgia, Iowa, Illinois, Louisiana, Maine, Montana,

New Hampshire, Oregon, Pennsylvania, Tennessee, Vermont, Wyoming, and West Virginia, leaving 35 that do not. Another 4 impose limitations: Massachusetts (permitted with parental consent and physician instructions); Maryland (banned except for certain schools with hospital accreditation); Nevada (permitted with a physician's order, but requires loosening every 15 minutes); and Washington (limited to binding limbs to object, unless included in IEP with parental consent). Thus, 31 states have no limits in law at all.

Chemical restraints can kill and injure. Only 10 states ban them by law in school: Alabama, Colorado, Georgia, Iowa, Illinois, Maine, New Hampshire, Oregon, Rhode Island, and Vermont. Another 3 restrict them: Connecticut (bans chemical restraints unless otherwise stated in IEP), Massachusetts (permitted with parental consent and physician instructions), and Tennessee (permitted with parental consent and physician instructions). Other states are silent in their laws.

There are 6 states that have nonbinding guidelines urging that mechanical restraints not be used: Nebraska, New Mexico, Oklahoma, South Carolina, Washington, D.C., and Wisconsin (but allowed with medical oversight). The remaining 26 states are completely silent. Four states have guidance urging that chemical restraints not be used: Missouri, Nebraska, Washington, D.C., and Wisconsin (but allowed with medical oversight).

For comparison, both Congressional bills ban mechanical and chemical restraints.

Mechanical Restraints Magnify Seclusion Harm

The risks from seclusion are magnified if the state permits mechanical restraint, as children may be locked or strapped into therapy chairs or other devices, and left for hours in rooms and closets in which they may remain hidden from view and knowledge. A nonverbal Alabama second grader with autism was restrained in a chair alone in a bathroom because she was screaming. She had flipped the chair over on herself and was hanging by the restraints. She also had urinated on herself.⁴⁶ In Massachusetts a preschooler was allegedly strapped into a chair for being rambunctious, and placed in a closed closet as he cried.⁴⁷

B. OTHER SECLUSION REQUIREMENTS

Monitoring and Other Conditions of Seclusion.

A number of states with laws restricting seclusion require that children be monitored. Monitoring can range from continuous visual monitoring to simply being capable of seeing inside the room or checking the room occasionally. In 2004, 13 year old Jonathan King killed himself in a seclusion room, while the teacher sat outside, lifting the paper on the window to check the room occasionally.⁴⁸ Other children locked in closets, bathrooms, and other rooms and spaces unobserved have been killed, injured, and traumatized.

13 year old Jonathan King killed himself in a seclusion room as the teacher sat outside, occasionally looking in to monitor him.

Five states appear to ban all forms of seclusion, regardless of whether the door is locked or blocked (Georgia, Maine, Nevada, Pennsylvania, Texas). Of those permitting seclusion, only 16 by law require continuous, direct visual monitoring of children in seclusion rooms: Alabama, Arkansas, Iowa, Illinois, Louisiana, Maryland, Maine, Minnesota, Montana, New York, Oregon, Rhode Island, Tennessee, Vermont, Washington, and Wyoming (for “isolation” rooms).

The other 30 states permit seclusion and do not have laws requiring continuous and direct visual monitoring.

There are 5 states that by law permit staff to monitor the room occasionally, but do not require continuous visual contact:

30 states lack laws requiring staff to continuously watch students in seclusion rooms.

⁴⁶ ALABAMA DISABILITIES ADVOCACY PROGRAM, SECLUSION AND RESTRAINT IN ALABAMA SCHOOLS (June 2009).

⁴⁷ James Vaznis, *Restraining Of Students Questioned, Some Wonder Whether Schools Cross The Line*, BOSTON GLOBE, May 4, 2009.

⁴⁸ Alan Judd, *Death Highlights Lack of Regulation at Psycho-educational Schools*, ATLANTA J. CONSTITUTION, July 27, 2009.

California (requires “adequate” supervision for unlocked seclusion); Colorado (“reasonably monitored”), Connecticut (IEP team determines frequency of monitoring), Massachusetts (“access” to staff required), North Carolina (require staff to be “able to see and hear the student at all times”). An observation window will satisfy a requirement to be able to see the child at all times; but this is not the same as requiring that staff actually watch the student through the window continuously, as opposed to leaving the child alone for stretches of time.

Other states lack laws that require monitoring. Six states seek continuous visual monitoring in their nonbinding state guidelines: Kansas, Michigan, Oklahoma, South Carolina, Washington, D.C., Wisconsin, and three advocate for the *ability* to see the student at all times: Indiana, Missouri, and Nebraska. These guidelines do not have the force of law and are subject to change. In addition, 16 states say nothing at all about monitoring: Alaska, Arizona, Delaware, Florida, Hawaii, Idaho, Kentucky, Mississippi, North Dakota, New Hampshire, New Jersey, New Mexico, Ohio, Utah, Virginia, and West Virginia.

For comparison, Senator Harkin’s bill would ban all seclusion. Congressman Miller’s bill would require a staff member to be physically present in the seclusion room with the student. If this was too dangerous, in which case continuous visual monitoring through an observation window would be permitted.

Minimum Room Condition Requirements.

There have been complaints that students have been secluded in small, darkened closets or injured in rooms with furniture or other items. There have also been reports that they have been routinely denied access to the bathroom, food, and water. In some cases, children have removed their clothing to be able to urinate in the room.⁴⁹

Some states regulate seclusion room conditions through statutes and regulations. States are more likely to impose lighting (14 states) and ventilation (12 states) requirements than access to essential bathroom facilities (6 states).

Some room requirements in state statutes and regulations are as follows:

Room must be lit (14 states by law): Arkansas, Colorado, Iowa, Illinois, Louisiana, Maryland, Minnesota, New York, North Carolina, Tennessee, Vermont, Washington, West Virginia, and Wyoming.

Heating/cooling/ adequate ventilation (12 states by law): Arkansas, Colorado, Iowa, Louisiana, Maryland, Minnesota, New York, North Carolina, Tennessee, Vermont, Washington, and

Only 6 states require bathroom access for children in seclusion rooms.

⁴⁹ See generally NDRN, SCHOOL IS NOT SUPPOSED TO HURT; J. BUTLER, UNSAFE IN THE SCHOOLHOUSE; OUT OF THE DARKNESS... INTO THE LIGHT (WISCONSIN).

Wyoming.

Free of dangerous furniture, objects, and conditions (12 states by law): Arkansas, Colorado, Iowa, Illinois, Louisiana, Maryland, Minnesota, New York, North Carolina, Tennessee, Vermont, and Wyoming.

Room size requirement (10 states by law): Arkansas, Colorado, Iowa, Louisiana, Maryland, Minnesota, New York, Tennessee, and Wyoming.

Bathroom access (6 states by law): Iowa, Maryland (hard 30 minute limit on seclusion), MN, New York (denial is forbidden aversive), North Carolina (same).

Access to water and food when normally served (1 state by law): Minnesota.

Such requirements are not necessary in the states that ban all seclusion.

Arkansas, Minnesota, New York, Tennessee, and Vermont are also among the states requiring compliance with fire, safety, and building codes. Minnesota requires obtaining a written statement that the room is in compliance from local authorities.

Nonbinding guidelines in five states also suggest room condition requirements: Indiana, Kansas, Michigan, South Carolina, and Wisconsin. (Fire, building, and safety code requirements are always mandatory.)

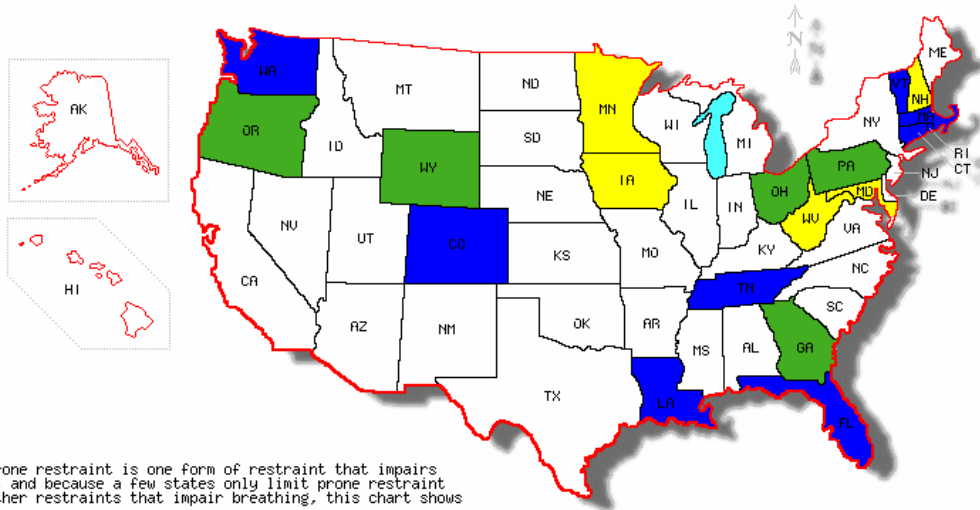
In the United States Congress, the Senate bill bans seclusion in non-exit rooms, rendering such requirements unnecessary. The House bill permits locked seclusion rooms and requires the Secretary of Education to regulate them, with the understanding that those regulations will include requirements regarding room safety and conditions.⁵⁰ The requirement that seclusion be limited to immediate threats of physical injury and end when the emergency ends also limits the duration in the rooms.

It is important to note that room condition requirements do not make seclusion rooms safe. The most well-lit and heated/ventilated room is still a room in which children can break a finger, sprain an ankle, become repeatedly bruised, and suffer severe trauma. The room requirements, however, ensure that seclusion rooms meet some very basic thresholds and children are not in icy rooms, boxes, unlit closets, etc.

⁵⁰ See H.R. REP. NO. 111-417 at 17-18. The House bill also requires staff to be physically present in the rooms unless it is dangerous, which likely would ensure that rooms are of proper temperature, lit, etc.

States that Ban Restraint that Impairs Breathing or Prone Restraint

- - Ban Impair Breathing
- - Ban Prone
- - Ban Both



NOTES:

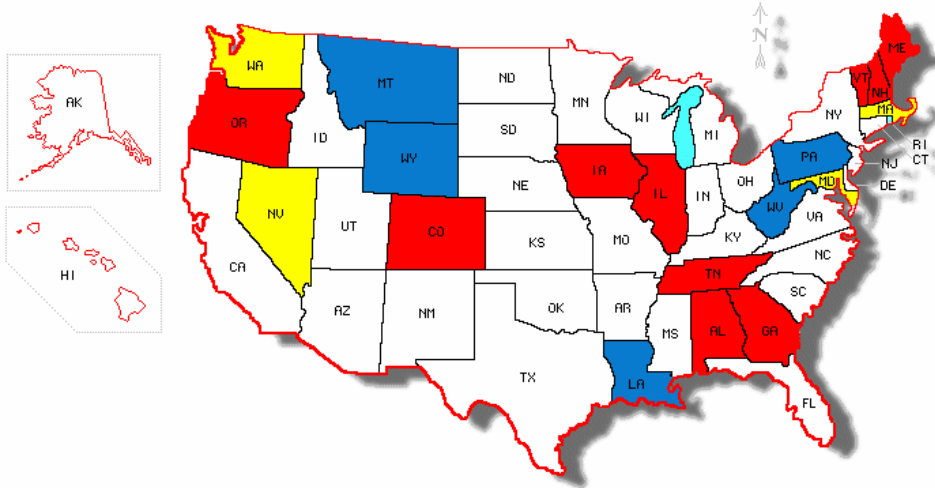
Because prone restraint is one form of restraint that impairs breathing, and because a few states only limit prone restraint but not other restraints that impair breathing, this chart shows both.

- Blue (dark): Bans restraint that limits breathing
- Green (medium): Bans prone restraint
- Yellow (light): Bans both either explicitly or by describing component parts

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States that Ban Mechanical and Chemical Restraints

- - Ban Mechanical
- - Ban Chemical
- - Ban Both
- - Some limits mech



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A Summary of State Monitoring Requirements for Children in Seclusion Rooms

Number of States	Monitoring Requirements.
21	Either ban seclusion or require continuous, direct visual monitoring.
5	All seclusion banned by law
16	Require staff to continuously and directly visually monitor (i.e. watch) child in seclusion room
30	Permit seclusion and do not have laws requiring continuous and direct visual monitoring. Laws may have loopholes or be non-existent.
5	Monitoring laws have loopholes, e.g. requiring only “reasonable” monitoring, allowing IEP team to determine how child will be monitored; or requiring that staff be able to see/hear a child at all times (but not that staff actually do so; this permits intermittent or occasional checking on the child).
6	Nonbinding guidelines, that lack force of law and can be changed at any time, urge continuous, direct visual monitoring. No mandatory statutes or regulations.
3	Nonbinding guidelines, that lack force of law and can be changed at any time, urge ability to see/hear child at all times (but not that staff actually do so). No mandatory statutes or regulations.
16	No monitoring requirements in law or even recommendations in nonbinding guidance.

State Laws on Restraints that Impair Breathing, Prone Restraint, Mechanical Restraint, & Chemical Restraint.

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	Restraint that Impairs Breathing	Prone Restraint Specifically	Mechanical Restraint	Chemical Restraint
total by law	14	10	15	10
AK				
AL	ban		ban	ban
AR				
AZ				
CA				
CO	ban		ban	ban
CT	ban			unless otherwise in IEP
DE				
DC		<i>Suggests ban in guidance- not law - can change</i>	<i>Suggests ban in guidance- not law - can change</i>	<i>Suggests ban in guidance- not law - can change</i>
FL	ban			
GA		ban	ban	ban
HI				
IA	ban	ban	ban	ban
ID				
IL			ban	ban
IN				
KS				
KY				
LA	ban		ban	
MA	ban	permits prone restraint if staff is trained in the technique	permitted w/parent consent & physician instruct.	permitted w/parent consent & physician instruct.
MD	ban	ban	ban except certain schools w/hospital accreditation.	
ME			ban	ban
MI				
MN	ban	ban		
MO	<i>Suggests ban in guidance- not law - can change</i>			
MS				
MT			ban (except in certain residential facilities)	
NC				
ND				

	Restraint that Impairs Breathing	Prone Restraint Specifically	Mechanical Restraint	Chemical Restraint
NE	<i>Suggests ban in guidance- not law - can change</i>		<i>Suggests ban in guidance- not law - can change</i>	
NH	ban	ban	ban	ban
NJ				
NM	<i>Suggests ban in guidance- not law - can change</i>		<i>Suggests ban in guidance- not law - can change</i>	
NV			permitted w/doctor order, but must loosen every 15 min	
NY				
OH		ban		
OK	<i>Suggests ban in guidance- not law - can change</i>		<i>Suggests ban in guidance- not law - can change</i>	
OR		ban	ban	ban
PA		ban	ban	
RI	ban			ban
SC	<i>Suggests ban in guidance- not law - can change</i>		<i>Suggests ban in guidance- not law - can change</i>	
SD				
TN	ban		ban	permitted w/parent consent & physician instruct.
TX				
UT				
VA				
VT	ban	allowed in certain circumstances if less restrictive restraints would not be effective	ban	ban
WA	ban		can't bind limbs to object or each other, unless in IEP	
WI			<i>Suggests ban in guidance- not law - can change</i>	
WV	ban	ban	ban	
WY		ban	ban	

IV. AWARENESS OF SECLUSION/RESTRAINT

A number of states have requirements related to disclosure and discussion of seclusion/restraint. These include the school's obligation to notify parents that a child was restrained/secluded; collection of data and making it available to the public; and debriefing and discussions that seek to reduce restraint/seclusion use and ensure that positive interventions and conflict resolution are used; and training requirements.

A. NOTICE TO PARENTS

Because of the dangers posed by seclusion/restraint, it is important that school staff notify parents promptly. But far too often, parents are unaware of what has happened to their child. Jonathan Carey was secluded in his room for extended periods of time at a private New York school, while employees repeatedly held the door, causing him to miss eight full days of school over a two week period. He was also repeatedly restrained and subjected to aversive interventions, including denial of 40 percent of his meals. His parents did not know about any of this, until his father arrived at the school to find Jonathan in his own urine, badly bruised and disoriented.⁵¹ Phyllis Musumeci's son, Christian, was restrained at least 89 times over 14 months, causing devastating psychological consequences and resulting in his parents removing him from school. His parents only found out a year later, when they requested school logs. One year of logs were missing.⁵² Numerous reports also detail the failure to give notice.

This section examines parental notification requirements in the states. Some states appear twice, and are designated with a dagger(†). They mandate both a quick same day/next day notification and a fuller written report later to parents. Numbers may add up to 52 "states." The analysis includes the District of Columbia and New Hampshire appears twice, as its restraint and seclusion requirements differ.

First Notice on the Same Day or Within 24 Hours

Providing some sort of first notification to parents within 24 hours is important. Indeed, concussions, internal bleeding, and other hidden internal injuries need to be identified immediately because of the consequences. Using a "business day" or "school day" standard can delay notification over weekends and school holidays.

Parental notification is required by law in 25 states. Only 18 by law require that the school take steps to notify parents on either the same day or within 24 hours.

Of these, 12 have laws requiring schools to take steps to notify the parent on the same day the event occurs:

18 states have same day/24 hour parental notification requirements.

⁵¹ *Examining the Abusive and Deadly Use of Seclusion and Restraint in Schools, Hearing Before the House Comm. on Education and Labor*, 111th Congress, 60-61 (2009).

⁵² *Gradebook: A Weekend Interview with Phyllis Musumeci*, TAMPA BAY TIMES, Jan. 24, 2009.

Colorado[†], Connecticut[†] (attempted, for restraint and seclusion (if seclusion is not in the IEP)), Florida[†], Iowa[†] (attempted), Massachusetts[†] (unless parents waive or restraint lasts less than 5 minutes), Minnesota[†], Oregon[†], Rhode Island[†], Tennessee (“reasonable efforts”), Texas[†] (“good faith effort”), Vermont[†] (documented attempt), West Virginia[†] (“good faith”). Six require actual notice and six require that schools make reasonable attempts and good faith efforts to notify parents.

Another six states by law require schools to take steps to notify the parent within one calendar day or 24 hours: Illinois, Louisiana[†], Maryland (unless otherwise stated in IEP/BIP), New Hampshire[†] (attempt, restraint only), Utah, and Wyoming (written notice required unless parent agrees otherwise).

Twelve of these states require a fuller written report afterwards: Colorado, Connecticut, Florida, Iowa, Louisiana, Massachusetts, Minnesota, New Hampshire (restraint only), Oregon, Rhode Island, Texas, Vermont, and West Virginia. Of the 7 states requiring an attempt or good faith effort on the same day of the event or within 24 hours, 6 require fuller written notice later: Connecticut (written report within 2 school/business days), Iowa (written report mailed within 3 days); New Hampshire (allowing several days for written notice); Texas (written within 1 school day); Vermont (written within 24 hours); West Virginia (written within 1 school day).

Permitting Longer Notification Period

Three states require notification within one school or business day: Alabama, California, Georgia. Four states by law set a longer deadline for first notice: Maine (2 days), New York (required, but no deadline), Pennsylvania (setting no deadline, but requiring an IEP meeting within 10 days which effectively is the outer deadline); North Carolina (notify parents “promptly” with written follow up within 30 days if child was injured or seclusion lasts longer than 10 minutes; requires notification if the school violated the prohibitions in the statute).

27 states have no legal requirement to tell parents a child was restrained/secluded.

The remaining 27 states do not set deadlines by law. Without laws, it may be difficult to enforce the right to notice. In those states without statutes or regulations, eleven have guidelines. Six seek same-day first notice in the guidance: Michigan, Missouri[†], Nebraska[†], Oklahoma, South Carolina[†], and Washington, D.C.[†] (The states with the daggers also suggest a fuller written notice afterwards.) In addition, Nevada has guidance urging notification within one calendar day, and Kansas, within one school day. Indiana’s guidelines leave it up to the IEP team, and Virginia and Wisconsin leave the deadline up to the school or school district. There are 17 states that do not even have suggestions: Alaska, Arkansas, Arizona, Delaware, Hawaii, Idaho, Kentucky, Mississippi, Montana, North Dakota, New Hampshire (seclusion only), New Jersey, New Mexico, Ohio, South Dakota, Washington, West Virginia.

Loopholes

Of this group of states that ostensibly require notice in 24 hours or less, 4 have sizeable loopholes. They allow the IEP team to set another deadline (Maryland); leave the decision entirely to the IEP team Connecticut (when seclusion is included in the IEP); allow parents to agree to a different deadline (Wyoming); or allow schools to request that parents waive the right to notice (Massachusetts). Massachusetts forbids waiving the right to notice if the restraint lasts longer than 20 minutes or if it restraint results in “serious injury,” but this term is not defined, giving schools broad discretion. California requires notice within 1 school day when an emergency intervention has been used. Yet, because the law does not apply if restraint or seclusion is used for non-emergencies, there is no required notification in that situation.

These loopholes are dangerous. For example, Connecticut requires that schools take steps to notify parents on the same day if the child is restrained or placed in seclusion. A detailed written notification must be sent within 2 days. But if the child has seclusion in his/her IEP, the IEP team determines the time and manner of notification. The detailed written notification is also not required. Hence, if the IEP team agrees that the parent will not receive notice, the parent is left in the dark.

B. DEBRIEFING

A debriefing is a meeting that occurs after an incident of restraint or seclusion. Staff members, the parents, and the student may attend. Debriefings help reduce and eliminate restraint and seclusion, by determining what caused the event, how it could be avoided, and by planning for positive interventions.⁵³ It is one of the six core strategies identified for decreasing the use of seclusion and restraint by the National Association of State Mental Health Program Directors (NASMHPD).⁵⁴

There are 13 states that by law require some type of debriefing after restraint or seclusion: They include Alabama, California, Colorado, Connecticut, Louisiana, Massachusetts, Maryland, Minnesota, Nevada, Oregon, Pennsylvania, Rhode Island, Vermont, and Wyoming. No other states require a debriefing by law. Seven states also suggest a debriefing in their nonbinding guidelines: Indiana, Michigan, Missouri, Nebraska, Oklahoma, South Carolina (seclusion only), and Washington, D.C.

For comparison, Senator Harkin’s bill would require a debriefing after each incident, where

⁵³ *Medicaid Program; Use of Restraint and Seclusion in Psychiatric Residential Treatment Facilities Providing Psychiatric Services to Individuals Under Age 21; Interim Final Rule*, 66 FED. REG. 7148, 7152 (Jan. 22, 2001). A systematic debriefing process also counters implementation drift—the tendency to go back to prior patterns of routinely using seclusion/restraint as a response. BethAnn Glew, *Reducing The Use Of Seclusion And Restraint In Segregated Special Education School Settings Through Implementation Of The Collaborative Problem Solving Model* (2012) (unpublished dissertation, Duquesne University).

⁵⁴ Kevin Ann Huckshorn, *SIX CORE STRATEGIES TO REDUCE THE USE OF SECLUSION AND RESTRAINT AS A PLANNING TOOL* (The National Association of State Mental Health Program Directors 2005).

school, parent, and student analyze the antecedents to the event, plan for positive behavioral interventions to prevent further use of restraint, and plan for a functional behavioral analysis.

C. DATA

Data Reporting to the SEA.

In its 2009 report, the GAO found that there was no single entity that collected information on the use of seclusion/restraint or the extent of their alleged abuse. The GAO wrote about six states that collected data: California, Connecticut, Kansas, Pennsylvania, Texas, and Rhode Island.⁵⁵ The few states that collected data reported tens of thousands of restraint and seclusion each year, with 33,000 instances alone in Texas and California in 2007-08. Indeed, the GAO previously reported that seclusion/restraint data is likely to be understated due to the absence of consistent reporting requirements.⁵⁶

33,000 students were restrained/secluded in TX and CA in 2007-08. But only 13 states collect minimal data on the use of restraint/seclusion each year.

Today, by law, 13 SEAs collect data at least annually and a 14th collects it when the State monitors the LEA. SEAs required to collect data annually by statute or regulation include Alabama, California (but only for emergency interventions, not those used in non-emergencies), Connecticut (data made available for review prior to relicensure), Florida (monthly and annually), Louisiana, North Carolina, New Hampshire (restraint only), Nevada, Oregon, Rhode Island, Tennessee, Texas, Wyoming, with 7 states adopting this requirement in the wake of the Miller bill which created a data requirement. Pennsylvania requires that the data be made available to the SEA when it monitors an LEA. Nevada further requires a report when the rights of a child are violated by restraint or seclusion.

Massachusetts has very limited data collection. Data is reported to the SEA only if the restraint exceeds 20 minutes or someone is seriously injured (undefined) during the restraint. Since many restraints last less than 20 minutes, these will go entirely unreported.

Kansas and Michigan recommend data collection in nonbinding guidance. Kansas is known to collect the data; Michigan's status is unclear. In any event, the requirement is subject to change. For example, in 2003, Vermont began collecting seclusion/restraint data as a result of task force recommendations. But with no mandatory requirements, Vermont ceased doing so a few years ago.

Even the mandatory state data requirements are not as robust as the data requirements in either

⁵⁵ GAO REPORT at 5, 7. This was not intended to be a full list.

⁵⁶ H.R. REP. NO. 111-417 at 13.

Congressman Miller's or Senator Harkin's bills. The two bills contain data requirements designed to break information down by subgroup (disability, race, etc.) and also to report information for each LEA. This data collection will better inform decision-making, and create sunshine on practices long hidden from public view. Still the state data collections signal that a significant number of states seem to favor reporting.

Data Reporting to the School or LEA.

Some states have lower-level data collection requirements. These indicate that data could readily be collected at the state level. By law, data is reported to the LEA or school board in eight states: Alabama, Florida, North Carolina, Nevada, Oregon, Tennessee, Vermont (certain circumstances). Other states keep data at the school-wide level, including Arkansas (seclusion only), California, Colorado, Connecticut, Florida, Iowa, Massachusetts (if the restraint lasts for more than 5 minutes or there is an injury, unless the parent waives the requirement), Nevada, Rhode Island, and Tennessee. In addition, the following 21 states by law require that an incident report be completed after each use of restraint and placed in the child's file: California, Colorado, Connecticut, Florida, Georgia, Iowa, Illinois, Louisiana, Massachusetts (if the incident lasted more than 5 minutes or led to an injury), Maryland, Maine, Minnesota, North Carolina (if the incident lasted longer than 10 minutes, involved prohibited activity, or resulted in an injury), New Hampshire, Nevada, New York, Rhode Island, Texas, Vermont, Washington, and Wyoming.

A few states have nonbinding suggested guidelines which seek data. Nebraska, South Carolina, and Wisconsin suggest data be reported to the LEA or school board. Eight states in their nonbinding guidance also recommend that incident reports be placed in the child's file: Kansas, Michigan, Nebraska, Oklahoma, South Carolina, Virginia, Washington, D.C., and Wisconsin.

The fact that states complete these kinds of reports tends to indicate that they could readily provide information through a computerized system to the state.

D. TRAINING AND OTHER MATTERS

A number of the deaths and injuries in the GAO report involved poorly trained or untrained staff.⁵⁷ Disability Rights California has also documented several incidents in which children were wrongfully restrained and secluded by untrained staff, including an untrained aide who dragged a six-year old dragged down the hall by his wrists.⁵⁸

There are 21 states with seclusion/restraint laws that require some kind of staff training. Training requirements vary widely. Therefore, this report does not attempt to catalogue all of them, but only to highlight some of the more significant elements. It is possible that some training provisions are included in other state laws and regulations, such as training related to

⁵⁷ H.R. REP. NO. 111-417 at 18.

⁵⁸ CALIFORNIA PROTECTION & ADVOCACY, INC., RESTRAINT & SECLUSION IN CALIFORNIA SCHOOLS: A FAILING GRADE (June 2007).

positive behavioral supports.

For comparison, the House and Senate bills require training in evidence-based techniques “shown to be effective” in preventing the use of restraint (and seclusion in the House bill) and in keeping personnel and students safe in imposing restraint. They also require training in positive behavioral interventions, behavioral antecedents, functional behavioral assessments, de-escalation, and training in first aid and cardiopulmonary resuscitation. They require training in State seclusion/restraint policies and procedures, and certification in the skills. No state laws contain all of these requirements, and most contain far fewer. Only Oregon and Wyoming refer to evidence-based techniques, and only for certain requirements.

In the paragraphs below, some state training programs are designated “(restraint only);” these states ban seclusion, and require training only in restraint.

By law, 18 states require training in conflict de-escalation and prevention of seclusion/restraint: Alabama, Colorado, Connecticut, Georgia, Illinois, Massachusetts, Maryland, Maine (restraint only), Minnesota, North Carolina, Nevada, Oregon, Rhode Island, Tennessee, Texas, Vermont, Wyoming and West Virginia. The 13 states which include training in positive behavioral supports within their seclusion/restraint laws are Alabama, California, Georgia, Iowa, Minnesota, Montana (requiring person trained in positive interventions on IEP team), North Carolina, Nevada, Pennsylvania, Rhode Island, Tennessee, Vermont, and Wyoming.

There are 18 states that require training in safe and appropriate use of seclusion/restraint in their laws: Alabama (restraint only), Colorado, Connecticut, Georgia (restraint only), Iowa, Illinois, Massachusetts, Maine (restraint only) Maryland, Minnesota, North Carolina, New York, Oregon, Rhode Island, Tennessee, Texas, Vermont, and West Virginia. Another 7 states have laws explicitly requiring training related to first aid, identifying medical distress, cardiopulmonary resuscitation or similar issues: Connecticut, Illinois, Massachusetts, Maryland, Minnesota, Rhode Island (for staff trained in-depth), and Vermont. This issue may be addressed in some states implicitly through training in “safe use” of the techniques. Nevertheless, when procedures as dangerous as restraint and seclusion are, basic medical and health training should be explicitly required. There are 9 states that by law require training in the dangers of seclusion/restraint: Colorado, Connecticut, Iowa, Illinois, Massachusetts, Maryland, Minnesota, Rhode Island, and Vermont.

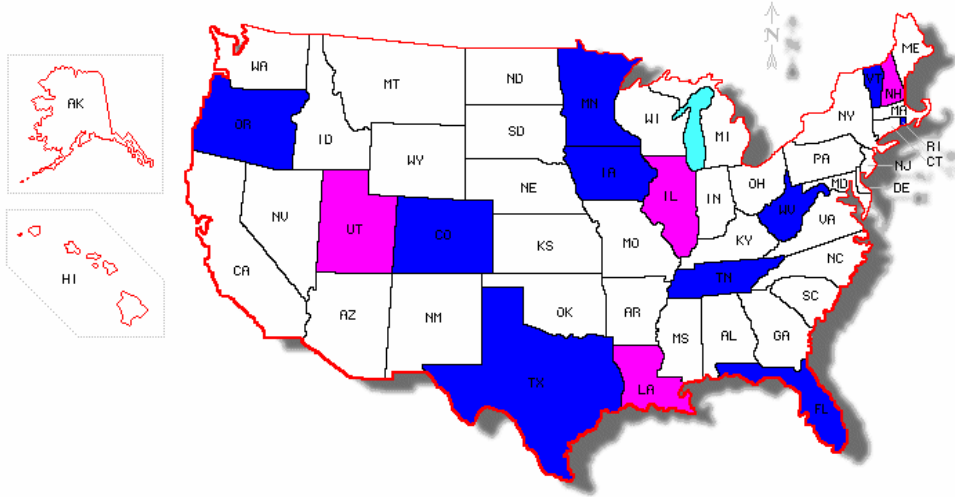
Surprisingly, very few states require training in state, LEA, and school policies and procedures regarding seclusion/restraint: Iowa (school only), Massachusetts (school only), Maryland, New York, Rhode Island (school only), Tennessee (if funding is available for training), and Wyoming (school only). Very few states by law require certification, proof of proficiency, or periodic retraining: Colorado (retrain every two years), Iowa (periodic retraining), Illinois (retrain every 2 years), Maryland (proficiency required for special school-wide resource staff), Rhode Island (special school-wide resources staff), and Wyoming.

Some states without laws have sought to include training requirements within their nonbinding guidance. Such policies, of course are subject to change. These 7 states in their nonbinding

guidance seek training in conflict de-escalation and prevention of seclusion/restraint: Indiana, Missouri, Nebraska, Oklahoma, South Carolina, Virginia, and Wisconsin. There are 9 states with nonbinding guidelines urging training in safe and appropriate use of seclusion/restraint: Indiana, Kansas, Missouri, Nebraska, Oklahoma, South Carolina, Virginia, Washington, D.C., and Wisconsin. Five states have guidelines that suggest training related to first aid, identifying medical distress, cardiopulmonary resuscitation or similar issues: Washington, D.C., Oklahoma, South Carolina, and Virginia. Four states incorporate training in the dangers of seclusion/restraint in their guidance: Indiana, Oklahoma, South Carolina, and Virginia.

States Requiring Parental Notification Same Day or Within 24 Hours

- - Same Day
- - 24 hr/1Calndr Day

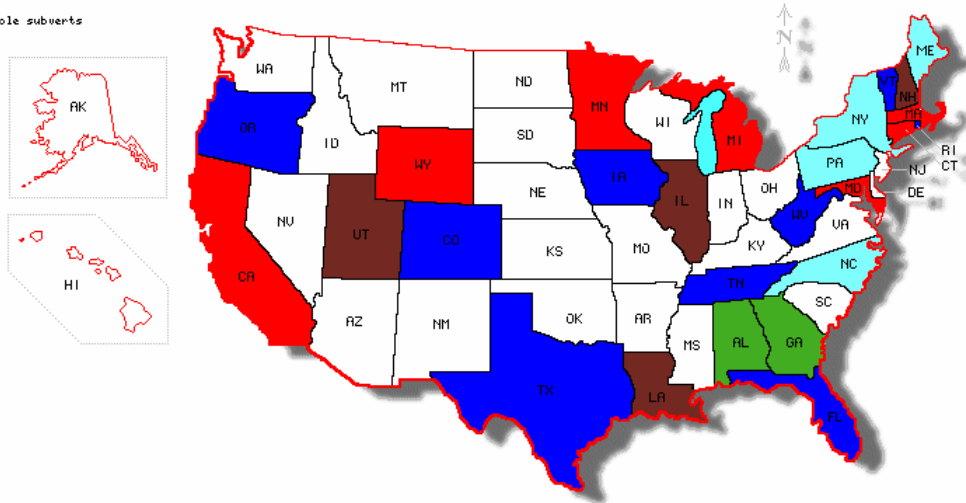


Blue (dark): same day
Pink (medium): within 24 hours or one calendar day

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Spectrum of Parental Notification Options

- - Same Day
- - 24 hr/10a1ndr Day
- - 1 School/Bus Day
- - Longer
- - Loophole subverts

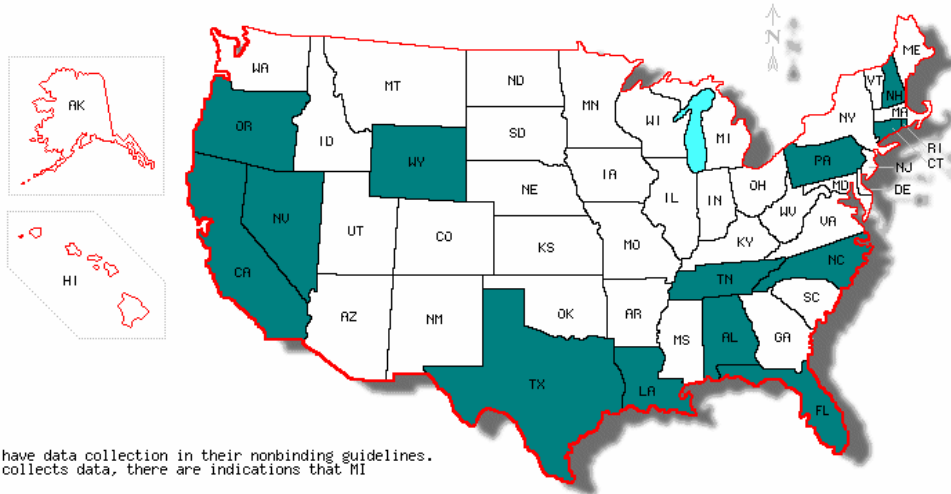


This map will only print properly in color.

“Loophole subverts” means that the state has a loophole in its parent notification law or another weakness that can prevent prompt notice to parents when a child has been restrained or secluded.

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State Requires Some Minimal Collection of Data By Law



The green states by law require at least the collection of the number of incidents of restraint and seclusion.

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Notifying Parent of Restraint/Seclusion Event.

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	Notify Same Day	Notify w/l 1 calendar day or 24 hours	Notify w/l 1 school/ business day	Law sets longer deadline	Fuller written followup required
AK					
AL					
AR					
AZ					
CA					
CO	X				X
CT	attempted (for seclusion if not in IEP and for restraint)			X (if seclusion is in IEP, IEP team sets deadline)	X (for seclusion if not in IEP and for restraint. If seclusion in IEP, not required.)
DE					
DC					
FL	X				X
GA					
HI					
IA	attempted				X
ID					
IL		X			
IN					
KS					
KY					
LA		X			X
MA	X	No notice if parent waives notice (at school request) or lasts for less than 5 mins.			X
MD		X	unless otherwise stated in IEP/BIP.		
ME					
MI					
MN	X				x
MO					

	Notify Same Day	Notify w/ 1 calendar day or 24 hours	Notify w/ 1 school/ business day	Law sets longer deadline	Fuller written followup required
MS					
MT					
NC					
ND					
NE					
NH		attempted (restraint only)			X
NJ					
NM					
NV					
NY					
OH					
OK					
OR	X				
PA					
RI	X				X
SC					
SD					
TN	Required. If reasonable efforts were made, school held harmless.				
TX	good faith efforts				X
UT		X			
VA					
VT	attempted				X
WA					
WI					
WV	"good faith"				X
WY		X	unless parent agrees otherwise.		

V. CHANGES IN RESTRAINT/SECLUSION LAW

A. IMPACT OF FEDERAL BILLS ON STATE ACTION (CONGRESSMAN MILLER; SENATOR HARKIN)

In December 2009, when Congressman George Miller introduced the first national restraint/seclusion bill, 22 states had laws providing meaningful protections from seclusion and/or restraint. Prior to this, the only proposals had been at the state level or by independent academicians and organizations. Occasionally, states would appear to incorporate each other's policies in their own. But the Miller bill appears to have had a substantial impact, causing states to adopt and strengthen restraint/seclusion laws to incorporate several of its features.

Two years later, there are 29 states with meaningful protections in law: Alabama, Arkansas (seclusion only), California, Colorado, Connecticut, Florida, Georgia, Iowa, Illinois, Louisiana, Massachusetts, Maryland, Maine, Minnesota, Montana, North Carolina, New Hampshire, Nevada, New York, Ohio (executive order limiting physical restraint), Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, Washington, West Virginia and Wyoming.⁵⁹

Of these, 7 states adopted their laws after Congressman Miller introduced his bill (Alabama, Florida, Georgia, Louisiana, Vermont, West Virginia, and Wyoming), and 3 substantially strengthened theirs (New Hampshire, Oregon, and Tennessee). All 10 incorporated important features from Congressman Miller's bill, although to varying degrees. In addition, Wisconsin is currently considering a bill, and Maine, a new regulation, that incorporate elements of the bill.

The following analyzes some features of the Miller bill and their adoption into state law. It does not analyze all features. Many of the features discussed below are also components of Senator Harkin's newly introduced bill. But the focus here is what has happened over the last two years since the Miller bill was introduced.

Of the 10 states, 8 incorporate the requirement that physical restraint may not be used unless there is an imminent danger of physical injury, 1 also allowed it for threats of serious property destruction, and 1 is silent. These 8 states are the majority of the 14 states limiting restraint to emergency threats of physical danger. The Miller and Harkin bills differ on their physical danger requirements, but each would impose such a requirement.

⁵⁹ West Virginia's regulation was approved on December 16, 2011, one year and 7 days after Miller introduced his bill, and the same day Senator Harkin introduced his bill.

Of the 10 states that adopted or updated their seclusion laws, 5 limit seclusion to emergencies in which there is an imminent danger to physical safety, and 2 ban all seclusion.⁶⁰ These new states make up 7 of the 11 states that either ban all locked seclusion or limit it to physical safety emergencies. The Miller bill would limit seclusion to immediate threats of physical injury; the Harkin bill would ban it.

Similarly, 6 of the states that took action in the last two years have a clause requiring less restrictive measures to have failed/been ineffective. In addition, 6 explicitly require the intervention to end when the emergency ends. They make up slightly less than half of the 13 states with each provision. These are both features of the Miller and Harkin bills.

Moreover, 9 of the 10 states ban mechanical restraint, 7 ban chemical restraint, and all 10 ban either restraint that restricts breathing or prone restraint. (The Miller and Harkin bills would prohibit restrictions on breathing, which by definition include prone restraint, and mechanical and chemical restraints). Again, these make up nearly half or more of the states that ban each restraint.

Six of the new states mandate that schools to take steps to notify parents on the same day or within 24 hours of when the incident occurred, similar to the Miller and Harkin bills. (Some states require a good faith effort on the same day or within 24 hours, followed by written notification. The Miller and Harkin bills would require mandatory same day notification, followed by written notification within 24 hours).

In addition, the Miller and Harkin bills would require the collection of data. Of the newly-acting states, 7 require some data collection, making up the majority of the 13 states with data rules. Of course, the Miller and Harkin bills would require a fuller data collection to better enable informed decision-making and inform the public of practices long-kept hidden.

Nevertheless, states have not adopted all elements of the Miller bill (and by extension, the Harkin bill). The Miller bill would require personnel to provide in-person monitoring of children in seclusion, and if this is not safe, other continuous visual monitoring of the student. Only 1 of these 9 states has adopted the same provision (Vermont). By contrast, 3 mandate continuous visual monitoring only (the most common monitoring requirement in states that have them); 2 require staff to be “able” to see and hear the student at all times (but not actually to do so at all times); 2 leave it up to the school district, and 1 is silent. No state has adopted all of the training component of the Miller bill, and some states simply left decisions about training up to the school district or just required staff training, with little direction or detail.

⁶⁰ For Wyoming, see footnote above stating how its differing forms of seclusion and isolation are treated in this report.

The bill introduced by Senator Tom Harkin in 2011 is stronger in certain respects than the Miller bill, and equal to it in others. Together, the two national bills are likely to provide a basis of support for those states which wish to strengthen their laws and likely to cause others to keep their laws strong. Stronger national policy decisions appear to be mirrored in stronger state action, and weaker national policy decisions could be mirrored in weaker state action. Of course, none of the state laws is an exact duplicate of the Miller or Harkin bill and some vary significantly in certain respects. Florida, the weakest state, adopted the fewest features of the Miller bill.

This analysis should not be read as suggesting that state laws are effective substitutes for a national bill that would protect all American children. Even the 10 states that took action in the last two years did not adopt all features of the Miller bill, and some weakened or changed features. Moreover, there are still only 29 states with meaningful protections by law, and 2 of these regulate just restraint or seclusion. There are 22 states without meaningful laws.

The protection a child receives is still randomly decided by where he/she lives, just as it was in December 2009. Families who move 15 minutes east from Augusta, Georgia to North Augusta, South Carolina; or who move an hour away from Nashville, Tennessee to Bowling Green, Kentucky will lose their protections. Furthermore, attempts to regulate or adopt statutes have failed in several states. Still others have seen no discernable effort at change (e.g., most of the states that explicitly permit seclusion/restraint for mere educational disruption have made no efforts to change their laws, despite the danger.) Others have nonbinding guidance, which is not in any way the equivalent of binding laws and regulations. It lacks the force of law, does not provide mandatory protection, and is easily changed by the State Department of Education.

Furthermore, the of state laws does not support the position that it is sufficient to merely provide aspirational or basic goals at the national level for states to consider, as some have advocated. Some states statutes, like Florida's, use this model—requiring school districts to write their own policies. These statutes, however, provide little protection to children. Instructing states to select the conditions for using restraint/seclusion, or to consider how children should be monitored, or to choose a deadline for parental notification does little to protect children from the serious physical and psychological dangers of these interventions. Put simply, a 24 hour notification provision enables parents to seek medical assistance promptly; a 7 day period or leaving the decision to the IEP team does not.

The harm of leaving issues up to the states is apparent from the recent situation in Connecticut. In January 2012, the media reported about “scream rooms” (seclusion rooms) in one district. Parents complained that children were alone in these rooms for long periods of time. They also alleged that blood was cleaned from them, indicating that children were injured. School officials stated that the rooms were used regularly only with children with disabilities who had seclusion in their IEPs.⁶¹

⁶¹ See, e.g., Julie Stagis, *Middletown: 'Scream Rooms' Will No Longer Be Used For Some Students*, HARTFORD COURANT, Jan. 14, 2012; Kathleen Magen, *Experts Call 'Scream Rooms' Untherapeutic, Harmful To Children And Others At School*, HARTFORD COURANT, Jan. 14, 2012; Lauren Petty, *Parents Protest "Scream*

Connecticut law allows schools to use seclusion for any reason when it is included in an IEP. Connecticut also leaves many decisions about seclusion up to the IEP team--including whether and why seclusion can be used; the conditions of the room; requirements for monitoring children in seclusion; and how (or whether) to notify parents.⁶² Connecticut also does not require that less-restrictive interventions fail before seclusion is used, as long as seclusion is in the IEP. By contrast, Connecticut limits restraint to threats of physical injury, requires less restrictive interventions to fail and requires schools to take steps to notify parents within 24 hours, followed by full written notification within 2 business days. There is no ability to simply add restraint to a student's IEP for any reason and thereby avoid the protections in the law.

B. PROVISIONS IN STATE LAW THAT ADVANCE GREATER PROTECTIONS FOR CHILDREN

In Sections I-III above, this report compares the ways in which different states treat certain elements of seclusion/restraint law. This report is not a comprehensive analysis of all potential elements of such a law. Nevertheless, many state laws include important protections from these potentially dangerous interventions.

Ensuring Children in Restraint/Seclusion Can Communicate

It is important that all children be able to communicate if they cannot breathe or are in medical distress. The GAO reported on at least four cases in which verbal children who died or were injured in restraint told staff that they could not breathe.⁶³

Yet, many children cannot speak or have difficulty doing so. According to a Galludet University survey of 37,500 deaf and hard of hearing students, 40% used sign language as their primary method of communication in school.⁶⁴ Other children who cannot speak use augmentative communication devices, which can range from simple symbol cards to dynamic computerized devices which "speak" for a child. There are popularly-reported estimates that up to 25 percent of children with autism are nonverbal.

Accordingly, to ensure that students who cannot speak can communicate medical distress, a number of states require that restraint and/or seclusion impair their methods of communication. Three examples include:

- Colorado: "No restraint is administered in such a way that the student is inhibited or impeded from breathing or communicating." (Colorado defines restraint to include seclusion.)

Rooms" In Schools, NBC CONNECTICUT, Jan. 11, 2012.

⁶² See CONN. GEN. STAT. §§ 46a-150 to 46a-154; CONN. ADMIN. REGS. §§ 10-76b-5 to 10-76b-11.

⁶³ GAO REPORT at 14, 16-17, 26, 29.

⁶⁴ GALLAUDET RESEARCH INSTITUTE, REGIONAL AND NATIONAL SUMMARY REPORT OF DATA FROM THE 2009-10 ANNUAL SURVEY OF DEAF AND HARD OF HEARING CHILDREN AND YOUTH (2011) at 11.

- Iowa: “If an employee physically restrains a student who uses sign language or an augmentative mode of communication as the student’s primary mode of communication, the student shall be permitted to have the student’s hands free of restraint for brief periods, unless an employee determines that such freedom appears likely to result in harm to self or others.”
- Maryland: “In applying physical restraint, school personnel may not . . . “(ii) Place a student in any other position that will . . . restrict a student's ability to communicate distress.”

For comparison, Senator Harkin’s bill would require that restraint cannot “interfere with the student’s ability to communicate in the student’s primary language or mode of communication.” Congressman Miller’s bill is silent.

Force Limited to That Necessary to Prevent Threatened Injury

As noted above, the GAO, NDRN, COPAA, and numerous other reports have documented the significant number of children killed and injured by restraint. Injuries include broken limbs, severe sprains, bloody noses, and other injuries. Often the degree of force used is much greater than the threatened injury. In one case in Tennessee, two adults allegedly lay on top of a 51 pound, 9 year old with autism.⁶⁵

Several states have incorporated the basic principle that restraint should be limited to the force needed to prevent the threatened injury. If grabbing a 6 year old’s hand and taking away scissors is sufficient, she should not be subjected to a more forceful restraint. Four examples of states which incorporate this provision are:

- Rhode Island: “Limitations on the Use of Restraints. Physical restraint/crisis intervention in a public education program shall be limited to the use of such reasonable force as necessary to protect a student or another member of the school community from assault or imminent, serious, physical harm. ”
- Texas: “Restraint shall be limited to the use of such reasonable force as is necessary to address the emergency.”
- Nevada: “The use of force in the application of physical restraint does not exceed the force that is reasonable and necessary under the circumstances precipitating the use of physical restraint.”

⁶⁵ Bob Fowler, *Mom accuses Anderson County School of Restraint*, KNOX NEWS SENTINEL, Sept. 12, 2008.

- Colorado: “Use restraints only for the period of time necessary and using no more force than is necessary.”

For comparison, Senator Harkin’s bill would provide that “LEAST AMOUNT OF FORCE NECESSARY.—When implementing a physical restraint, staff shall use only the amount of force necessary to protect the student or others from the threatened injury.” Congressman Miller’s bill is silent.

Medical and Psychological Contraindications

Restraint and seclusion are dangerous for all children. But for some children, health and medical conditions and psychological ones mean that the interventions would cause even more damage. Hence, there are states that further restrict the use of restraint or seclusion in these situations. Some examples include:

- Georgia: “physical restraint is prohibited in Georgia public schools and educational programs. . . when the use of the intervention would be contraindicated due to the student’s psychiatric, medical, or physical conditions as described in the student’s educational records.”
- Vermont: Physical restraint may only be used “In a manner that is safe, proportionate to and sensitive to the student’s: (i.) Severity of behavior; (ii.) Chronological and developmental age; (iii.) Physical size; (iv.) Gender; (v.) Ability to communicate; (vi.) Cognitive ability; and (vii.) Known physical, medical, psychiatric condition, and personal history, including any history of physical, emotional or sexual abuse or trauma.”
- Louisiana: “A student shall not be placed in seclusion or physically restrained if he or she is known to have any medical or psychological condition that precludes such action, as certified by a licensed health care provider in a written statement provided to the school in which the student is enrolled.”

By comparison, Senator Harkin’s bill would forbid physical restraint “if contraindicated based on the student’s disability, health care needs, or medical or psychiatric condition, as documented in a health care directive or medical management plan, a behavior intervention plan, an individualized education program or an individualized family service plan...or plan developed pursuant to section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), or other relevant record made available to the State or local educational agency.” Congressman Miller’s bill is silent.

Anti-Retaliation Clause

Many incidents of restraint and seclusion are reported by fellow teachers and staff.⁶⁶ In doing so, some may risk their jobs. Other incidents are reported by parents, children, and advocates. All could face retaliation. Nevada includes a non-retaliation provision in its seclusion/restraint statute: “Retaliation for reporting violation prohibited. An officer, administrator or employee of a public school shall not retaliate against any person for having: (1.) Reported a violation of [the seclusion/restraint statute], inclusive; or (2.) Provided information regarding a violation of [the statute], inclusive, by a public school or a member of the staff of the public school.”

For comparison, Senator Harkin’s bill would likewise prohibit retaliation, using similar language.

These are only a few of the features in state law that help protect children from dangerous restraint and seclusion in school. There are several others.

VI. CONCLUSION

Two years after Congressman Miller introduced his national seclusion/restraint bill, there are 29 states with meaningful protections in statutes and regulations. A number of states have taken steps to ensure that children are not subjected to abusive restraint and seclusion in the guise of education. But children in 22 states lack legal protections. Even among the 29 states with meaningful laws, state requirements vary widely. Only 14 states limit restraint to emergencies threatening physical harm. Five states ban seclusion and six limit it to emergencies where seclusion is necessary to protect someone from physical harm. Some states require parental notification on the same day or within 24 hours; other states are content to wait for several days (a delay that can further harm injured children). A state may provide strong protections in one area and be weak in others.

Abusive interventions are neither educational nor effective. They are dangerous and unjust. It is time to provide meaningful protections against restraint and seclusion for children in all 50 states and the District of Columbia.

⁶⁶ *See generally*, Jessica Butler, UNSAFE IN THE SCHOOLHOUSE.

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¹ In addition, searches were performed of the Statutes, Administrative Regulations, and State Departments of Education websites for Arizona, Idaho, Mississippi, North Dakota, New Jersey, and South Dakota. This report excluded proposed regulations and nonbinding guidelines that were not adopted; nonbinding guidance with no indication that it was in force; and guidance not applicable to at least all students with disabilities (some states may have special, limited suggested guidance for children with particular disabilities).

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WASH. ADMIN. CODE §§ 392-172A-03120 to 392-172A-03135.

W. VA. CODE ST. R. § 126-28-8 (8.14), § 126-99 (4373) Chapter 4, §§ 3-4 (§126-99 adopted Dec. 2011; effective July 2012).

WISCONSIN DEPT. OF PUBLIC INSTRUC., WDPI DIRECTIVES FOR THE APPROPRIATE USE OF SECLUSION AND PHYSICAL RESTRAINT IN SPECIAL EDUCATION PROGRAMS (2009).

WYO. STAT. § 21-2-202; WYO. EDUC. RULES 42-1 to 42-8 (Emergency Rules effective June 27, 2011); PROPOSED PERMANENT RULES 42-1 to 42-8 (Proposed Aug. 22, 2011).

STATE BY STATE SUMMARY: RESTRAINT/SECLUSION LAWS

This summary was prepared for convenience. It includes certain key state law features, but not all of them. Refer to main document for fuller information.

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AL.

Statute or regulation with meaningful protections.

Restraint only for emergencies: imminent threat of physical harm.

Bans restraints that interfere with breathing and/or prone. Bans mechanical and chemical restraints.

Bans locked seclusion. There are no restrictions if door blocked, held closed by staff, or child proofing is used (that adults can open and children with physical or motor disabilities cannot).

Staff must continuously and directly watch children in seclusion.

Intervention must end when the emergency ends.

S/R cannot be used unless less restrictive interventions have failed/would be ineffective.

First notification of parents required within 1 business/school day.

SEA collects data at least annually regarding use of interventions.

AK.

Some very minimal protection in regulation. Restraint permitted for threats of physical harm, property destruction, or educational disruption.

Restraint not limited to emergencies.

No limit on restraints that interfere with breathing, mech., chem. restraints.

No limits or requirements for seclusion.

No parental notification requirements and no data collection.

AR.

Statute or regulation with meaningful protections.

Applicable only to Seclusion.

Seclusion for threats of physical harm, property damage, & severe disruption.

Locked rooms forbidden.

Staff must continuously and directly watch children in seclusion.

No limit on restraints that interfere with breathing.

No limit on mechanical or chemical restraints.

Does not require monitoring of secluded child.

No parental notification requirements and no data collection.

AZ.

No statute, regulation, or even nonbinding guidelines to protect children.

CA.

Statute or regulation with meaningful protections.

Explicitly permits restraint in “emergency” situations, which are defined as spontaneous, unpredictable events posing an imminent threat of serious physical harm. Does not forbid use of restraint in non-emergencies. Bans locked seclusion as an emergency intervention, but does not prohibit seclusion in non-emergencies. Protections in law apply only to emergency interventions. Consequently, schools often claim that predictable behavior patterns, or behaviors that do not threaten serious physical harm are non-emergencies and the law's protections do not apply.

Does not limit restraint that impedes breathing or mech. or chem. restraint.

Requires only “adequate” supervision of unlocked seclusion (unlocked rooms child cannot physically exit), and no limits on non-emergency seclusion.

Parents must be notified of S/R within 1 business/school day.

SEA gets annual data for emergency interventions, but not non-emergency use.

Intervention must end when the emergency ends.

Less restrictive interventions must fail/be ineffective.

CO.

Statute or regulation with meaningful protections.

Restraint only for emergencies: imminent threat of physical harm.

Bans restraint that interferes with breathing and/or prone restraint.

Bans mechanical restraint (except by armed security officers).

Bans chemical restraint.

Seclusion only for emergencies: immediate threats of physical harm.

“Reasonable” monitoring of seclusion required.

Requires same day notification of parents with full written report later.

Intervention must end when the emergency ends.

S/R cannot be used unless less restrictive interventions have failed/would be ineffective.

CT.

Statute or regulation with meaningful protections.

Restraint only for emergencies: imminent threat of physical harm.

Bans restraint that interferes with breathing and/or prone restraint.

Mechanical permitted for threats of physical harm or if provided for in IEP.

Bans chemical restraint (unless otherwise stated in IEP).

IEP team determines how often secluded children are monitored and the kind of room or space used (heating, cooling, lighting, closet, room, bathroom access, etc).

Same day attempted parent notification; written report required later.

Seclusion permitted for threats of physical harm or if written into IEP (no limits on reasons why it can be put in IEP).

Less-restrictive methods must fail before restraint is used. Less-restrictive methods need not fail if seclusion is permitted in the IEP; seclusion can be in IEP for any reason.

Seclusion must end when child is "compose[d]" or 1 hour.

Data about S/R use made available to State prior to relicensure.

DE.

DE permits committees to authorize “emergency interventions” for children with autism that may be used if there is a threat of physical harm or destruction of property. But Delaware is silent on the use of such interventions for other children and also silent on the use of restraint, seclusion, or other aversives in non-emergencies for children with autism. Thus, a Delaware child could be put in restraint or seclusion for tearing up a book or failing to follow instructions. This regulation provides very little protection.

DC.

Nonbinding Guidelines. Such guidelines are not statutes/regulations and do not provide protections by law for children. They are also easily changed, requiring neither a legislative or rulemaking process.

Restraint only for emergencies: imminent threat of physical harm, per guidelines.

Guidelines state that prone and supine restraints are not authorized; nor are mechanical or chemical restraints.

Statute forbids "unreasonable restraint."

Lock on door to seclusion room should automatically release, per guidelines.

Seclusion only for emergencies: immediate threats of physical harm.

Children in seclusion should be continuously and directly visually monitored.

Intervention should end when the emergency ends, per guidelines.

S/R should not be used unless less restrictive interventions have failed/would be ineffective, per guidelines.

Parents should be notified of S/R same day, per guidelines.

FL.

Statute or regulation with meaningful protections.

Restraint and seclusion may only be used for emergencies: imminent threat of serious physical harm. Requirement is implied. Statute requires incident report that explains why there was a risk of serious/substantial physical harm. But requirement is not explicit, and statute may be interpreted as permitting restraint or seclusion for any reason.

Bans restraint that interferes with breathing and/or prone restraint.

No limit on mechanical or chemical restraints.

Does not require monitoring of secluded child; leaves to school district.

Lock on door to seclusion room should automatically release.

Notify parents same day; full written report later.

SEA collects data at least annually regarding use of interventions.

GA.

Statute or regulation with meaningful protections.

Restraint only for emergencies: imminent threat of physical harm.

Bans prone restraint; mechanical & chemical restraints.

Bans all rooms from which children are physically prevented from exiting (locked, blocked by furniture, held shut by teachers, child proofing, etc.).

Bans seclusion of child in room from which child cannot exit, so seclusion monitoring

Intervention must end when the emergency ends.

Less restrictive interventions must fail/be ineffective.

Parents must be notified of S/R within 1 business/school day.

HI.

Weak Statute or regulation; some very minimal protection for restraint only. No limits on seclusion.

Permits use of reasonable force to prevent injury to person or property, including implementing “therapeutic behavior plans” contained in a child’s IEP.

Otherwise, Hawaii is silent and provides no protections.

IA.

Statute or regulation with meaningful protections.

Restraint and seclusion allowed for threats of physical harm, property destruction, or educational disruption.

Bans restraints that interfere with breathing and/or prone; mechanical, chemical.

Lock on door to seclusion room should automatically release.

Staff must continuously and directly watch children in seclusion.

Restraint for “reasonable and necessary” period; seclusion for “reasonable” period.

Less restrictive interventions must fail/be ineffective.

Requires same day attempted notification of parents.

Parents must receive a fuller written report later.

ID.

No statute, regulation, or even nonbinding guidelines to protect children.

IL.

Statute or regulation with meaningful protections.

Restraint only for emergencies: imminent threat of physical harm.

Bans restraints that interfere with breathing; mechanical; chemical.

Seclusion permitted for threats of physical harm or educational disruption.

Lock on door to seclusion room should automatically release.

Staff must continuously and directly watch children in seclusion.

Restraint should end when the emergency ends. Seclusion should end 30 minutes after behavior resulting in seclusion has ended.

Parents must be notified of S/R within 1 calendar day or 24 hours.

IN.

Nonbinding Guidelines. Such guidelines are not statutes/regulations and do not provide protections by law for children. They are also easily changed, requiring neither a legislative or rulemaking process.

Suggests restraint only for emergencies: imminent threat of physical harm.

Does not suggest limits on restraints that interfere with breathing or prone restraint, mechanical restraint, or chemical restraint.

Suggests seclusion only for emergencies: immediate threats of physical harm.

Suggests ability to see/hear at all times when child in seclusion. This does not require actually seeing/hearing the child, just being able to do so.

Suggests the intervention end when the emergency ends. for restraint.; seclusion ends 30 minutes after behavior resulting in seclusion has ended.

Suggests parental notice to be decided by IEP team.

Suggests SEA collects data at least annually regarding use of interventions.

KS.

Nonbinding Guidelines. Such guidelines are not statutes/regulations and do not provide protections by law for children. They are also easily changed, requiring neither a legislative or rulemaking process.

Suggests restraint only for emergencies: imminent threat of physical harm.

Does not suggest limits on restraints that interfere with breathing or prone restraint, mechanical restraint, or chemical restraint.

Suggests seclusion for threats of physical harm or as stated in the BIP/IEP.

Suggests lock on door to seclusion room should automatically release.

Suggests staff must continuously and directly watch children in seclusion.

Suggests S/R cannot be used unless less restrictive interventions have failed/would be ineffective.

Suggests parents notified within 1 business/school day.

KY.

Restraint: no limits.

Nonbinding Guidelines. Such guidelines are not statutes/regulations and do not provide protections by law for children. They are also easily changed, requiring neither a legislative or rulemaking process.

Nonbinding guidelines describe seclusion as part of a continuum to manage behavior. No limit to emergencies.

LA.

Statute with meaningful protections.
 S/R limited to emergencies: risk of substantial physical harm.
 Bans restraint that interferes with breathing and/or prone restraint.
 Bans mechanical restraint.
 No limit on chemical restraints.
 Staff must continuously and directly watch children in seclusion.
 Intervention must end when the emergency ends.
 Less restrictive interventions must fail/be ineffective.
 Parents must be notified of S/R within 1 calendar day or 24 hours.
 Parents must receive a fuller written report later.
 SEA collects data at least annually regarding use of interventions.

MA.

Statute or regulation with meaningful protections.
 Restraint: only threats of serious physical harm or as stated in IEP/BIP.
 Bans restraint that interferes with breathing. (Prone restraint permitted by trained staff).
 Mechanical & chemical: permitted with parental consent and physician instructions.
 Bans all locked seclusion if there is no access to staff. Permits it without regulation if child has “access” to staff. The term “access” is undefined.
 Intervention must end when the emergency ends.
 Less restrictive interventions must fail/be ineffective.
 Requires same day notification of parents. School is only required to notify parents if the restraint lasts longer than 5 minutes. School can ask parents to waive notice. Waiver is forbidden if the restraint lasts longer than 20 minutes or if it restraint results in serious injury, but this term is not defined, giving schools broad discretion.
 Data is reported to the SEA only if the restraint exceeds 20 minutes or someone is seriously injured (undefined) during the restraint. Since many restraints last less than 20 minutes, these will go entirely unreported.

MD.

Statute or regulation with meaningful protections.
 Restraint for threats of serious/substantial physical harm or as stated in IEP/BIP.
 Bans restraint that interferes with breathing and/or prone restraint (and effectively bans
 Mechanical: banned with exceptions for schools with hospital accreditation.
 No limit on chemical restraints.
 Seclusion: immediate threats of physical harm or as stated in IEP/BIP.
 Staff must continuously and directly watch children in seclusion.
 Less restrictive interventions must fail/be ineffective.
 Notify parents within 1 calendar day or 24 hours unless otherwise stated in IEP.

ME.

Statute or regulation with meaningful protections.

Restraint: threats of serious/substantial physical harm or as stated in IEP/BIP.

No prohibition on restraints that interfere with breathing or prone restraint.

Bans mechanical & chemical restraint.

Seclusion room door may not be locked, latched or secured in any way that would prevent the student from exiting the room.

Maine appears to ban seclusion but allow what it calls time-out rooms, in which students are alone, observed by staff, and are able to exit the room. These rooms may be used in emergency situations that threaten physical harm or property destruction, or as stated in the IEP/BIP. Under both proposed federal bills, and the definition in this report, these rooms would not be considered “seclusion” because students can exit the rooms.

Less restrictive interventions must be tried; but Maine does not require that they fail or be ineffective before restraint is used.

Parent notification: 2 days.

MI.

Nonbinding Guidelines. Such guidelines are not statutes/regulations and do not provide protections by law for children. They are also easily changed, requiring neither a legislative or rulemaking process. Also has a weak statute with minimal protections.

Law allows restraint for threats of physical harm, property destruction or educ. disrupt.

Nonbinding guidance does not suggest limits on restraints that interfere with breathing or prone restraint, mechanical restraint, or chemical restraint.

Suggests seclusion only for emergencies: immediate threats of physical harm.

Suggests staff continuously and directly watch children in seclusion.

Suggests less restrictive interventions must fail/be ineffective.

Recommends parents be notified on the same day the event occurs.

Suggests data be collected by SEA, but current status is unclear.

MN.

Statute or regulation with meaningful protections.

Restraint for threats of physical harm or serious destruction of property.

Bans restraint that interferes with breathing; prone restraint banned Aug. 2012.

No limit on mechanical or chemical restraints.

Lock on seclusion room door should automatically release.

Seclusion for immediate threats of physical harm or serious property destruction.

Staff must continuously and directly watch children in seclusion.

Intervention must end when the emergency ends.

Less restrictive interventions must fail/be deemed ineffective.

Notify parents same day; full written report later.

MS.

No statute, regulation, or even nonbinding guidelines to protect children.

MO.

Weak statute with minimal protections. Nonbinding Guidelines. Such guidelines are

Suggests restraint can be used for threats of physical harm, property destruction, educational disruption, or as stated in the IEP.

Suggests ban on restraint that interferes with breathing and/or prone restraint.

Suggests that mechanical be permitted as stated in the IEP.

Suggests ban on chemical restraint.

Law bans locked, solitary seclusion except if awaiting law enforcement's arrival.

Suggests permitting seclusion that is (a) unlocked or (b) locked but in which the child is observed if there is a threat of physical harm or as stated in the IEP. MO's guidelines would allow school districts to choose to permit seclusion for threats of physical harm, destruction of property, or as stated in the IEP.

Suggests staff have the ability to see/hear a secluded child at all times.

Suggests intervention must end when the emergency ends.

Suggest less restrictive interventions fail / be ineffective.

Suggests school notify parents that S/R has happened on the same day.

MT.

Statute or regulation with meaningful protections.

Restraint for threats of physical harm, property destruction, or educ. disruption.

Bans mechanical restraint.

No limit on restraints that interfere with breathing or chemical restraints.

Bans locked rooms.

Seclusion permitted for threats of physical harm, property damage, & educational disruption.

Staff must continuously and directly watch children in seclusion.

Time limits on S/R as stated in IEP/BIP.

Staff should try less restrictive interventions first, but there is no requirement that they fail or be ineffective before S/R is used.

No parental notification required.

NC.

Statute or regulation with meaningful protections.

Restraint allowed for threats of physical harm, property destruction, or educational disruption or as stated in the IEP/BIP.

No limit on restraints that interfere with breathing.

No limit on mechanical or chemical restraints.

Seclusion permitted for physical harm, property destruction, educational disruption, or as stated in the IEP/BIP. (Broad provision.)

Must be able to see/hear child at all times, but this does not require actually seeing or hearing the child.

School to notify parents "promptly" with written followup within 30 days if child was injured or seclusion lasts longer than 10 minutes. Requires notification if the school violated the prohibitions in the statute.

ND.

No statute, regulation, or even nonbinding guidelines to protect children.

NE.

Nonbinding Guidelines. Such guidelines are not statutes/regulations and do not

Suggests restraint only for emergencies: imminent threat of physical harm.

Suggests no restraints that interfere with breathing and/or prone. Suggests no

Suggests lock on door to seclusion room should automatically release.

Suggests seclusion only for emergencies: immediate threats of physical harm.

Suggests staff have the ability to see/hear child in seclusion at all times.

Suggests intervention must end when the emergency ends.

Suggests parents be notified of S/R on the same day the event occurs.

SEA collects data at least annually regarding use of interventions..

NJ.

No statute, regulation, or even nonbinding guidelines to protect children.

NH.

Statute or regulation with meaningful protections.

Restraint is governed by a 2010 law.

Restraint only for emergencies: imminent threat of serious physical harm.

Bans restraints that interfere with breathing and/or prone. Bans mechanical and chemical restraints.

Seclusion is governed by older regulations. NH prohibits unobserved seclusion in a space the child cannot exit unless there is a threat of physical harm or it is documented in the IEP (after certain conditions are met). This has two large loopholes. First, it allows unobserved, locked seclusion for almost any reason when documented in the IEP.

Second, it allows seclusion for any reason without any regulation as long as the child is observed. Observation could be by remote video camera, allowing children to languish in rooms for hours.

Restraint should end when the emergency ends.

Restraint should not be used unless less restrictive interventions have failed/been deemed ineffective.

For restraint only: Must attempt notification of parents within 1 calendar day or 24 hours (attempted); parents must receive a fuller written report later for restraint. No notification requirements for seclusion.

SEA collects restraint (not seclusion) data at least annually.

NM.

Nonbinding Guidelines. Such guidelines are not statutes/regulations and do not provide protections by law for children. They are also easily changed, requiring neither a legislative or rulemaking process.

Suggests restraint be limited to emergencies: immediate threats of physical harm or destruction of property.

Suggests ban on restraint that interferes with breathing and/or prone restraint.

Does not suggest limits on mechanical restraint, or chemical restraint.

Suggests restraint not be used unless less restrictive methods fail/be ineffective before use.

Bans locked seclusion under fire code. Guidance allows unlocked seclusion (e.g., rooms children cannot exit due to furniture blockage or staff holding door closed) for any purpose, including behavior modification.

No parental notification recommendations.

NV.

Statute or regulation with meaningful protections.

Restraint: imminent threats of physical harm or serious property destruction only.

Permits mechanical restraints upon physician order.

No limit on mechanical or chemical restraints.

Bans all rooms from which children are physically prevented from exiting.

Intervention must end when the emergency ends.

Recommends parents be notified of S/R within 1 calendar day or 24 hours.

SEA collects data at least annually regarding use of interventions.

NY.

Statute or regulation with meaningful protections.

Restraint: threats of physical harm, property destruction, or educational disruption.

No limit on restraints that interfere with breathing.

No limit on mechanical or chemical restraints.

Bans locked seclusion. There are no restrictions if door otherwise blocked closed.

Seclusion: threats of physical harm, property damage, or educational disruption

Less restrictive interventions must fail/ be ineffective.

Staff must continuously and directly watch children in seclusion.

Parental notification required; no deadline.

OH.

Exec. Order with meaningful protections for RESTRAINT only.

Restraint only for emergencies: imminent threat of physical harm.

Bans restraint that interferes with breathing and/or prone restraint (prone).

OK.

Nonbinding Guidelines. Such guidelines are not statutes/regulations and do not provide protections by law for children. They are also easily changed, requiring neither a legislative or rulemaking process.

Suggests restraint only for emergencies: imminent threat of serious/substantial physical harm.

Suggests ban on restraint that interferes with breathing and/or prone restraint.

Suggests ban on mechanical restraint.

Suggests seclusion only for emergencies: immediate threats of physical harm.

Suggests intervention must end when the emergency ends.

Suggests less restrictive interventions must fail/be ineffective.

Suggests Staff must continuously and directly watch children in seclusion.

Suggests parents be notified of S/R on the same day it occurs.

OR (effective July 2012).

Statute or regulation with meaningful protections.

Restraint only for emergencies: imminent threat of serious physical harm.

Bans restraints that interfere with breathing and/or prone. Bans mechanical and chemical restraints.

Seclusion only emergencies: immediate threats of serious physical harm.

Staff must continuously and directly watch children in seclusion.

S/R must end when the emergency ends.

S/R cannot be used unless less restrictive interventions have failed/would be ineffective.

Requires same day notification of parents.

SEA collects data at least annually regarding use of interventions.

PA.

Statute or regulation with meaningful protections.

Restraint only for emergencies: imminent threat of physical harm.

Bans restraint that interferes with breathing and/or prone restraint.

Bans mechanical restraint.

No limit on chemical restraints.

Bans all rooms from which children cannot readily exit (locked, blocked by furniture,

Requires parental notification but sets no deadline. The regulation, however, sets an IEP meeting within 10 days, making this effectively the outer deadline.

Data must be made available to the SEA when it monitors an LEA.

RI.

Statute or regulation with meaningful protections.

Restraint emergencies only: imminent threat of serious/substantial physical harm.

Bans restraint that interferes with breathing and/or prone restraint.

No limit on mechanical restraints.

Bans chemical restraint.

RI bans seclusion unless the child is observed, and seclusion has been agreed to in the child's BIP. RI does not regulate observed seclusion, meaning that it can occur for any reason and last for any duration.

Staff must continuously and directly watch children in seclusion.

Intervention must end when the emergency ends.

S/R cannot be used unless less restrictive interventions have failed/would be ineffective.

Requires same day notification of parents.

Parents must receive a fuller written report later.

SEA collects data at least annually regarding use of interventions.

SC.

Nonbinding Guidelines. Such guidelines are not statutes/regulations and do not provide protections by law for children. They are also easily changed, requiring neither a legislative or rulemaking process.

Does not suggest limits on restraint, except as noted.

Suggests ban on restraint that interferes with breathing and/or prone restraint.

Suggests ban on mechanical restraint.

Recommends lock on door to seclusion room should automatically release.

Guidelines state strong recommendation that seclusion be prohibited by local school districts. If it is not, then guidelines recommend certain limits.

Recommends seclusion only for emergencies: immediate threats of physical harm.

Recommends continuous visual monitoring of seclusion.

Recommends Intervention must end when the emergency ends.

Recommends S/R cannot be used unless less restrictive interventions have failed/would

SD.

No statute, regulation, or even nonbinding guidelines to protect children.

TN.

Statute or regulation with meaningful protections.

Restraint only for emergencies: imminent threat of physical harm.

Bans restraints that interfere with breathing and/or prone. Bans mechanical and chemical restraints.

Seclusion only for emergencies: immediate threats of physical harm.

Staff must continuously and directly watch children in seclusion.

Requires same day attempted notification of parents.

Parents must receive a fuller written report later.

SEA collects data at least annually regarding use of interventions.

TX.

Statute or regulation with meaningful protections.

Restraint may only be for immediate threats of physical harm or serious destruction of property.

No specific ban on restraints interfering with breathing or mech. or chem. restraints.

Texas law forbids the use of locked spaces unless there is a threat of bodily harm and

Same day good faith effort notify parents, followed by written report.

SEA collects data at least annually regarding use of interventions.

UT.

Nonbinding Guidelines. Such guidelines are not statutes/regulations and do not

Statute requires consideration of guidelines, but explicitly does not require that guidelines be followed.

Guidelines suggest S/R for threat of physical harm or serious property destruction.

No suggested ban on restraints interfering with breathing, mech. or chem. restraint.

Recommends S/R cannot be used unless less restrictive interventions have failed/would be ineffective.

Parents must be notified within 1 calendar day or 24 hours, per regulation.

VA.

Nonbinding Guidelines. Such guidelines are not statutes/regulations and do not provide protections by law for children. They are also easily changed, requiring neither a legislative or rulemaking process.

Suggests restraint only for emergencies: imminent threat of physical harm.

Does not suggest limits on restraints that interfere with breathing or prone restraint,

Suggests seclusion only for emergencies: immediate threats of physical harm.

Suggests school district determine parental notification schedule.

VT.

Statute or regulation with meaningful protections.

Both restraint and seclusion.

Restraint only for emergencies: imminent threat of physical harm.

Bans restraints that interfere with breathing and/or prone. Bans mechanical and chemical restraints.

Seclusion only for emergencies: immediate threats of physical harm.

Staff must continuously and directly watch children in seclusion.

Intervention must end when the emergency ends.

S/R cannot be used unless less restrictive interventions have failed/would be ineffective.

Requires same day attempted notification of parents.

Parents must receive a fuller written report later.

WA.

Statute or regulation with meaningful protections.

Restraint allowed for threats of physical harm, property destruction, or educational disruption.

Bans restraint that interferes with breathing and/or prone restraint.

Limited ban on mechanical restraints. Forbids the binding of limbs to an object or each other. Permits such binding if included in IEP with parental consent).

No limit on chemical restraints.

Seclusion is permitted for any reason.

A child may not be secluded in a room or other enclosure unless it is provided for in the child's IEP. The room meets certain habitability and condition requirements. Continuous visual monitoring is required unless the child can free himself/herself from the room, in which case the adult need only remain in visual or auditory range of the child.

WI.

Nonbinding Guidelines. Such guidelines are not statutes/regulations and do not provide protections by law for children. They are also easily changed, requiring neither a legislative or rulemaking process.

Suggests restraint only for emergencies: imminent threat of physical harm.

Suggests ban on mechanical restraint (but allowed with medical oversight).

Suggests ban on chemical restraint (but allowed with medical oversight).

Suggests seclusion only for emergencies: immediate threats of physical harm.

Suggests staff must continuously and directly visually monitor children in seclusion.

Suggests the intervention end when the emergency ends (restraint only).

Suggests S/R cannot be used unless less restrictive interventions have failed/would be ineffective.

Suggests school determines parental notification schedule.

WV. (new regulation effective July 2012)

Statute or regulation with meaningful protections.

Physical restraint only for emergencies: threats of physical harm or serious destruction of property.

Ban on restraint that interferes with breathing and on prone restraint (describes elements of prone restraint).

Bans mechanical restraints; does not ban chemical restraints.

Unsupervised seclusion is prohibited; defined as removing child to unsupervised space.

"Supervision" is undefined, and may simply mean checking on the student intermittently.

Intervention must end when the emergency ends.

Requires "good faith" effort to verbally notify parents on same day.

Written report to parents must be put in mail within 1 school day.

WY.

Statute or regulation with meaningful protections.

No limit on physical restraint.

Bans restraint that interferes with breathing and/or prone restraint.

Bans mechanical restraint.

No limit on chemical restraints.

Bans locked seclusion.

Seclusion only for emergencies: immediate threats of physical harm. This is the standard for using a room in which the child is isolated and cannot exit, but is not locked.

Wyoming calls these rooms "isolation" rooms but they meet the standards for "seclusion" under both federal bills and this report, and the generally understood definition of seclusion.

Isolation room must allow continuous visual and auditory monitoring of child.

Parents must be notified of S/R within 1 calendar day or 24 hours.

SEA collects data at least annually regarding use of interventions.

112TH CONGRESS
1ST SESSION

S. _____

To protect all school children against harmful and life-threatening seclusion and restraint practices.

IN THE SENATE OF THE UNITED STATES

Mr. HARKIN introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To protect all school children against harmful and life-threatening seclusion and restraint practices.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Keeping All Students
5 Safe Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) **APPLICABLE PROGRAM.**—The term “appli-
9 cable program” has the meaning given the term in

1 section 400(c)(1) of the General Education Provi-
2 sions Act (20 U.S.C. 1221(c)(1)).

3 (2) CHEMICAL RESTRAINT.—The term “chem-
4 ical restraint” means a drug or medication used on
5 a student to control behavior or restrict freedom of
6 movement that is not—

7 (A) prescribed by a licensed physician, or
8 other qualified health professional acting under
9 the scope of the professional’s authority under
10 State law, for the standard treatment of a stu-
11 dent’s medical or psychiatric condition; and

12 (B) administered as prescribed by the li-
13 censed physician or other qualified health pro-
14 fessional acting under the scope of the profes-
15 sional’s authority under State law.

16 (3) ESEA DEFINITIONS.—The terms—

17 (A) “Department”, “educational service
18 agency”, “elementary school”, “local edu-
19 cational agency”, “parent”, “secondary school”,
20 “State”, and “State educational agency” have
21 the meanings given such terms in section 9101
22 of the Elementary and Secondary Education
23 Act of 1965 (20 U.S.C. 7801); and

1 (B) “school resource officer” and “school
2 personnel” have the meanings given such terms
3 in section 4151 of such Act (20 U.S.C. 7161).

4 (4) FEDERAL FINANCIAL ASSISTANCE.—The
5 term “Federal financial assistance” means any
6 grant, loan, contract (other than a procurement con-
7 tract or a contract of insurance or guaranty), or any
8 other arrangement by which the Department pro-
9 vides or otherwise makes available assistance in the
10 form of—

11 (A) funds;

12 (B) services of Federal personnel; or

13 (C) real and personal property or any in-
14 terest in or use of such property, including—

15 (i) transfers or leases of such property
16 for less than fair market value or for re-
17 duced consideration; and

18 (ii) proceeds from a subsequent trans-
19 fer or lease of such property if the Federal
20 share of its fair market value is not re-
21 turned to the Federal Government.

22 (5) FREE APPROPRIATE PUBLIC EDUCATION.—
23 For those students eligible for special education and
24 related services under the Individuals with Disabil-
25 ities Education Act (20 U.S.C. 1400 et seq.), the

1 term “free appropriate public education” has the
2 meaning given the term in section 602 of such Act
3 (20 U.S.C. 1401).

4 (6) MECHANICAL RESTRAINT.—The term “me-
5 chanical restraint”—

6 (A) has the meaning given the term in sec-
7 tion 595(d)(1) of the Public Health Service Act
8 (42 U.S.C. 290jj(d)(1)), except that the mean-
9 ing shall be applied by substituting “student’s”
10 for “resident’s”; and

11 (B) does not mean devices used by trained
12 school personnel, or used by a student, for the
13 specific and approved therapeutic or safety pur-
14 poses for which such devices were designed and,
15 if applicable, prescribed, including—

16 (i) restraints for medical immobiliza-
17 tion;

18 (ii) adaptive devices or mechanical
19 supports used to allow greater freedom of
20 mobility than would be possible without the
21 use of such devices or mechanical supports;
22 or

23 (iii) vehicle safety restraints when
24 used as intended during the transport of a
25 student in a moving vehicle.

1 (7) PHYSICAL ESCORT.—The term “physical es-
2 cort” means the temporary touching or holding of
3 the hand, wrist, arm, shoulder, waist, hip, or back
4 for the purpose of inducing a student to move to a
5 safe location.

6 (8) PHYSICAL RESTRAINT.—The term “physical
7 restraint” means a personal restriction that immo-
8 bilizes or reduces the ability of an individual to move
9 the individual’s arms, legs, body, or head freely.
10 Such term does not include a physical escort, me-
11 chanical restraint, or chemical restraint.

12 (9) POSITIVE BEHAVIORAL INTERVENTIONS
13 AND SUPPORTS.—The term “positive behavioral
14 interventions and supports”

15 (A) means a school-wide systematic ap-
16 proach to embed evidence-based practices and
17 data-driven decisionmaking to improve school
18 climate and culture in order to achieve im-
19 proved academic and social outcomes, and in-
20 crease learning for all students, including those
21 with the most complex and intensive behavioral
22 needs; and

23 (B) encompasses a range of systemic and
24 individualized positive strategies to reinforce de-
25 sired behaviors, diminish reoccurrence of chal-

1 lenging behaviors, and teach appropriate behav-
2 iors to students.

3 (10) PROTECTION AND ADVOCACY SYSTEM.—
4 The term “protection and advocacy system” means
5 a protection and advocacy system established under
6 subtitle C of title I of the Developmental Disabilities
7 Assistance and Bill of Rights Act of 2000 (42
8 U.S.C. 15041 et seq.).

9 (11) SECLUSION.—The term “seclusion” means
10 the isolation of a student in a room, enclosure, or
11 space that is—

12 (A) locked; or

13 (B) unlocked and the student is prevented
14 from leaving.

15 (12) SECRETARY.—The term “Secretary”
16 means the Secretary of Education, and, where ap-
17 propriate, the Secretary of the Interior and the Sec-
18 retary of Defense.

19 (13) SERIOUS BODILY INJURY.—The term “se-
20 rious bodily injury” has the meaning given the term
21 in section 1365(h) of title 18, United States Code.

22 (14) STATE-APPROVED CRISIS INTERVENTION
23 TRAINING PROGRAM.—The term “State-approved
24 crisis intervention training program” means a train-
25 ing program approved by a State that, at a min-

1 imum, provides training in evidence-based practices
2 shown to be effective—

3 (A) in the prevention of the use of physical
4 restraint;

5 (B) in keeping both school personnel and
6 students safe in imposing physical restraint in
7 a manner consistent with this Act;

8 (C) in the use of data-based decision-
9 making and evidence-based positive behavioral
10 interventions and supports, safe physical escort,
11 conflict prevention, behavioral antecedents,
12 functional behavioral assessments, de-escalation
13 of challenging behaviors, and conflict manage-
14 ment;

15 (D) in first aid, including the signs of
16 medical distress, and cardiopulmonary resus-
17 citation; and

18 (E) certification for school personnel in the
19 practices and skills described in subparagraphs
20 (A) through (D), which shall be required to be
21 renewed on a periodic basis.

22 (15) STUDENT.—The term “student” means a
23 student who—

24 (A) is enrolled in a public school;

1 (B) is enrolled in a private school and is
2 receiving a free appropriate public education at
3 the school under subparagraph (B) or (C) of
4 section 612(a)(10) of the Individuals with Dis-
5 abilities Education Act (20 U.S.C.
6 1412(a)(10)(B), (C));

7 (C) is enrolled in a Head Start or Early
8 Head Start program supported under the Head
9 Start Act (42 U.S.C. 9831); or

10 (D) receives services under section 619 or
11 part C of the Individuals with Disabilities Edu-
12 cation Act (20 U.S.C. 1419, 1431 et seq.).

13 **SEC. 3. PURPOSE.**

14 The purposes of this Act are—

15 (1) to promote the development of effective
16 intervention and prevention practices that do not use
17 restraints and seclusion;

18 (2) to protect all students from physical or
19 mental abuse, aversive behavioral interventions that
20 compromise health and safety, and any restraint im-
21 posed for purposes of coercion, discipline or conven-
22 ience, or as a substitute for appropriate educational
23 or positive behavioral interventions and supports;

24 (3) to ensure that staff are safe from the harm
25 that can occur from inexpertly using restraints; and

1 (4) to ensure the safety of all students and
2 school personnel and promote positive school culture
3 and climate.

4 **SEC. 4. MINIMUM STANDARDS; RULE OF CONSTRUCTION.**

5 Each State and local educational agency receiving
6 Federal financial assistance shall have in place policies
7 that are consistent with the following:

8 (1) PROHIBITION OF CERTAIN ACTION.—School
9 personnel, contractors, and resource officers are pro-
10 hibited from imposing on any student—

11 (A) seclusion;

12 (B) mechanical restraint;

13 (C) chemical restraint;

14 (D) aversive behavioral interventions that
15 compromise health and safety;

16 (E) physical restraint that is life-threat-
17 ening, including physical restraint that restricts
18 breathing; and

19 (F) physical restraint if contraindicated
20 based on the student's disability, health care
21 needs, or medical or psychiatric condition, as
22 documented in a health care directive or med-
23 ical management plan, a behavior intervention
24 plan, an individualized education program or an
25 individualized family service plan (as defined in

1 section 602 of the Individuals with Disabilities
2 Education Act (20 U.S.C. 1401)), or plan de-
3 veloped pursuant to section 504 of the Rehabili-
4 tation Act of 1973 (29 U.S.C. 794), or other
5 relevant record made available to the State or
6 local educational agency.

7 (2) PHYSICAL RESTRAINT.—

8 (A) IN GENERAL.—Physical restraint may
9 only be implemented if—

10 (i) the student's behavior poses an im-
11 mediate danger of serious bodily injury to
12 self or others;

13 (ii) the physical restraint does not
14 interfere with the student's ability to com-
15 municate in the student's primary lan-
16 guage or mode of communication; and

17 (iii) less restrictive interventions have
18 been ineffective in stopping the immediate
19 danger of serious bodily injury to the stu-
20 dent or others, except in a case of a rare
21 and clearly unavoidable emergency cir-
22 cumstance posing immediate danger of se-
23 rious bodily injury.

24 (B) LEAST AMOUNT OF FORCE NEC-
25 ESSARY.—When implementing a physical re-

1 strait, staff shall use only the amount of force
2 necessary to protect the student or others from
3 the threatened injury.

4 (C) END OF PHYSICAL RESTRAINT.—The
5 use of physical restraint shall end when—

6 (i) a medical condition occurs putting
7 the student at risk of harm;

8 (ii) the student's behavior no longer
9 poses an immediate danger of serious bod-
10 ily injury to the student or others; or

11 (iii) less restrictive interventions
12 would be effective in stopping such imme-
13 diate danger of serious bodily injury.

14 (D) QUALIFICATIONS OF INDIVIDUALS EN-
15 GAGING IN PHYSICAL RESTRAINT.—School per-
16 sonnel imposing physical restraint in accordance
17 with this subsection shall—

18 (i) be trained and certified by a State-
19 approved crisis intervention training pro-
20 gram, except in the case of rare and clearly
21 unavoidable emergency circumstances when
22 school personnel trained and certified are
23 not immediately available due to the un-
24 foreseeable nature of the emergency cir-
25 cumstance;

1 (ii) engage in continuous face-to-face
2 monitoring of the student; and

3 (iii) be trained in State and school
4 policies and procedures regarding restraint
5 and seclusion.

6 (E) PROHIBITION ON USE OF PHYSICAL
7 RESTRAINT AS PLANNED INTERVENTION.—The
8 use of physical restraints as a planned interven-
9 tion shall not be written into a student’s edu-
10 cation plan, individual safety plan, plan devel-
11 oped pursuant to section 504 of the Rehabilita-
12 tion Act of 1973 (29 U.S.C. 794), individual-
13 ized education program or individualized family
14 service plan (as defined in section 602 of the
15 Individuals with Disabilities Education Act (20
16 U.S.C. 1401)), or any other planning document
17 for an individual student.

18 (3) OTHER POLICIES.—

19 (A) IN GENERAL.—The State or local edu-
20 cational agency, and each school and edu-
21 cational program served by the State or local
22 educational agency shall—

23 (i) establish policies and procedures
24 that ensure school personnel and parents,
25 including private school personnel and par-

1 ents, are aware of the State, local edu-
2 cational agency, and school's policies and
3 procedures regarding seclusion and re-
4 straint;

5 (ii) establish policies and procedures
6 to keep all students, including students
7 with the most complex and intensive be-
8 havioral needs, and school personnel safe;

9 (iii) establish policies and procedures
10 for planning for the appropriate use of re-
11 straint in crisis situations in accordance
12 with this Act by a team of professionals
13 trained in accordance with a State-ap-
14 proved crisis intervention training pro-
15 gram; and

16 (iv) establish policies and procedures
17 to be followed after each incident involving
18 the imposition of physical restraint upon a
19 student, including—

20 (I) procedures to provide to the
21 parent of the student, with respect to
22 each such incident—

23 (aa) a verbal or electronic
24 communication on the same day
25 as each such incident; and

1 (bb) within 24 hours of each
2 such incident, written notifica-
3 tion; and

4 (II) after the imposition of phys-
5 ical restraint upon a student, proce-
6 dures to ensure that all school per-
7 sonnel in the proximity of the student
8 immediately before and during the
9 time of the restraint, the parent, the
10 student, appropriate supervisory and
11 administrative staff, and appropriate
12 IEP team members, participate in a
13 debriefing session.

14 (B) DEBRIEFING SESSION.—

15 (i) IN GENERAL.—The debriefing ses-
16 sion described in subparagraph (A)(iv)(II)
17 shall occur as soon as practicable, but not
18 later than 5 school days following the im-
19 position of physical restraint unless it is
20 delayed by written mutual agreement of
21 the parent and school. Parents shall retain
22 their full legal rights for children under the
23 age of majority concerning participation in
24 the debriefing or other matters.

1 (ii) CONTENT OF SESSION.—The de-
2 briefing session described in subparagraph
3 (A)(iv)(II) shall include—

4 (I) identification of antecedents
5 to the physical restraint;

6 (II) consideration of relevant in-
7 formation in the student's records,
8 and such information from teachers,
9 other professionals, the parent, and
10 student;

11 (III) planning to prevent and re-
12 duce reoccurrence of the use of phys-
13 ical restraint, including consideration
14 of the results of any functional behav-
15 ional assessments, whether positive be-
16 havior plans were implemented with
17 fidelity, recommendations of appro-
18 priate positive behavioral interventions
19 and supports to assist personnel re-
20 sponsible for the student's educational
21 plan, the individualized education pro-
22 gram for the student, if applicable,
23 and plans providing for reasonable ac-
24 commodations under section 504 of

1 the Rehabilitation Act of 1973 (29
2 U.S.C. 794);

3 (IV) a plan to have a functional
4 behavioral assessment conducted, re-
5 viewed, or revised by qualified profes-
6 sionals, the parent, and the student;
7 and

8 (V) for any student not identified
9 as eligible to receive accommodations
10 under section 504 of the Rehabilita-
11 tion Act of 1973 (29 U.S.C. 794) or
12 services under the Individuals with
13 Disabilities Education Act (20 U.S.C.
14 1400 et seq.), evidence of such a re-
15 ferral or documentation of the basis
16 for declining to refer the student.

17 (iii) COMMUNICATION BY THE STU-
18 DENT.—When a student attends a debrief-
19 ing session described in subparagraph
20 (A)(iv)(II), information communicated by
21 the student may not be used against the
22 student in any disciplinary, criminal, or
23 civil investigation or proceeding.

24 (4) NOTIFICATION IN WRITING ON DEATH OR
25 BODILY INJURY.—In a case in which serious bodily

1 injury or death of a student occurs in conjunction
2 with the use of physical restraint or any intervention
3 used to control behavior, there are procedures to no-
4 tify, in writing, within 24 hours after such injury or
5 death occurs—

6 (A) the State educational agency and local
7 educational agency;

8 (B) local law enforcement; and

9 (C) a protection and advocacy system, in
10 the case of a student who is eligible for services
11 from the protection and advocacy system.

12 (5) PROHIBITION AGAINST RETALIATION.—The
13 State or local educational agency, each school and
14 educational program served by the State or local
15 educational agency, and school personnel of such
16 school or program shall not retaliate against any
17 person for having—

18 (A) reported a violation of this section or
19 Federal or State regulations or policies promul-
20 gated to carry out this section; or

21 (B) provided information regarding a viola-
22 tion of this section or Federal or State regula-
23 tions or policies promulgated to carry out this
24 section.

1 **SEC. 5. INTERACTION.**

2 (a) **RULE OF CONSTRUCTION.**—Nothing in this Act
3 shall be construed to restrict or limit, or allow the Sec-
4 retary to restrict or limit, any other rights or remedies
5 otherwise available to students or parents under Federal
6 or State law (including regulations) or to restrict or limit
7 stronger restrictions on the use of restraint, seclusion, or
8 aversives in Federal or State law (including regulations)
9 or in State policies.

10 (b) **DENIAL OF A FREE APPROPRIATE PUBLIC EDU-**
11 **CATION.**—Failure to meet the minimum standards of this
12 Act as applied to an individual child eligible for accom-
13 modations developed pursuant to section 504 of the Reha-
14 bilitation Act of 1973 (29 U.S.C. 794) or for education
15 or related services under the Individuals with Disabilities
16 Education Act (20 U.S.C. 1400 et seq.) shall constitute
17 a denial of a free appropriate public education.

18 **SEC. 6. REPORT REQUIREMENTS.**

19 (a) **IN GENERAL.**—Each State educational agency
20 shall (in compliance with the requirements of section 444
21 of the General Education Provisions Act (commonly
22 known as the “Family Educational Rights and Privacy
23 Act of 1974”) (20 U.S.C. 1232g)) prepare and submit to
24 the Secretary, and make available to the public, a report
25 with respect to each local educational agency, and each
26 school not under the jurisdiction of a local educational

1 agency, located in the same State as such State edu-
2 cational agency that includes the following information:

3 (1) The total number of incidents in which
4 physical restraint was imposed upon a student in the
5 preceding full academic year.

6 (2) The information described in paragraph (1)
7 shall be disaggregated—

8 (A) by the total number of incidents in
9 which physical restraint was imposed upon a
10 student—

11 (i) that resulted in injury to students
12 or school personnel, or both;

13 (ii) that resulted in death; and

14 (iii) in which the school personnel im-
15 posing physical restraint were not trained
16 and certified as described in section
17 4(2)(D)(i); and

18 (B) by the demographic characteristics of
19 all students upon whom physical restraint was
20 imposed, including—

21 (i) the subcategories identified in sec-
22 tion 1111(h)(1)(C)(i) of the Elementary
23 and Secondary Education Act of 1965 (20
24 U.S.C. 6311(h)(1)(C)(i));

25 (ii) age; and

1 (iii) disability category.

2 (b) UNDUPLICATED COUNT; EXCEPTION.—The
3 disaggregation required under subsection (a) shall—

4 (1) be carried out in a manner to ensure an
5 unduplicated count of the total number of incidents
6 in the preceding full academic year in which physical
7 restraint was imposed upon a student; and

8 (2) not be required in a case in which the num-
9 ber of students in a category would reveal personally
10 identifiable information about an individual student.

11 **SEC. 7. GRANT AUTHORITY.**

12 (a) IN GENERAL.—From the amount appropriated
13 under section 9, the Secretary may award grants to State
14 educational agencies to assist in—

15 (1) establishing, implementing, and enforcing
16 the policies and procedures to meet the minimum
17 standards described in this Act;

18 (2) improving State and local capacity to collect
19 and analyze data related to physical restraint; and

20 (3) improving school climate and culture by im-
21 plementing school-wide positive behavioral interven-
22 tions and supports.

23 (b) DURATION OF GRANT.—A grant under this sec-
24 tion shall be awarded to a State educational agency for
25 a 3-year period.

1 (c) APPLICATION.—Each State educational agency
2 desiring a grant under this section shall submit an appli-
3 cation to the Secretary at such time, in such manner, and
4 accompanied by such information as the Secretary may
5 require, including information on how the State edu-
6 cational agency will target resources to schools and local
7 educational agencies in need of assistance related to pre-
8 venting and reducing physical restraint.

9 (d) AUTHORITY TO MAKE SUBGRANTS.—

10 (1) IN GENERAL.—A State educational agency
11 receiving a grant under this section may use such
12 grant funds to award subgrants, on a competitive
13 basis, to local educational agencies.

14 (2) APPLICATION.—A local educational agency
15 desiring to receive a subgrant under this section
16 shall submit an application to the applicable State
17 educational agency at such time, in such manner,
18 and containing such information as the State edu-
19 cational agency may require.

20 (e) PRIVATE SCHOOL PARTICIPATION.—

21 (1) IN GENERAL.—A State educational agency
22 receiving grant funds under this section shall, after
23 timely and meaningful consultation with appropriate
24 private school officials, ensure that private school

1 personnel can participate, on an equitable basis, in
2 activities supported by grant or subgrant funds.

3 (2) PUBLIC CONTROL OF FUNDS.—The control
4 of funds provided under this section, and title to ma-
5 terials, equipment, and property with such funds,
6 shall be in a public agency and a public agency shall
7 administer such funds, materials, equipment, and
8 property.

9 (f) REQUIRED ACTIVITIES.—A State educational
10 agency receiving a grant, or a local educational agency re-
11 ceiving a subgrant, under this section shall use such grant
12 or subgrant funds to carry out the following:

13 (1) Researching, developing, implementing, and
14 evaluating evidence-based strategies, policies, and
15 procedures to reduce and prevent physical restraint
16 in schools, consistent with the minimum standards
17 described in this Act.

18 (2) Providing professional development, train-
19 ing, and certification for school personnel to meet
20 such standards.

21 (g) ADDITIONAL AUTHORIZED ACTIVITIES.—In addi-
22 tion to the required activities described in subsection (f),
23 a State educational agency receiving a grant, or a local
24 educational agency receiving a subgrant, under this sec-

1 tion may use such grant or subgrant funds for 1 or more
2 of the following:

3 (1) Developing and implementing a high-quality
4 professional development and training program to
5 implement evidence-based systematic approaches to
6 school-wide positive behavioral interventions and
7 supports, including improving coaching, facilitation,
8 and training capacity for administrators, teachers,
9 specialized instructional support personnel, and
10 other staff.

11 (2) Providing technical assistance to develop
12 and implement evidence-based systematic approaches
13 to school-wide positive behavioral interventions and
14 supports, including technical assistance for data-
15 driven decisionmaking related to positive behavioral
16 interventions and supports in the classroom.

17 (3) Researching, evaluating, and disseminating
18 high-quality evidence-based programs and activities
19 that implement school-wide positive behavioral inter-
20 ventions and supports with fidelity.

21 (4) Supporting other local positive behavioral
22 interventions and supports implementation activities
23 consistent with this subsection.

1 (h) EVALUATION AND REPORT.—Each State edu-
2 cational agency receiving a grant under this section shall,
3 at the end of the 3-year grant period for such grant—

4 (1) evaluate the State’s progress toward the
5 prevention and reduction of physical restraint in the
6 schools located in the State, consistent with the min-
7 imum standards; and

8 (2) submit to the Secretary a report on such
9 progress.

10 **SEC. 8. ENFORCEMENT.**

11 (a) USE OF REMEDIES.—If a State educational agen-
12 cy fails to comply with the requirements under this Act,
13 the Secretary shall—

14 (1) withhold, in whole or in part, further pay-
15 ments under an applicable program in accordance
16 with section 455 of the General Education Provi-
17 sions Act (20 U.S.C. 1234d);

18 (2) require a State or local educational agency
19 to submit, and implement, within 1 year of such fail-
20 ure to comply, a corrective plan of action, which may
21 include redirection of funds received under an appli-
22 cable program;

23 (3) issue a complaint to compel compliance of
24 the State or local educational agency through a
25 cease and desist order, in the same manner the Sec-

1 retary is authorized to take such action under sec-
2 tion 456 of the General Education Provisions Act
3 (20 U.S.C. 1234e); or

4 (4) refer the State to the Department of Jus-
5 tice or Department of Education Office of Civil
6 Rights for an investigation.

7 (b) CESSATION OF WITHHOLDING OF FUNDS.—

8 Whenever the Secretary determines (whether by certifi-
9 cation or other appropriate evidence) that a State or local
10 educational agency that is subject to the withholding of
11 payments under subsection (a)(1) has cured the failure
12 providing the basis for the withholding of payments, the
13 Secretary shall cease the withholding of payments with re-
14 spect to the State educational agency under such sub-
15 section.

16 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

17 There are authorized to be appropriated such sums
18 as may be necessary to carry out this Act for fiscal year
19 2012 and each of the 4 succeeding fiscal years.

Keeping All Students Safe Act (Seclusion and Restraint)

Background

Based on a 2009 GAO report and independent reports from organizations such as the National Disabilities Rights Network, restraints and seclusion have resulted in physical injury and psychological trauma to thousands of students in public and private schools throughout the country. Estimates from the GAO are that over 200 students have died due to seclusion and restraints being used in schools over the past five years.

Keeping all Students Safe Act

This legislative proposal would prohibit the use of seclusion in locked and unattended rooms or enclosures prohibit the use of mechanical and chemical restraints and physical restraints that restrict breathing, and prohibit aversive behavioral interventions that compromise health and safety. These prohibitions are needed because there is great variability from state to state regarding the prohibition of these dangerous activities in schools.

In addition to the prohibitions mentioned above, the legislation would:

- 1) Only allow for physical restraints to be used in emergency situations,
- 2) Only impose physical restraints that did not inhibit a student's primary means of communication
- 3) Prohibit including the use of seclusions and/or restraints in a student's IEP or any other behavioral plan
- 4) Call for SEAs to establish policies and procedures to promote preventative programming to reduce the use of restraints
- 5) Call for States to collect data on the occurrence of seclusions and restraints, and
- 6) Call for schools to conduct a debriefing with parents and staff after a restraint is used and plan for positive behavioral interventions that will prevent the use of restraints with the student in the future.
- 7) Establish a state grant program to enhance the State's ability to promote, within its LEAs, preventative programming and training for school personnel.

The vast majority of disability organizations have backed this proposed legislation and many of the general education groups are in support as well.

For additional information or to support this proposal, please contact Michael Gamel-McCormick, Senate HELP Committee, at [Michael Gamel McCormick@help.senate.gov](mailto:Michael_Gamel_McCormick@help.senate.gov) or (202) 224-7692.