



**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**

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OTHER SOURCES**

U.S. Department of Education

Arne Duncan
Secretary

February 2010

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This report includes the descriptive information verified by each state and territory. Additional information can be found at the URLs provided in a specific state profile, or by contacting the state directly. No official endorsement by the U.S. Department of Education of any product, commodity, service, enterprise or policy mentioned in this report, on a state's Web site or other URL included in this report is intended or should be inferred. All Web addresses consulted or listed within this report were operational as of December 2009, unless otherwise noted.

This report is available on the U.S. Department of Education's Web site:
www.ed.gov/policy/seclusion/seclusion-state-summary.html.

On request, this document can be made available in accessible formats, such as Braille, large print and computer diskette. For more information, please contact the U.S. Department of Education's Alternative Format Center at 202-260-0852 or 202-260-0818, or send an e-mail to frank.pacheco@ed.gov.

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INTRODUCTION

In his July 31, 2009 letter, Secretary of Education Arne Duncan informed the Chief State School Officers that the Department's regional Comprehensive Centers would be conducting research on each state's laws, regulations, guidance and policies regarding the use of seclusion and restraints in schools. In December 2009, the states were asked to review and confirm the accuracy of the summary and the information for their specific state profile and to note any changes or corrections needed. The information in this report may be updated as states develop or revise policies and guidelines on the use of seclusion and restraints to ensure that all students are safe and protected.

SUMMARY TABLE

State	Statutes and Regulations Addressing Seclusion and Restraint	Policies and Guidance Addressing Seclusion and Restraint	Currently Developing or Revising State Statutes, Regulations, Policies or Guidance
Alabama	Please see attached.	Please see attached.	State is revising all policies; expects draft of new policy (for all students) to be adopted by end of July 2010.
Alaska	Please see attached.	No policies or guidance addressing seclusion and restraint.	State intends to provide guidance; currently collected data on training and resources at the local level.
American Samoa	No statute or regulations addressing seclusion and restraint.	No policies or guidance addressing seclusion and restraint.	Not indicated.
Arizona	No state statute or regulations addressing seclusion and restraint.	Please see attached.	Task force developed to make recommendation of best practice for discipline of students with disabilities.
Arkansas	Please see attached.	Please see attached.	Committee convened to review state statute juvenile justice code regarding restraints to consider applicability to education code. Also plan to review, update and expand seclusion regulation to apply to all students.
California	Please see attached.	No policies or guidance addressing seclusion and restraint.	Not indicated.
Colorado	Please see attached.	Please see attached.	Amendments to current rules, which apply to all students, have been adopted on November 12, 2009.
Commonwealth of the Northern Mariana Islands	No statute or regulations addressing seclusion and restraint.	No policies or guidance addressing seclusion and restraint.	Not indicated.

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State	Statutes and Regulations Addressing Seclusion and Restraint	Policies and Guidance Addressing Seclusion and Restraint	Currently Developing or Revising State Statutes, Regulations, Policies or Guidance
<u>Connecticut</u>	Please see attached.	Please see attached.	Preparing state form for districts to submit data on use of seclusion.
<u>Delaware</u>	Please see attached.	Please see attached.	Not indicated.
<u>District of Columbia</u>	Please see attached.	Please see attached.	Not indicated.
<u>Florida</u>	Please see attached.	Please see attached.	State statute and regulations are in development for students with disabilities.
<u>Georgia</u>	No state statute or regulations addressing seclusion and restraint.	Please see attached.	State Board of Education to adopt a final rule in April 2010.
<u>Guam</u>	No statute or regulations addressing seclusion and restraint.	No policies or guidance addressing seclusion and restraint.	Not indicated.
<u>Hawaii</u>	Please see attached.	Please see attached.	Not indicated.
<u>Idaho</u>	No state statute or regulations addressing seclusion and restraint.	No policies or guidance addressing seclusion and restraint.	Task force will begin in September 2009 and submit proposed rule (including all students) to State Board in June 2010.
<u>Illinois</u>	Please see attached.	Please see attached.	Not indicated.
<u>Indiana</u>	No state statute or regulations addressing seclusion and restraint.	Please see attached.	Not indicated.
<u>Iowa</u>	Please see attached.	Please see attached.	Not indicated.
<u>Kansas</u>	No state statute or regulations addressing seclusion and restraint.	Please see attached.	Developing a collection tool for schools to report quarterly seclusion data.
<u>Kentucky</u>	No state statute or regulations addressing seclusion and restraint.	Please see attached.	Restraint and Seclusion Advisory Committee met September 2009 to examine current guidance and practice and make recommendations.

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State	Statutes and Regulations Addressing Seclusion and Restraint	Policies and Guidance Addressing Seclusion and Restraint	Currently Developing or Revising State Statutes, Regulations, Policies or Guidance
<u>Louisiana</u>	No state statute or regulations addressing seclusion and restraint.	No policies or guidance addressing seclusion and restraint.	Considering developing legislation or policy, or both.
<u>Maine</u>	Please see attached.	Please see attached.	State is reviewing current rule on restraint.
<u>Republic of the Marshall Islands</u>	No statute or regulations addressing seclusion and restraint.	No policies or guidance addressing seclusion and restraint.	Not indicated.
<u>Maryland</u>	Please see attached.	Please see attached.	Amendments to the September 2003 regulations were approved on August 25, 2009, and became effective October 5, 2009.
<u>Massachusetts</u>	Please see attached.	Please see attached.	Not indicated.
<u>Michigan</u>	Please see attached.	Please see attached.	Not indicated.
<u>Federated States of Micronesia</u>	No statute or regulations addressing seclusion and restraint.	No policies or guidance addressing seclusion and restraint.	Not indicated.
<u>Minnesota</u>	Please see attached.	Please see attached.	Recently revised statutes will be effective in 2011. Additional legislative revisions are possible.
<u>Mississippi</u>	No state statute or regulations addressing seclusion and restraint.	Please see attached.	Plans to develop, review or revise statute, policies or guidelines.
<u>Missouri</u>	No state statute or regulations addressing seclusion and restraint.	No policies or guidance addressing seclusion and restraint.	School districts are required to have policies on restraints by July 2011.
<u>Montana</u>	Please see attached.	Please see attached.	The state is reviewing code and procedures.

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State	Statutes and Regulations Addressing Seclusion and Restraint	Policies and Guidance Addressing Seclusion and Restraint	Currently Developing or Revising State Statutes, Regulations, Policies or Guidance
<u>Nebraska</u>	No state statute or regulations addressing seclusion and restraint.	Please see attached.	The state is reviewing the inclusion in its regulations of a policy/procedure in the area of seclusion and restraint. Beginning in 2009/2010, districts are to assure that staff training is in place prior to using seclusion and restraints for students with disabilities.
<u>Nevada</u>	Please see attached.	Please see attached.	Revised statute on July 1, 2009 through Assembly Bill 56.
<u>New Hampshire</u>	Please see attached.	Please see attached.	Not indicated.
<u>New Jersey</u>	No state statute or regulations addressing seclusion and restraint.	No policies or guidance addressing seclusion and restraint.	State is developing policy.
<u>New Mexico</u>	No state statute or regulations addressing seclusion and restraint.	Please see attached.	Not indicated.
<u>New York</u>	Please see attached.	Please see attached.	State conducted a comprehensive review of all special education policies in September 2009.
<u>North Carolina</u>	Please see attached.	Please see attached.	Incident data being collected during 2009 school year.
<u>North Dakota</u>	Please see attached.	Please see attached.	Not indicated.
<u>Ohio</u>	No state statute or regulations addressing seclusion and restraint.	Please see attached.	State is forming committee to develop provisions on seclusion and restraints.

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State	Statutes and Regulations Addressing Seclusion and Restraint	Policies and Guidance Addressing Seclusion and Restraint	Currently Developing or Revising State Statutes, Regulations, Policies or Guidance
<u>Oklahoma</u>	No state statute or regulations addressing seclusion and restraint.	No policies or guidance addressing seclusion and restraint.	Draft guidance was developed for special education students in 2007 to assist districts in developing suitable restraints and seclusion policies at the local level. Draft policy on seclusion and restraint is out for public comment.
<u>Oregon</u>	Please see attached.	Please see attached.	Not indicated.
<u>Pennsylvania</u>	Please see attached.	Please see attached.	State is planning to develop regulations on the use of seclusion.
<u>Puerto Rico</u>	No statute or regulations addressing seclusion and restraint.	No policies or guidance addressing seclusion and restraint.	Not indicated.
<u>Republic of Palau</u>	No statute or regulations addressing seclusion and restraint.	No policies or guidance addressing seclusion and restraint.	Not indicated.
<u>Rhode Island</u>	Please see attached.	No policies or guidance addressing seclusion and restraint.	Not indicated.
<u>South Carolina</u>	No state statute or regulations addressing seclusion and restraint.	Please see attached.	Draft guidelines, which apply to all students, have been developed and are in the review process. Data from a survey that was sent to districts to see how many have policies in place are currently being reviewed. Results are expected to be released in mid December 2009.
<u>South Dakota</u>	No state statute or regulations addressing seclusion and restraint.	No policies or guidance addressing seclusion and restraint.	Not indicated.
<u>Tennessee</u>	Please see attached.	Please see attached.	Not indicated.

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Texas	Please see attached.	Please see attached.	State is currently collecting data on use of restraints for students with disabilities from all the districts. State has developed procedures for students with disabilities.
Utah	Please see attached.	No policies or guidance addressing seclusion and restraint.	State Board of Education Rules require the state to develop, review regularly, and provide to local school boards and charter school governing boards model policies to address disruptive student behavior.
Vermont	No state statute or regulations addressing seclusion and restraint.	No policies or guidance addressing seclusion and restraint.	Since March 2009, several meetings and focus groups have been held to address the issue and move in the direction of legislation.
Virginia	Please see attached.	Please see attached.	Superintendent's memo was issued October 2009 to all local education agencies (LEA) directing the review of state guidelines.
U.S. Virgin Islands	No statute or regulations addressing seclusion and restraint.	No policies or guidance addressing seclusion and restraint.	Draft policy being reviewed by the Policy Review Committee. Adoption of policy is expected in February 2010.
Washington	Please see attached.	Please see attached.	Not indicated.
West Virginia	No state statute or regulations addressing seclusion and restraint.	Please see attached.	Not indicated.
Wisconsin	Please see attached.	Please see attached.	Not indicated.

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State	Statutes and Regulations Addressing Seclusion and Restraint	Policies and Guidance Addressing Seclusion and Restraint	Currently Developing or Revising State Statutes, Regulations, Policies or Guidance
Wyoming	No state statute or regulations addressing seclusion and restraint.	No policies or guidance addressing seclusion and restraint.	In September 2009, state Special Education Director will propose developing state definitions for seclusion and restraints and state guidance as well as a process for public comment.

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ALABAMA

Government Accountability Office Report	State Web Site Search	Additional Information Provided by State Education Agency (SEA) Staff
<p>Ala. Code § 16-1-14 (Education; General Provisions)</p> <p>Local school boards may prescribe rules and regulations, subject to State Board of Education approval, that isolate or separate pupils who create disciplinary problems in any classroom or other school activity and whose presence in the class may be detrimental to the best interest and welfare of the class as a whole.</p>	<p>Alabama Administrative Code (Ch. 290-8-9) "Special Education Services" effective May 19, 2009, contains nothing regarding restraint and seclusion.</p> <p>Alabama Disabilities Advocacy Program (ADAP) released a report in June about the use of restraint in Alabama schools.</p>	<p>In the fall of 2008, Special Education Services, Alabama State Department of Education began development of a policy to clarify the permissible use of seclusion and restraint in public schools with an emphasis on positive behavioral supports and management of student behavior. A draft version of a policy for only students with disabilities was developed. (See Version One Draft Policy.) This version was presented to the Alabama Special Education Advisory Council on June 2, 2009. The Council approved the draft policy but asked the State Department of Education to consider using their approved policy version as a basis for developing a policy for all students, including students with disabilities. As a result, a second version was developed and the policy was shared with section directors across the State Department of Education. The Prevention and Support Section of the Department was designated as the lead section for this policy. At the same time, both versions of the seclusion and restraint policy were shared with local education agency special education coordinators and prevention and support coordinators across the state for comment. Both documents were also shared with the Alabama Disabilities Advocacy Program and Alabama Parent Education Center. The comment period will end at the end of August.</p>

Technical assistance is requested to review draft policy and make recommendations as appropriate.

Does SEA plan to develop, review or revise statutes, policies or guidelines? Yes. As discussed, a draft seclusion and restraint policy for all students will be presented to the Alabama State Board of Education for consideration of adoption this fall. (See Version Two Draft Policy.) At that time, a public comment period will be provided. It is expected that the draft policy will be adopted by the Alabama State Board of Education by the end of July 2010 with immediate implementation across the state.

ALASKA

The state of Alaska has limited coverage of issues concerning the use of restraint and seclusion in K–12 schools. The applicable statutes and regulatory requirements are likely limited due largely to the fact that there are few requirements at the federal level in relation to public pre-K/K–12 education’s use of restraint and seclusion. The applicable statutes/regulations are as follows:

AS 14.33.120. School Disciplinary and Safety Program.

AS 11.81.430. Justification: Use of Force, Special Relationships.

AS 14.07.020. Duties of the Department.

4 AAC 07.010. Establishment of district guidelines and procedures

4 AAC 07.900. Definition

Policies concerning the application of these requirements for public school general populations are left to individual school districts. For students with disabilities, the *Alaska State Special Education Handbook* provides some guidance concerning the use of restraint and seclusion, but this guidance is limited due to the requirement of the IEP team to develop individualized plans to address behavior (Behavior Intervention Plan, or BIP) with clear identification of the details in which such actions will be used and with supporting documentation. Part IV, Section 12 of the *Alaska State Special Education Handbook* identifies much of the implementation of a BIP, but does not address specifically the use of restraint and seclusion. It is acknowledged that restraint and seclusion are very serious issues, but are necessary for a fractional portion of student populations. Addressing the use of means necessary to protect a student under special circumstances are intended to be addressed in an individualized, case-by-case basis. This information is referenced in Appendix J of the *Handbook*.

In partnership with the Department’s Special Education Advisory Panel, the Governor’s Council on Disabilities and Special Education developed and sent a survey to Special Education Directors throughout the state. The purpose of the survey is to better determine the current level of involvement each school district has in restraint and seclusion. Survey results have 100% response rates unless otherwise noted. The survey results are as follows.

Restraint: Defined as any manual method, physical or mechanical device, material or equipment that immobilizes or reduces the ability of an individual to move his or her arms, legs, body or head freely

- 1) Does your district/school have restraint procedures in place? If yes, how does your district check on whether these procedures are being followed?46% Yes
- 2) Does your district use a form to report each incident of restraint?.....33% Yes
- 3) Who most often restrains students in your district?
 - Principal 34%
 - Assistant principal 14%
 - Regular education teacher20%
 - Special education teacher 60%
 - Teacher’s assistant 34%
 - School security staff 15%
 - Other 15%

Results allowed for multiple selection, presenting greater than 100% results

- 4) Does school staff contact the student’s parents/guardian after each incident of restraint?70% Yes

Seclusion: Defined as the involuntary confinement of an individual alone in a room or area from which the individual is physically prevented from leaving

- 1) Does your district/school have seclusion procedures in place? If yes, how does your district check on whether these procedures are being followed?45% Yes
- 2) Does your district use a form to report each incident of seclusion?.....20% Yes
- 3) Who most often puts students in seclusion at your district?
 - Principal45%
 - Assistant principal15%
 - Regular education teacher15%
 - Special education teacher50%
 - Teacher’s assistant15%
 - School security staff10%
 - Other (please describe).....15%

Results allowed for multiple selection, presenting greater than 100% results

- 4) Do you contact the student’s parents/guardian after each incident of seclusion?70% Yes

Training

- 1) Has your staff been trained to do restraints?50% Yes

If so, what methodology/system do you use?

 - MANDT59%
 - CPI91%
 - Other0%
- 2) Who is trained at each school?
 - a. Principal50%
 - b. Assistant Principal32%
 - c. Regular education teachers44%
 - d. Special education teachers72%
 - e. School security staff12%
 - f. Teacher assistants43%
 - g. Bus drivers11%
 - h. Secretary5%
 - i. Others28%

Results allowed for multiple selection, presenting greater than 100% results

- 3) What is the amount of training school staff (who restrain/seclude students) have received in the last two years (August 2007–June 2009):
 - a. 0–2 hours50%
 - b. 3–5 hours0%
 - c. 6–8 hours5%
 - d. 1–2 days15%
 - e. More than 2 days15%
 - f. Other15%
- 4) What type of training was provided? (click all that apply)
 - a. None37%
 - b. District in-service by district staff48%
 - c. District in-service by outside consultants11%
 - d. Training at a state conference0%

- e. Training at an out of state conference..... 11%
- f. Other 0%

Results allowed for multiple selection, presenting greater than 100% results

5) What professional development or training would help you reduce the number of restraints or seclusion incidents in your school? (Ranked in order of importance, percentages exceed 100%)

- g. Schoolwide positive behavior support program from outside consultant 42%
- h. Train-the-trainer program sponsored by Department of Education and Early Development on schoolwide Positive Behavioral Supports (PBS) 50%
- i. Ongoing/as-needed technical assistance from a state PBS trainer 6%
- j. University of Alaska Anchorage distance education class on PBS for continuing education credit (CEU) 15%
- k. Online/e-module of basic PBS training for new staff..... 10%

Results allowed for multiple selection, presenting greater than 100% results

This survey was voluntary and the results do not reflect an accurate representation of the state’s geographical population core.

There has never been a reported incident of fatality or injury as a result of the use of restraint or seclusion in Alaska. Alaska is one of 23 states that currently have no specific restrictions on the use of restraint and seclusion in the pre-K/K–12 school setting. Despite these facts, Alaska’s Department of Education and Early Development believes that now is an opportune time to initiate regulatory requirements to ensure that such an incident never occurs. At this point, it would be beneficial for the federal government to require each state to independently address the use of restraint and seclusion in public schools with, as a minimum, a specific course of action to prevent the incident of injury or death to all students of that state.

This information is the current status of the Department’s steps toward updating practices of the use of restraint and seclusion in Pre-K/K–12 public schools. It is not intended to be a plan of action or viewed as an official policy change at this time. For specific information concerning current practices regarding this issue, please feel free to contact the Director of Special Education, Art Arnold, at (907) 465-2972, or the special education director of the school district in question.

AMERICAN SAMOA

American Samoa Department of Education (ASDOE) does not have specific policies, laws, regulations or guidelines on the subject of student seclusion and restraints. The ASDOE Special Education Division follows the U.S. Department of Education special education laws on handling students with problems.

ASDOE has a policy handbook that is outdated and has not been used for over 10 years. Each school has its own policy on how to deal with students who misbehave. There is no written consensus across schools. However, schools tend to follow the same practice: When a student misbehaves in a way that is unacceptable in the classroom, the student is sent to the office. At the office, an administrator (principal, vice-principal, counselor, or a drug-free program specialist) would deal with the problem by counseling the student. If the problem occurs three times with the same student, the parents are called in. For extreme cases (e.g., the use of alcohol and drugs, fighting, abusive or disruptive behavior), the parents, police and social service staff members are involved.

All schools (elementary and high school) have a safe and drug-free program.

The safe and drug-free schools and communities program assist schools with students' behavioral problems. They have in place a student referral form and are using the American Samoa laws on compulsory attendance, illegal drugs and conducting student searches under the law.

ARIZONA

Arizona is one of 19 states that does not have any statutory requirements regarding the use of restraints and seclusion practices in schools. Guidance is provided through task force recommendations.

Arizona SB 1197 was passed in 2009 and established a nine-member Task Force on Best Practices in Special Education and Behavior Management to examine, evaluate and make recommendations concerning the best practices for managing the behavior and discipline of pupils with disabilities. Task force members are appointed by the State Board of Education, and the group will submit a written report of its findings to the governor and Legislature by August 20, 2009. The bill requires each school district governing board and charter school governing body to hold a public meeting to review and consider the adoption of the best practice recommendations by June 30, 2010.

The governing board or governing body is not required to adopt the recommendations and may choose to modify the recommendations to accommodate the needs of the school district or charter school. The bill repeals the task force on September 15, 2010.

ARKANSAS

The Arkansas Department of Education (ADE) developed rules and regulations on seclusion of special education students several years ago. The title of the policy is "Time-Out Seclusion Room." The rules and regulations on "Time-Out Seclusion Room" from ADE Special Education and Related Services policies are reproduced below beginning with section 20.00.

At the present time, ADE has not adopted a policy on the use of restraint. However, a policy on the use of restraint is available through the Arkansas Juvenile Justice code, at Arkansas Code Annotated 9-27-303(3)(C)(ii). The applicability of this policy to educational settings is the subject of discussion and may result in a specific policy on the use of restraint being developed by ADE, as noted below.

Plans for Further Development

An ADE committee has been convened to review the current state statute addressing restraint to determine whether it is sufficient in its application to educational settings. If it is determined to be insufficient, the existing statute, as well as other input, will be used for guidance in developing appropriate statutes, rules and/or another policy on student restraint applicable to educational settings. If additional statutory authority is necessary to develop and implement ADE policy on the use of restraint, then the necessary legislation will be proposed to the Arkansas General Assembly at the first opportunity available to ADE. Also, the existing special education rules on the use of time-out seclusion will be reviewed, updated as necessary and expanded to include all educational settings, not just special education environments.

Documentation

ARKANSAS DEPARTMENT OF EDUCATION

SPECIAL EDUCATION AND RELATED SERVICES

20.00 TIME-OUT SECLUSION ROOM

20.01 GENERAL

20.01.1 The time-out seclusion room is an extension of such techniques as turning a chair away from a group or placing a student in a corner or in the hallway.

20.01.2 Time-out is only effective if the classroom environment from which the student is removed is more reinforcing than the isolation area in which he is placed.

20.02 DEFINITION

20.02.1 Time-out. As used in these regulations, time-out is defined as the removal of the opportunity to engage in reinforced behavior.

20.03 RESTRICTIONS ON THE USE OF A TIME-OUT SECLUSION ROOM

20.03.1 Time-out seclusion should be used only for behaviors that are destructive to property, aggressive toward others or severely disruptive to the class environment. General noncompliance, self stimulation, academic refusal, etc., can be responded to with less stringent and restrictive techniques.

20.03.2 The time-out seclusion room should be used only as a last resort if and when less restrictive means of controlling behavior have proven ineffective.

20.03.3 The necessity of using physical force to place a student in a timeout seclusion room is inappropriate beyond that reasonably managed by the classroom teacher.

20.03.3.1 Involuntary time-out must not be used with such students and, in general, time-out is not an appropriate intervention for classroom use with any students older than 12 unless they have made a contractual agreement for its use.

20.03.3.2 It is important that teachers realistically evaluate their ability to physically remove a student to the time-out room.

20.03.3.3 If there is a reasonable doubt concerning the capability of the teacher to physically remove the resistant student, the teacher should not begin to attempt the time-out procedure. In such a case, an alternative strategy should be implemented.

20.03.4 Time-out seclusion rooms must meet structural guidelines and provide for continuous monitoring, visually and auditorily, of the student's behavior by an adult. (Refer to § 20.04.9 of this part for structural guidelines.)

20.04 GUIDELINES FOR APPROPRIATE USE OF A TIME-OUT SECLUSION ROOM

20.04.1 The teacher or behavioral specialist should have documentation that milder forms of time-out or other reduction techniques have proven ineffective in suppressing the inappropriate behavior.

20.04.2 The use of seclusion time-out and the behaviors which will result in its use must be explicitly stated in the student's IEP. Parent consent for the use of a time-out seclusion procedure should be documented.

20.04.3 Time-out must be paired with a behavioral plan to provide positive reinforcement for appropriate behaviors. This must also be included in the student's IEP.

20.04.4 Written procedures must be developed and followed for each student whose IEP includes the use of time-out.

20.04.5 The following guidelines should be adhered to for effective use of the timeout seclusion room.

20.04.5.1 Avoid lengthy verbal explanations. Behaviors resulting in time-out should be clearly explained prior to implementing the time-out program. Explanations provided during use of time-out should be brief, but should adequately inform the student of his/her misbehavior, such as, "Because you _____, you must go to time-out for _____ minutes." All other verbal interaction should be avoided.

20.04.5.2 To maximize opportunities to exercise self-control, students should be given the opportunity to take their own time-out after receiving instructions from the teacher. However, if students refuse to take their own time-out, or if they fail to respond to the teacher's instructions within a reasonable time interval (5 to 10 seconds), the teacher should physically remove them to the time-out area. (Refer to § 20.03.3 of these regulations regarding physically removing the child to the time-out area.)

20.04.5.3 For high intensity behavior (e.g., kicking, screaming), the student should immediately be escorted to the time-out room.

20.04.6 Time Spent In Time-Out Seclusion Room

20.04.6.1 Length of time spent in the time-out seclusion room must be documented and kept within the specified time limits -

A. Preschool - no more than 5 minutes for each exclusion.

B. Lower elementary - no more than 15 minutes for each exclusion.

C. Middle/upper elementary - no more than 20 minutes for each exclusion.

20.04.6.2 At the end of the prescribed time, the student should be offered the opportunity to rejoin the class. If the student chooses to stay in time-out, the door must be left open at this time. When a student consistently chooses to stay in the time-out seclusion room beyond the prescribed time limit, the use of this procedure must be reviewed. The time-out room may be providing more reinforcement than the environment from which the student was removed.

20.04.6.3 Should there be a need for a time-out period to extend past the prescribed time limits, the appropriateness of continuing the time-out procedure should be evaluated immediately by knowledgeable professionals (i.e., principal, counselor, special education staff).

20.04.6.4 Careful consideration must be taken in extending the prescribed length of the time-out seclusion. The effectiveness of the time-out procedure is the result of its consistent use, rather than the length of stay in the timeout seclusion room.

20.04.7 Records Must Be Kept Of Each Occasion When Time-Out Seclusion Is Used. The Records Should Include -

20.04.7.1 The student's name;

20.04.7.2 The behavior for which time-out is being used, as specified in the IEP; and

20.04.7.3 The time of day the student was placed in and released from time-out.

20.04.8 When the use of time-out seclusion is included in a student's IEP, it is recommended that the use of time-out to address specific student behaviors be reviewed by a knowledgeable professional(s) twice monthly.

20.04.8.1 The use of the time-out seclusion procedure shall be altered or discontinued as a behavioral management technique if data do not support its effectiveness.

20.04.8.2 The continued and/or frequent need for this type of behavioral intervention could indicate that behavioral objectives, management techniques or other factors affecting the learning environment are not appropriately matched with the student's needs and behaviors.

20.04.9 If A Time-Out Room Is To Be Employed, The Time-Out Room Should -

20.04.9.1 Be at least 4' X 4' and no larger than 6' X 6' in size;

20.04.9.2 Be properly lighted (preferably recessed lighting, with switches outside the room). Lighting should remain on at all times;

20.04.9.3 Be properly ventilated;

20.04.9.4 Be free of objects and fixtures;

20.04.9.5 Provide the means by which an adult can continuously monitor, visually and auditorily, the student's behavior;

20.04.9.6 The door should be such that it cannot be locked; and

20.04.9.7 Meet state and county fire and safety codes.

20.04.10 In addition, it is necessary that all personnel involved in designing and implementing behavioral management procedures, including the use of timeout seclusion, be adequately trained and supervised. It is imperative that these persons have attained levels of skill and competency so that their qualifications correspond to their responsibilities.

CALIFORNIA

California law recognizes that “the state has continually sought to provide an appropriate and meaningful educational program in a safe and healthy environment for all children regardless of possible physical, mental, or emotionally disabling conditions.” California Education Code [EC] identifies procedures to follow to ensure this. In addition, specific guidance and procedures on dealing with emergency situations are included.

These statutes, regulations, and guidance include the following:

CA Statutes

CA Education Code 30 EC 56520—Behavioral Interventions Legislative Findings, Declarations and Intent

http://www3.scoe.net/speced/laws_search/searchDetailsLaws.cfm?id=522&keywords=behavioral%20interventions

CA Education Code 30 EC 56521—Application of Chapter on Behavioral Interventions

http://www3.scoe.net/speced/laws_search/searchDetailsLaws.cfm?id=484&keywords=behavior

CA Education Code 30 EC 56523—Regulations Pertaining to Behavioral Interventions

http://www3.scoe.net/speced/laws_search/searchDetailsLaws.cfm?id=726&keywords=behavior

CA Education Code 30 EC 56524—Teacher Training in Appropriate Behavioral Interventions

http://www3.scoe.net/speced/laws_search/searchDetailsLaws.cfm?id=334&keywords=behavior

CA Education Code 30 EC 56525—Board Certified Behavior Analyst

http://www3.scoe.net/speced/laws_search/searchDetailsLaws.cfm?id=887&keywords=behavior

CA Regulations

CA Code of Regulations 5 CCR 3052—Behavioral Intervention Plans

<http://www.cde.ca.gov/sp/se/lr/om110707.asp>

5CCR 3052—Key Points

Behavioral Intervention Plan:

- An IEP team shall facilitate and supervise all assessment, intervention, and evaluation activities related to a individual's behavioral intervention plan.
- Behavioral intervention plans shall be implemented by, or be under the supervision of, only staff members with documented training in behavior analysis, including the use of positive behavioral interventions.

Emergency Interventions:

- Emergency interventions may only be used to control unpredictable, spontaneous behavior which poses clear and present danger of serious physical harm to the individual or others and which cannot be immediately prevented by a response less restrictive than the temporary application of a technique used to contain the behavior.
- To prevent emergency interventions from being used in lieu of planned, systematic behavioral interventions, the parent and residential care provider, if appropriate, shall be notified within one school day whenever an emergency intervention is used or serious property damage occurs.

Incident Reporting:

- “Behavioral Emergency Report” data shall be collected by Special Education Local Plan Areas (SELPA), which shall report annually the number of Behavioral Emergency Reports to the California Department of Education and the Advisory Commission on Special Education.
- The local plan of each SELPA shall include procedures governing the systematic use of behavioral interventions and emergency interventions. These procedures shall be part of the SELPA local plan.

Training

Through its three Diagnostic Centers, the California Department of Education provides statewide professional development and training opportunities to educators and families. In 2008–2009, the Diagnostic Center, Southern California, offered a training strand on positive behavioral supports that included classes on “Medical Interventions for Children with Behavior Disorders,” and “Nonviolent Crisis Intervention,” which focused on providing for the best possible care and welfare of assaultive, disruptive, or out-of-control individuals, even during violent moments. The Diagnostic Center, Central California, offered classes in minimizing disruptive behaviors and in providing behavior supports for students with severe disabilities. In association with the Diagnostic Centers, the Positive Environments, Network of Trainers (PENT) provides information and resources for educators working to achieve high educational outcomes through the use of proactive positive strategies. Evidence-based positive practices and other helpful information are disseminated statewide through the PENT Web site.

COLORADO

26-20-101. Short title.

This article shall be known and may be cited as the "Protection of Persons from Restraint Act".

Source: L. 99: Entire article added, p. 377, § 1, effective April 22.

26-20-102. Definitions.

As used in this article, unless the context otherwise requires:

(1) (a) "Agency" means:

(I) Any one of the principal departments of state government created in article 1 of title 24, C.R.S., or any division, section, unit, office, or agency within one of such principal departments of state government, except as excluded in paragraph (b) of this subsection (1);

(II) Any county, city and county, municipality, school district, or other political subdivision of the state or any department, division, section, unit, office, or agency of such county, city and county, municipality, school district, or other political subdivision of the state;

(III) Any public or private entity that has entered into a contract for services with an entity described in subparagraph (I) or (II) of this paragraph (a);

(IV) Any public or private entity licensed or certified by one of the entities described in subparagraph (I) or (II) of this paragraph (a);

(V) A person regulated pursuant to article 43 of title 12, C.R.S.

(b) "Agency" does not include:

(I) The department of corrections or any public or private entity that has entered into a contract for services with such department;

(II) Any law enforcement agency of the state or of a political subdivision of the state;

(III) A juvenile probation department or division authorized pursuant to section 19-2-204, C.R.S.;

(IV) Any county department of social services when engaged in performance of duties pursuant to part 3 of article 3 of title 19, C.R.S.

(2) "Chemical restraint" means giving an individual medication involuntarily for the purpose of restraining that individual; except that "chemical restraint" does not include the involuntary administration of medication pursuant to section 27-10-111 (4.5), C.R.S., or administration of medication for voluntary or life-saving medical procedures.

(3) "Emergency" means a serious, probable, imminent threat of bodily harm to self or others where there is the present ability to effect such bodily harm.

(4) "Mechanical restraint" means a physical device used to involuntarily restrict the movement of an individual or the movement or normal function of a portion of his or her body.

(5) "Physical restraint" means the use of bodily, physical force to involuntarily limit an individual's freedom of movement; except that "physical restraint" does not include the holding of a child by one adult for the purposes of calming or comforting the child.

(6) "Restraint" means any method or device used to involuntarily limit freedom of movement, including but not limited to bodily physical force, mechanical devices, or chemicals. "Restraint" includes a

chemical restraint, a mechanical restraint, a physical restraint, and seclusion. "Restraint" does not include:

(a) The use of any form of restraint in a licensed or certified hospital when such use:

(I) Is in the context of providing medical or dental services that are provided with the consent of the individual or the individual's guardian; and

(II) Is in compliance with industry standards adopted by a nationally recognized accrediting body or the conditions of participation adopted for federal medicare and medicaid programs;

(b) The use of protective devices or adaptive devices for providing physical support, prevention of injury, or voluntary or life-saving medical procedures;

(c) The holding of an individual for less than five minutes by a staff person for protection of the individual or other persons;

(d) Placement of an inpatient or resident in his or her room for the night; or

(e) The use of time-out as may be defined by written policies, rules, or procedures of an agency.

(7) "Seclusion" means the placement of a person alone in a room from which egress is involuntarily prevented.

Source: L. 99: Entire article added, p. 377, § 1, effective April 22. **L. 2004:** (1)(a)(V) added, p. 920, § 28, effective July 1.

26-20-103. Basis for use of restraint.

(1) Subject to the provisions of this article, an agency may only use restraint:

(a) In cases of emergency; and

(b) (I) After the failure of less restrictive alternatives; or

(II) After a determination that such alternatives would be inappropriate or ineffective under the circumstances.

(2) An agency that uses restraint pursuant to the provisions of subsection (1) of this section shall use such restraint:

(a) For the purpose of preventing the continuation or renewal of an emergency;

(b) For the period of time necessary to accomplish its purpose; and

(c) In the case of physical restraint, using no more force than is necessary to limit the individual's freedom of movement.

(3) In addition to the circumstances described in subsection (1) of this section, a facility, as defined in section 27-10-102 (4.5), C.R.S., that is designated by the executive director of the department of human services to provide treatment pursuant to section 27-10-105, 27-10-106, 27-10-107, or 27-10-109, C.R.S., to a person with mental illness, as defined in section 27-10-102 (8.5), C.R.S., may use seclusion to restrain a person with a mental illness when the seclusion is necessary to eliminate a continuous and serious disruption of the treatment environment.

(4) (a) The general assembly recognizes that skilled nursing and nursing care facilities that participate in federal medicaid programs are subject to federal statutes and regulations concerning the use of restraint in such facilities that afford protections from restraint in a manner consistent with the purposes and policies set forth in this article.

(b) If the use of restraint in skilled nursing and nursing care facilities licensed under state law is in accordance with the federal statutes and regulations governing the medicare program set forth in 42 U.S.C. sec. 1395i-3(c) and 42 CFR part 483, subpart B and the medicaid program set forth in 42 U.S.C. sec. 1396r(c) and 42 CFR part 483, subpart B and with the rules of the department of public health and environment relating to the licensing of these facilities, there shall be a conclusive presumption that such use of restraint is in accordance with the provisions of this article.

(5) (a) The general assembly recognizes that article 10.5 of title 27, C.R.S., and the rules promulgated pursuant to the authority set forth in that article, address the use of restraint on a person with a developmental disability.

(b) If any provision of this article concerning the use of restraint conflicts with any provision concerning the use of restraint stated in article 10.5 of title 27, C.R.S., or any regulation adopted pursuant thereto, the provision of article 10.5 of title 27, C.R.S., or the regulation adopted pursuant thereto shall prevail.

(6) The provisions of this article shall not apply to any agency while engaged in transporting a person from one facility or location to another facility or location when it is within the scope of that agency's powers and authority to effect such transportation.

Source: L. 99: Entire article added, p. 379, § 1, effective April 22. L. 2006: (3) amended, p. 1389, § 20, effective August 7.

26-20-104. Duties relating to use of restraint.

(1) Notwithstanding the provisions of section 26-20-103, an agency that uses restraint shall ensure that:

(a) At least every fifteen minutes, staff shall monitor any individual held in mechanical restraints to assure that the individual is properly positioned, that the individual's blood circulation is not restricted, that the individual's airway is not obstructed, and that the individual's other physical needs are met;

(b) No physical or mechanical restraint of an individual shall place excess pressure on the chest or back of that individual or inhibit or impede the individual's ability to breathe;

(c) During physical restraint of an individual, an agent or employee of the agency shall check to ensure that the breathing of the individual in such physical restraint is not compromised;

(d) A chemical restraint shall be given only on the order of a physician who has determined, either while present during the course of the emergency justifying the use of the chemical restraint or after telephone consultation with a registered nurse, licensed physician assistant, or other authorized staff person who is present at the time and site of the emergency and who has participated in the evaluation of the individual, that such form of restraint is the least restrictive, most appropriate alternative available;

Editor's note: This version of paragraph (d) is effective until January 1, 2009.

(d) A chemical restraint shall be given only on the order of a physician or an advanced practice nurse with prescriptive authority who has determined, either while present during the course of the emergency justifying the use of the chemical restraint or after telephone consultation with a registered nurse, licensed physician assistant, or other authorized staff person who is present at the time and site of the emergency and who has participated in the evaluation of the individual, that such form of restraint is the least restrictive, most appropriate alternative available. Nothing in this subsection (1) shall modify the requirements of section 26-20-102 (2) or 26-20-103 (3).

Editor's note: This version of paragraph (d) is effective January 1, 2009.

(e) An order for a chemical restraint, along with the reasons for its issuance, shall be recorded in writing at the time of its issuance;

(f) An order for a chemical restraint shall be signed at the time of its issuance by such physician if present at the time of the emergency;

(g) An order for a chemical restraint, if authorized by telephone, shall be transcribed and signed at the time of its issuance by an individual with the authority to accept telephone medication orders who is present at the time of the emergency;

(h) Staff trained in the administration of medication shall make notations in the record of the individual as to the effect of the chemical restraint and the individual's response to the chemical restraint.

(2) For individuals in mechanical restraints, agency staff shall provide relief periods, except when the individual is sleeping, of at least ten minutes as often as every two hours, so long as relief from the mechanical restraint is determined to be safe. During such relief periods, the staff shall ensure proper positioning of the individual and provide movement of limbs, as necessary. In addition, during such relief periods, staff shall provide assistance for use of appropriate toileting methods, as necessary. The individual's dignity and safety shall be maintained during relief periods. Staff shall note in the record of the individual being restrained the relief periods granted.

(3) Relief periods from seclusion shall be provided for reasonable access to toilet facilities.

(4) An individual in physical restraint shall be released from such restraint within fifteen minutes after the initiation of physical restraint, except when precluded for safety reasons.

Source: L. 99: Entire article added, p. 380, § 1, effective April 22. L. 2001: (1)(d) amended, p. 185, § 18, effective August 8. L. 2008: (1)(d) amended, p. 135, § 26, effective January 1, 2009.

Editor's note: Subsection (1)(d) was contained in a 2008 act that was passed without a safety clause. The act establishes an effective date of January 1, 2009, for this provision. For further explanation concerning the effective date, see page ix of this volume.

26-20-105. Staff training.

(1) All agencies shall ensure that staff utilizing restraint in facilities or programs are trained in the appropriate use of restraint.

(2) All agencies shall ensure that staff are trained to explain, where possible, the use of restraint to the individual who is to be restrained and to the individual's family if appropriate.

Source: L. 99: Entire article added, p. 381, § 1, effective April 22.

26-20-106. Documentation requirements.

Each agency shall ensure that an appropriate notation of the use of restraint is documented in the record of the individual restrained. Each agency that is authorized to promulgate rules or adopt ordinances shall promulgate rules or adopt ordinances applicable to the agencies within their respective jurisdictions specifying the documentation requirements for purposes of this section.

Source: L. 99: Entire article added, p. 382, § 1, effective April 22.

26-20-107. Review of the use of restraint.

Each agency shall ensure that a review process is established for the appropriate use of restraint.

Source: L. 99: Entire article added, p. 382, § 1, effective April 22.

26-20-108. Rules.

Each agency that is authorized to promulgate rules or adopt ordinances shall promulgate rules or adopt ordinances applicable to the agencies within their respective jurisdictions that establish procedures for the use of restraint consistent with the provisions of this article. Any agency that has rules or ordinances in existence on April 22, 1999, is not required to promulgate additional rules or adopt additional ordinances unless that agency's existing rules or ordinances do not meet the minimum requirements of this article.

Source: L. 99: Entire article added, p. 382, § 1, effective April 22.

Colorado State Board of Education

Department of Education

1 Colorado Code of Regulations 301-45

Adopted: December 14, 2000, November 12, 2009

Attorney General Opinion: December 18, 2000, November 23, 2009

Statutory Authority: C.R.S. 26-20-108, C.R.S. 22-2-107(1)(a) and 22-2-107(1)(c)

RULES FOR THE ADMINISTRATION OF THE PROTECTION OF PERSONS FROM RESTRAINT ACT

2620-R- 1.00 STATEMENT OF BASIS AND PURPOSE

1.00(1) These Rules were developed in accordance with C.R.S. 26-20-101, et seq. Specific statutory authority for the development of these Rules comes from C.R.S. 26-20-108. These Rules are provided pursuant to the terms of the "Protection of Persons from Restraint Act". These Rules outline the procedures to be followed in the administration of restraint, staff training, documentation requirements, and the review of the use of restraint.

1.00(2) The statutory authority for the amendments to these Rules is found in 26-20-108, C.R.S. The purpose of these amendments is to conform these Rules to the Protection of Persons from Restraint Act; add clarifying language; and reorganize these Rules to provide enhanced clarification for implementation.

2620-R- 2.00 DEFINITIONS

2.00(1) "Bodily Injury" means physical pain, illness or any impairment of physical or mental condition as defined in Section 18-1-901(3)(c), C.R.S.

2.00(2) "Emergency" means serious, probable, imminent threat of bodily injury to self or others with the present ability to effect such bodily injury. Emergency includes situations in which the student creates such a threat by abusing or destroying property.

2.00(3) "Parent" means

2.00(3)(a) A biological or adoptive parent of a child;

2.00(3)(b) A foster parent, unless state law, regulations, or contractual obligations with a state or local entity prohibit a foster parent from acting as a parent;

2.00(3)(c) A guardian generally authorized to act as the child's parent or authorized to make educational decisions for the child (but not the State if the child is a ward of the State);

2.00(3)(d) An individual acting in the place of a biological or adoptive parent (including a grandparent, step-parent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare;

2.00(3)(e) An educational surrogate parent who has been assigned in accordance with 1 C.C.R. 301-8 2220-R-6.02(8);

2.00(3)(f) Except as provided in section (3)(b) of this Rule 2.00(3), the biological or adoptive parent, when attempting to act as the parent under these Rules and when more than one party is qualified under Section (3) of this Rule 2.00 to act as a parent, must be presumed to be the parent for the

purposes of this Section unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.

2.00(3)(g) If a judicial decree or order identifies a specific person or persons under Sections 3(a) through (d) of this rule to act as the “parent” of a child or to make educational decisions on behalf of a child, then such persons(s) shall be determined to be the “parent” for the purposes of this Section 2.00(3).

2.00(4) “Positional Asphyxia” means an insufficient intake of oxygen as a result of body position that interferes with one’s ability to breathe.

2.00(5) “Public Education Agency”

2.00(5)(a) For the purposes of these Rules only, means:

2.00(5)(a)(i) Any public school district organized and existing under the laws of Colorado except a junior college district;

2.00(5)(a)(ii) The Charter School Institute as established in Article 30.5 of Title 22, C.R.S.;

2.00(5)(a)(iii) The Colorado School for the Deaf and the Blind as created by Article 80 of TITLE 22, C.R.S.;

2.00(5)(a)(iv) A Board of Cooperative Education Services as created by Article 5 of Title 22, C.R.S.;

2.00(5)(a)(v) An approved facility school as defined in 22-2-402(1) C.R.S. operated by an eligible facility; or

2.00(5)(a)(vi) Any public or private entity that has entered into a contract for services with an entity described in Subsections (i) through (v) of this Section 2.00(5)(a).

2.00(5)(b) “Public Education Agency” does not include:

2.00(5)(b)(i) Educational schools, programs, or facilities operated by or under the supervision, rules or licensing authority of the Colorado Department Of Human Services including:

2.00(5)(b)(i)(A) The Division Of Youth Corrections;

2.00(5)(b)(i)(B) The Mental Health Institutes at Fort Logan and Pueblo; and

2.00(5)(b)(i)(C) An eligible facility that is a day treatment facility; or

2.00(5)(b)(ii) Educational schools, programs or facilities operated by or under the supervision of the Colorado Department of Corrections.

2.00(5)(c) These Rules apply to public education agencies, as defined in Section 2.00(5)(a) and to all educational programs, activities or events provided, supervised or sponsored by such public agencies.

2.00(6) “Restraint” means any method or device used to involuntarily limit freedom of movement, including but not limited to bodily physical force, mechanical devices, chemicals, and seclusion.

2.00(6)(a) “Chemical Restraint” means administering medication to a student (including medications prescribed by his or her physician) on an as needed basis for the sole purpose of involuntarily limiting the student’s freedom of movement. “Chemical Restraint” does not include:

2.00(6)(a)(i) Prescription medication that is regularly administered to the student for medical reasons other than to restrain the student’s freedom of movement (e.g., Asthma-cort, medications used to treat mood disorders or ADHD, Glucagon); or

2.00(6)(a)(ii) The administration of medication for voluntary or life-saving medical procedures (e.g., EpiPens, Diastat).

2.00(6)(b) "Mechanical Restraint" means a physical device used to involuntarily restrict the movement of a student or the movement or normal function of his or her body. "Mechanical Restraint" does not include:

2.00(6)(b)(i) Devices recommended by a physician, occupational therapist, or physical therapist and agreed to by a student's IEP Team or Section 504 Team and used in accordance with the student's Individualized Education Program (IEP) or Section 504 Plan;

2.00(6)(b)(ii) Protective devices such as helmets, mitts, and similar devices used to prevent self-injury and in accordance with a student's IEP or Section 504 Plan;

2.00(6)(b)(iii) Adaptive devices to facilitate instruction or therapy and used as recommended by an occupational therapist or physical therapist, and consistent with a student's IEP or Section 504 Plan; or

2.00(6)(b)(iv) Positioning or securing devices used to allow treatment of a student's medical needs.

2.00(6)(c) "Physical Restraint" means the use of bodily, physical force to involuntarily limit an individual's freedom of movement. "Physical Restraint" does not include:

2.00(6)(c)(i) Holding of a student for less than five minutes by a staff person for the protection of the student or others;

2.00(6)(c)(ii) Brief holding of a student by one adult for the purpose of calming or comforting the student;

2.00(6)(c)(iii) Minimal physical contact for the purpose of safely escorting a student from one area to another; or

2.00(6)(c)(iv) Minimal physical contact for the purpose of assisting the student in completing a task or response.

2.00(6)(d) "Seclusion" means the placement of a student alone in a room from which egress is involuntarily prevented. "Seclusion" does not mean:

2.00(6)(d)(i) Placement of a student in residential services in his or her room for the night; or

2.00(6)(d)(ii) "Time-out" which is the removal of a student from potentially rewarding people or situations. A Time-out is not used primarily to confine the student, but to limit accessibility to reinforcement. In a Time-out, the individual is not physically prevented from leaving the designated Time-out area. Such a Time-out requires effective monitoring by staff.

2.00(7) "School Day" means any day or partial day that students are in attendance at the public education programs, agencies or services or sponsored events.

2.00(8) "Student," for the purposes of these Rules only, means any individual aged 3 – 21 years.

2620-R- 2.01 BASIS FOR THE USE OF RESTRAINT

2.01(1) Restraints shall only be used:

2.01(1)(a) In an emergency and with extreme caution; and

2.01(1)(b) After

2.01(1)(b)(i) The failure of less restrictive alternatives (such as Positive Behavior Supports, constructive and non-physical de-escalation, and re-structuring the environment); or

2.01(1)(b)(ii) A determination that such alternatives would be inappropriate or ineffective under the circumstances.

2.01(2) Restraints must never be used as a punitive form of discipline or as a threat to control or gain compliance of a student's behavior.

2.01(3) School personnel shall:

2.01(3)(a) Use restraints only for the period of time necessary and using no more force than is necessary; and

2.01(3)(b) Prioritize the prevention of harm to the student.

2620-R- 2.02 DUTIES RELATED TO THE USE OF RESTRAINT

2.02(1) General Requirements

2.02(1)(a) When restraints, including seclusion, are used, the public education program shall ensure that:

2.02(1)(a)(i) No restraint is administered in such a way that the student is inhibited or impeded from breathing or communicating;

2.02(1)(a)(ii) No restraint is administered in such a way that places excess pressure on the student's chest, back, or causes positional asphyxia;

2.02(1)(a)(iii) Restraints are administered only by staff who have received training, in accordance with Section 2.03 of these Rules;

2.02(1)(a)(iv) Opportunities to have the restraint removed are provided to the student who indicates that (s)he is willing to cease the violent or dangerous behavior;

2.02(1)(a)(v) When it is determined by trained staff that the restraint is no longer necessary to protect the student or others (i.e., the emergency no longer exists), the restraint must be removed. In the case of seclusion, staff must reintegrate the student or clearly communicate to the student that (s)he is free to leave the area used to seclude the student; and

2.02(1)(a)(vi) Student is reasonably monitored to ensure the student's physical safety.

2.02(2) Proper administration of specific restraints.

2.02(2)(a) "Chemical Restraints" shall not be used by public education agencies.

2.02(2)(b) "Mechanical Restraints" shall not be used by public education agencies, except that this provision shall not apply to armed security officers who:

2.02(2)(b)(i) Have received documented training in defensive tactics utilizing handcuffing procedures; and

2.02(2)(b)(ii) Are detaining a student for law enforcement.

2.02(2)(c) "Physical restraint"

2.02(2)(c)(i) A person administering the physical restraint must use only the amount of force necessary to stop the dangerous or violent actions of the student.

2.02(2)(c)(ii) A restrained student must be continuously monitored to ensure that the breathing of the student in such physical restraint is not compromised.

2.02(2)(c)(iii) A student shall be released from physical restraint within fifteen minutes after the initiation of the restraint, except when precluded for safety reasons.

2.02(2)(d) "Seclusion"

2.02(2)(d)(i) Relief periods from seclusion shall be provided for reasonable access to toilet facilities; and

2.02(2)(d)(ii) Any space in which a student is secluded must have adequate lighting, ventilation, and size. To the extent possible under the specific circumstances, the space should be free of injurious items.

2620-R- 2.03 STAFF TRAINING

2.03 All public educational programs shall ensure that staff utilizing restraint in schools or facilities are trained. Training shall include:

2.03(1) a continuum of prevention techniques;

2.03(2) environmental management;

2.03(3) a continuum of de-escalation techniques;

2.03(4) nationally recognized physical management and restraint practices, including, but not limited to, techniques that allow restraint in an upright or sitting position and information about the dangers created by prone restraint;

2.03(5) methods to explain the use of restraint to the student who is to be restrained and to the individual's family;

2.03(6) appropriate documentation and notification procedures; and

2.03(7) retraining at a frequency of at least every two years.

2620-R- 2.04 DOCUMENTATION AND NOTIFICATION REQUIREMENTS

2.04(1) If there is a reasonable probability that restraint might be used with a particular student, appropriate school staff must notify, in writing, the parents and, if appropriate, the student of the restraint procedures (including types of restraints) that might be used; specific circumstances in which restraint might be used; and staff involved. For students with disabilities, if the parents request a meeting with school personnel to discuss the notification, school personnel must ensure that the meeting is convened. This notification may occur at the meeting where the student's Behavior Plan or IEP is developed/reviewed.

2.04(2) If restraints are used, a written report must be submitted within one (1) school day to school administration.

2.04(3) The school principal or designee shall verbally notify the parents as soon as possible but no later than the end of the school day that the restraint was used.

2.04(4) A written report based on the findings of the staff review referenced in Section 2.05(1)(a) of these Rules, must be emailed, faxed, or mailed to the parent within five (5) calendar days of the use of restraint. The written report of the use of restraint must include:

2.04(4)(a) The antecedent to the student's behavior if known;

2.04(4)(b) A description of the incident;

2.04(4)(c) Efforts made to deescalate the situation;

2.04(4)(d) Alternatives that were attempted;

2.04(4)(e) The type and duration of the restraint used;

2.04(4)(f) Injuries that occurred, if any; and

2.04(4)(g) The staff present and staff involved in administering the restraint.

2.04(5) A copy of the written report on the use of restraint shall be placed in the student's confidential file.

2620-R- 2.05 REVIEW OF THE USE OF RESTRAINT

2.05(1) Each public education agency shall ensure that a review process is established and conducted for each incident of restraint used. The purpose of this review shall be to ascertain that appropriate procedures were followed and to minimize future use of restraint. The review shall include, but is not limited to:

2.05(1)(a) Staff review of the incident;

2.05(1)(b) Follow up communication with the student and his/her family;

2.05(1)(c) Review of the documentation to ensure use of alternative strategies; and

2.05(1)(d) Recommendations for adjustment of procedures, if appropriate.

If requested by the public education agency or the parent(s) of the student, the public education agency shall convene a meeting to review the incident. For students with IEPs or Section 504 Plans, such a review may occur through the IEP or Section 504 process.

2.05(2) Each public education agency shall ensure that a general review process is established, conducted and documented in writing at least annually. The purpose of the general review is to ascertain that the public education agency is properly administering restraint, identifying additional training needs, minimizing and preventing the use of restraint by increasing the use of positive behavior interventions, and reducing the incidence of injury to students and staff. The review shall include but is not limited to:

2.05(2)(a) Analysis of incident reports, including all reports prepared pursuant to 2.04(2) and 2.04(4); including but not limited to procedures used during the restraint, preventative or alternative techniques tried, documentation, and follow up;

2.05(2)(b) Training needs of staff;

2.05(2)(c) Staff to student ratio; and

2.05(2)(d) Environmental considerations, including physical space, student seating arrangements, and noise levels.

2620-R- 2.06 EXCEPTIONS

2.06(1) The provisions in these Rules shall not apply to Peace Officers, as defined in Section 16-2.5-101, C.R.S. et seq. who are acting within the scope of their employment or in accordance with Section 16-3-109, C.R.S.

2.06(2) The provisions in these Rules shall not apply to any public education agency while engaged in transporting a student from one facility or location to another facility or location when it is within the scope of that agency's powers and authority to effect such transportation.

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Regulations on Student Discipline regarding the following:

Jurisdiction, Day-to-Day Discipline, Detention, In-School Suspension, Offense Categories, Suspension, Expulsion, Hearing Procedures, Appeal to the Board of Education, Discipline of Students With Disabilities, Enrollment or Return Following Suspension and/or Expulsion, Closed Campus, Student Vehicle Use, Student Attire and Appearance, Student Participation in Secret Organizations and Gangs, Student Use and Care of School Property, and Student Use of Tobacco, Alcohol, Drugs and Betel Nut.

Policies on Student Discipline regarding the following:

Student Use of Tobacco, Alcohol, Drugs and Betel Nut, Drug-Free Schools, Student Conduct on Buses, Corporal Punishment: Prohibited, Reporting of Violent Behavior, and Reporting Student Abuse.

CONNECTICUT

Public Act No. 07-147 An Act Concerning Restraints and Seclusion in Public Schools (Effective October 1, 2007) <http://www.cga.ct.gov/2007/ACT/PA/2007PA-00147-R00SB-00977-PA.htm>

This act is specific to public schools and in accordance with Chapter 814e (see below).

An amendment to the regulations was made effective in May 2009 after public hearings were held. A summary of the regulations is described in *The Bureau Bulletin: Bureau of Special Education*, May–June 2009, Vol.1 (9) as follows:

“The regulations require the recording and reporting of instances of the emergency use of physical restraint or seclusion consistent with the requirements of Section 46a-153 of the Connecticut General Statutes, as amended by Section 3 of Public Act 07-147. The regulations also require the recording of the emergency use of restraint or seclusion to be done on a standardized incident report developed by the State Department of Education. A draft copy of a standardized incident report has been developed and is included in this bulletin for immediate use in school districts. The report is to be completed no later than the school day following the incident. Each instance of the emergency use of physical restraint or seclusion on a child eligible for special education, or a child being evaluated for eligibility for special education and awaiting a determination of eligibility must be recorded. Where seclusion is utilized as specifically provided for in an individualized education program, recording of each instance of its use is not required. Parents, however, are to receive notification consistent with the requirements of Section 10-76b-9 of the regulations.”

<http://www.sde.ct.gov/sde/lib/sde/PDF/DEPS/Special/Updates/BulletinMayJune2009.pdf>

B. STATE OF CONNECTICUT REGULATION of State Board of Education

The Regulations of Connecticut State Agencies are amended by adding Sections 10-76b-5 to 10-76b-11, inclusive, as follows:

(New) Section 10-76b-5. Use of physical restraint and seclusion in public schools. Definitions.

For the purposes of sections 10-76b-6 to 10-76b-11, inclusive, of the Regulations of Connecticut State Agencies:

- (1) “Assistant” means “assistant” as defined in section 46a-150 of the General Statutes;
- (2) “Behavior intervention” means supports and other strategies developed by the planning and placement team to address the behavior of a person at risk which impedes the learning of the person at risk or the learning of others;
- (3) “Business day” means “business day” as defined in subsection (a) of section 10-76h-1 of the Regulations of Connecticut State Agencies;
- (4) “Individualized education plan” or “IEP” means “individualized education plan” as defined in section 10-76a-1 of the Regulations of Connecticut State Agencies;
- (5) “Parent” or “parents,” means “parents” as defined in section 10-76a-1 of the Regulations of Connecticut State Agencies;
- (6) “Person at risk” means “person at risk” as defined in subparagraph (A) of subdivision (3) of section 46a-150 of the Connecticut General Statutes;
- (7) “Physical restraint” means “physical restraint” as defined in section 46a-150 of the Connecticut General Statutes;

- (8) “Planning and placement team” or “PPT” means “planning and placement team” as defined in section 10-76a-1 of the Regulations of Connecticut State Agencies;
- (9) “Provider” means “provider” as defined in section 46a-150 of the Connecticut General Statutes; and
- (10) “Seclusion” means “seclusion” as defined in section 46a-150 of the Connecticut General Statutes, provided seclusion does not include any confinement of a person at risk in which the person is physically able to leave the area of confinement including, but not limited to, in-school suspension and time-out.

(New) Section 10-76b-6. Use of physical restraint and seclusion in public schools.

No provider or assistant shall (1) use involuntary physical restraint on a person at risk or (2) involuntarily place a person at risk in seclusion, unless such use conforms to the requirements of sections 46a-150 to 46a-154, inclusive, of the Connecticut General Statutes, and the requirements of sections 10-76b-5 to 10-76b-11, inclusive, of the Regulations of Connecticut State Agencies.

(New) Section 10-76b-7. Use of physical restraint and seclusion in public schools, exceptions.

Nothing in sections 46a-150 to 46a-154, inclusive, of the Connecticut General Statutes or sections 10-76b-5 to 10-76b-11, inclusive, of the Regulations of Connecticut State Agencies shall be construed to interfere with the responsibility of local or regional boards of education to maintain a safe school setting in accordance with section 10-220 of the Connecticut General Statutes or to supersede the provisions of subdivision (6) of section 53a-18 of the Connecticut General Statutes concerning the use of reasonable physical force.

(New) Section 10-76b-8. Use of seclusion in public schools, requirements.

- (a) Except for an emergency intervention to prevent immediate or imminent injury to the person or to others conforming to the requirements of subsection (b) of section 46a-152 of the Connecticut General Statutes, seclusion may only be used if (1) this action is specified in the IEP of the person at risk and (2) if other less restrictive, positive behavior interventions appropriate to the behavior exhibited by the person at risk have been implemented but were ineffective.
- (b) If the PPT of a person at risk determines, based upon the results of a functional assessment of behavior and other information determined relevant by the PPT, that use of seclusion is an appropriate behavior intervention, the PPT shall include the assessment data and other relevant information in the IEP of the person at risk as the basis upon which a decision was made to include the use of seclusion as a behavior intervention. In such a case, the IEP shall specify (1) the location of seclusion, which may be multiple locations within a school building, (2) the maximum length of any period of seclusion, in accordance with subsection (d) of this section, (3) the number of times during a single day that the person at risk may be placed in seclusion, (4) the frequency of monitoring required for the person at risk while in seclusion, and (5) any other relevant matter agreed to by the PPT taking into consideration the age, disability and behaviors of the child that might subject the child to the use of seclusion.
- (c) In the event the parent disagrees with the use of seclusion in the IEP of the person at risk, the parent shall have a right to the hearing and appeal process provided for in section 10-76h of the Connecticut General Statutes.
- (d) Any period of seclusion (1) shall be limited to that time necessary to allow the person at risk to compose him or herself and return to the educational environment and (2) shall not exceed one hour. The use of seclusion may be continued with written authorization of the building principal or designee to prevent immediate or imminent injury to the person at risk or to others. In the

case where transportation of the person at risk is necessary, the written authorization to continue the use of seclusion is not required if immediate or imminent injury to the person at risk or to others is a concern.

- (e) The PPT shall, at least annually, review the continued use of seclusion as a behavior intervention for the person at risk. When the use of seclusion as a behavior intervention is repeated more than two times in any school quarter, the PPT (1) shall convene to review the use of seclusion as a behavior intervention, (2) may consider additional evaluations or assessments to address the child's behaviors, and (3) may revise the child's IEP, as appropriate.
- (f) The PPT shall inquire as to whether there are any known medical or psychological conditions that would be directly and adversely impacted by the use of seclusion as a behavior intervention. A person at risk shall not be placed in seclusion if such person is known to have any medical or psychological condition that a licensed health care provider has indicated will be directly and adversely impacted by the use of seclusion. For purposes of this subsection, a "licensed health care provider" means (1) a legally qualified practitioner of medicine, (2) an advanced practice registered nurse, (3) a registered nurse licensed pursuant to chapter 378 of the Connecticut General Statutes, or (4) a physician assistant licensed pursuant to chapter 370 of the Connecticut General Statutes. Such licensed health care provider may be the person at risk's licensed health care provider or a licensed health care provider utilized by the public schools to provide an evaluation of the person at risk for purposes of determining the appropriate use of seclusion as a behavior intervention in the person at risk's IEP. As part of the assessments described in subsection (b) of this section, the PPT may request a medical or psychological evaluation of the child for purposes of determining whether there is a medical or psychological condition that will be directly and adversely impacted by the use of seclusion as a behavior intervention. The parent may provide that information to the PPT. Any written statement provided by a licensed health care provider shall be included in the educational record of the person at risk.
- (g) A person at risk in seclusion shall be monitored as described in the child's IEP by a provider or assistant specifically trained in physical management, physical restraint and seclusion procedures including, but not limited to, training to recognize health and safety issues for children placed in seclusion to ensure the safe use of seclusion as a behavior intervention.
- (h) Any room used for the seclusion of a person at risk shall:
 - (1) Be of a size that is appropriate to the chronological and developmental age, size and behavior of the person at risk;
 - (2) Have a ceiling height that is comparable to the ceiling height of the other rooms in the building in which it is located;
 - (3) Be equipped with heating, cooling, ventilation and lighting systems that are comparable to the systems that are in use in the other rooms of the building in which it is located;
 - (4) Be free of any object that poses a danger to the person at risk who is being placed in the room;
 - (5) Have a door with a lock only if that lock is equipped with a device that automatically disengages the lock in case of an emergency. Not later than January 1, 2014, the locking mechanism of any room in a public school specifically designated for use as a seclusion room shall be a pressure sensitive plate. Any latching or securing of the door, whether by mechanical means or by a provider or assistant holding the door in place to prevent the person at risk from leaving the room, shall be able to be removed in the case of any

emergency. An “emergency” for purposes of this subdivision includes, but is not limited to, (A) the need to provide direct and immediate medical attention to the person at risk, (B) fire, (C) the need to remove the person at risk to a safe location during a building lockdown, or (D) other critical situations that may require immediate removal of the person at risk from seclusion to a safe location; and

(6) Have an unbreakable observation window located in a wall or door to permit frequent visual monitoring of the person at risk and any provider or assistant in such room. The requirement for an unbreakable observation window does not apply if it is necessary to clear and use a classroom or other room in the school building as a seclusion room for a person at risk.

(New) Section 10-76b-9. Parental notification of physical restraint, seclusion.

- (a) If a person at risk is physically restrained or placed in seclusion, an attempt shall be made to notify the parent on the day of, or within twenty-four hours after, physical restraint or seclusion is used with the child as an emergency intervention to prevent immediate or imminent injury to the person or others, as permitted under sections 46a-150 to 46a-154, inclusive, of the Connecticut General Statutes. Such notification shall be made by phone, e-mail or other method which may include, but is not limited to, sending a note home with the child. The parent of such child, regardless of whether he or she received such notification, shall be sent a copy of the incident report no later than two business days after the emergency use of physical restraint or seclusion. The incident report shall contain, at a minimum, the information required under subsection (d) of section 46a-152 of the Connecticut General Statutes.
- (b) Where seclusion is included in the IEP of a person at risk, the PPT and the parents shall determine a time frame and manner of notification of each incident of seclusion.
- (c) The Department of Education shall develop a plain language notice for use in the public schools to advise parents of the laws and regulations concerning the emergency use of physical restraint or seclusion or the use of seclusion as a behavior intervention in a child’s IEP. On and after October 1, 2009, this notice shall be provided to the child’s parent at the first PPT meeting following the child’s referral for special education. For children who were eligible for special education prior to October 1, 2009, the notice shall be provided to the parent at the first PPT meeting convened after October 1, 2009. The notice shall also be provided to a child’s parent at the first PPT meeting at which the use of seclusion as a behavior intervention is included in the child’s IEP.

(New) Section 10-76b-10. Required training for providers or assistants on the use of physical restraint or seclusion.

A person at risk may be physically restrained or removed to seclusion only by a provider or assistant who has received training in physical management, physical restraint and seclusion procedures. Providers or assistants shall also be provided with training as described in subdivision (2) of subsection (a) of section 46a-154 of the Connecticut General Statutes.

(New) Section 10-76b-11. Reports of physical restraint, seclusion.

The recording and reporting of instances of physical restraint or seclusion and the compilation of this information shall be in accordance with section 46a-153 of the Connecticut General Statutes. The recording of such instances shall be done on a standardized incident report developed by the Department of Education. Such reports shall be completed no later than the school day following the incident.

EFFECTIVE DATE: Upon filing with the Secretary of the State.

STATEMENT OF PURPOSE:

(A) Purpose of regulation: To address the use of physical restraint or seclusion in the public schools for children who are or may be eligible for special education consistent with the requirements of Public Act 07-147.

(B) Summary of the main provisions of the regulation: This regulation adopts definitions contained in Public Act 07-147 concerning what is seclusion and restraint and who may perform such; requires that the use of physical restraint or seclusion conforms to the requirements of Public Act 07-147; provides exceptions to the restrictions on the use of physical restraint or seclusion as emergency interventions to allow districts to maintain a safe school setting and to use reasonable physical force consistent with the requirements of Section 53a-18 of the general statutes; details under what conditions seclusion may be used as a behavioral intervention strategy for a child eligible for special education; provides for parental notification in the event physical restraint or seclusion must be used as an emergency intervention, allows the PPT to determine the appropriate method of notification if seclusion is used as a behavior intervention and provides clarification on how school districts are to notify parents regarding the laws and regulations on the use of restraint and seclusion in the public schools; provides that providers or assistants be provided with training as required pursuant to subdivision (2) of subsection (a) of section 46a-154 of the general statutes; and requires that the Department of Education create a standardized incident report form for reporting incidents of physical restraint or seclusion.

(C) Legal effects of the regulation: The proposed regulation adds to the regulatory requirements for the provision of special education and related services to children who are eligible or whose eligibility for special education is being determined. The development of the IEP, including the conducting of any assessment or evaluation would follow the procedural requirements contained in the federal Individuals with Disabilities Education Act (IDEA) and the state special education regulations.

C. Chapter 814e: Physical Restraint, Medication and Seclusion of Persons Receiving Care, Education or Supervision in an Institution of Facility. <http://www.cga.ct.gov/2005/pub/Chap814e.htm>

Sec.46a-152. Physical restraint and use of psychopharmacologic agents restricted. Monitoring and documentation required. <http://www.cga.ct.gov/2006/sup/Chap814e.htm>, Covers the conditions under which physical restraints, medication, and seclusion may be used. Calls for the continual monitoring, including regular evaluation, of any person subject to any of these conditions and it's documentation in the person's medical or educational record

D. Department of Children and Families, Agency Regulations: Rights of Children and Youth Under the Supervision of the Commissioner of Children and Families
<http://www.dir.ct.gov/dcf/Policy/regslaws/Regulations/REGS17a-16-6.htm#Section17a-16-6> These agency regulations pertain to the use of or receipt of mail, use of the telephone, and the use of restraint, seclusion and force for children under the supervision of the Department of Children and Families.

The "2009 Parental Notification of the Laws Relating to Seclusion and Restraint in the Public Schools"—English and Spanish versions—can be found at

<http://www.sde.ct.gov/sde/cwp/view.asp?Q=320730&a=2678>

DELAWARE

Statutes	Regs	Policies	Guidance	Future Plans
<p>14 DE Code, Chapter 7: Lawful Authority of Teachers over Pupils</p> <p>Provides for the use of reasonable and necessary force in situations including but not limited to protecting a pupil from inflicting harm on pupil's own self or to protect the safety of others.</p>	<p><u>14 DE. Admin. Code 900 Administrative Code Regs. § 929</u> (Department of Education; Special Populations)</p> <p>While "restraint" or "seclusion" are not discussed directly, a school's "emergency intervention procedures" and "behavior management procedures" for children with autism must be reviewed by the state's Human Rights Committee and Peer Review Committee. Parents must give informed consent for the use of each behavior management procedure and may withdraw that consent at any time.</p>	<p>None</p>	<p>Guidelines and Sample Strategies for the Behavior Support Plan (page 6 of 8 mentions gentle restraint). http://www.doe.k12.de.us/infosuite/staff/profdev/rti_files/Module%204%20Guidelines%20for%20Behavior%20Support.pdf</p> <p>The Delaware Autism program has guidelines for seclusion and restraint, which are described in its document "Behavior Management" from 2007. Restraints include the brief immobilization of hands and the use of restrictive or protective clothing. Seclusion is not really used, although timeout in-area and accompanied timeout out of area can be used.</p>	<p>None discussed</p>

DISTRICT OF COLUMBIA

Statutes	Regulations	Policies	Guidance	Future Plans
<p><u>D.C. Code §§ 38-2561.01 - .16 (Educational Institutions; Special Education; Nonpublic Schools)</u></p>	<p>Chapter 28 A2812 http://www.osse.dc.gov/seo/frames.asp?doc=/seo/lib/seo/Final_OSSE_5_DCMR_A28_proposed_rules.pdf Referent pages: 9, 11, 15, 16, 18, 19, 20, 42, 69, 70, http://www.tash.org/dev/tashcms/ewebeditpro5/upload/In_the_Name_of_Treatmentfinal.pdf. article source: http://www.friendsofquinn.com/share/c/88219/90/restraint-disabilities/2</p>	<p>Implementation of a positive behavioral support system in every secondary school—page 9 State Performance Plan (Special Education) Disseminated June 29, 2009, memo to local education agencies (LEA) to clarify expectations related to policies and procedures for children with disabilities.</p>	<p>References for non-public schools: DC State Monitoring and Compliance Manual for IDEA Part B, Feb. 2009, Indicators 4 and 5. Positive Social Emotional Skills (including social relationships) Annual Performance Report</p>	<p>Positive behavior supports evidenced in building-wide and classroom behavior management systems. Current state education agency (SEA) response to intervention (RTI)/positive behavior supports (PBS) pilot initiative is in year two of implementation with 4 LEAs. SEA plans to develop demonstration sites via this pilot to showcase best practices/lessons learned to inform expansion. SEA also plans to issue state level guidance on Response to Intervention for SY 2010–2011.</p>
	<p>Chapter 25, Subtitle E of Title 5 of the <i>District of Columbia Municipal Regulations</i> (DCMR) Proposed rules on student code of conduct with a section dedicated to seclusion and restraint. Comment period closes on January 12, 2010. http://www.dcregs.org/Gateway/NoticeHome.aspx?NoticeID=52494</p>		<p>Guidance will follow after final rule is published. Targeted for late winter, early spring 2010.</p>	

SUMMARY OF SECLUSION AND RESTRAINT STATUTES, REGULATIONS, POLICIES AND GUIDANCE, BY STATE AND TERRITORY

Statutes	Regulations	Policies	Guidance	Future Plans
	Reference page: 4			



Memo to: All LEAs
From: Tamera J. Lewis, Assistant Superintendent of Education
Re: LEA Review of Behavior Policies and Procedures for Children with Disabilities
Date: Monday, June 29, 2009

This memo is intended to clarify expectations related to policies and procedures for children with disabilities who exhibit behaviors that significantly impede either their learning or the learning of others. As the 2008-2009 SY comes to a close and preparations for the 2009-2010 SY begin, The OSSE is requesting that all LEAs conduct a review of key policies and procedures to ensure IDEA compliance in this domain. Key areas addressed by IDEA 2004 are outlined below:

➤ Individualized Behavior Planning

Per IDEA 2004, IEP Teams must determine whether a child needs positive behavioral interventions and supports. If the behavior of a child impedes the child's learning or the learning of other children, the IEP Team must consider the use of positive behavioral supports, supports, and other strategies to address that behavior (20 U.S.C. § 1414(d)(3)(B)(i), 34 C.F.R. § 300.324(a)(2)(i)). Further, if the child's behavior that impedes learning is not addressed in the IEP, the IEP Team must review and revise the IEP to ensure that the child receives appropriate positive behavioral interventions and supports and other strategies. (34 C.F.R. § 300.324(a) (2) (i) and 34 C.F.R. § 300.324(a) (3) (i) (see <http://www.pbis.org> for assistance).

➤ Discipline

All LEAs must ensure compliance with IDEA 2004 discipline procedures and related procedural safeguards when determining whether a change in placement is appropriate for a child with a disability who violates a code of student conduct. 20 U.S.C. 1415(k)(1) and (7), 34 C.F.R. § 300.530) (see <http://www.ideapartnership.org> for assistance).

All LEAs are expected to ensure alignment with these standards and make any necessary adjustments to existing policies and procedures. If you are interested in receiving training or technical assistance in this area, please contact Ms. Chandra Williams, Director, Training and Technical Assistance Unit at chandra.williams@dc.gov.

FLORIDA

Florida has no rule in place governing student restraint and seclusion in the public and private schools. However, Florida currently has several initiatives under way. There is a new State Board of Education rule under development that is tentatively titled “Standards for the Use of Reasonable Force to Maintain a Safe and Orderly Learning Environment.” This rule (6A-6.05271, FAC) will address the use of reasonable force, physical restraint, time out and seclusion to maintain a safe and orderly learning environment.

Legislation has been introduced in the Florida’s House of Representatives that addresses student restraint and seclusion for students with disabilities (HB 81). The bill, “Use, Prevention, and Reduction of Seclusion and Restraint on Students with Disabilities in Public Schools,” provides that manual physical restraint shall be used only in an emergency when there is imminent risk of serious injury or death to student or others; provides restrictions on use of manual physical restraint; prohibits the use of manual physical restraint by school personnel who are not trained and certified to use district-approved methods for applying restraint techniques; prohibits school personnel from placing student in seclusion; provides requirements for use of time-out; requires schools to prepare incident reports after an occasion of student restraint; and requires development and revision of school district policies and procedures.

Current Florida Statutes—[1003.32](#) (1)(j), [1006.09](#)(1), and [1012.75](#)(2)—outline the authority of teachers and principals to maintain an orderly environment, but do not directly refer to the use of student restraint or seclusion.

In addition, the Fire Marshall Code Rule (69A-58.0084), provides guidance on seclusion and time out rooms. It reads as follows.

[69A-58.0084](#) Seclusion Time-Out Rooms.

(1) Egress. Secured seclusion time-out rooms, when provided, shall be equipped with doors which allow egress at all times in the event of an emergency.

(2) Locking devices.

(a) Locking devices on secured seclusion time-out rooms are permitted only when such room is in full compliance with the criteria in this section.

(b) An electro-magnetic locking device is the only approved device to secure a secured seclusion time-out room. The lock shall remain engaged only when the human hand is in contact with it placing pressure on it.

1. Upon release of pressure, the door shall unlock. The locking device shall be designed, and shall be operated, so that it cannot be engaged by leverage of an inanimate object or in any manner except by constant human contact.

2. The push button shall be recessed from the face of the unit housing, or in some other way designed to prevent taping or wedging the button in the engaged mode.

3. The device shall have an interface with the fire alarm system and shall automatically release and disengage upon activation of the fire alarm. The locking device shall automatically release and disengage in the event of power failure.

4. A timer shall not be used on the locking device.

(3) Door Requirements. The door shall have only a push panel exposed on the interior of the room. A vision panel shall be provided in the door, and it shall be no larger than 12" x 12" (144 square inches). The view panel shall consist of clear one-quarter (1/4) inch thick unbreakable plastic panel, flush with the face of the door on the inside. The view panel shall be positioned in the door to allow a staff

member to continuously keep the student under observation. The view panel shall not be covered with any material.

(4) Finishes and materials. The ceiling, floor, and walls must be free of any loose, torn or potentially hazardous materials. All surfaces must be kept smooth and free of any hooks, outlets, switches or similar items. Construction materials shall meet all applicable provisions of the Florida Fire Prevention Code and the Florida Building Code. Each secured seclusion time-out room must be identified with a permanently mounted room number.

(5) All secured seclusion time-out rooms must have natural or mechanical ventilation.

(6) The division and the local fire official are permitted to conduct unannounced inspections of all secured seclusion time-out rooms to ensure compliance with this rule chapter. A written record of each inspection must be made and a copy of same must be provided to the school administrator or designee.

(7) During each unannounced inspection, the division or the local fire official is permitted to inspect secured seclusion time-out rooms, interview staff, and review staff development activities to ensure compliance with this rule chapter.

(8) If during any fire safety inspection a secured seclusion time-out room is found in violation of this rule chapter, the board or the local fire official shall immediately report the deficiency to the division in accordance with Section [1013.12\(1\)\(c\)](#) or [1013.12\(5\)](#), F.S., and the secured seclusion time-out room shall be immediately withdrawn from use.

Florida has supported a discretionary project at the University of South Florida (USF) related to Positive Behavioral Support: Response to Intervention for Behavior (PBS) program for over 12 years. The PBS program has to its credit achieved the following:

To date, nearly 800 schools have been trained in the school-wide PBS and at least 600 of these schools remain active.

Interest in and demand for PBS in Florida schools is rapidly increasing; during the last year, the PBS project Web site (<http://flpbs.fmhi.usf.edu>) had approximately 4,000,000 hits, up from 1,000,000 hits the previous year.

Scale up during the 2007–08 school year included:

Training to over 3,400 school personnel across Tiers 1–3 (1. universal/core, 2. targeted group/supplemental, 3. individual student/intensive) on schoolwide PBS,

Over 340 personnel and 122 schools participated in Tier 2 training,

Nearly 1,600 personnel participated in 35 initial or ongoing PBS training for Tier 1, and

Nearly 400 schools participated in team-based PBS training (296 initial, 23 retraining, and 77 booster) for Tier 1.

At least 60 of Florida's 67 school districts are now collaborating with the PBS project and have an active PBS District Leadership Team overseeing all PBS activities within their respective districts.

Outcomes (based on data from 2007–2008 school year) include:

Ninety-one (91) schools were identified as PBS Model Schools,

Over 70% of all active schools are implementing PBS with fidelity,

Participating schools realized an average 26% fewer office discipline referrals and 10% fewer out-of-school suspensions after their first year of implementation, and

Participating schools implementing PBS with fidelity realized 29% fewer office discipline referrals and 47% fewer out-of-school suspensions compared with low-implementing schools.

In June, 2008, "Guidelines for the Use of Manual Physical Restraint in Special Education Programs" was released by the Department. This document was developed with input from a workgroup composed of various stakeholders, including school district staff members, behavioral specialists and parent representatives. This Technical Assistance Paper (available online at: <http://info.fldoe.org/docushare/dsweb/Get/Document-5016/k12-2008-67.pdf>) provides guidance for the use of manual physical restraint in school districts, including (a) when manual physical restraint is used, (b) who should use it, (c) the type of training needed for its correct usage, (d) considerations when selecting a training program, (e) what should be documented, (f) parent notification and reporting, and (g) monitoring its use. Although Florida School Laws do not expressly reference the term "manual physical restraint," the Florida Legislature has created statutes that address the use of "reasonable force." The paper references the following statutes.

1003.32, F.S., Authority of teacher; responsibility for control of students; district school board and principal duties.

Subject to law and to the rules of the district school board, each teacher or other member of the staff of any school shall have such authority for the control and discipline of students as may be assigned to him or her by the principal or the principal's designated representative and shall keep good order in the classroom and in other places in which he or she is assigned to be in charge of students.

(1) In accordance with this section and within the framework of the district school board's code of student conduct, teachers and other instructional personnel shall have the authority to undertake any of the following actions in managing student behavior and ensuring the safety of all students in their classes and school and their opportunity to learn in an orderly and disciplined classroom.

... (j) Use reasonable force, according to standards adopted by the State Board of Education, to protect himself or herself or others from injury.

1006.11, F.S., Standards for use of reasonable force.

(1) The State Board of Education shall adopt standards for the use of reasonable force by district school board personnel to maintain a safe and orderly learning environment. Such standards shall be distributed to each school in the state and shall provide guidance to district school board personnel in receiving the limitations on liability specified in subsection (2).

(2) Except in the case of excessive force or cruel and unusual punishment, a teacher or other member of the instructional staff, a principal or the principal's designated representative, or a school bus driver shall not be civilly or criminally liable for any action carried out in conformity with the State Board of Education and district school board rules regarding the control, discipline, suspension, and expulsion of students, including, but not limited to, any exercise of authority under S. [1003.32](#) or S. [1006.09](#).

1012.75, F.S., Liability of teacher or principal; excessive force.

(1) Except in the case of excessive force or cruel and unusual punishment, a teacher or other member of the instructional staff, a principal or the principal's designated representative, or a bus driver shall not be civilly or criminally liable for any action carried out in conformity with State Board of Education and district school board rules regarding the control, discipline, suspension, and expulsion of students, including, but not limited to, any exercise of authority under S. [1003.32](#) or S. [1006.09](#).

(2) The State Board of Education shall adopt rules that outline administrative standards for the use of reasonable force by school personnel to maintain a safe and orderly learning environment. Such standards shall be distributed to each school in the state and shall provide guidance to school personnel in receiving the limitations on liability specified in this section.

GEORGIA

State Web Site Search	State Education Agency (SEA) Plans to Develop, Review, or Revise Statutes, Policies, or Guidelines (Y/N)	Technical Assistance Requested (Y/N)
<p>Special Education rules adopted June 14, 2007, do not address restraint and seclusion.</p> <p>Minutes from State Advisory Panel (SAP) for Special Education meeting on November 4–5, 2008, indicate that the GADOE Divisions for Special Education Services and Supports said that restraint and seclusion guidelines were sent to the Georgia Network for Educational and Therapeutic Support (GNETS) and local education agency (LEA) special education directors. The Panel asked DOE staff members about rule making process and timelines.</p> <p>Minutes from January 22–23, 2009, SAP meeting include a committee recommendation of further discussion on seclusion and restraint. Minutes from the SAP for Special Education meeting on September 24–25, 2009, include an update on the proposed rule on seclusion and restraint. Additional information on seclusion and restraint was shared at the SAP for Special Education meeting on November 11 and 12, 2009.</p>	<p>Yes. Georgia is developing a State Board of Education rule on restraint and seclusion. We anticipate the State Board of Education to adopt the rule in April 2010.</p>	<p>No. Georgia is working with stakeholders in the rule development and is receiving public comment as required in state statute through the Georgia Administrative Procedures Act.</p>

GUAM

Guam Education Policy Board

http://www.gdoe.net/gepb/policy_stcond.htm

Specific Sites with Information related to restraints and seclusion:

BOARD POLICY

407 STANDARD OPERATING PROCEDURES FOR STUDENT SEARCHES AND SEIZURES

Amend 407

Issued: 01/10/07

<http://216.236.125.173/LinkClick.aspx?fileticket=4erW3mtJ8Qs%3d&tabid=235&mid=757>

410 CORPORAL PUNISHMENT

Rescind: JDA

Issued Date: 08/07/79

Issued: 03/29/88

<http://216.236.125.173/LinkClick.aspx?fileticket=JPDMet-Yj5Y%3d&tabid=235&mid=757>

405 STUDENT SUSPENSION/EXPULSION

Issued Date: 405 04/01/99

http://216.236.125.173/LinkClick.aspx?fileticket=w_mFjel_3WA%3d&tabid=235&mid=757

HAWAII

Hawaii Revised Statute Section 302A-1141

No physical punishment of any kind can be inflicted upon any pupil except reasonable force used to restrain a student from hurting himself/herself or any other person or property.

Hawaii Board of Education Policies are available at: <http://lilinode.k12.hi.us/STATE/BOE/POL1.NSF>

Hawaii Board of Education Policy 4200

STUDENT SAFETY AND WELFARE POLICY

The Department of Education shall provide a caring environment conducive to the physical, mental, social, and emotional well-being of students while they are participating in school activities. Attention shall be given to the personal safety of each student during these activities and such attention shall include instruction in safety practices and attitudes; proper maintenance of buildings, grounds, and equipment; establishment and enforcement of proper rules of conduct at each school including a no use, no possession, and no distribution of tobacco, alcohol and other non-prescription drugs; and provision of services to safeguard students from the deviant behavior of those who fail to conform to standards of conduct compatible with the best interests of all.

Approved: 10/70

Amended: 3/88, 7/91

Hawaii Board of Education Policy 4201

USE OF FORCE POLICY

The Board of Education believes that maintaining an orderly, safe environment conducive to learning is an expectation of all staff members of the Hawaii public education system. When their actions comply with state statutes governing physical restraint of students, staff members shall have the full support of the Board of Education in their efforts to maintain a safe environment.

An individual who is a teacher, administrator, school employee, or school volunteer may, within the scope of that person's employment, including involvement in co-curricular activities and athletics, use and apply such amount of force as is reasonable and necessary to accomplish the following purposes:

1. To restrain a student from an act of wrongdoing;
2. To quell a disturbance threatening physical injury to self or others;
3. To obtain possession of weapons or other dangerous objects which are within the control of a student;
4. For the protection of self, others or public property; and
5. To implement a therapeutic behavioral plan as prescribed in a student's Individualized Education Plan or Section 504 Modification Plan.

An act of a teacher or other staff member shall not be considered child abuse if the act was performed in good faith and in compliance with Board policies and Department regulations. Such acts shall not be construed to constitute corporal punishment. Physical pain or discomfort caused by athletic competition or other recreational activities voluntarily engaged in by the student is not corporal punishment.

Within a reasonable time after a teacher or other staff member uses force or physical intervention with a student, the teacher or other staff member shall report the incident to the principal or the principal's designee. The principal or the principal's designee shall notify the student's parents or guardians of the incident.

Approved: 4/18/02

Hawaii Board of Education Policy 4211

ANTI-HARASSMENT, ANTI-BULLYING, AND ANTI-DISCRIMINATION AGAINST STUDENT(S) BY EMPLOYEES POLICY

The Department of Education strictly prohibits discrimination, including harassment, by any employee against a student based on the following protected classes: race, color, national origin, sex, physical or mental disability, and/or religion. In addition to the above protected basis, the Department of Education strictly prohibits any form of harassment and/or bullying based on the following: gender identity and expression, socio-economic status, physical appearance and characteristic, and sexual orientation.

A student shall not be excluded from participation in, be denied the benefits of, or otherwise be subjected to harassment, bullying, or discrimination under any program, services, or activity of the Department of Education.

The Department of Education expressly prohibits retaliation against anyone engaging in protected activity. Protected activity is defined as anyone who files a complaint of harassment, bullying, or discrimination; participates in complaint or investigation proceedings dealing with harassment, bullying, or discrimination under this policy; inquires about his or her rights under this policy; or otherwise opposes acts covered under this policy.

The Department of Education shall develop regulations and procedures relating to this policy to include personnel action consequences for anyone who violates this policy.

Approved: 02/21/08

HAWAII ADMINISTRATIVE RULES: DEPARTMENT OF EDUCATION TITLE 8 SUBTITLE 2 PART 1 CHAPTER 19

STUDENT MISCONDUCT, DISCIPLINE, SCHOOL SEARCHES AND SEIZURES, REPORTING OFFENSES, POLICE INTERVIEWS AND ARRESTS, AND RESTITUTION FOR VANDALISM

Chapter 19 describes student rules of conduct and the disciplinary actions that occur as a result of infractions. Actions resulting from Chapter 19 will be enforced by faculty and administration and may include: counseling; warnings; detention on campus; withdrawing privileges; parents/guardians supervising their youngster on campus and in classes; in-school suspension; out-of-school suspension; and, possible transfer to another school; or expulsion.

Chapter 19 is available in full at

<http://lilinode.k12.hi.us/PUBLIC/ADMINR1.NSF/85255a0a0010ae82852555340060479d/4996c004afd7cbaf0a25675f006efbd9?OpenDocument>

IDAHO

Idaho has no state statutes, regulations, policies or guidance on this issue. Superintendent of Public Instruction, Tom Luna, has authorized a task force on seclusion and restraint at the State Department of Education (SDE). The task force is charged with reviewing current state laws, regulations, and policies around seclusion and restraint in Idaho public schools and revising and developing, if necessary, clear and concise policies and procedures for the use of seclusion and restraint across state and local education agencies in Idaho. The task force will begin its work in September 2009 and expects to submit proposed rules to the state board of education in June 2010. The Idaho SDE would welcome technical assistance from the U.S. Department of Education in moving this important issue forward.

While there is no state policy in place, the SDE partners with the Center on Disability and Human Development at the University of Idaho to provide consultant services to districts through a positive behavior project.

Idaho Positive Behavioral Intervention and Support:

<http://www.idahocdhd.org/DNN/Default.aspx?alias=www.idahocdhd.org/dnn/pbs>

ILLINOIS

Statutes:

Section 1.280 Discipline

Section 24-24 of the School Code [105 ILCS 5/24-24] provides for teachers, other certificated educational employees and persons providing a related service for or with respect to a student as determined by the board of education to maintain discipline in the schools.

The board of education shall establish and maintain a parent-teacher advisory committee as provided in Section 10-20.14 of the School Code [105 ILCS 5/10-20.14].

The board of education shall establish a policy on the administration of discipline in accordance with the requirements of Sections 10-20.14 and 24-24 of the School Code [105 ILCS 5/10-20.14 and 24-24] and disseminate that policy as provided in Section 10-20.14 of the School Code.

Any use of isolated time out or physical restraint permitted by a board's policy shall conform to the requirements of Section 1.285 of this Part. If isolated time out or physical restraint is to be permitted, the policy shall include:

- the circumstances under which isolated time out or physical restraint will be applied;
- a written procedure to be followed by staff in cases of isolated time out or physical restraint;
- designation of a school official who will be informed of incidents and maintain the documentation required pursuant to Section 1.285 of this Part when isolated time out or physical restraint is used;
- the process the district or other administrative entity will use to evaluate any incident that results in an injury that the affected student (or the responsible parent or guardian), staff member, or other individual identifies as serious;
- a description of the alternative strategies that will be implemented when determined advisable pursuant to Section 1.285(f)(4) of this Part; and
- a description of the district's or other administrative entity's annual review of the use of isolated time out or physical restraint, which shall include at least:
 - the number of incidents involving the use of these interventions,
 - the location and duration of each incident,
 - identification of the staff members who were involved,
 - any injuries or property damage that occurred, and
 - the timeliness of parental notification and administrative review.

In addition to, or as part of, its policy on the maintenance of discipline, each board of education shall adopt policies and procedures regarding the use of behavioral interventions for students with disabilities who require such intervention. Each board's policies and procedures shall conform to the requirements of Section 14-8.05(c) of the School Code [105 ILCS 5/14-8.05(c)].

(Source: Amended at 26 Ill. Reg. 1157, effective January 16, 2002)

Section 1.285 Requirements for the Use of Isolated Time Out and Physical Restraint

Isolated time out and physical restraint as defined in this Section shall be used only as means of maintaining discipline in schools (that is, as means of maintaining a safe and orderly environment for learning) and only to the extent that they are necessary to preserve the safety of students and others. Neither isolated time out nor physical restraint shall be used in administering discipline to individual students, i.e., as a form of punishment. Nothing in this Section or in Section 1.280 of this Part shall be construed as regulating the restriction of students' movement when that restriction is for a purpose other than the maintenance of an orderly environment (e.g., the appropriate use of safety belts in vehicles).

- a) "Isolated time out" means the confinement of a student in a time-out room or some other enclosure, whether within or outside the classroom, from which the student's egress is restricted. The use of isolated time out shall be subject to the following requirements.
 - 1) Any enclosure used for isolated time out shall:
 - A. have the same ceiling height as the surrounding room or rooms and be large enough to accommodate not only the student being isolated but also any other individual who is required to accompany that student;
 - B. be constructed of materials that cannot be used by students to harm themselves or others, be free of electrical outlets, exposed wiring, and other objects that could be used by students to harm themselves or others, and be designed so that students cannot climb up the walls (including walls far enough apart so as not to offer the student being isolated sufficient leverage for climbing); and
 - C. be designed to permit continuous visual monitoring of and communication with the student.
 - 2) If an enclosure used for isolated time out is fitted with a door, either a steel door or a wooden door of solid-core construction shall be used. If the door includes a viewing panel, the panel shall be unbreakable.
 - 3) An adult who is responsible for supervising the student shall remain within two feet of the enclosure.
 - 4) The adult responsible for supervising the student must be able to see the student at all times. If a locking mechanism is used on the enclosure, the mechanism shall be constructed so that it will engage only when a key, handle, knob, or other similar device is being held in position by a person, unless the mechanism is an electrically or electronically controlled one that is automatically released when the building's fire alarm system is triggered. Upon release of the locking mechanism by the supervising adult, the door must be able to be opened readily.
- b) "Physical restraint" means holding a student or otherwise restricting his or her movements. "Physical restraint" as permitted pursuant to this Section includes only the use of specific, planned techniques (e.g., the "basket hold" and "team control").
- c) The requirements set forth in subsections (d) through (h) of this Section shall not apply to the actions described in this subsection (c) because, pursuant to Section 10-20.33 of the School Code [105 ILCS 5/10-20.33], "restraint" does not include momentary periods of physical restriction by direct person-to-person contact, without the aid of material or mechanical devices, accomplished with limited force and designed to:
 - 1) prevent a student from completing an act that would result in potential physical harm to himself, herself, or another or damage to property; or
 - 2) remove a disruptive student who is unwilling to leave the area voluntarily.

- d) The use of physical restraint shall be subject to the following requirements.
- 1) Pursuant to Section 10-20.33 of the School Code, physical restraint may only be employed when:
 - A. the student poses a physical risk to himself, herself, or others,
 - B. there is no medical contraindication to its use, and
 - C. the staff applying the restraint have been trained in its safe application as specified in subsection (h)(2) of this Section.
 - 2) Students shall not be subjected to physical restraint for using profanity or other verbal displays of disrespect for themselves or others. A verbal threat shall not be considered as constituting a physical danger unless a student also demonstrates a means of or intent to carry out the threat.
 - 3) Except as permitted by the administrative rules of another State agency operating or licensing a facility in which elementary or secondary educational services are provided (e.g., the Illinois Department of Corrections or the Illinois Department of Human Services), mechanical or chemical restraint (i.e., the use of any device other than personal physical force to restrict the limbs, head, or body) shall not be employed.
 - 4) Medically prescribed restraint procedures employed for the treatment of a physical disorder or for the immobilization of a person in connection with a medical or surgical procedure shall not be used as means of physical restraint for purposes of maintaining discipline.
 - 5) Any application of physical restraint shall take into consideration the safety and security of the student. Further, physical restraint shall not rely upon pain as an intentional method of control.
 - 6) In determining whether a student who is being physically restrained should be removed from the area where such restraint was initiated, the supervising adult(s) shall consider the potential for injury to the student, the student's need for privacy, and the educational and emotional well-being of other students in the vicinity.
 - 7) If physical restraint is imposed upon a student whose primary mode of communication is sign language or an augmentative mode, the student shall be permitted to have his or her hands free of restraint for brief periods, unless the supervising adult determines that such freedom appears likely to result in harm to the student or others.
- e) Time Limits
- 1) A student shall not be kept in isolated time out for more than 30 minutes after he or she ceases presenting the specific behavior for which isolated time out was imposed or any other behavior for which it would be an appropriate intervention.
 - 2) A student shall be released from physical restraint immediately upon a determination by the staff member administering the restraint that the student is no longer in imminent danger of causing physical harm to himself, herself, or others.
- f) Documentation and Evaluation
- 1) A written record of each episode of isolated time out or physical restraint shall be maintained in the student's temporary record. The official designated pursuant to Section 1.280(c)(3) of this Part shall also maintain a copy of each such record. Each such record shall include:
 - A. the student's name;
 - B. the date of the incident;
 - C. the beginning and ending times of the incident;

- D. a description of any relevant events leading up to the incident;
 - E. a description of any interventions used prior to the implementation of isolated time out or physical restraint;
 - F. a description of the incident and/or student behavior that resulted in isolated time out or physical restraint;
 - G. a log of the student's behavior in isolated time out or during physical restraint, including a description of the restraint technique(s) used and any other interaction between the student and staff;
 - H. a description of any injuries (whether to students, staff, or others) or property damage;
 - I. a description of any planned approach to dealing with the student's behavior in the future;
 - J. a list of the school personnel who participated in the implementation, monitoring, and supervision of isolated time out or physical restraint;
 - K. the date on which parental notification took place as required by subsection (g) of this Section.
- 2) The school official designated pursuant to Section 1.280(c)(3) of this Part shall be notified of the incident as soon as possible, but no later than the end of the school day on which it occurred.
 - 3) The record described in subsection (f)(1) of this Section shall be completed by the beginning of the school day following the episode of isolated time out or physical restraint.
 - 4) The requirements of this subsection (f)(4) shall apply whenever an episode of isolated time out exceeds 30 minutes, an episode of physical restraint exceeds 15 minutes, or repeated episodes have occurred during any three-hour period.
 - A. A certified staff person knowledgeable about the use of isolated time out or trained in the use of physical restraint, as applicable, shall evaluate the situation.
 - B. The evaluation shall consider the appropriateness of continuing the procedure in use, including the student's potential need for medication, nourishment, or use of a restroom, and the need for alternate strategies (e.g., assessment by a mental health crisis team, assistance from police, or transportation by ambulance).
 - C. The results of the evaluation shall be committed to writing and copies of this documentation shall be placed into the student's temporary student record and provided to the official designated pursuant to Section 1.280(c)(3) of this Part.
 - 5) When a student has first experienced three instances of isolated time out or physical restraint, the school personnel who initiated, monitored, and supervised the incidents shall initiate a review of the effectiveness of the procedure(s) used and prepare an individual behavior plan for the student that provides either for continued use of these interventions or for the use of other, specified interventions. The plan shall be placed into the student's temporary student record. The review shall also consider the student's potential need for an alternative program or for special education.
 - A. The district or other entity serving the student shall invite the student's parent(s) or guardian(s) to participate in this review and shall provide ten days' notice of its date, time, and location.
 - B. The notification shall inform the parent(s) or guardian(s) that the student's potential need for special education or an alternative program will be considered and that the results of the review will be entered into the temporary student record.

g) Notification to Parents

- 1) A district whose policies on the maintenance of discipline include the use of isolated time out or physical restraint shall notify parents to this effect as part of the information distributed annually or upon enrollment pursuant to Sections 10-20.14 and 14-8.05(c) of the School Code [105 ILCS 5/10-20.14 and 14-8.05(c)].
- 2) Within 24 hours after any use of isolated time out or physical restraint, the school district or other entity serving the student shall send written notice of the incident to the student's parent(s), unless the parent has provided the district or other entity with a written waiver of this requirement for notification. Such notification shall include the student's name, the date of the incident, a description of the intervention used, and the name of a contact person with a telephone number to be called for further information.

h) Requirements for Training

1) Isolated Time Out

Each district, cooperative, or joint agreement whose policy permits the use of isolated time out shall provide orientation to its staff members covering at least the written procedure established pursuant to Section 1.280(c)(2) of this Part.

2) Physical Restraint

- A. Physical restraint as defined in this Section shall be applied only by individuals who have received systematic training that includes all the elements described in subsection (h)(2)(B) of this Section and who have received a certificate of completion or other written evidence of participation. An individual who applies physical restraint shall use only techniques in which he or she has received such training within the preceding two years, as indicated by written evidence of participation.
- B. Training with respect to physical restraint may be provided either by the employer or by an external entity and shall include, but need not be limited to:
 - i. appropriate procedures for preventing the need for physical restraint, including the de-escalation of problematic behavior, relationship-building, and the use of alternatives to restraint;
 - ii. a description and identification of dangerous behaviors on the part of students that may indicate the need for physical restraint and methods for evaluating the risk of harm in individual situations in order to determine whether the use of restraint is warranted;
 - iii. the simulated experience of administering and receiving a variety of physical restraint techniques, ranging from minimal physical involvement to very controlling interventions;
 - iv. instruction regarding the effects of physical restraint on the person restrained, including instruction on monitoring physical signs of distress and obtaining medical assistance;
 - v. instruction regarding documentation and reporting requirements and investigation of injuries and complaints; and
 - vi. demonstration by participants of proficiency in administering physical restraint.
- 3) An individual may provide training to others in a particular method of physical restraint only if he or she has received written evidence of completing training in that technique that meets the requirements of subsection (h)(2)(B) of this Section within the preceding one-year period.

(Source: Added at 26 Ill. Reg. 1157, effective January 16, 2002)

From the Government Accountability Office Report

105 Ill. Comp. Stat. 5/2-3.130 (Schools; Common Schools; School Code; State Board of Education – Powers and Duties)

The State Board of Education is required to promulgate rules governing the use of time out and physical restraint in public schools.

105 Ill. Comp. Stat. 5/10-20.33 (Schools; Common Schools; School Code; School Boards)

Until rules are adopted by the State Board of Education, the use of physical restraints is prohibited except where the student poses a physical risk to persons, there is no medical contraindication to its use, and the staff applying it have been trained in its safe application. “Restraint” does not include momentary periods of physical restriction by direct person-to-person contact with limited force that is designed to prevent a student from completing an act that would result in potential physical harm to persons or damage to property, or to remove a student who is unwilling to leave an area voluntarily. Uses of restraint must be documented and parents notified.

Until rules are adopted by the State Board of Education, timeout rooms cannot lock other than with a mechanism that engages when a key or handle is being held by a person, cannot be a confining space such as a closet or box, and cannot be a room where the student cannot be continually observed.

II. Admin. Code tit. 28, §§ 1.280, .285 (Education and Cultural Resources; Education; State Board of Education; Public School Recognition; Public Schools Evaluation, Recognition and Supervision; School Governance)

The restrictions listed in 105 Ill. Comp. Stat. 5/10-20.33 are repeated and adopted. In addition, physical restraint may only be used as a means of maintaining discipline and only to the extent necessary to preserve the safety of students and others. It may not be used as a form of punishment. Only specific, planned techniques are permitted.

Students are not subject to restraint for using profanity, verbal displays of disrespect, or verbal threats unless accompanied by a means or intent to carry out the threat. Except under certain limited circumstances, the use of mechanical or chemical restraints is prohibited. Use of restraint shall take into consideration the safety and security of the student, and it shall not rely on pain as an intentional method of control. If the student uses sign language or an augmentative mode of primary communication, the student shall be permitted to have the student’s hands free of restraint for brief periods, unless the adult determines that such freedom appears likely to result in harm to self or others. The restraint must end as soon as the student is no longer in imminent danger of causing physical harm to persons.

Detailed records of each incident must be kept, and parents must be notified within 24 hours. Training must include alternatives to restraint, de-escalation procedures, the experience of administering and receiving a variety of restraint techniques, how to monitor for physical signs of distress, and retraining every 2 years. School districts must review the use of restraints annually.

Isolated time out may only be used as a means of maintaining discipline and only to the extent necessary to preserve the safety of students and others. It may not be used as a form of punishment.

Enclosures used for isolated time out must meet size requirements, be free of materials that can be used to cause harm, and be designed to permit continuous visual monitoring of and communication with the student. Doors, if used, must be steel or wood with a solid-core construction, with an unbreakable viewing panel. An adult must remain within two feet and must be able to see the student at all times. If the enclosure has a locking mechanism, it must only be engaged when it is held in position by a person, or if electronically engaged, must automatically release if the building’s fire alarm system

is activated. A student may not be kept in isolated time out for more than 30 minutes after the problematic behavior has ceased.

Detailed records of each incident must be kept, and parents must be notified within 24 hours. School districts must review the use of isolated time out annually.

Ill. Admin. Code tit. 23, § 401.250 (Education and Cultural Resources; Education; State Board of Education; Nonpublic Elementary and Secondary Schools; Special Education Facilities Under Section 14-7.02 of the School Code; Operations Requirements)

Private, special education facilities must have their staff trained in the use of isolated time out and restraint according to the requirements of Ill. Admin. Code tit. 28, §§ 1.280, .285

Additional Information

Beth Hanselman, Director of Special Education and Support Services at the Illinois State Board of Education, testified Tuesday, May 19, 2009, before the congressional members of the House Education and Labor Committee about the need for national standards on the use of physical restraints, seclusions and aversive interventions in school programs. Illinois has been identified as an exemplary and "flagship state" in this area because of its rules and the implementation of Positive Behavior Intervention Supports, or PBIS, throughout the state. PBIS is a proactive systems approach to establishing the school climate and social culture needed for all students in a school to achieve social, emotional and academic success. Currently, more than 1,000 Illinois schools in more than 200 districts have been trained and are implementing PBIS. Ms. Hanselman testified that 2001 legislation went into effect in January of 2002 addressing the issue of seclusion, or "isolated time out," as we call it in Illinois, and physical restraint that applies to all students, not only those with disabilities, in public schools. The rules limit the use of isolated time out and physical restraint to be used only to preserve the safety of self or others and to prohibit the use of seclusion or restraint for the purpose of punishment or exclusion. The majority of behaviors, which result in the use of seclusion or restraint, Ms. Hanselman told the congressional members, can be prevented by early identification and intense interventions—implemented within a schoolwide system of behavioral support. One model is PBIS, which offers educators a framework, not a curriculum, for decision-making practices. Key to the implementation of PBIS is the recognition that we must teach and acknowledge behavioral and social skills, just as we teach academic skills.

Schoolwide PBIS emphasizes:

- The implementation of evidence-based practices,
- School, district and state systems that support the implementation of these practices and
- Ongoing collection and use of data for decision making.

Ms. Hanselman urged the adoption of a national model policy on the use of seclusion and restraint, which she said can be effective when coupled with a strong commitment and investment in the training and ongoing support of staff members in evidence-based prevention strategies.

Comments from the state superintendent as reported to the Great Lakes West Comprehensive Center's state manager on August 5, 2009:

- There is a need to have a national task force that works on defining restraint and seclusion.
- There is a need for national standards

Would the state want technical assistance to revise either state regulations or guidance?

Not at this time. The state does not currently have plans for any revisions to either its regulations or guidance.

INDIANA

State Policies

Prior to December 2009, regulations specifically on the use of seclusion and restraint in Indiana were found in laws and policies related to health and human services. In each example below, seclusion and restraint are allowable under a specific set of guidelines.

- Indiana Code (IC)
 - Title 12, Human Services
 - Title 16, Health
- Indiana Administrative Code (IAC)
 - Title 405, Psychiatric Residential Treatment Facilities (Article 5-20-3.1(3))
 - Title 410, Department of Health (Article 16.2)
 - Title 440, Division of Mental Health and Addiction (Article 1.5)
 - Title 445, Division of Aging (Article 3)
 - Title 465, Department of Child Services (Article 2)

After the July 2009 letter from Secretary Arne Duncan, which urged states to review, revise or develop state policies and guidelines on the use of seclusion and restraint, the Indiana Department of Education (IDOE) began its review process of all state statutes, regulations and policies. The review process determined that there was no statewide policy regarding seclusion and restraint.

However, Indiana Code 20-33-8-12(a)(1) requires school corporations to establish written discipline rules, and the IDOE developed guidance and recommendations for school corporations to incorporate into their written discipline rules and policies.

Indiana Education Policy

Type	Laws (IC)	Policies (IAC)	Regulations (IDOE)	Guidance (IDOE)
Seclusion	None	None	None	Policy guidance adopted by Indiana State Board of Education at December 2009 board meeting.
Restraint	None	None	None	Policy guidance adopted by Indiana State Board of Education at December 2009 board meeting.
Corporal Punishment	None	None	None	None

Practice Considerations

In his July 31, 2009, letter, Secretary Duncan “mentioned examples of good practices that State officials might strive to include in their statutes, regulations, policies and guidance.” The following table lists practice consideration, identifies whether Indiana has included them in its policy guidance, and provides additional information and a link to the source document.

Practice Considerations	Present	Notes	Source(s)
Clear definitions of relevant terms such as “seclusion” and “restraint” and “emergency”	Yes	IDOE definitions include <ul style="list-style-type: none"> isolated time out physical restraint 	Endorsement of seclusion and restraint policy A3-A4
Clear limitations on what seclusion and restraint techniques specifically are limited or not allowed	Partial	The specific circumstances under which isolated time out or physical restraint may be utilized is left as a local decision; however, guidance in the implementation of seclusion and restraint (i.e. requirements of physical space used for seclusion) is provided.	Endorsement of seclusion and restraint policy A2-A4
Specifying when seclusion and restraint techniques may be used	Yes	Must be used only for maintaining a safe and orderly learning environment and only to extent necessary to ensure safety of student and others.	Endorsement of seclusion and restraint policy A3
If seclusion and restraint techniques are permitted as behavioral interventions, addressing these interventions in the context of behavioral intervention plans	Yes	IDOE recommends an individual behavior plan when a student has experienced three instances of isolated time out or restraint.	Endorsement of seclusion and restraint policy A4
Requiring effective personnel training in the administration of seclusion and restraint of students	Yes	IDOE recommends that school corporations include in local policy the training requirements for all staff that may be required to use seclusion and restraint methods.	Endorsement of seclusion and restraint policy A4
Clearly indicating for whom the training is targeted	Yes		

SUMMARY OF SECLUSION AND RESTRAINT STATUTES, REGULATIONS, POLICIES AND GUIDANCE, BY STATE AND TERRITORY

Practice Considerations	Present	Notes	Source(s)
Identifies type of training	Yes	IDOE policy guidance identifies six areas that local training should include, but not be limited to.	Endorsement of seclusion and restraint policy A4-A5
Identifies how frequently personnel are trained	Partial	IDOE policy guidance includes directive that staff members can only use seclusion and restraint techniques that they have received training in during the preceding two years.	Endorsement of seclusion and restraint policy A4
Identifies duration of the training	No		
Describing appropriately qualified personnel to administer seclusion and restraint interventions	No		
Publicizing the policies and guidelines so that administrators, teachers and parents fully understand and consent to the limited circumstances under which these techniques may be used	No	Other than the directive that school corporations include seclusion and restraint into the local written discipline policy, no specific guidance is provided related to publicizing allowable use.	Endorsement of seclusion and restraint policy A3
Ensuring that parents are notified (including specifying the time frame for notification) when these interventions do occur (to the extent possible, before they occur)	Yes	IDOE directs school corporations to include in local policy a process for parental notification; specifics related to time frame are not included in guidance.	Endorsement of seclusion and restraint policy A4

Practice Considerations	Present	Notes	Source(s)
Ensuring that the use of these interventions is fully documented in a form accessible to parents when requested	Yes		
Providing for the collection of data on the use of seclusions and restraints so that information is maintained on a statewide as well as local basis	No	Reporting guidance is limited to individual student behavior or academic plan.	
Describing how the state uses the data and whether the data are publicly reported	No		
Providing resources for training of appropriate staff members	No	School corporations are responsible for training.	
Providing for monitoring to ensure adherence to state law, regulations, policies and guidance	No	No information found	
Providing a mechanism to report any potential abuses	No	No information found	

School Corporation Policies

Many school corporations (school districts) do have seclusion and restraint policies in place. In a 2008 study, the Indiana Institute on Disability and Community examined the policies and procedures of 280 school corporations (Pappas, Chait, and Norris 2008) to determine the extent seclusion and restraint practices were used. The report's key findings include the following:

- Half (141) of the school corporations have some kind of time-out or time-out room policies in place.
 - 31% of the school corporations identify a specific time limit.
 - 26% of the school corporations include the practice within a student's IEP or Behavioral Intervention Plan.
 - 23% of the school corporations require parental notification.

- 22% of the school corporations require the school to document the use.
- 22% of the school corporations use time-outs or time-out rooms as part of a hierarchy of response.
- Over half (151) of the school corporations have some kind of policy related to physical restraint.
 - 38% of the school corporations allow physical restraint.
 - 50% of the school corporations require trained staff members.
 - 53% of the school corporations require the school to document the use.
 - 44% of the school corporations require parental notification.
 - 55% of school corporations include the practice within a student's IEP or Behavioral Intervention Plan.
- Over two-thirds of schools corporations did not have policies or procedures related to mechanical restraint.
 - Less than a third (28%) of the school corporations allow the use explicit use of mechanical restraint; most often, use is for transportation.

IOWA

Statutes/laws

Iowa Code section 280.21: “Corporal Punishment—Burden of Proof”

<http://search.legis.state.ia.us/nxt/gateway.dll/ic/2009code/1/9461/10368/10587/10617?f=templates&fn=default.htm> (or <http://tinyurl.com/kolrgn>)

Iowa Administrative Code 281, Chapter 103: “Corporal Punishment Ban; Restraint; Physical Confinement and Detention”

<http://www.legis.state.ia.us/asp/ACODocs/DOCS/8-12-2009.281.103.pdf>

Policy

The statute and regulations are the policy of the state of Iowa and are mandatory in all school districts, area education agencies (AEAs) and accredited nonpublic schools.

Regulations

Amendments to Chapter 103, effective November 2008. (Thomas Mayes, lawyer with Special Education bureau)

Amended regulations:

- i. require training on positive behavior interventions and supports, alternatives to seclusion and restraint, and crisis prevention and de-escalation;
- ii. provide that corporal punishment remains banned, and seclusion and restraint is to be used only when reasonable;
- iii. provide standards for determining when use of seclusion and restraint is reasonable;
- iv. require notice to parents about the use of seclusion and restraint;
- v. require data collection, for use in notifying parents and program evaluation;
- vi. ban certain inherently risky practices (e.g., prone restraint).

Iowa provides guidance on these amended regulations:

http://www.iowa.gov/educate/index.php?option=com_content&view=article&id=1002&Itemid=1299

Guidance

Area Education Agencies (AEAs) deliver Mandt System training and certification to special education teachers and administrators as well as other topics (e.g., positive behavioral interventions and supports). <http://www.mandtsystem.com/>

Positive Behavioral Intervention and Supports (Susan Bruce, Iowa’s contact). www.pbis.org

Iowa has no current needs and/or requests for further technical assistance at this time.

KANSAS

KANSAS STATE DEPARTMENT OF EDUCATION SECLUSION AND RESTRAINT GUIDELINES

LEGAL GOVERNANCE OF SECLUSION AND RESTRAINT (STATE/FEDERAL LAWS)

Federal law does not restrict the use of restraints and seclusion in public or private schools. With regard to children with disabilities, the *Individuals with Disabilities Education Act (IDEA)* requires that eligible students be educated in the least restrictive environment. *IDEA* also mandates that special education students have an Individualized Education Program (IEP), a written document that, in part, explains the educational goals of the student and the types of services to be provided. IEPs are developed by parents and school personnel and may contain instructions related to the use of strategies to support the student. These strategies could include, for example, instructional approaches and behavioral interventions such as the use of seclusion and restraints. State laws and regulations in this area vary widely. For example, 19 states, including Kansas, do not have laws or regulations related to the use of seclusions or restraints in schools. However, Kansas is one of four states currently collecting and reporting information from school districts on the use of restraints and seclusions.

Source the Government Accountability Office document GAO-09-719T

The authority for Seclusion and Restraint in Kansas is located in the published Kansas Seclusion/Restraint Guidelines, which were adopted by the Kansas State Board of Education on March 13, 2007, "... the State Board directed staff members to convert the proposed seclusion and restraint regulations for students with disabilities to guidelines, with provision for the monitoring of these activities and reporting to the State Board."

Source the Kansas State Board of Education Minutes of March 13, 2007

HISTORY

The Kansas Seclusion and Restraint Guidelines evolved from a request for regulations by the Disability Rights Center (DRC) of Kansas in 2005. The request was turned over to the Senate Education Committee for investigation. Testimony was heard from parents of students with disabilities, the Kansas State Department of Education (KSDE) and other interested parties. In response to testimony, the Committee directed the Kansas State Department of Education to gather information to better determine how seclusion and restraint interventions were being used in public schools. KSDE was also directed to use this information to develop policies, rules and/or regulation about the appropriate use of seclusion and physical restraint, the appropriate physical characteristics of seclusion rooms, and training needed by school personnel.

In June 2005, KSDE, DRC, and Families Together met with school personnel and parents of students with disabilities to discuss concerns about the use of seclusion and restraint in public schools. As a result of this meeting, a focus group was convened by KSDE, which included representatives of KSDE, parent advocacy groups, Kansas Statewide Technical Assistance Resource System (KSTARS), Kansas Association of Special Education Administrators (KASEA), the Kansas Association of School Boards (KASB), the Attorney General's Office, the Kansas Department of Health and Environment (KDHE), Disability Rights Center (DRC) and other stakeholders. The focus group met multiple times during the year to further identify needs for improvement and develop a common language on seclusion and restraint in public school settings. The final outcome of the focus group was the development of

seclusion and restraint guidelines in public schools that was presented to the Kansas State Board of Education (KSBE) and adopted in March 2007.

KANSAS GUIDELINES: SECLUSION REPORTING REQUIREMENTS

School districts are required to report **annually** to the State Director of Special Education:

- the school name;
- the grades offered at the school; and
- the length, width, and height of each seclusion room located within the school(s).

School districts are required to report **quarterly** to the State Director of Special Education:

- the number of students placed in seclusion during the reporting period;
- the maximum amount of time any child was in seclusion on a single occasion; and
- the maximum number of times during a single day that a student was placed in a seclusion room.

KSDE has standardized procedures to verify seclusion data submitted quarterly. KSDE may request additional student level information such as the Individual Education Plan (IEP) or documentation of the seclusion incident to ensure compliance with *IDEA* state and federal statutes and regulations regarding positive behavior supports and behavior intervention plans. The seclusion data collected by KSDE is used to plan professional development activities and provide targeted technical assistance.

PROFESSIONAL DEVELOPMENT

These adopted guidelines are disseminated by KSDE and technical assistance is provided to educators in regard to seclusion and restraint in public schools. In addition, a more comprehensive guidance document, referred to as the “Kansas Seclusion and Restraint Guidelines Guidance Document,” stresses positive preventive supports and provides guidance to schools on how to use seclusion and restraint in a safe and effective manner when those interventions prove necessary. Technical assistance is provided on an ongoing basis statewide.

All Kansas special education directors, principals and superintendents have received information regarding these training opportunities. Each year, professional development is offered through conference calls, interactive TV sessions, regional training for administrators and staff members, KSDE sponsored conference presentations, and ongoing individual student level technical assistance. Supporting professional development materials and PowerPoint presentations can be obtained at www.ksde.org.

EXCERPT FROM GUIDANCE DOCUMENT ON KANSAS SECLUSION AND RESTRAINT GUIDELINES (2008)

Safety for students and staff is the number one concern of all educators. It is important to remember that behavior is learned and that all behaviors have a function. A professional educator understands that in order to provide a safe and orderly environment conducive to teaching and learning, student perspectives and basic needs must be explored, understood and met. Proactive and preventive behavioral interventions should be initiated and ongoing to diffuse disruptive and volatile situations. When students are provided appropriate supports, the potential for misbehavior is minimized. Seclusion is ineffective when used as a form of discipline or punishment but research suggests it can be effective as a planned behavior intervention strategy. A behavior intervention strategy is one that is planned to support an individual through a targeted behavior change—not to punish the individual until they comply. Behavior interventions may focus on changing the antecedents or consequences that are

typically associated with the behavior, teaching alternative behaviors, and/or increasing reinforcement for desired behaviors.

Seclusion can be most effective when:

- *The “time-in environment” is valued by the child and removal from that environment is seen as a negative consequence; and*
- *The procedure is implemented consistently by trained staff; and*
- *The procedure is perceived as fair by staff, parents and children with rules of seclusion agreed upon in advance; and*
- *There is constant monitoring of the use of seclusion and adjustments are made as necessary.*

Seclusion

There are three types of seclusion “timeouts”:

- *Inclusion in the classroom;*
- *Exclusion outside the classroom, e.g., in the hallway or principal’s office; and*
- *Seclusion in a room or location where a student is purposefully isolated from others and prevented from leaving the area.*

Seclusion is the most restrictive form of timeout. Public schools are required to report quarterly on the use of seclusion for special education students. It is important to understand what constitutes “seclusion” and how it is different from other forms of time out. According to the Kansas Seclusion/Restraint Guidelines, a student is considered to be in seclusion when the student is:

- *Placed in an enclosed area by school personnel,*
- *Purposefully isolated from other adults and peers and*
- *Prevented from leaving the room.*

Regardless of what the room is called, if the use of the room meets these three criteria it is considered seclusion.

Physical Restraint/Mechanical Restraint

Physical restraint should not be used for purposes of discipline, punishment, or staff convenience. “Physical restraint” means bodily force used to substantially limit a person’s movement. A child with a disability should not be subjected to mechanical restraint. “Mechanical restraint” means any device or object used to limit a person’s movement.

A school employee may use physical restraint on a child with a disability only if the child’s behavior presents an imminent risk of harm to self or others. “Imminent risk of harm” means an immediate and impending threat of a person causing substantial physical injury to self or others. Any school employee applying restraint should use a method of restraint in which the employee has received training and should apply the restraint in a manner that is proportionate to the circumstances, and that is appropriate to the severity of the child’s behavior, size and age. The training for school employees should be consistent with nationally-recognized training programs, such as Mandt or Nonviolent Crisis Intervention.

Restraint should be used only if a student presents a danger of imminent risk of harm to self or others and only as a last resort to protect the safety of all involved.

SCHOOL-WIDE POSITIVE BEHAVIOR SUPPORT (SWPBS)/ Multi-Tier System of Supports—Behavior (MTSS)

The Kansas School-Wide Positive Behavior Support (SWPBS)/Multi-Tier System of Support (MTSS) is a prevention-focused approach that includes using multiple tiers of increasingly intensive interventions to ensure student behavioral and academic success. This prevention-oriented service framework was adopted from the fields of public health and community mental health and applied to educational settings.

SWPBS is a systematic approach for implementing proactive school-wide discipline. The purpose of SWPBS is to improve school climate and prevent student problem behaviors across all school settings. Essential elements of SWPBS include:

- Building a culture within the whole school that will serve as a foundation for both behavioral and academic success,
- Emphasizing early identification and prevention of problem behavior,
- Directly teaching appropriate social skills to all students, and modifying or rearranging the school context when necessary to prevent problem behavior,
- Using a three-tiered continuum of behavior support practices in order to prevent problem behavior, and
- Actively using data for decision-making. SWPBS focuses on achieving social and academic achievement outcomes by establishing data, systems and practices.

All students receive the support they need for success based on a continuum of need and intensity.

MTSS Recognized Facilitators work closely with school staff members to determine the professional development necessary to implement SWPBS. The teams participate in ongoing professional development which enables them to plan for and implement appropriate instruction and interventions in all tiers. In addition, school teams are encouraged to use the MTSS Behavior Resource Site, which allows schools and districts access to tools, materials and resources. To access the site, go to: www.kansasmtss.org/resources.htm and click on the link “Behavior Resource Website”.

A professional development module was developed to introduce major elements of SWPBS/MTSS which include the following:

- Overview of the multi-tiered system of supports for behavior
- Forming a district MTSS leadership team
- Building consensus
- Data-based decision making in MTSS
- Developing capacity for Tier 2 and Tier 3
- Community involvement
- Cultural competence and MTSS

KSDE maintains a focus on prevention efforts by providing training and resources to educators across the state to decrease the use of seclusion and restraint and ensure a free appropriate public education to special education students.

PLANS FOR FURTHER DEVELOPMENT

KSDE is developing a new collection tool for schools to report quarterly seclusion data. The collection tool is anticipated to be launched during the 2009–2010 school year. The new collection tool will allow for data to be retrieved by individual student ID for each incident of seclusion and will enable KSDE and schools to monitor data more closely.

The purposes for creating such a reporting system on incidents of seclusion were to:

- Lay the groundwork for research and analysis regarding the relationship between seclusion incidents and academic performance, special education status, demographic data and other variables;
- Allow schools to record data on seclusion incidents including student identifier, date of seclusion and length of seclusion; and
- Analyze the data and provide targeted technical assistance to districts across the state in the area of seclusion.

DOCUMENTATION

Guidance Document on Kansas Seclusion and Restraint Guidelines

<http://www.ksde.org/Default.aspx?tabid=3119>

Kansas Incident Discipline System (KAN-DIS)

<http://www.ksde.org/Default.aspx?tabid=2575>

Kansas Multi-Tier System of Supports

www.kansasmtss.org

Kansas State Board of Education Seclusion Report of November 11, 2008

<http://www.ksde.org/Default.aspx?tabid=3119>

School-wide Positive Behavior Supports

www.swpbs.org/resource.html

Seclusion Reporting Checklist for 2008–2009

<http://www.ksde.org/Default.aspx?tabid=3119>

Seclusion Reporting Requirements 2008–2009

<http://www.ksde.org/Default.aspx?tabid=3119>

Seclusion Restraint Guidelines

<http://www.ksde.org/Default.aspx?tabid=3119>

What Every Administrator Should Know About Seclusion PowerPoint

<http://www.ksde.org/Default.aspx?tabid=3119>

KENTUCKY

Current Statutes, Regulations, Policies and/or Guidance

Currently, Kentucky does not have any statutes or regulations on student seclusion and restraint. The state does offer guidance. Guidance is available in two areas: (1) for procedures and best practices for time out rooms (see www.state.ky.us/agencies/behave/bi/TO.html) and (2) three-tiered behavior intervention plan providing best practice for schools (see www.state.ky.us/agencies/behave/bi/bi.html). KDE also has a policy letter on the use of time-out in schools. A copy of it is embedded within the guidelines on effective use of time-out posted on the Behavior Home Page (see Web site above).

Recommended best practices in policy, regulation or guidance documents

Kentucky has evidence (see two bulleted items below) of the following recommended best practices in policy, regulation or guidance documents.

- If seclusion and restraint techniques are permitted as behavioral interventions, the SEA addresses these interventions in the context of behavioral intervention plans

The following Web site offers guidance for using time out:

www.state.ky.us/agencies/behave/bi/TO.html

- Provides resources for training of appropriate staff people

The following two Web sites provides resources:

www.state.ky.us/agencies/behave/bi/TO.html

www.state.ky.us/agencies/behave/bi/bi.html

Future Plans

The Restraint and Seclusion Advisory Committee, a group of stakeholders (the majority of whom KDE has established long-standing relationships with) met on September 29, 2009, to examine current guidance and practice and make recommendations to Kentucky's Commissioner of Education and to KDE.

Additional Information

KDE and the Department of Special Education and Rehabilitation Counseling at the University of Kentucky maintain "The Behavior Homepage." (See <http://www.state.ky.us/agencies/behave/homepage.html>.) It serves as a one-stop Web site to access information about student behavior.

The Kentucky Center on Instructional Discipline (KCID) is a federal- and state-funded center housed at Eastern Kentucky University's Center for School Safety. KCID reaches approximately 300 schools to implement Positive Behavior Intervention and Support (PBIS). The Commissioner of Education, Dr. Terry Holliday, has shared Secretary Duncan's letter with all KY superintendents and has reminded them of resources available through KCID. His letter to superintendents implies further guidance in the future.

The Academic and Behavior Response to Intervention (ABRI) Center is a state-funded pilot project through the Kentucky Department of Education that is operated at the University of Louisville. The Center works with districts to address both academic and behavioral interventions through proactive, evidence-based instructional practices.

KDE does not have a system to monitor what is occurring at the local level regarding the use of student restraint and seclusion *except* in the case of a student identified with a disability. In this case they monitor systems of general supervision.

Kentucky hosts the nationally recognized annual three-day Behavior Institute each summer with over 1,400 participants. National and state experts provide training to both special and general educators to support students with challenging behaviors through positive, proactive instructional strategies through tiered interventions. For students with the most challenging behaviors, teachers are taught to use verbal de-escalation strategies as a primary tool with restraint as a last possible resort.

LOUISIANA

State Web Site Search

No policy exists that addresses these issues. There is nothing regarding restraint/seclusion in [Bulletin 1530](#), Louisiana IEP Handbook for Students with Disabilities (last updated Dec. 2008), nor in [Bulletin 1706](#), Subpart A-Regulations for Students with Disabilities (last updated Oct. 2008).

Professional development offering for personnel working with children with disabilities during 2003–2004 school year in Nonviolent Crisis Prevention/Intervention (two-day training, 12 hours total).

DOE Web site shows [professional development offering](#) for instructor certification training in Nonviolent Crisis Prevention Intervention from a Crisis Prevention Institute trainer from Brookfield, Wisconsin. This four-day certification course was offered Jan 18–21, 2005, and Feb 1–4, 2005, for up to 30 individuals per session.

There are one or two criminal statutes from 1969, R.S. 14:328 and R.S. 14:329.5, that prohibit a person from willfully obstructing or impeding any student of an education institution in the lawful pursuit of his educational activities through the use of restraint, abduction, coercion or intimidation or by any action as result of which force and/or violence are present or threatened. However, these statutes are directed at riot prevention and the right of campus ingress and egress rather than the physical restraint of students by teachers or other staff.

R.S. 17:416.9 requires schools to provide a safe environment for teachers and other school staff, but it doesn't apply to students.

R.S. 17:416 allows the removal of disruptive students from the classroom, although it does not mention seclusion or restraints.

R.S. 17:223 and R.S. 17:416.1 allow corporal punishment of students, but do not define corporal punishment.

The only prohibition in state law against the use of seclusion or physical restraints is in laws protecting the rights of mental patients.

R.S. 28:171 (adults) and Children's Code Article 1409(D) (minors) mirror one another and provide extensive and humane guidelines for the use of restraints and seclusion.

§ 28:171. Enumerations of rights guaranteed

D. Seclusion or restraint shall only be used to prevent a patient from physically injuring himself or others. Seclusion or restraint may not be used to punish or discipline a patient or used as a convenience to the staff of the treatment facility. Seclusion or restraint shall be used only in accordance with the following standards:

(1) Seclusion or restraint shall only be used when verbal intervention or less restrictive measures fail. Use of seclusion or restraint shall require documentation in the patient's record of the clinical justification for such use as well as the inadequacy of less restrictive intervention techniques.

(2) Seclusion or restraint shall only be used in an emergency. An emergency occurs when there is either substantial risk of self-destructive behavior, as evidenced by clinically significant threats or attempts to commit suicide or to inflict serious harm to self, or a substantial risk or serious physical assault on another person, as evidenced by dangerous actions or clinically significant threats that the patient has the apparent ability to carry out.

(3) A written order from a physician, psychologist, medical psychologist, or psychiatric mental health nurse practitioner acting within the scope of his institutional privileges shall be required for any use of

seclusion or restraint. If, however, no physician, psychologist, medical psychologist, or psychiatric mental health nurse practitioner is immediately available, a registered nurse who has been trained in management of disturbed behavior may utilize seclusion or restraint. The nurse or the nursing supervisor shall then immediately notify a physician psychologist, medical psychologist, or psychiatric mental health nurse practitioner with institutional authority to order seclusion or restraint and provide him with sufficient information to determine whether seclusion is necessary and whether less restrictive interventions have been tried or considered. The physician, psychologist, medical psychologist, or psychiatric mental health nurse practitioner may issue a telephone order for seclusion or restraint, if such order is indicated.

(4) Written orders for the use of seclusion or restraint shall be time limited and not more than twelve hours in duration. The written order shall include the date and time of the actual examination of the patient, the date and time that the patient was placed in seclusion or restraint, and the date and time that the order was signed.

(5) A renewal order for up to twelve hours of seclusion or restraint may be issued by a physician, psychologist, medical psychologist, or psychiatric mental health nurse practitioner with institutional authority to order seclusion or restraint after determining that there is no less restrictive means of preventing injury to the patient or others. If any patient is held in seclusion or restraint for twenty-four hours, the physician, psychologist, medical psychologist, or psychiatric mental health nurse practitioner with institutional authority shall conduct an actual examination of the patient and document the reason why the use of seclusion or restraint beyond twenty-four hours is necessary, and the next of kin or responsible party shall be notified by the twenty-sixth hour.

(6) Staff who implement written orders for seclusion or restraint shall have documented training in the proper use of the procedure for which the order was written.

(7) Periodic monitoring and care of the patient shall be provided by responsible staff. A patient in seclusion or restraint shall be evaluated every fifteen minutes, especially in regard to regular meals, water, and snacks, bathing, the need for motion and exercise, and use of the bathroom, and documentation of these evaluations shall be entered in the patient's record.

(8) Patients shall be released from seclusion or restraint as soon as the reasons justifying the use of seclusion or restraint subside. If at any time during the period of seclusion or restraint a registered nurse determines that the emergency which justified the seclusion or restraint has subsided and a physician, psychologist, medical psychologist, or psychiatric mental health nurse practitioner with institutional authority to order seclusion or restraint is not immediately available, the patient shall be released. At the end of the period of seclusion or restraint ordered by the physician, psychologist, medical psychologist, or psychiatric mental health nurse practitioner the patient shall be released unless a renewal order is issued.

(9) Mechanical restraints shall be designed and used so as not to cause physical injury to the patient and so as to cause the least possible discomfort.

(10) Facilities using seclusion or restraint shall have written policies concerning their use in place before they can be used. These policies shall include standards and procedures for placing a patient in seclusion or restraint, and for informing him of the reason he was put in seclusion or restraint and the means of terminating such seclusion or restraint.

(11) Nothing in this Section shall be construed to expand the scope of practice of psychology as defined in R.S. 37:2351 et seq. to authorize the ordering, administering, or dispensing of medications, or to authorize any practice not permitted under the privileges granted by the institution.

(12) The department shall adopt rules and regulations in accordance with the Administrative Procedure Act to govern the use of seclusion and restraint. Such rules and regulations shall respect the patient's

individual rights, protect the patient's health, safety, and welfare, and be the least restrictive of the patient's liberty. The department shall adopt rules and regulations to provide for enforcement procedures and penalties applicable to a person who violates the requirements of this Section.

E. A patient may be placed alone in a room or other area pursuant to behavior shaping techniques such as "time-out". Such confinement may only be used as part of a written treatment plan, shall not be used for the convenience of staff, and may be used only according to the following standards and procedures:

(1) Placement alone in a room or other area shall be imposed only when less restrictive measures are inadequate.

(2) Placement alone in a room or other area shall only be ordered by a qualified professional trained in behavior-shaping techniques and authorized in accordance with the written policies and procedures of the facility to order the use of behavioral-shaping techniques.

(3) The period of placement alone in a room or other area shall not exceed thirty minutes.

(4) The patient shall be observed and supervised by a staff member.

(5) The period of placement alone in a room or other area shall not exceed a total of three hours in any twenty-four-hour time period. If the placement alone in a room or other area exceeds a total of three hours in any twenty-four-hour time period, it shall then be considered seclusion and shall be governed by the procedures and standards set forth in Subsection D of this Section.

(6) The date, time, and duration of the placement shall be documented.

(7) In treatment facilities where patients are placed alone in a room or other area as a behavior-shaping technique, there shall be written policies and procedures governing use of such behavior-shaping technique.

§ 40:2010.7. Definitions

For the purpose of R.S. 40:2010.6 through R.S. 40:2010.9, unless the context otherwise requires:

(1) "Sponsor" means an adult relative, friend, or guardian of a resident who has an interest or responsibility in the resident's welfare, and preferably who is designated as the responsible party on the resident's admission forms.

(2) "**Physical restraint**" means, but is not limited to, any article, device, or garment that interferes with the free movement of the resident and that he is unable to remove easily. It also includes a geriatric chair and a locked room door.

(3) "Chemical restraint" includes any drug listed in the schedules of controlled substances under R.S. 40:964 as a substance having a depressant effect on the central nervous system, or chlorpromazine hydrochloride.

(4) "Ancillary service" means, but is not limited to, podiatry, dental, audiology, vision, physical therapy, occupational therapy, psychological and social services, and planning services.

Art. 1409. Rights guaranteed

D. **Physical restraints** or seclusion shall only be used to prevent a minor patient from physically injuring himself or others. **Physical restraints** or seclusion may not be used to punish or discipline a patient or used as a convenience to the staff of the treatment facility. Restraint and seclusion shall be used only in accordance with the following standards:

- (1) Restraint or seclusion shall only be used when verbal intervention or less restrictive measures fail. Use of restraint or seclusion shall require documentation in the patient's record of the clinical justification for such use as well as the inadequacy of less restrictive intervention techniques.
- (2) A written order from a physician or a psychologist acting within the scope of his institutional privileges shall be required for any use of restraint or seclusion. If, however, no physician or psychologist is immediately available, a registered nurse who has been trained in management of disturbed behavior may utilize restraint or seclusion. The nurse or the nursing supervisor shall then immediately notify a physician or a psychologist with institutional authority to order seclusion and provide him with sufficient information to determine whether restraints or seclusion are necessary and whether less restrictive interventions have been tried or considered. The physician or psychologist may then issue a telephone order for seclusion or restraint, if such order is indicated.
- (3) Written orders for the use of restraint or seclusion shall be time limited and not more than twelve hours in duration. The written order shall include the date and time of the actual examination of the patient, the date and time that the patient was placed in restraint or seclusion, and the date and time that the order was signed.
- (4) A renewal order for up to twelve hours of restraint or seclusion may be issued by a physician or a psychologist with institutional authority to order seclusion or restraint after determining that there is no less restrictive means of preventing injury to the patient or others. If any patient is held in restraint or seclusion for twenty-four hours, the physician or psychologist with institutional authority shall conduct an actual examination of the patient and document the reason why the use of seclusion or restraint beyond twenty-four hours is necessary, and the parent, tutor, or caretaker shall be notified by the twenty-sixth hour.
- (5) Staff who implement written orders for restraints and seclusion shall have documented training in the proper use of the procedure for which the order was written.
- (6) Periodic monitoring and care of the patient shall be provided by responsible staff. A patient in restraint or seclusion shall be evaluated every fifteen minutes, especially in regard to regular meals, water, and snacks, bathing, the need for motion and exercise, and use of the bathroom, and documentation of these evaluations shall be entered in the patient's record.
- (7) Patients shall be released from restraint or seclusion as soon as the reasons justifying the use of restraints or seclusion subside. If at any time during the period of restraint or seclusion a registered nurse determines that the emergency which justified the seclusion or restraint has subsided and a physician or psychologist is not immediately available, the patient shall be released. At the end of the period of restraint or seclusion ordered by the physician or psychologist the patient shall be released unless a renewal order is issued.
- (8) Mechanical restraints shall be designed and used so as not to cause physical injury to the patient and so as to cause the least possible discomfort.
- (9) Facilities using seclusion or restraint shall have written policies concerning their use. These policies shall include standards and procedures for placing a patient in seclusion or restraint, and for informing him of the reason he was put in seclusion or restraint and the means of terminating such seclusion or restraint.
- (10) Nothing in this Article shall be construed to expand the scope of practice of psychology as defined in R.S. 37:2351 et seq. to authorize the ordering, administering, or dispensing of medications, or to authorize any practice not permitted under the privileges granted by the institution.
- (11) The department shall adopt rules and regulations in accordance with the Administrative Procedure Act to govern the use of seclusion and restraint. Such rules and regulations shall respect the minor patient's individual rights, protect the minor patient's health, safety, and welfare, and be the least

restrictive of the minor patient's liberty. The department shall adopt rules and regulations to provide for enforcement procedures and penalties applicable to a person who violates the requirements of this Section.

E. A patient may be placed alone in a room or other area pursuant to behavior shaping techniques such as "time-out". Such placement may only be used as part of a written treatment plan, shall not be used for the convenience of staff, and may be used only according to the following standards and procedures:

(1) Placement alone in a room or other area shall be imposed only when less restrictive measures are inadequate.

(2) Placement alone in a room or other area shall only be ordered by a qualified professional trained in behavior-shaping techniques and authorized in accordance with written policies and procedures of the facility to order the use of behavior-shaping techniques.

(3) The period of placement alone in a room or other area shall not exceed thirty minutes.

(4) The patient shall be observed and supervised by a staff member.

(5) The period of placement alone in a room or other area shall not exceed a total of three hours in any twenty-four hour time period. If the placement alone in a room or other area exceeds a total of three hours in any twenty-four hour time period, it shall then be considered seclusion and shall be governed by the procedures and standards set forth in Paragraph D of this Article.

(6) The date, time, and duration of the placement shall be documented.

(7) In treatment facilities where patients are placed alone in a room or other area as a behavior-shaping technique, there shall be written policies and procedures governing use of such behavior-shaping technique.

State Education Agency Plans:

- Share information with Children's Justice Act (CJA) Task Force.
- Develop guidance and advisement of districts to consider using some of their stimulus dollars for PBIS implementation.
- For the purposes of safety, uniformity and use of best practices, the department is seeking legislation and/or developing policy on the humane and effective use of seclusion and/or physical restraints.

MAINE

A. Maine has had regulations in place for several years

05-071 Chapter 33: REGULATIONS GOVERNING TIMEOUT ROOMS, THERAPEUTIC RESTRAINTS AND AVERSIVES IN PUBLIC SCHOOLS AND APPROVED PRIVATE SCHOOLS

Section 1. In General

1.1 Policy and Purpose

These regulations establish standards for the use of separate, isolated timeout rooms and the use of therapeutic restraint when the behavior of a student presents a risk of injury or harm to the student or others, significant property damage, or seriously disrupts the educational process and other less intrusive interventions have failed. Nothing in these rules would require a school administrative unit (SAU) or approved private school to construct or use a timeout room or implement a program of therapeutic restraint. Schools that are licensed as residential child care facilities or mental health treatment centers and governed by other state standards shall comply with the higher standard. Nothing within these rules limit the protections of individual students under applicable special education standards.

1.2 Local Policy Required

Each School Administrative Unit and each approved private school shall develop local policies and procedures relating to the use of timeout rooms and therapeutic restraint prior to initiating such interventions in their schools. School Administrative Units and approved private schools which have local policies and/or permit the use of timeout rooms and/or therapeutic restraint shall revise existing policies or develop policies consistent with these rules within 90 calendar days of the effective date of these rules. These policies and procedures shall be developed with input, as needed, from representatives of related disciplines such as special education, psychology, school psychology, social work and / or counseling. SAUs and approved private schools shall establish a process to review, at least annually, the use of timeout rooms and therapeutic restraint and to make recommendations as necessary to the governing body for changes in local policy.

1.3 Documentation

Each use of a timeout room and/or therapeutic restraint shall be documented. The documentation shall include at a minimum, the date and time of initiation, the time of termination, the student, the location, the antecedent events prior to the behavioral episode, the behavior that resulted in the use of timeout and/or therapeutic restraint, the type of intervention, and the staff person(s) involved in the use of timeout and/or therapeutic restraint. This documentation shall be written as soon as practical after the incident and provided to the program administrator or designee within 2 school days of the incident. The program administrator or designee shall inform the parents or guardians of the use of timeout or therapeutic restraint as soon thereafter as practical.

Section 2. Definitions

2.1 Timeout

Removal to a timeout room is a therapeutic intervention to bring the behavior of a student presenting a risk of injury or harm to self or others or significant property damage under control. The purpose of the use of timeout rooms is to reduce the frequency and intensity of harmful behaviors, to permit the

student to regain his or her composure and to assist the student to return to the learning environment. Timeout includes requiring a student to leave the classroom, playground, or other educational setting and go to a designated timeout room for a period of time specified in these rules and local policy. For purposes of these rules, timeout is limited to a designated timeout room. The term does not include disciplinary actions imposed by a school administrator or teacher/staff imposed behavior interventions. Examples of disciplinary actions imposed by a school administrator include, but are not limited to, detention and "in school suspension." Examples of teacher/staff imposed behavior interventions include, but are not limited to, requesting a student to sit in a 'quiet chair' within the classroom, directing a student to put his/her head on their desk, sending a student to the principal's office, etc. These exclusions may not be used to circumvent the intent of these rules.

2.2 Timeout Room

A timeout room is a designated space, separate from a student's classroom, which is used to isolate a student from his or her peers and school activities. All timeout rooms will meet the standards specified in these rules.

2.3 Therapeutic restraint

Therapeutic restraint is the use of a therapeutic physical intervention with a student by an appropriately trained staff person to prevent injury or harm to the student or others. Title 20-A, §4009 permits staff to use a reasonable degree of force to intervene and control emergency situations. Nothing in these regulations applies to any conduct by a school official that would otherwise be covered by the legal protections of 20-A MRSA §4009.

Section 3. Time Out Room

3.1 Limitations on the use of timeout room

Timeout rooms shall be used consistent with local policy to reduce dangerous behaviors and only after less intrusive interventions have failed. Timeout rooms may be used for either an emergency intervention or as part of an intervention plan. Local policy will determine when a pattern of the use of timeout rooms requires referral to the appropriate intervention team and/or the development of an individualized intervention plan. Parents or guardians shall be involved in the development of any individualized intervention plans. Timeout rooms shall not be used for punitive purposes, staff convenience or to control minor misbehavior.

3.2 Time limitations on the use of timeout rooms

Use of timeout rooms shall be limited in duration to that time necessary to allow the student to compose him/herself and return to the classroom. The use of timeout shall be consistent with local policy and the student's individualized intervention plan but may not exceed one hour. If a student is still presenting dangerous behaviors after this period the use of timeout may be continued with written authorization of the program administrator or designee.

3.3 Adult supervision

Students in a timeout room shall be directly observed at all times by a staff person.

3.4 Physical Characteristics

Timeout rooms will be a minimum of 60 square feet with adequate light, heat, and ventilation and of normal room height. The door to the timeout room may not be locked, latched or secured in any way

that would prevent the student from exiting the room. An unbreakable observation window shall be located in a wall or door to permit continuous observation of the student and any staff member in the timeout room.

Section 4. Therapeutic restraint

4.1 Permitted uses of therapeutic restraint

Appropriately trained staff may physically intervene with a student to prevent injury or harm to the student or others. Therapeutic restraint may be used for either an emergency intervention or as part of an intervention plan. The intervention shall occur only after less intrusive efforts to control the behavior have been attempted. The intervention shall involve the least amount of physical contact necessary, shall be implemented consistent with the standards of a training program as specified in §4.5 and consistent with local policy. The use of therapeutic restraint shall require the presence of at least two adults at all times. Title 20-A, §4009 permits a single individual to use a reasonable degree of force in emergency situations to control or remove the student.

4.2 Time limits on the use of therapeutic restraint

Use of therapeutic restraint shall be limited in duration consistent with local policy and the student's individualized intervention plan but may not exceed one hour. If a student is still presenting dangerous behaviors after this time period, the use of therapeutic restraint may be continued with written authorization of the program administrator or designee.

4.3 Exclusions

Protective equipment or devices that are part of a treatment plan prescribed by a physician or psychologist for treatment of a chronic condition are not prohibited by these regulations.

4.4 Mechanical or Chemical Restraints Prohibited

The term 'therapeutic restraint' does not include mechanical or chemical restraints used to control or modify a student's behavior. Chemical restraints include but are not limited to medication, noxious sprays or gases. Prescribed medication administered by a health care provider consistent with a student's health care plan are permitted. Mechanical restraints are prohibited.

4.5 Training

Except as provided by Title 20-A, §4009, individuals who implement or supervise the implementation of therapeutic restraint shall have successfully completed an appropriate training program in the identification and de-escalation of potentially harmful behaviors and the safe use of passive physical therapeutic restraints. This training includes, but is not limited to, Non-Abusive Psychological and Physical Intervention (NAPPI), Mandt, Crisis Prevention Institute, Therapeutic Crisis Intervention Training, and other training as determined appropriate by local policy.

Section 5. Aversives

5.1 Use of Aversive Therapy or Treatment Prohibited

A school administrative unit or an approved private school may not use aversive therapy or treatment in order to modify or change a student's behavior. Aversive therapy or treatment includes the application of unusual, noxious or potential hazardous substances, stimuli or procedures to a student. Such

substances, stimuli and procedures include but are not limited to: water spray, hitting, pinching, slapping, noxious fumes, extreme physical exercise, costumes or signs.

STATUTORY AUTHORITY: 20-A MRSA §4502(5)(M)

EFFECTIVE DATE:

July 29, 2001—added as sub-section 17(D) to Chapter 125, “Basic Approval Standards: Public Schools and School Units.”

EFFECTIVE DATE:

April 27, 2002—filing 2002-104 accepted March 28, 2002: sub-section 125.17(D) removed from Chapter 125 and established as new Chapter 33, “Regulations Governing Timeout Rooms, Therapeutic Restraints and Aversives in Public Schools and Approved Private Schools”

<http://www.maine.gov/sos/cec/rules/05/071/071c033.doc>

- B. Below is a link to a letter sent by Commissioner Gendron to superintendents, principals, special education directors and teachers that clearly defines Maine laws and provides guidance to education professionals based on a current bill that was recently presented to the Joint Committee on Education and Cultural Affairs, which is underway to further address this issue.
- C. Letter #003 [Restraints Causing Restriction of the Airway \[07/14/2009\]](#)

ADMINISTRATIVE LETTER NO: 3

POLICY CODE: JKF

TO: Superintendents, Principals, Directors of Special Education, Teachers
FROM: Susan A. Gendron, Commissioner
DATE: July 14, 2009
RE: Restraints Causing Restriction of the Airway

A bill was presented this session to the Joint Committee on Education and Cultural Affairs to prohibit physical restraint of a disabled student that results in the student lying face down on the floor while pressure is applied to the student's back. LD 1096—An Act To Protect School Children from Dangerous or Abusive Restraint and Seclusion.

<http://janus.state.me.us/legis/LawMakerWeb/summary.asp?ID=280032005> The Department not only strongly supports the effort to prohibit this type of restraint, we would broaden the prohibition to include all children and any position which restricts the free movement of the diaphragm or chest so as to interrupt normal breathing and speech. Any body position that restricts the airway or that interferes with the muscular or mechanical means of getting air into and out of the body—the body's "bellows function"—will result in death unless the restriction ends in time.

Some students, such as those who are overweight or who have asthma, may be more prone to airway constraint than other students when placed in particular positions. A combination of conditions, mental and physical, including the use of certain medications, can place individuals at particular risk. www.gao.gov/archive/1999/he99176.pdf, pp. 7 and 8.

The Child Welfare League of America reported in 2002 that 8 to 10 children in the United States die each year due to restraints, and that other children suffer a range of injuries including broken bones and damaged joints. These data were identified with a broader population survey than schools only. Neither the federal government nor the states comprehensively track the use of restraint or seclusion data, or related injuries, so the true extent of the harm from restraint is unclear. www.gao.gov/archive/2000/he00026t.pdf, p. 4.

Unsafe practices must be avoided. The regulations permit therapeutic restraints only "to prevent injury or harm to the student", Ch. 33 §§ 2.3 and 4.1. Local policy may be determined only for therapeutic restraints. Ch. 33 § 1.3. www.maine.gov/sos/cec/rules/05/chaps05.htm

Dangerous restraints of the type addressed in this letter are generally discouraged by the training programs referenced in § 4.5 of Ch. 33 according to the Department's information and are considered non-therapeutic.

Accordingly, pending the results of a review and revision of Ch. 33, the use of any restraint that restricts the free movement of the diaphragm or chest or that restricts the airway so as to interrupt normal breathing or speech of students is prohibited. All school personnel who may restrain or assist with a restraint shall be notified of this prohibition. During the course of every restraint, a student's breathing and speech shall be monitored to protect against airway stress. Action causing unintended airway stress shall cease immediately. Any restraint shall immediately be reported to the school nurse who shall assess the student promptly.

http://www.maine.gov/tools/whatsnew/index.php?topic=edu_letters&id=76197&v=article

REPUBLIC OF THE MARSHALL ISLANDS

There is no specific rule pertaining to student restraints and seclusion in the Student Conduct section of the MOE Rules and Regulations of the Ministry of Education, 2008 Revision promulgated under Public Law. 191-125, the Education of Act, Chapter 14 (pp. 34-44).

Disorderly Conduct is defined below and the rules and regulations addressed penalties for such action. The penalties do not include restraints and seclusion:

“Disorderly conduct” means:

- (1) Engaging in fighting or threatening, or in violent behavior such as yelling or screaming, or both;
- (2) Making unreasonable noise as to cause disruption of normal school operation;
- (3) Making any offensively coarse utterance, gesture, or display, or addressing abusive language to any person present, which is likely to provoke a violent response
- (4) Creating a hazardous or physically offensive condition by any act which is not performed under any authorized license or permit, or
- (5) Impeding or obstructing any person in a public school for the purpose of begging or soliciting aims or other forms of aid; with the intent to cause physical inconvenience or alarm to a member of the public school, or recklessly creating a risk thereof;

Disorderly conduct is considered a Class B Offense as stated here in the **MOE Rules and Regulations**, Chapter 14 (p. 36).

14-14-8 Prohibited Student Conduct: penalties. (a) the following prohibited conduct applies to all students in the public school system during school hours, on school premises, or during Ministry- or school-supervised activities on or off school property:

(2) Class B offenses; unlawful conduct:

- A. Disorderly conduct
- B. Harassment
- C. Theft
- D. Trespassing

(3) Class C offenses; MOE prohibited conduct:

- A. Class cutting

Disposition of Class B offenses according to MOE Rules and Regulations is as follows:

Disciplinary Referral form (MOE FORM 10-14) shall be used for reporting offenses.

(b) Upon receiving a class A or class B offense report, the principal or designee shall conduct a preliminary investigation to determine as to whether the behavior requires a direct call to the police or whether the behavior can be handled through school disciplinary procedures. The principal or designee shall call the police, national or local, whenever there is perceived danger and the behavior cannot be handled by the school staff.

(c) Upon determining that a class A or class B offense occurred, the principal or designee shall submit a school incident report to the Secretary of Education within five days.

14-14-17 Disciplinary Measures. (a) Disciplinary measures shall be taken for offenses prescribed in Section 14-14-8, in accordance with procedures established under this chapter (MOE FORM 011-14); (b) School official shall determine duration of disciplinary measures based on their judgment and compassion; and, (c) Measures such as detention, suspension, probation, and dismissal shall allow school officials to correct the student conduct; and shall not inflict corporal or other brutal unreasonable punishment upon any student.

MARYLAND

Title 13A STATE BOARD OF EDUCATION

Subtitle 08 STUDENTS

Chapter 04 Student Behavior Interventions

Authority: Education Article, §§2-205, 7-301, 7-303—7-305, 7-307, 7-308 and 7-1101—7-1104, Annotated Code of Maryland

(Bold = new amendments) Effective October 5, 2009

.01 Scope.

This chapter applies to student behavior interventions by public agencies and nonpublic schools.

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) “Behavior intervention plan” means a proactive plan designed to address problem behaviors exhibited by a student in the educational setting through the use of positive behavioral interventions, strategies, and supports.

(2) “Business day” has the meaning stated in COMAR (Code of Maryland) 13A.08.03.

(2-1) Communicate.

(a) “Communicate” means to convey information verbally or nonverbally.

(b) “Communicate” includes, but is not limited to:

(i) Speech;

(ii) Gestures;

(iii) Symbols; and

(iv) American Sign Language.

(3) “Department” means the Maryland State Department of Education.

(4) “Exclusion” means the removal of a student to a supervised area for a limited period of time during which the student has an opportunity to regain self-control and is not receiving instruction including special education, related services, or support.

(5) Functional Behavior Assessment.

(a) “Functional behavior assessment” means the systematic process of gathering information to guide the development of an effective and efficient behavior intervention plan for the problem behavior.

(b) “Functional behavior assessment” includes the:

(i) Identification of the functions of the problem behavior for the student;

(ii) Description of the problem behavior exhibited in the educational setting; and

(iii) Identification of environmental and other factors and settings that contribute to or predict the occurrence, nonoccurrence, and maintenance of the behavior over time.

(6) “IEP” means an individual education program as defined and developed in accordance with COMAR 13A.05.01.

(7) “IEP team” has the meaning stated in COMAR 13A.05.01.

(8) Mechanical Restraint.

(a) “Mechanical restraint” means any device or material attached or adjacent to the student’s body that restricts freedom of movement or normal access to any portion of the student’s body and that the student cannot easily remove.

(b) “Mechanical restraint” does not include a protective or stabilizing device.

(9) “Nonpublic school” means a school that receives funds from the Department for the purpose of providing special education and related services to students with disabilities in accordance with COMAR 13A.09.10.

(10) “Parent” has the meaning stated in COMAR 13A.05.01.

(11) Physical Restraint.

(a) “Physical restraint” means the use of physical force, without the use of any device or material, that restricts the free movement of all or a portion of a student’s body.

(b) “Physical restraint” does not include:

(i) Briefly holding a student to calm or comfort the student;

(ii) Holding a student’s hand or arm to escort the student safely from one area to another;

(iii) Moving a disruptive student who is unwilling to leave the area if other methods such as counseling have been unsuccessful; or

(iv) Intervening in a fight in accordance with Education Article §7-307, Annotated Code of Maryland.

(12) “Positive behavior interventions, strategies, and supports” means the application of affirmative school-wide and individual student specific actions, instruction, and assistance to encourage educational success.

(13) Protective or Stabilizing Device.

(a) “Protective or stabilizing device” means any device or material attached or adjacent to the student’s body that restricts freedom of movement or normal access to any portion of the student’s body for the purpose of enhancing functional skills, preventing self-injurious behavior, or ensuring safe positioning of a person.

(b) “Protective or stabilizing device” includes:

(i) Adaptive equipment prescribed by a health professional, if used for the purpose for which the device is intended by the manufacturer;

(ii) Seat belts; or

(iii) Other safety equipment to secure students during transportation in accordance with the public agency or nonpublic school transportation plan.

(14) “Public agency” has the meaning stated in COMAR 13A.05.01.

(15) “Restraint” means the use of a physical or mechanical restraint.

(16) “School personnel” means an individual employed by a public agency or nonpublic school as defined in this chapter.

(17) “Seclusion” means the confinement of a student alone in a room from which the student is physically prevented from leaving.

(18) “Student with a disability” has the meaning stated in COMAR 13A.05.01.

.03 Student Behavior Interventions.

A. General. School personnel are encouraged to use an array of positive behavior interventions, strategies, and supports to increase or decrease targeted student behaviors.

B. School personnel shall only use exclusion, restraint, or seclusion:

(1) After less restrictive or alternative approaches have been considered, and:

(a) Attempted; or

(b) Determined to be inappropriate;

(2) In a humane, safe, and effective manner;

(3) Without intent to harm or create undue discomfort; and

(4) Consistent with known medical or psychological limitations and the student's behavioral intervention plan.

C. This chapter does not prohibit:

(1) School personnel from initiating appropriate student disciplinary actions pursuant to Education Article §7-305, Annotated Code of Maryland, COMAR 13A.08.01.11, and COMAR 13A.08.03; or

(2) Law enforcement, judicial authorities, or school security personnel from exercising their responsibilities, including the physical detainment of a student or other person alleged to have committed a crime or posing a security risk in accordance with relevant law, regulation, policy, or procedures.

.04 Use of Exclusion.

A. School personnel may use exclusion to address a student's behavior:

(1) If the student's behavior unreasonably interferes with the student's learning or the learning of others;

(2) If the student's behavior constitutes an emergency and exclusion is necessary to protect a student or other person from imminent, serious, physical harm after other less intrusive, nonphysical interventions have failed or been determined inappropriate;

(3) If exclusion is requested by the student; or

(4) If supported by the student's behavior intervention plan.

B. A setting used for exclusion shall:

(1) Provide school personnel with the ability to see the student at all times;

(2) Provide adequate lighting, ventilation, and furnishings; and

(3) Be unlocked and free of barriers to prevent egress.

C. School personnel shall monitor a student placed in exclusion and provide a student in exclusion with:

(1) An explanation of the behavior that resulted in the removal; and

(2) Instructions on the behavior required to return to the learning environment.

D. School personnel shall ensure that each period of exclusion:

(1) Is appropriate to the developmental level of the student and the severity of the behavior; and

(2) Does not exceed 30 minutes.

E. Parents and school personnel may at any time request a meeting to address the use of exclusion and to:

- (1) Conduct a functional behavioral assessment; and
- (2) Develop, review, or revise a student's behavioral intervention plan.

F. School personnel shall consider the need to initiate a referral to a pupil services or IEP team if a nondisabled student has experienced excessive exclusion, to determine if the student has a disability that may require the provision of special education and related services, in accordance with COMAR 13A.05.01.

G. School personnel shall ensure the implementation of appropriate procedures, in accordance with COMAR 13A.08.03, if a student with a disability has experienced an excessive period of exclusion that may result in a change of placement.

.05 General Requirements for the Use of Restraint or Seclusion.

A. Use of Restraint.

(1) Physical Restraint.

(a) The use of physical restraint is prohibited in public agencies and nonpublic schools, unless:

(i) There is an emergency situation and physical restraint is necessary to protect a student or other person from imminent, serious, physical harm after other less intrusive, nonphysical interventions have failed or been determined inappropriate;

(ii) The student's behavioral intervention plan or IEP describes the specific behaviors and circumstances in which physical restraint may be used; or

(iii) The parents of a nondisabled student have otherwise provided written consent to the use of physical restraints while a behavior intervention plan is being developed.

(b) Physical restraint shall be applied only by school personnel who are trained in the appropriate use of physical restraint consistent with Regulation .06C of this chapter.

(c) In applying physical restraint, school personnel shall only use reasonable force as is necessary to protect a student or other person from imminent, serious, physical harm.

(d) Physical restraint:

(i) Shall be removed as soon as the student is calm; and

(ii) May not exceed 30 minutes.

(e) In applying physical restraint, school personnel may not:

(i) Place a student in a face down position;

**(ii) Place a student in any other position that will obstruct a student's airway or otherwise impair a student's ability to breathe, obstruct a staff member's view of a student's face, restrict a student's ability to communicate distress, or place pressure on a student's head, neck, or torso;
or**

(iii) Straddle a student's torso.

(2) Mechanical Restraint.

(a) The use of mechanical restraint is prohibited in public agencies and nonpublic schools unless a public agency or nonpublic school is certified by and meets the requirements of the Joint Commission for the Accreditation of Health Care Organizations.

(b) Regulation .04 of this chapter does not prohibit school personnel from using a protective or stabilizing device:

(i) As prescribed by a health professional; or

(ii) For a student with a disability, in accordance with the student's IEP or behavior intervention plan.

(3) Documentation of the Use of Restraint.

(a) Each time a student is in a restraint, school personnel shall document:

(i) Other less intrusive interventions that have failed or been determined inappropriate;

(ii) The precipitating event immediately preceding the behavior that prompted the use of restraint;

(iii) The behavior that prompted the use of a restraint;

(iv) The names of the school personnel who observed the behavior that prompted the use of restraint;
and

(v) The names and signatures of the staff members implementing and monitoring the use of restraint.

(b) Documentation under §A(3) of this regulation shall include a description of the restraint event, including:

(i) The type of restraint;

(ii) The length of time in restraint;

(iii) The student's behavior and reaction during the restraint; and

(iv) The name and signature of the administrator informed of the use of restraint.

(4) The documentation described in §A(3) of this regulation shall be maintained in the student's educational record and available for inspection by the student's parent or legal guardian in accordance with COMAR 13A.08.02.

(5) Each time restraint is used, parents shall be provided oral or written notification within 24 hours, unless otherwise provided for in a student's behavior intervention plan or IEP.

B. Use of Seclusion.

(1) The use of seclusion is prohibited in public agencies and nonpublic schools unless:

(a) There is an emergency situation and seclusion is necessary to protect a student or another person after other less intrusive interventions have failed or been determined to be inappropriate;

(b) The student's IEP or behavioral intervention plan describes the specific behaviors and circumstances in which seclusion may be used; or

(c) The parents of a nondisabled student have otherwise provided written consent for the use of seclusion while a behavior intervention plan is being developed.

(2) Seclusion Room.

(a) At a minimum, a room used for seclusion shall:

(i) Be free of objects and fixtures with which a student could self-inflict bodily harm;

(ii) Provide school personnel an adequate view of the student from an adjacent area; and

(iii) Provide adequate lighting and ventilation.

(3) School personnel shall:

(a) View a student placed in seclusion at all times; and

(b) Provide a student placed in seclusion with:

(i) An explanation of the behavior that resulted in the removal; and

(ii) Instructions on the behavior required to return to the learning environment.

(4) Seclusion shall only be applied by school personnel trained in the appropriate use of seclusion consistent with Regulation .06C of this chapter.

(5) A seclusion event:

(a) Shall be appropriate to the student's developmental level and severity of the behavior;

(b) May not restrict the student's ability to communicate distress; and

(c) May not exceed 30 minutes.

(6) Documentation of Seclusion.

(a) Each time a student is placed in seclusion, school personnel shall document:

- (i) Other less intrusive interventions that have failed or been determined inappropriate;
- (ii) The precipitating event immediately preceding the behavior that prompted the use of seclusion;
- (iii) The behavior that prompted the use of seclusion; and
- (iv) The names and signatures of the staff members implementing and monitoring the seclusion.

(b) The documentation under §B(6) of this regulation shall include a description of the seclusion event, including:

- (i) Justification for initiating the use of seclusion;
- (ii) The length of time in seclusion;
- (iii) The student's behavior and reaction during the seclusion; and
- (iv) The name and signature of the administrator informed of the use of seclusion.

(7) The documentation described in §B(6) of this regulation shall be maintained in the student's educational record and available for inspection by the student's parent or legal guardian in accordance with COMAR 13A.08.02.

(8) Unless otherwise provided for in the student's behavior intervention plan or IEP, each time seclusion is used, school personnel shall provide the student's parent with verbal notification or send written notice within 24 hours.

C. Referral to a Pupil Services or IEP Team.

(1) If restraint or seclusion is used for a student who has not been identified as a student with a disability, the student shall immediately be referred to the school's pupil services team or an IEP team.

(2) If restraint or seclusion is used for a student with a disability, and the student's IEP or behavior intervention plan does not include the use of restraint or seclusion, the IEP team shall meet, in accordance with COMAR 13A.08.03, within 10 business days of the incident to consider:

- (a) The need for a functional behavioral assessment;
- (b) Developing appropriate behavioral interventions; and
- (c) Implementing a behavioral intervention plan.

(3) If restraint or seclusion is used for a student with a disability, and the IEP or behavior intervention plan includes the use of restraint or seclusion, the student's IEP or behavior intervention plan shall

specify how often the IEP team shall meet to review or revise, as appropriate, the student's IEP or behavior intervention plan, in accordance with COMAR 13A.05.01 and 13A.08.03.

(4) When an IEP team meets to review or revise a student's IEP or behavior intervention plan, as specified in §C(3) of this regulation, the IEP team shall consider:

- (a) Existing health, physical, psychological, and psychosocial information;
- (b) Information provided by the parent;
- (c) Observations by teachers and related service providers; and
- (d) The student's current placement.

(5) The local school system or nonpublic school shall provide the parent of the student with written notice in accordance with COMAR 13A.05.01.12A when an IEP team proposes or refuses to initiate or change the student's IEP or behavior intervention plan that includes the use of restraint or seclusion,

(6) A parent may request mediation in accordance with COMAR 13A.05.01.15B or a due process hearing in accordance with COMAR 13A.05.01.15C if the parent disagrees with the IEP team decision to propose or refuse to initiate or change:

- (a) The student's IEP;
- (b) The student's behavior intervention plan to use restraint or seclusion; or
- (c) The student's placement.

.06 Administrative Procedures.

A. Each public agency and nonpublic school shall develop policies and procedures to address:

- (1) A continuum of positive behavioral interventions, strategies, and supports for use by school personnel before exclusion, restraint, or seclusion;
- (2) The prevention of self-injurious behaviors;
- (3) Methods for identifying and defusing potentially dangerous behavior;
- (4) The use and documentation of exclusion consistent with Regulation .04 of this chapter;
- (5) The use of restraint consistent with Regulation .05A of this chapter; and
- (6) The use of seclusion consistent with Regulation .05B of this chapter.

B. Each public agency and nonpublic school shall annually review policies and procedures and provide them to school personnel and parents as described in COMAR 13A.08.01.

C. Professional Development.

(1) Each public agency and nonpublic school shall provide professional development to designated school personnel on this chapter and the appropriate implementation of policies and procedures developed in accordance with §A of this regulation.

(2) At the beginning of each school year, each public agency and nonpublic school shall identify school personnel authorized to serve as a school-wide resource to assist in ensuring proper administration of exclusion, restraint, and seclusion.

(3) The school personnel described in §C(2) of this regulation shall receive training in current professionally accepted practices and standards regarding:

(a) Positive behavior interventions strategies and supports, including methods for identifying and defusing potentially dangerous behavior;

(b) Functional behavior assessment and behavior intervention planning;

(c) Exclusion;

(d) Restraint and alternatives to restraint;

(e) Seclusion; and

(f) Symptoms of physical distress and positional asphyxia.

(4) The professional development described in §C(3) of this regulation shall include a written examination and physical demonstration of proficiency in the described skills and competencies.

D. Monitoring and Compliance.

(1) Each public agency and nonpublic school shall develop policies and procedures on:

(a) Monitoring the use of exclusion, restraint, and seclusion; and

(b) Receiving and investigating complaints regarding exclusion, restraint, and seclusion practices.

(2) The Department may monitor and request any information regarding any matter related to exclusion, restraint, or seclusion implemented by a public agency or nonpublic school. The Department shall provide written notice of the requested information and specify the time and the manner in which the public agency or nonpublic school shall respond to the request.

Administrative History

Effective date: June 23, 2003 (30:11 Md. R. 789)

Regulation .02B amended effective May 7, 2007 (34:9 Md. R. 827); October 5, 2009 (36:20 Md. R. 1531)

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Regulation .05A, B amended effective October 5, 2009 (36:20 Md. R. 1531)

Regulation .05C amended effective May 7, 2007 (34:9 Md. R. 827)

Regulation .06C amended effective October 5, 2009 (36:20 Md. R. 1531)

“Discipline of Students with Disabilities: Resources and Information on Effective Practices and Requirements under the Individuals with Disabilities Education Act”

http://www.marylandpublicschools.org/NR/rdonlyres/5F4F5041-02EE-4F3A-B495-5E4B3C850D3E/21665/DisciplineofStudentswithDisabilities_September2009.pdf



September 2009

Division of Special Education/Early Intervention Services

Use of Exclusion, Restraint and Seclusion

Overview

In 2002, the Maryland General Assembly enacted a law requiring MSDE to convene a taskforce to address exclusion restraint, and seclusion of students in local school systems and nonpublic special education facilities throughout Maryland. Regulations were promulgated and the implementation of these regulations was effective beginning September 2003 [COMAR 13A.08.04]. The State Board of Education approved amendments to these regulations on August 25, 2009.

Behavior Intervention

1. What principles should guide school personnel in their approach to student behavior?

Maryland's regulations begin with this key statement: "School personnel are encouraged to use an array of positive behavior interventions, strategies, and supports to increase or decrease targeted student behaviors."

Public agencies should emphasize the positive and proactive methods in the use of behavior interventions, strategies, and supports. Generally, the term "positive behavior interventions" refers to therapeutic methods of modifying behavior or certain types of behavior therapy. "Positive strategies" include adapting teaching methods for a student, such as using visual prompting or frequent feedback. "Positive supports" may include equipment or "extra hands" to fill a need, such as an augmentative communication device, assistive technology, or adult assistance.

Positive behavior interventions, strategies, and supports are intended to be used for two reasons: First, to increase the occurrence of behaviors that school personnel want to encourage, and second, to decrease behaviors that school personnel want to lessen or eliminate. It is important to remember that responding in a positive and rewarding way to behavior that school personnel want to see, i.e., 'catching a student being good' is just as, if not more important than developing a behavior plan that focuses on the negative behaviors that school personnel seek to eliminate.

The regulations specify the need for an "array" of positive approaches because it is quite possible that no one approach by itself will work. Depending on the nature of the challenging behavior presented by the student, it may be necessary to try several interventions, strategies,

or supports, or a variety of approaches in combination, in order to find an approach that works. It is also important that the IEP team focus on “targeted student behaviors.” A generic behavior plan that does not address the specific challenges presented by the student will not work effectively. A process of identifying target behaviors, planning how to address them, and deciding on the particular interventions, strategies, and supports is necessary. Positive behavior interventions, strategies, and supports focus on proactive ways of preventing targeted challenging behaviors instead of reacting to a challenging behavior after its occurrence. While these regulations govern the use of restraint and seclusion in schools, if positive behavior interventions, strategies, and supports are implemented appropriately, the use of restraint and seclusion should be truly limited to unavoidable emergency situations

2. The regulations state that unless not feasible, less restrictive or alternative approaches to behavior must be used prior to the use of restraint or seclusion. What are less restrictive or alternative approaches?

In this context, “less restrictive” refers to approaches that have a less substantial impact on the student’s ability to:

- Move;
- Communicate with others;
- Make choices; and
- Participate in school activities with other students.

“Alternative approaches” refers to a wide variety of responses such as substituting a different activity or implementing a therapeutic approach. For example, a student who becomes agitated during an academic task and begins kicking his desk might be permitted to walk around the classroom. Or a student who becomes upset by too much sensory stimulation and begins to scream might be allowed to go to another room and hold a stuffed animal to settle down.

3. How can it be determined if less restrictive or alternative approaches to restraint or seclusion are not feasible, as the regulations require?

The regulations state that exclusion, restraint, and seclusion may be used only after less restrictive or alternative approaches have been considered and attempted or determined not to be feasible. In making the determination as to whether less restrictive or alternative approaches are not feasible, school staff should consider the following:

1. Is the situation an emergency? Does the student pose an imminent risk of significant physical harm to self or others? Are there time, space, or personnel limitations that prevent less restrictive or alternative approaches from being implemented or from being implemented safely or effectively?
2. Is the situation one that arises frequently? If so, it should be addressed with positive behavioral supports as part of the student’s behavior intervention plan and should be part of his or her IEP. It is not appropriate to respond to a chronic situation with an emergency response, which is what exclusion, restraint, and seclusion are considered to be.
3. What supplementary aids and services and programmatic modifications and supports will enable the student with behavioral needs to be successfully served in the general education setting and in nonacademic and extracurricular activities? Remember that to the greatest extent possible, students should be educated in the general education classroom with appropriate supports in place. Students should not be removed solely on the basis of their disability, because of administrative convenience, or because of the configuration of the service delivery system. The supplementary aids, services, supports,

and program modifications that will help the student be educated successfully in the least restrictive environment possible must be provided. If these supports and supplementary aids and services have not been provided, it is unlikely that a meaningful determination can be made that less restrictive alternatives to restraint and seclusion were not available.

4. When considering the use of exclusion, restraint, or seclusion, what other factors must be considered?

1. The use of exclusion, restraint, and seclusion must be implemented in a “humane, safe, and effective” manner. It is important to consider whether the proposed intervention promotes “a safe, inclusive, equitable learning community.” Evaluations of safety and efficacy should be based on data at the individual student level and at the level of peer-reviewed research. At the individual student level, school personnel must be able to use data to determine if the use of exclusion, restraint, or seclusion is effective in changing the targeted behavior, is safe, and is not causing detrimental effects in other aspects of the student's life, at the system level, school-based practices should be research-based.
2. The use of exclusion, restraint, and seclusion must be “consistent with known medical or psychological limitations.” It is essential that medical contraindications, such as, asthma, seizures, or other medical conditions be considered by school personnel when determining the use of exclusion, restraint, and seclusion. Likewise, psychological history, such as past sexual abuse or abandonment must be considered as well. To re-traumatize a student through the use of exclusion, restraint, or seclusion will only exacerbate the behavior issues that need to be addressed.
3. When exclusion, restraint, and seclusion are used, they must be used “without intent to harm or create discomfort.” Exclusion, restraint, and seclusion cannot be used as punishment or discipline or for retaliatory purposes.

These provisions do not override the authority that school personnel have to address questions of disciplinary action, allegations of criminal activity, or security risk.

Behavior Assessments and Intervention Planning

5. Is “functional behavior assessment” defined in the regulations?

Yes. “Functional behavior assessment” is defined as “the systematic process of gathering information to guide development of an effective and efficient behavior intervention plan for the problem behavior.” It includes the identification of the functions of the behavior, a description of the behavior exhibited in the educational setting, and identification of environmental and other factors and settings that contribute to or predict the occurrence, nonoccurrence, or maintenance of the behavior. This definition is particularly significant because the IDEA does not define functional behavior assessment.

6. Why is a functional behavioral assessment (FBA) important?

Functional behavioral assessment is the process of gathering information that reliably predicts the conditions and/or circumstances surrounding a student's behavior that is considered inappropriate. The purpose of an FBA is to determine how the behavior functions for the student. All behaviors serve a function for individuals. We behave to get something, avoid something, or control activities. When students exhibit behaviors considered problematic, a

behavioral assessment is needed to accurately describe and ascertain how the behavior functions for the students.

Before personnel are able to redirect instructional interventions and supports or teach an appropriate replacement behavior, the targeted behavior must be identified across settings and described in accurate, objective, observable terms. For an appropriate replacement behavior or strategy for the identified problem behavior to be successful, the replacement behavior must satisfy the same function for the student. This assessment is a collaborative, student-centered, problem-solving process.

7. When must an FBA be conducted?

For students with disabilities, under the IDEA, a functional behavioral assessment is required once the student's behavior has resulted in a removal or series of removals equivalent to 10 school days. However, it is recommended that the FBA process be applied to any student's behaviors wherever those behaviors are of concern. The purpose of an FBA is to improve our understanding of behavior and the context in which it is observed, and to use this information to guide the development of behavior support plans. Whenever a problem behavior is first observed, the FBA process is used to enable professionals to develop a behavioral support plan. As such, an FBA should be conducted whenever a student's behavior is difficult to understand and/or a student's behavioral support plan needs to be developed or improved.

8. Do the State regulations define "behavior intervention plan"?

Yes. In State regulations, Maryland defines a behavioral intervention plan as "a proactive plan designed to address problem behaviors exhibited by a student in the educational setting through the use of positive behavioral interventions, strategies, and supports." The proactive nature of the plan and its emphasis on positive interventions, strategies, and supports will be discussed in the next section of this document.

9. Who conducts the FBA?

The Individuals with Disabilities Education Act (IDEA) and Code of Maryland Regulations (COMAR) do not specify a particular professional discipline or group of school personnel as the individuals to conduct the FBA. However, all staff members in a school should understand the purpose of conducting an FBA, be familiar with the basic steps of the process, and be able to participate in the FBA process. Therefore, all staff members should receive instruction on the purpose and features of FBA, and have opportunities to observe or participate in the FBA process. Personnel should receive training to be technically fluent with the FBA process and have the capacity to accurately and efficiently conduct an FBA.

10. How are the outcomes of an FBA used and what is the relationship between an FBA and a behavior intervention plan (BIP)?

In determining appropriate strategies for the student, the results of the FBA are used to develop and implement a BIP. This plan must also consider the student's strengths and the concerns of the student's parents. The BIP should focus on positive supports and strategies to address the events, environmental factors, and/or actions that trigger the behavior, to teach the student a replacement behavior or skill that serves the same functional intent for the student and how to implement the BIP consistently across settings.

11. What are positive behavioral interventions and supports and what does IDEA say about positive interventions?

The purpose of positive interventions is to teach the student appropriate replacement behaviors that serve the same function for the student. Interventions and supports should focus on proactive preventative natural supports for the student. Intervening and altering the known environment, activities, and our responses to the behavior by modeling and positively reinforcing the desired appropriate behavior within the setting is more efficient and effective for both the student and the staff. The IDEA requires a student's IEP team to consider positive behavior interventions, strategies, and supports to address the behavior when that behavior impedes the student's learning or the learning of others. The identified interventions shall be included in the student's IEP as appropriate. IDEA also specifically requires the involvement of the student's general education teacher in the development, review, and revision of the student's IEP to assist in determining appropriate positive interventions and strategies for the student.

Exclusion

12. When may exclusion be used?

School personnel may use exclusion to address a student's behavior:

- a. If the student's behavior unreasonably interferes with the student's learning or the learning of others;
- b. If the student's behavior constitutes an emergency and exclusion is necessary to protect a student or other person from imminent, serious, physical harm after other less intrusive, nonphysical interventions have failed or been determined inappropriate;
- c. If exclusion is requested by the student; or
- d. If supported by the student's behavior intervention plan.

However, exclusion should not be used for behaviors which are merely annoying or which can be redirected or de-escalated. In determining whether to use exclusion, school personnel should consider the student's capacity to understand why he or she is being removed from the learning environment. A student who is unable to understand the reason for removal will be unable to participate meaningfully in the process for bringing the exclusion to an end.

13. What happens during exclusion?

School personnel must ensure that each period of exclusion is appropriate to the developmental level of the student, the severity of the behavior, does not exceed 30 minutes. During this period, school personnel must monitor the student. School personnel must provide the student with an explanation of the behavior that resulted in the exclusion and instructions on the behavior required to return to the learning environment. This is a particularly important requirement, and school personnel must be sensitive to the student's disability as well as his or her individual needs when implementing this requirement. For example, for a student with autism or an auditory processing disorder, the stress of processing a verbal explanation and instructions while he or she is upset may be too complex and overwhelming; the student may need modeling or an alternative presentation of the explanation and instructions.

14. Is there a limit to the amount of time a student can be placed in exclusion or the number of times?

If numerous periods of exclusion occur and a cumulative total of 10 school days is reached during a school year, the procedural requirements governing the disciplinary removal of students with disabilities will apply.

Restraint

15. What is physical restraint?

Physical restraint is defined as “the use of physical force, without the use of any device or material that restricts the free movement of all or a portion of a student's body.” Physical restraint does **not** include briefly holding a student to calm or comfort him or her, holding the student's hand or arm to escort him or her to another area, moving a disruptive student who is unwilling to leave the area if other methods such as counseling have not been successful, or intervening in a fight. A physical restraint shall be removed as soon as the student is calm and may not exceed 30 minutes. In applying physical restraint, school personnel may not place a student in a face down position or in any other position that will:

- (i) Obstruct a student's airway or otherwise impair a student's ability to breathe;
- (ii) Obstruct a staff member's view of a student's face;
- (iii) Restrict a student's ability to communicate distress;
- (iv) Place pressure on a student's head, neck, or torso; or
- (v) Straddle a student's torso.

16. When may physical restraint be used?

Physical restraint may be used:

- In an emergency situation in order to protect the student or others from “imminent, serious, physical harm” after other less intrusive, non-physical interventions have failed or been determined inappropriate;
- When a student's behavioral intervention plan or IEP describes the specific behaviors and circumstances in which physical restraint may be used; or
- The parents of a non-disabled student have otherwise provided written consent to the use of physical restraints while a behavior intervention plan is being developed.

If physical restraint is used in an emergency, it may not be used past the point at which the emergency has ended. In applying physical restraint, school personnel shall only use reasonable force as is necessary to protect a student or other person from imminent, serious, physical harm. Physical restraint shall be removed as soon as the student is calm and may not exceed 30 minutes.

Physical restraint **may not** be used to:

- Discipline, punish, or retaliate;
- Get a student to focus on instruction during class time; and
- Prevent a student from causing property damage.

17. May school personnel use mechanical restraint?

NO. The use of mechanical restraints is prohibited. Neckties, scarves, tape, rope, cord, seatbelts, Rifton Chairs (if **not** used for purposes other than prescribed by a health professional), helmets (if **not** used for purposes other than prescribed by a health professional),

or any other similar equipment, objects, or devices, are mechanical restraints if used to prevent a student from moving all or any of his or her body for a reason other than that prescribed by a health professional and for the purpose for which the device is intended by the manufacturer.

18. What should happen if emergencies requiring restraint occur frequently?

Frequent emergencies should raise concerns about the efficacy of the student's behavioral intervention plan. Repeated challenging behavior that leads to an emergency situation can be anticipated and should be addressed through the "array of positive behavior interventions, strategies, and supports" required by the regulations. Any determination that positive behavior interventions, strategies, and supports cannot address the identified behavior should be based on data. Likewise, any determination that restraint is necessary should be based on data to support the efficacy of restraint in addressing that behavior in the school setting,

19. What are the documentation requirements for the use of restraint?

Whenever a student is restrained by school personnel, the restraint must be documented in the student's educational record. The documentation must be available to the parent or guardian, and the parent or guardian must be notified about the restraint verbally or in writing within 24 hours, unless the student's behavior plan or the IEP require some other arrangement. School personnel must document the following:

1. Other less intrusive interventions that have failed or been determined inappropriate;
2. The precipitating event immediately preceding the behavior that prompted the used of restraint;
3. The behavior that prompted the use of restraint;
4. The names of school personnel who observed the behavior that prompted the use of restraint;
5. The names and signatures of the staff members implementing and monitoring the use of restraint;
6. A description of the restraint event, including the type of restraint, the length of time in restraint, the student's behavior and reaction during the restraint, and the name and signature of the administrator informed of the use of restraint.

Seclusion

20. When may seclusion be used?

As with restraint, seclusion may be used:

- In an emergency situation in order to protect the student or another person after other less intrusive interventions have failed or been determined to be inappropriate;
- When a student's IEP or behavioral intervention plan describes the specific behaviors and circumstances in which seclusion may be used; or
- The parents of a non-disabled student have otherwise provided written consent for the use of seclusion while a behavior intervention plan is being developed.

Seclusion may not be used for discipline, punishment, or retaliation. It may not be used to prevent a student from causing property damage. If used in an emergency situation, it may not be used past the point at which the emergency has ended.

In considering whether seclusion is appropriate, school personnel should consider the student's capacity to understand why he or she is being removed from the learning environment. A student who is unable to understand the reason for removal will be unable to participate meaningfully in the process for bringing the seclusion to an end.

A seclusion event shall be appropriate to the student's developmental level and severity of the behavior. It may not restrict the student's ability to communicate distress and may not exceed 30 minutes.

Additionally, school personnel should consider the nature of the situation for which seclusion is being considered. If it is a true emergency, which is the only legitimate reason for the use of seclusion, consideration must be given to the safety issues involved in transporting a student to a seclusion room, as opposed to using a different intervention, including, if absolutely necessary, physical restraint as an alternative to seclusion.

21. May any space be used for seclusion?

No. There are specific requirements for a room used for seclusion. At a minimum, the room must not contain any objects or fixtures with which a student could harm him- or herself. School personnel must be able to see the student adequately from an adjacent area. Additionally, the room must provide adequate lighting and ventilation. It is unlikely that a box, closet or concrete, unpadded room, for instance, will meet these requirements.

22. What happens during seclusion?

When a student is placed in seclusion, school personnel must watch him or her at all times. As with exclusion, school personnel must provide the student with an explanation of the behavior that resulted in seclusion and instructions on the behavior required to return to the learning environment. As discussed in the section regarding exclusion, this is a particularly important requirement. School personnel must be sensitive to the student's disability, as well as to his or her individual needs when implementing this requirement. For some students, verbal presentation of the explanation and instructions may not be appropriate. As stated above in question # 21, a seclusion event shall be appropriate to the student's developmental level and severity of the behavior. It may not restrict the student's ability to communicate distress and may not exceed 30 minutes.

23. May any individual identified as a school employee implement seclusion?

No. Only school personnel (employees) trained in the appropriate use of seclusion may use seclusion with a student under the conditions specified above in question #21.

24. What should happen if emergencies requiring seclusion occur frequently?

Frequent emergencies should raise concerns about the efficacy of the student's behavioral intervention plan. Repeated challenging behavior that leads to an emergency situation can be anticipated and should be addressed through the "array of positive behavior interventions, strategies, and supports" required by the regulations. Any determination that positive behavior interventions, strategies, and supports cannot address the identified behavior should be based on data. Likewise, any determination that seclusion is necessary should be based on data to support the efficacy of seclusion in addressing that behavior in the school setting.

25. What are the documentation requirements for the use of seclusion?

Each time a student is placed in seclusion by school personnel, the seclusion must be documented in the student's educational record. The documentation must be available to the parent or guardian, and the parent or guardian must be notified about the seclusion verbally or in writing within 24 hours, unless the student's behavior plan or the IEP requires some other arrangement. School personnel must document the following:

1. Other less intrusive interventions that have failed or been determined inappropriate;
2. The precipitating event immediately preceding the behavior that prompted the use of seclusion;
3. The behavior that prompted the use of seclusion;
4. The names and signatures of the staff members implementing and monitoring the seclusion;
5. A description of the seclusion event, including justification for initiating the use of seclusion, the length of time in seclusion, the student's behavior and reaction during the seclusion, and the name and signature of the administrator informed of the use of seclusion.

26. Do the regulations require review by an IEP team if a student has been restrained or placed in seclusion?

This is an individualized decision that needs to be made on a case-by-case basis. If a student has not been identified as a student with disabilities and restraint or seclusion is used, the student must immediately be referred to the school's pupil services team or to the student's IEP team. The choice lies with school personnel who can assess whether the student's behavior appears to be an unusual, isolated event or an ongoing interference that needs to be assessed.

If restraint or seclusion is used for a student who already is identified as being a student with a disability and the student's IEP or behavior intervention plan does not include the use of restraint or seclusion, the IEP team must meet within 10 business days of the incident to consider the need for a functional behavioral assessment, the development of appropriate behavior interventions, and the implementation of a behavioral intervention plan. If a student's IEP or behavior intervention plan does include the use of restraint or seclusion, the document shall specify how often the IEP team will meet to review or revise the document, as appropriate.

Administrative Procedures

27. Does the IEP team have any additional obligations?

Yes. The IEP team must consider existing health, physical, psychological, and psychosocial information, information provided by the parents, observations by teachers and related service providers, and the student's current placement. When the IEP team proposes or refuses to initiate or change the student's IEP or behavior intervention plan that includes the use of restraint or seclusion, the local school system or nonpublic school must provide the student's parent with prior written notice in accordance with federal and State law. The parent may file for mediation or a due process complaint if he or she disagrees with the IEP team's proposals or refusals.

28. Do public agencies have any obligations to develop policies and procedures regarding exclusion, restraint, and seclusion?

Yes. Each public agency and nonpublic school must develop policies and procedures to address:

1. A continuum of positive behavioral interventions, strategies, and supports for use by school personnel before exclusion, restraint or seclusion;
2. The prevention of self-injurious behaviors;
3. Methods for identifying and defusing potentially dangerous behavior;
4. The use and documentation of exclusion;
5. The use of restraint; and
6. The use of seclusion.

In accordance with COMAR 13A.08.01.10 each local board of education shall have a document on students' responsibilities and rights. This document shall conform to guidelines established by the State Board of Education. The local document shall be disseminated periodically to all members of the school community, including students, teachers, administrators, and parents or guardians. Local school systems are to involve representatives of the school community in the review of the document.

29. Do the public agencies and nonpublic schools have to conduct any professional development activities?

Yes. Each public agency and nonpublic school must provide professional development to designated school personnel regarding the regulations and the appropriate implementation of the policies and procedures developed in accordance with the regulations.

At the beginning of each school year, each public agency and nonpublic school must identify school personnel authorized to serve as a school-wide resource to assist in ensuring that exclusion, restraint, and seclusion are utilized properly at the school. These school personnel shall receive training in current, professionally accepted practices and standards regarding:

1. Positive behavior interventions, strategies, and supports;
2. Functional behavior assessment and behavior intervention planning;
3. Exclusion;
4. Restraint, including alternatives to restraint;
5. Seclusion; and
6. Symptoms of physical distress and positional asphyxia.

The professional development described above shall include a written examination and physical demonstration of proficiency in the described skills and competencies. Additional areas in which public agencies and nonpublic schools may wish to consider training to include child development, trauma recognition and prevention, neurobiological and psychological effects of trauma, relationship-building and collaborative problem-solving, collaborating with families to create and maintain positive behavioral supports, matching behaviors with interventions, prevention and de-escalation techniques, signs of physical distress, systemic effects of the use of restraint and seclusion on bystanders, legal and ethical issues, investigation of injuries and complaints, documentation, and data collection and analysis.

30. Do public agencies and nonpublic schools have an oversight role with respect to the use of exclusion, restraint, and seclusion?

Yes. Each public agency and nonpublic school must develop policies and procedures regarding monitoring the use of exclusion, restraint, and seclusion, and receiving and investigating complaints regarding exclusion, restraint, and seclusion practices.

Additionally, the Maryland State Department of Education may monitor and ask for any information about any matter related to exclusion, restraint, or seclusion implemented by a public agency or nonpublic school. The Department must provide written notice of the requested information and specify the time and manner in which the public agency or nonpublic school shall answer the request.

For more information, call 410-767-7548

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MASSACHUSETTS

A. Regulations:

Pursuant to M.G.L. c. 69, § 1B, and c. 71, § 37G, “The board of education shall promulgate regulations regarding the use of physical restraint for students. Such regulations shall not preclude any teacher or employee or agent of the school from using reasonable force to protect pupils, other persons and themselves from an assault by a pupil as set forth above in section (b). Such regulations shall require training of all personnel authorized to administer any forms of restraint. Such regulations shall provide for procedures for notification to the department and to the parents.”

Education Law and Regulation addresses the issue of physical restraint of students.

603 CMR 46.00 Physical Restraint addresses; Authority, Scope, Purpose and Construction, Definitions, Procedures and Training, Determining When Physical Restraint May Be Used, Proper Administration of Physical Restraint, Reporting Requirements, and Special Circumstances related to physical restraint issues in Massachusetts public education programs.

Summary: The Massachusetts Department of Elementary and Secondary Education (MA DESE) addresses physical restraint laws and guidelines through 603 CMR 46.00 (in effect April 2, 2001), which relate to students in publicly funded elementary and secondary education programs, including all Massachusetts public school districts, charter schools, collaborative education programs and special education day schools approved under 603 CMR 28.09. 603 CMR 18.00 (amended April 2, 2001), MA DESE’s Program and Safety Standards for Approved Public or Private Day and Residential Special Education School Programs, generally address behavior management at section 18.05(5) and require approved day and residential special education school programs to develop rules, policies and procedures addressing a number of areas, including restraints. Subparagraph (h) of the same section directs such programs to comply with the restraint requirements of their respective licensing/approval agencies. For example, the residential setting within an approved residential special education is licensed by a sister state agency. The private approved special education residential school must comply with the other state agency’s regulations, as applicable. Residential educational programs approved under 603 CMR 28.09 and educational programs in facilities operated by the Department of Youth Services are required to comply with the restraint requirements of 102 CMR 3.00 (July 13, 2001), which states that each new employee (who may work with residents) of a program which utilizes restraints, shall receive a minimum of sixteen (16) hours of training in the prevention and use of restraint, which shall address the needs and behaviors of the population served (details specified), and prevention/restraint training shall include role-playing in de-escalation and demonstration of proficiency with each hold taught, and written post-training tests. Additionally, this regulation states, “no new employee shall be solely responsible for children in care until s/he has received the minimum orientation described above.” Educational programs within a program or facility subject to M.G.L. c.123 or Department of Mental Health Regulations are required to comply with the restraint requirements of M.G.L. c.123, 104 CMR 27.12 or 104 CMR 28.05, as applicable.

B. Existing Programs:

The Department has a PowerPoint presentation posted online that provides general information on Physical Restraint Laws and regulations. This presentation states that “it provides an overview of the regulatory requirements for the use of physical restraint, all staff should be familiar with the regulations, and viewing the presentation does not substitute for a careful reading of the full regulatory requirements.”

The DESE does not directly provide training in restraint and seclusion procedures. Please see Training/Professional Development section below.

C. Reporting and Complaint Procedure

MA DESE regulations require verbal and written reports of certain types of restraint. Forms developed by the Department of Elementary and Secondary Education that may be used in meeting both the local and state reporting requirements are posted on the Department's Web site.

The regulations require that a report [603 CMR 46.06(5)] be filed with the Department of Elementary and Secondary Education by a Massachusetts public school district, charter school, collaborative education program and special education day school approved under 603 CMR 28.09 within five (5) school working days of the administration of the restraint when "a restraint has resulted in a serious injury (requiring emergency medical intervention) to a student or program staff member and/or when a restraint lasting for more than twenty (20) minutes (an "extended restraint") has been administered." This report requires notification to parents that a restraint of this nature took place.

A Program Quality Assurance (PQA) staff person reviews the report that is filed with DESE to determine compliance with the requirements and to conduct follow-up with the school as needed on any specific report or any concerning pattern of reports that warrant further inquiry.

There are additional regulatory requirements that mandate these educational settings notify school staff and parents/guardians of other incidents of restraint as well. 603 CMR 46.06(1, 2) requires the school staff to notify school principal or school director or designee of each instance of physical restraint that results in any injury to a student or staff member, or any physical restraint of duration longer than five minutes verbally as soon as possible, and by written report to school principal or school director or designee no later than the next school working day. 603 CMR 46.06(1, 3) requires the school staff to notify the parent/guardian of each instance of physical restraint that results in any injury to a student or staff member, or any physical restraint of duration longer than five minutes verbally as soon as possible, and by written report to parent/guardian postmarked no later than three school working days following the use of such a restraint.

Complaints relative to restraints follow the standard complaint procedure outlined by the DESE about the Problem Resolution System (PRS) on its <http://www.doe.mass.edu/pgq/> Program Quality Assurance site. PQA is the unit within the Department that manages that system.

Any concerned person has the right to contact the Department. Most concerns come from parents, students, teachers and individuals or organizations acting on students' behalf. If an individual does not write or speak English, is not comfortable communicating in English or requires some other accommodation, the Department will make arrangements to communicate appropriately with the individual.

The Department recommends that individuals with questions and concerns first contact the school (for example, the principal, superintendent of schools or administrator of special education) to present questions and concerns to the people who are closest to the situation and who are most able to respond quickly. If that does not work, or does not seem possible under the circumstances, individuals may contact PQA using the posted listing of assigned PRS Educational Specialists.

The complete problem resolution procedure is listed on the DESE Web site [<http://www.doe.mass.edu>]. The formal process involves some of the following elements;

1. Submission of a signed Intake Information Form to the Department.
2. Review by the Department's Educational PRS Specialist of the complaint to determine if there is authority for the Department to act (if not, the individual is referred to other assistance sources).

3. If a concern is related to educational laws, regulations or policy, then the complaint is investigated and a procedure for resolution is followed that includes contact with the district as a first step.
4. If the Department determines that the district is not meeting requirements, the Department will send a letter explaining the basis of this determination and the requirements for correcting any noncompliance found.

Requests for advocates are often referred to the Federation for Children with Special Needs.

D. Training/ Professional Development

In order to receive the full 16 hours of training referred to in the legislation, districts contract through regional collaborative and/or private providers to certify lead personnel and staff trainers in restraint procedures and policies. DESE staff suggests that inquiries related to finding restraint and seclusion training or professional development be made to other MA districts. A number of the professional development trainings that certify school personnel are coordinated and provided through the state's regional Educational Cooperatives.

Examples:

The Crisis Prevention Institute (CPI) is provided by the TEC/EDCO Education Collaborative, Dedham, MA.

MSEC (The Merrimac Special Education Collaborative) offers physical restraint training for interested schools and other groups. *"MSEC provides both the overview training on physical restraint required by the Department of Education for all school staff, as well as in-depth training for staff who serve as a required school-wide resource. The MSEC trainer is certified in CPI, has trained over 2,000 staff."*

E. Web-Based Links

1. Education Laws and Regulations 603 CMR 46.00: Physical Restraint
<http://www.doe.mass.edu/lawsregs/603cmr46.html?section=all>
2. Education Laws and Regulations 603 CMR 18.00: Program and Safety Standards for Approved Public or Private Day and Residential Special Education School Programs
<http://www.doe.mass.edu/lawsregs/603cmr18.html?section=05>
3. The General Laws of Massachusetts PART I. ADMINISTRATION OF THE GOVERNMENT TITLE XII. EDUCATION CHAPTER 69. Chapter 69: Section 1B. Board of elementary and secondary education; duties.
<http://www.mass.gov/legis/laws/mgl/69-1b.htm>
4. The General Laws of Massachusetts PART I. ADMINISTRATION OF THE GOVERNMENT TITLE XII. EDUCATION CHAPTER 71. PUBLIC SCHOOLS, SCHOOL COMMITTEES Chapter 71: Section 37G. Corporal punishment of pupils prohibited; use of physical restraint; regulations.
<http://www.mass.gov/legis/laws/mgl/71-37g.htm>
5. PowerPoint
<http://www.malden.mec.edu/mps/doc/PPT%20Presentation%20Restraint%20Training.pdf>
6. Program Quality Assurance Services Compliance and Monitoring Problem Resolution System (Complaints Procedures)
<http://www.doe.mass.edu/pqa/prs/>

7. Updated Guidance Regarding Implementation of Physical Restraint Regulations and Incident Reporting Requirements in Special Education Day and Residential Schools
<http://www.doe.mass.edu/news/news.asp?id=2696>
8. Physical Restraint Report Forms 603 CMR 46.06(5)
http://www.doe.mass.edu/pqa/sa_nr/46_req.html
http://www.doe.mass.edu/pqa/sa_nr/physical_restraint.pdf
http://www.doe.mass.edu/pqa/sa_nr/physical_restraint.doc
9. Regional Collaborative Training Program Example
<http://www.tec-coop.org/pdl/PDFs/Fall09/RestraintTraining.pdf>

MICHIGAN

The Michigan Compiled Laws (MCL) and the Michigan Department of Education (MDE) provide directives on the use of seclusion and restraint, specific to school-based policies and practices.

Michigan Education Policy

Type	Laws (MCL)	Policies (MDE)	Regulations (MDE)	Guidance (MDE)
Seclusion	None	Supporting Student Behavior: Standards for the Emergency Use of Seclusion and Restraint	None	School-wide Positive Behavior Support Implementation Guide 2008
Restraint	“Reasonable physical force” allowable to maintain order and control in providing a safe and conducive learning environment. At least one of a determined set of criteria must apply. (§380.1312)	Supporting Student Behavior: Standards for the Emergency Use of Seclusion and Restraint		School-wide Positive Behavior Support Implementation Guide 2008
Corporal punishment	Prohibited (§380.1312)			

In addition to the policies and regulations directing the use of seclusion and restraint in education, Michigan also has a policy that each district must implement schoolwide positive behavior support (PBS) strategies. MDE has provided a number of resources to support schoolwide PBS, most recently with an updated 2008 implementation guide—[School-wide Positive Behavior Support](#).

Practice Considerations

In his July 31, 2009, letter, Secretary Duncan mentioned “examples of good practices that State officials might strive to include in their statutes, regulations, policies and guidance.” The following table lists practice consideration, identifies whether Michigan has included them in its state policies, and provides additional information and a link to the source document.

“Supporting Student Behavior—Standards for Emergency Use of Seclusion and Restraints” and “School-wide Positive Behavior Support: Implementation Guide 2008” can be located at

http://www.michigan.gov/documents/mde/SchoolwidePBS_264634_7.pdf

SUMMARY OF SECLUSION AND RESTRAINT STATUTES, REGULATIONS, POLICIES AND GUIDANCE, BY STATE AND TERRITORY

Practice Considerations	Present	Notes	Source(s)
Clear definitions of relevant terms such as “seclusion” and “restraint” and “emergency”	Yes	MDE definitions include <ul style="list-style-type: none"> • Emergency • Emergency safety intervention • De-escalation techniques • Informed consent • Restraint • Seclusion • Timeout • Timeout continuum Prohibited Practices	Supporting Student Behavior: Standards for the Emergency Use of Seclusion and Restraint
Clear limitations on what seclusion and restraint techniques specifically are limited or not allowed	Yes	Seclusion limitations identified. Restraint limitations identified.	Supporting Student Behavior: Standards for the Emergency Use of Seclusion and Restraint
Specifying when seclusion and restraint techniques may be used	Yes	Must only be used as last resort for emergency safety.	Supporting Student Behavior: Standards for the Emergency Use of Seclusion and Restraint
If seclusion and restraint techniques are permitted as behavioral interventions, addressing these interventions in the context of behavioral intervention plans	Yes (implied)	Inclusion of seclusion and restraint is not to be used “as a planned response”; however, there are specific requirements for an “emergency intervention plan” developed in collaboration with the parent(s).	Supporting Student Behavior: Standards for the Emergency Use of Seclusion and Restraint

SUMMARY OF SECLUSION AND RESTRAINT STATUTES, REGULATIONS, POLICIES AND GUIDANCE, BY STATE AND TERRITORY

Practice Considerations	Present	Notes	Source(s)
Requiring effective personnel training in the administration of seclusion and restraint of students	Yes	MDE provides a training framework that includes: <ul style="list-style-type: none"> • awareness training for broader educational community, pre-service training for all teachers, and training for substitute teachers • comprehensive training for key identified personnel 	Supporting Student Behavior: Standards for the Emergency Use of Seclusion and Restraint
Clearly indicating for whom the training is targeted	Yes		
Identifies type of training	No	Identifies levels of training and components that must be covered at each level.	
Identifies how frequently personnel are trained	No	Periodically as defined by the local school district.	Addressed in the Frequently Asked Questions attached to the document.
Identifies duration of the training	No	Unclear in the duration of the training	Addressed in the Frequently Asked Questions attached to the document.
Describing appropriately qualified personnel to administer seclusion and restraint interventions	Yes	MDE has requirement of the involvement of appropriately trained key identified staff	Supporting Student Behavior: Standards for the Emergency Use of Seclusion and Restraint
Publicizing the policies and guidelines so that administrators, teachers and parents fully understand and consent to the limited circumstances under which these techniques may be used	No	Parental notification and documentation are required, but no directive was found related to publicizing of policies and guidelines. The awareness training component requires that the “broader educational community” be made aware of the policy.	

SUMMARY OF SECLUSION AND RESTRAINT STATUTES, REGULATIONS, POLICIES AND GUIDANCE, BY STATE AND TERRITORY

Practice Considerations	Present	Notes	Source(s)
Ensuring that parents are notified (including specifying the timeframe for notification) when these interventions do occur (to the extent possible, before they occur)	Yes	MDE provides specific parental notification requirements and procedures.	Supporting Student Behavior: Standards for the Emergency Use of Seclusion and Restraint Section V (pg. 10) Section VI (pg. 15)
Ensuring that the use of these interventions is fully documented in a form accessible to parents when requested	Yes	MDE provides specific parental notification requirements and procedures.	Supporting Student Behavior: Standards for the Emergency Use of Seclusion and Restraint
Providing for the collection of data on the use of seclusions and restraints, so that information is maintained on a statewide and a local basis	Yes	MDE directs districts to develop a system of data collection with specific criteria.	Supporting Student Behavior: Standards for the Emergency Use of Seclusion and Restraint
Describing how the state uses the data and whether the data are publicly reported	No	MDE is not currently collecting data.	
Providing resources for training of appropriate staff	No	Policy provides the framework for trainings. Local districts develop own resources.	School-wide Positive Behavior Support Implementation Guide 2008.
Providing for monitoring to ensure adherence to State law, regulations, policies and guidance	No	No information found.	
Providing a mechanism to report any potential abuses	No	No information found.	

FEDERATED STATES OF MICRONESIA

a. Chuuk State

No policy currently exists.

b. Kosrae State

c. Pohnpei State

There are limited regulatory policies on use of restraint and isolation. The Pohnpei Education Act of 1999, Section 4-11 and 4-12 states,

“No corporal punishment. No physical punishment of any kind shall be inflicted upon a student, but reasonable force may be used by a Department employee to restrain a student, in attendance, from inflicting harm on self or others, or from damaging property.” It further states that if a student becomes a detriment to the morals or discipline of the school attended, the student may be evicted from the school by the principal, with the approval of the director. The same section (2) also states, “The Department [of Education] shall seek the active participation of other public and private agencies in providing help to such students before and after eviction from school.”

In an interview, the Special Education specialist shared the following information:

In the history of Special Education in Pohnpei, they have never encountered any serious cases where use of severe restraint or isolation is needed. Whenever they run into a problem, they immediately contact parents/family and put the child into their care, with recommendations to seek other agencies (mental health division).

Use of “cultural resolutions” has always been their main strategy for handling problematic cases. This means referring the child to parents and community to control unmanageable behaviors.

Since Special Education is a federally funded program, they are mandated to follow federal laws and guidelines on use of restraint and isolation but have never had the need to refer to or apply them (reiterating again the effectiveness of using “cultural or traditional” restraint).

With changing times and society, there is a need to take a look at PDOE policies and create regulations and guidelines for use of restraint and isolation.

Yap State

There are limited regulatory policies on use of restraint and seclusion. The original *Yap Department of Education Policy and Procedures*, of 1978 remains the current legal document. In that document are the following policies related to use of restraint and seclusion:

Policy 503.3 Behavioral Problems including use of detention

Teachers, counselors and administrators will discuss with parents/guardians academic progress and persistent problems of disruptive behavior by the student. Student will be removed from participation in class or school activities when appropriate in the judgment of the Principal/Head Teacher. The following measures will be utilized:

- 1 Warning:
 - a. Oral
 - b. Written

2 Removal from class:

- a. Deny particular class attendance for a period of two days or less
- b. Under the supervision of other teachers or staff members, the student will work on classroom assignments in an appropriate in-school environment where learning can continue.

3 Notify the parents/guardians.

A. Policy 503.4 Physical Abuse: The YDOE [Yap Department of Education] shall not permit or condone the use of physical abuse of any student by the school or DOE staff, nor will the DOE permit or condone the physical or verbal abuse of its employees by any student or parent.

1. Special Education is a federally funded program and is mandated to follow federal laws and guidelines on use of restraint and isolation. In addition to complying with SPED regulations, the use of “cultural resolutions” has been used for handling problematic cases. This approach means referring the child to parents and community to control unmanageable behaviors.

MINNESOTA

Statutes

Minn. Stat. § 121A.58—<https://www.revisor.leg.state.mn.us/statutes/?id=121A.58>

Minn. Stat. § 121A.66—<https://www.revisor.leg.state.mn.us/statutes/?id=121A.66>

Rules

Minn. R. 3525.0210 subps. 5, 6, 9, 13, 17, 22, 29, 30, 46 and 47 --

<https://www.revisor.leg.state.mn.us/rules/?id=3525.0210>

Minn. R. 3525.0850—<https://www.revisor.leg.state.mn.us/rules/?id=3525.0850>

Minn. R. 3525.1100, subp. 2—<https://www.revisor.leg.state.mn.us/rules/?id=3525.1100>

Minn. R. 3525.2710—<https://www.revisor.leg.state.mn.us/rules/?id=3525.2710>

Minn. R. 3525.2810—<https://www.revisor.leg.state.mn.us/rules/?id=3525.2810>

Minn. R. 3525.2900—<https://www.revisor.leg.state.mn.us/rules/?id=3525.2900>

Codes

Minn. State Fire Code—Minn. R. 7511.1008, subp. 3—

<https://www.revisor.leg.state.mn.us/rules/?id=7511.1008>

Minn. State Building Code—Minn. R. 1305.1008, subp. 8—

<https://www.revisor.leg.state.mn.us/rules/?id=1305.1008>

Effective August 1, 2011, Minn. Stat. § 125A.0941 and 125A.0942 go into effect.

<<Minn. Stat. § 125A.0941 and 125.0942.pdf>> (attached)

Accountability

http://education.state.mn.us/MDE/Accountability_Programs/Student_Maltreatment/index.html

Minnesota does not have immediate plans to modify their current statutes/rules in response to the U.S. Department of Education letter from Arne Duncan addressed to state commissioners. Their Positive Behavioral Interventions and Support (PBIS) scaling-up model, based on the work out of the Institute of Education Sciences, aligns with the suggestions contained in the letter.

Although Minnesota has an internal group following the national trends in this area, they would also like technical assistance from the North Central Regional Comprehensive Center (NCCC) around effective practices currently under way in other states.

MISSISSIPPI

State Web site Search

[State Policies Regarding Children with Disabilities](#) (Policy 7219, effective July 20, 2009) contain nothing regarding restraint and seclusion.

Search of Mississippi Department of Education (MDE) Office of Special Education Web pages

The [Mississippi School Safety Manual](#) (Revised 2005) includes a reference to state code concerning corporal punishment and restraint policy (Appendix VI) in the translation associated with [Mississippi Code of 1972](#), SEC. 37-11-57 regarding immunity of school personnel from liability for carrying out action in enforcing rules. [Appendix VI](#) is a sample student restraint policy describing its relation to the code, situations for which a restraint may be appropriate, acceptable techniques, and reporting requirements.

Additional Information provided by state education agency (SEA) staff

Current restraint policy recommendation as cited in Appendix VI of the [Mississippi School Safety Manual](#) has been approved by the Mississippi Attorney General's Office.

Current restraint policy recommendation as cited in Appendix VI of the [Mississippi School Safety Manual](#) has been reviewed by the U.S. Attorney's Office for the Southern and Northern District of Mississippi with no objections.

Current restraint policy recommendation as cited in Appendix VI of the [Mississippi School Safety Manual](#) has been adopted and incorporated into the Mississippi School Board Association Policy and Procedures Manual as Policy JCBA.

MDE currently has in place a "Passive Restraint for Educators" training course available on request to support the recommended policy.

SEA plans to develop, review, or revise statutes, policies, or guidelines

Technical assistance is requested.

MISSOURI

Missouri has adopted a widely known and well-established philosophy and tradition of local control in education. Schools, districts and communities take pride in their ability to develop and implement local policies that guide and protect interests of their own students and address the unique and distinct educational needs of their individual communities. State policies related to appropriate seclusion and restraint practices have thus far not been viewed differently from other guidelines or policies necessary to ensure safe, quality education for Missouri students. There is no statewide policy at the present time.

Recent legislation (H.C.S. #2, S.S. S.B. 291) approved by the governor of Missouri on July 31, 2009, requires, "By July 1, 2011, the local board of education of each school district shall adopt a written policy that comprehensively addresses the use of restrictive behavioral interventions as a form of discipline or behavior management technique"

Plans for further development

Department of Elementary and Secondary Education (DESE) Career Education Assistant Commissioner Tom Quinn and DESE Special Education Legal Counsel Cynthia Quetsch have been named to co-chair a stakeholder committee to begin development of guidance that will assist districts in their development and adoption of suitable restraint and seclusion policies at the local level as required under the new statute.

Reporting requirements

There has apparently been no state law or policy which is directly on point, but the law signed into effect on July 31, 2009, requires local districts to have a policy on seclusion and restraint by July 1, 2011, and requires DESE to provide guidance (see the text of the law, below). However, the state does currently collect some related data. For example, discipline incidents are reported annually. Statewide data of 2004-09 incidents are available at

<http://dese.mo.gov/planning/profile/DI000000.html>.

Positive Behavior Interventions and Supports

There are currently 472 buildings in Missouri officially implementing schoolwide Positive Behavioral Interventions and Support (PBIS). PBIS schools in the southwest region of the state have been categorized into implementation levels, including

1. preparation,
2. emerging,
3. bronze,
4. silver, and
5. gold.

Level criteria and other Missouri PBIS details can be found at www.pbissmissouri.org.

Schools implementing at the bronze, silver, and gold levels receive annual recognition from DESE, including items such as a plaque and banner.

Documentation

The following is an excerpt from the final version of the legislation approved by the governor of Missouri on July 31, 2009, [Truly Agreed to and Finally Passed] House Committee Substitute No. 2 for Senate Substitute for Senate Bill No. 291. Note particularly lines 22–25.

160.263. 1. The school discipline policy under section 160.261

2 shall prohibit confining a student in an unattended, locked space
3 except for an emergency situation while awaiting the arrival of law
4 enforcement personnel.

5 **2.** By July 1, 2011, the local board of education of each school
6 district shall adopt a written policy that comprehensively addresses the
7 use of restrictive behavioral interventions as a form of discipline or
8 behavior management technique. The policy shall be consistent with
9 professionally accepted practices and standards of student discipline,
10 behavior management, health and safety, including the Safe Schools
11 Act. The policy shall include but not be limited to:

12 (1) Definitions of “restraint,” “seclusion,” and “time-out” and any
13 other terminology necessary to describe the continuum of restrictive
14 behavioral interventions available for use or prohibited in the district;

15 (2) Description of circumstances under which a restrictive
16 behavioral intervention is allowed and prohibited and any unique
17 application requirements for specific groups of students such as
18 differences based on age, disability, or environment in which the
19 educational services are provided;

20 (3) Specific implementation requirements associated with a
21 restrictive behavioral intervention such as time limits, facility
22 specifications, training requirements or supervision requirements; and

23 (4) Documentation, notice and permission requirements
24 associated with use of a restrictive behavioral intervention.

25 **3.** The department of elementary and secondary education shall,
26 in cooperation with appropriate associations, organizations, agencies
27 and individuals with specialized expertise in behavior management,
28 develop a model policy that satisfies the requirements of subsection 2
29 of this section by July 1, 2010.

MONTANA

Montana code has been in place since 1971 and been amended several times.

The administrative rule and technical assistance guide on the use of seclusion and restraint with special education students was most recently revised in 2001.

Montana code prohibits corporal punishment, but allows school personnel to use physical restraint that is reasonable and necessary, even if it causes physical pain. The use of restraint or seclusion is not solely restricted to “ensure the immediate physical safety” of the student, but may be used to “quell a disturbance, provide self-protection, protect persons from physical injury, obtain possession of a weapon or dangerous object from the pupil, maintain the orderly conduct of a pupil, or protect property from serious harm.” Other relevant terms defined in the law are as follows: (1) corporal punishment means knowingly and purposely inflicting physical pain on a pupil as a disciplinary measure, and (2) physical restraint is defined as the placing of hands on a pupil in a manner that is reasonable and necessary.

There is no requirement for school staff training or automatic notice after restraint or seclusion, except in the case of special education students who have a functional behavioral disability and have “aversive procedures” included as part of the individual education plan. In such cases, parental notification and staff trained in aversive procedures are also required.

Montana has three full-time staff members who are certified trainers through "The Mandt System" (<http://www.mandtsystem.com/>), a commercial company that offers specialized training for school personnel. It teaches a gradual and graded system of alternatives for interacting with students. Montana's three trainers provide approximately 15 days of training during the course of a typical year in response to requests from individual schools. Sometimes schools purchase training directly from the company. There is currently no way to determine how many schools have certified trainers on staff.

Montana also supports a PBIS-based program called the Montana Behavior Initiative (MBI) which began in 1995. The Montana Office of Public Instruction (MOPI) supports the MBI through a summer training institute, online resources, and an MOPI staff member assigned as MBI coordinator. Recruitment/invitation letters are sent to all schools annually. To date, 367 schools (out of 829) have participated in the training. Participating schools enter a three-year program during which they are supported by an MOPI sponsored MBI coach. After three years, the schools are responsible for maintaining the program. There is currently no way to monitor the maintenance of effort or fidelity to the program after training is completed.

Each participating school gathers data and reports it on the MBI Blueprint; a quarterly progress report on the initiative. However, the data are used only by the local program and are not collected or aggregated for analysis by the SEA.

Montana has been reviewing the status of state codes and procedures with an eye toward amending or adding regulations and developing better guidance. The state would welcome further technical assistance in this area.

The MOPI Web site has links to three relevant documents:

Mont. Code Ann. § 20-4-302 (Education; Teacher, Superintendents, and Principals; Teachers' Powers, Duties, and Privileges) <http://data.opi.state.mt.us/bills/mca/20/4/20-4-302.htm>

Mont. Admin. R. 10.16.3346 (Department of Education; Special Education; Services) <http://www.mtrules.org/gateway/RuleNo.asp?RN=10.16.3346>

Mont. Guide on the Use of Aversive Treatment Procedures <http://opi.mt.gov/pdf/SpecED/guides/AdvTreatGuide.pdf>

NEBRASKA

Statutes/laws

Revised Statute 79.295: Corporal Punishment Ban

<http://nebraskalegislature.gov/laws/statutes.php?statute=s7902095000>

Policy

Policy is developed by local districts. A technical assistance document to provide guidance to districts in developing policy and procedures is in the process of being created through a grant with the University of Nebraska-Lincoln.

Regulations

Nebraska is reviewing the inclusion in its regulations of a requirement for a district policy/procedure in the area of restraint and seclusion.

Guidance

Many Educational Service Units, school districts and programs in Nebraska already provide training to members of their staff on conflict de-escalation and restraint and seclusion topics through major vendors for this training, including, Mandt, Crisis Prevention Institute (CPI), Therapeutic Crisis Intervention (TCI) and others.

Most superintendents review and remind staff at the beginning of each school year to be cautious about touching or holding students unless the staff member is specifically trained and following all procedures.

Through the federal Nebraska School Improvement Grant (N-SIG)/ General Supervision Enhancement Grant (G-SEG), NDE provides training and support to school districts through the Nebraska Positive Behavioral Interventions and Supports Project which is administered by Jolene Palmer of the Nebraska Department of Education.

<http://www.npbis.org/>

Nebraska has a technical assistant project underway through a grant to the University of Nebraska-Lincoln to provide guidance to school districts in the development and implementation of restraint and seclusion policies and procedures. That project will coordinate with the Comprehensive Centers as needed.

NEVADA

The State of Nevada has had stringent requirements in place regarding the use of aversive intervention, physical restraint and mechanical restraint (seclusion and restraint) of pupils since 1999. The state statutes governing seclusion and restraint of pupils are comprehensive in nature and apply to both public and private schools operating in Nevada. The statutes governing seclusion and restraint of public school pupils in Nevada (NRS 388.521 through NRS 388.5315) have been provided with this Status Report as Attachment A (private school statutes are identical in wording but not attached). In addition, the public statutes can be viewed electronically at: <http://www.leg.state.nv.us/NRS/NRS-388.html#NRS388Sec521>.

Specifically, Nevada statutes provide for the following:

- Clear and concise definitions of terms and conditions that apply to aversive intervention and restraint of pupils.
- Conditions under which physical and mechanical restraint may be used on a pupil along with required reporting to the local board of trustees or private school administrators. If a physical or mechanical restraint is used, a report of the procedure must be completed and included in the pupils cumulative record along with a copy of the report provided to the board of trustees of the school district, the pupil's individualized education program team and the parent or guardian of the pupil.
- The development of a model program of education by the Nevada Department of Education for use by school districts and private schools to train staff members who are authorized to carry out and monitor the use of physical or mechanical on pupils. The training is mandatory for these staff members and must include instruction in positive behavioral interventions and positive behavioral supports.
- Disciplinary action against a person who intentionally violates the specific statutes governing aversive intervention and restraint of pupils.
- If a violation occurs within a school, a report must be filed within 24 hours to the board of trustees of the school district and a corrective action plan must be developed within 30 calendar days with appropriate action taken to prevent future violations. The corrective action plan must be submitted to the Nevada Department of Education to ensure compliance with state and federal law and may be modified by the Department to ensure compliance.

Revisions to Statutes Regarding Aversive Intervention and Restraint of Pupils Made by the 2009 Legislature

Although not yet codified and available electronically, the 2009 Nevada Legislature revised and enhanced existing statutes governing aversive intervention and restraint of pupils through the passage of Assembly Bill 56, which became effective July 1, 2009. Assembly Bill 56 can be viewed at the following Web site location: http://www.leg.state.nv.us/75th2009/Bills/AB/AB56_EN.pdf

A Summary of Statute Changes Made by Assembly Bill 56

- Requires the board of trustees of each school district and the administrative head of each private school that provides instruction to pupils with disabilities, on or before August 1 of each year, to prepare a report for each school under their jurisdiction on the use of physical and mechanical restraint on pupils with disabilities. The report must include the number of instances of physical and mechanical restraint used during the previous school year for each school per teacher employed at the school and per pupil and the number of violations of the physical and

mechanical restraint statutes. The bill prohibits personally identifiable information about an individual pupil or teacher from being included in the report.

- Requires the Department of Education to develop the form to be used by the school districts/private schools to report the required information on the use of physical and mechanical restraint on pupils with disabilities.
- Authorizes the board of trustees to develop the form to be used to collect the required information from each school within the school district. Requires the board of trustees to submit the written report to the Department of Education on or before August 15 of each year.
- Requires the Department of Education to compile the reports received from each school district/private school and prepare a written report on or before October 1 of each year. The Department report must be submitted to the Legislative Counsel Bureau to be forwarded to the next regular session of the legislature during even-numbered years. In odd-numbered years, the Department report is to be submitted to the Legislative Committee on Education.
- Modifies the current physical and mechanical restraint reporting requirements for each pupil if there are three reports of restraint in one school year on the pupil. In these cases, the Bill requires the school district/private school to review the circumstances of the use of the restraint and provide a report on its findings.
- Modifies the current physical and mechanical restraint reporting requirements for each pupil if there are five reports of restraint in one school year on the pupil. In these cases, requires a review of the pupil's Individualized Education Plan (IEP). If either physical or mechanical restraint continues after the IEP review, the school district and the parent or legal guardian of the pupil must develop a plan to be included in the IEP that addresses additional methods that are appropriate for the pupil to ensure the restraint does not continue, which could include, but not be limited to, mentoring, training, a functional behavior assessment, a positive behavior plan and positive behavioral supports. The school district must notify the school in which the pupil is enrolled to review the circumstances of the use of the restraint and provide a report to the school district on its findings.

Summary

The State of Nevada has long had a concern with the welfare of students regarding seclusion and restraint of pupils as evidenced by the detailed state statutes that have been in effect since 1999. In addition, enhanced reporting and monitoring requirements were adopted within the state that became effective July 1, 2009, that will ensure all cases of physical or mechanical restraint are dealt with quickly and effectively and are publically reported to the Nevada Legislature. The mandatory training required of all staff within the state who work with students where the possibility of physical or mechanical restraint may occur is additional evidence that the state has been proactive in its dealing with the seclusion and restraint of pupils. The use of positive interventions such as mentoring, a functional behavior assessment, a positive behavior plan and positive behavioral supports have been emphasized within the state to ensure the safety and protection of all students in both public and private schools.

Use of Aversive Intervention, Physical Restraint and Mechanical Restraint on Pupils With Disabilities

NRS 388.521 Definitions. As used in [NRS 388.521](#) to [388.5315](#), inclusive, unless the context otherwise requires, the words and terms defined in [NRS 388.5215](#) to [388.526](#), inclusive, have the meanings ascribed to them in those sections.

(Added to NRS by [1999, 3236](#))

NRS 388.5215 “Aversive intervention” defined. “Aversive intervention” means any of the following actions if the action is used to punish a pupil with a disability or to eliminate, reduce or discourage maladaptive behavior of a pupil with a disability:

1. The use of noxious odors and tastes;
2. The use of water and other mists or sprays;
3. The use of blasts of air;
4. The use of corporal punishment;
5. The use of verbal and mental abuse;
6. The use of electric shock;
7. The administration of chemical restraint to a person;
8. The placement of a person alone in a room where release from the room is prohibited by a mechanism, including, without limitation, a lock, device or object positioned to hold the door closed or otherwise prevent the person from leaving the room;
9. Requiring a person to perform exercise under forced conditions if the:
 - (a) Person is required to perform the exercise because he exhibited a behavior that is related to his disability;
 - (b) Exercise is harmful to the health of the person because of his disability; or
 - (c) Nature of the person’s disability prevents him from engaging in the exercise; or
10. The deprivation of necessities needed to sustain the health of a person, regardless of the length of the deprivation, including, without limitation, the denial or unreasonable delay in the provision of:
 - (a) Food or liquid at a time when it is customarily served; or
 - (b) Medication.

(Added to NRS by [1999, 3237](#))

NRS 388.522 “Chemical restraint” defined. “Chemical restraint” means the administration of drugs for the specific and exclusive purpose of controlling an acute or episodic aggressive behavior when alternative intervention techniques have failed to limit or control the behavior. The term does not include the administration of drugs on a regular basis, as prescribed by a physician, to treat the symptoms of mental, physical, emotional or behavioral disorders and for assisting a person in gaining self-control over his impulses.

(Added to NRS by [1999, 3237](#))

NRS 388.5225 “Corporal punishment” defined. “Corporal punishment” means the intentional infliction of physical pain, including, without limitation, hitting, pinching or striking.

(Added to NRS by [1999, 3237](#))

NRS 388.523 “Electric shock” defined. “Electric shock” means the application of electric current to a person’s skin or body. The term does not include electroconvulsive therapy.

(Added to NRS by [1999, 3237](#))

NRS 388.5235 “Emergency” defined. “Emergency” means a situation in which immediate intervention is necessary to protect the physical safety of a person or others from an immediate threat of physical injury or to protect against an immediate threat of severe property damage.

(Added to NRS by [1999, 3237](#))

NRS 388.524 “Individualized education program” defined. “Individualized education program” has the meaning ascribed to it in 20 U.S.C. § 1414(d)(1)(A).

(Added to NRS by [1999, 3237](#))

NRS 388.5245 “Individualized education program team” defined. “Individualized education program team” has the meaning ascribed to it in 20 U.S.C. § 1414(d)(1)(B).

(Added to NRS by [1999, 3237](#))

NRS 388.525 “Mechanical restraint” defined. “Mechanical restraint” means the use of devices, including, without limitation, mittens, straps and restraint chairs to limit a person’s movement or hold a person immobile.

(Added to NRS by [1999, 3238](#))

NRS 388.5255 “Physical restraint” defined. “Physical restraint” means the use of physical contact to limit a person’s movement or hold a person immobile.

(Added to NRS by [1999, 3238](#))

NRS 388.526 “Verbal and mental abuse” defined. “Verbal and mental abuse” means actions or utterances that are intended to cause and actually cause severe emotional distress to a person.

(Added to NRS by [1999, 3238](#))

NRS 388.5265 Aversive intervention prohibited. A person employed by the board of trustees of a school district or any other person shall not use any aversive intervention on a pupil with a disability.

(Added to NRS by [1999, 3238](#))

NRS 388.527 Physical restraint and mechanical restraint prohibited; exceptions. A person employed by the board of trustees of a school district or any other person shall not:

1. Except as otherwise provided in [NRS 388.5275](#), use physical restraint on a pupil with a disability.
2. Except as otherwise provided in [NRS 388.528](#), use mechanical restraint on a pupil with a disability.

(Added to NRS by [1999, 3238](#))

NRS 388.5275 Conditions under which physical restraint may be used; report required.

1. Except as otherwise provided in subsection 2, physical restraint may be used on a pupil with a disability only if:

(a) An emergency exists that necessitates the use of physical restraint;

(b) The physical restraint is used only for the period that is necessary to contain the behavior of the pupil so that the pupil is no longer an immediate threat of causing physical injury to himself or others or causing severe property damage; and

(c) 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.

2. Physical restraint may be used on a pupil with a disability and the provisions of subsection 1 do not apply if the physical restraint is used to:

(a) Assist the pupil in completing a task or response if the pupil does not resist the application of physical restraint or if his resistance is minimal in intensity and duration;

(b) Escort or carry a pupil to safety if the pupil is in danger in his present location; or

(c) Conduct medical examinations or treatments on the pupil that are necessary.

3. If physical restraint is used on a pupil with a disability in an emergency, the use of the procedure must be reported in the pupil's cumulative record and a confidential file maintained for the pupil not later than 1 working day after the procedure is used. A copy of the report must be provided to the board of trustees of the school district, the pupil's individualized education program team and the parent or guardian of the pupil. If the board of trustees determines that a denial of the pupil's rights has occurred, the board of trustees may submit a report to the Department in accordance with [NRS 388.5315](#).

(Added to NRS by [1999, 3238](#))

NRS 388.528 Conditions under which mechanical restraint may be used; report required.

1. Except as otherwise provided in subsection 2, mechanical restraint may be used on a pupil with a disability only if:

(a) An emergency exists that necessitates the use of mechanical restraint;

(b) A medical order authorizing the use of mechanical restraint is obtained from the pupil's treating physician before the application of the mechanical restraint or not later than 15 minutes after the application of the mechanical restraint;

(c) The physician who signed the order required pursuant to paragraph (b) or the attending physician examines the pupil as soon as practicable;

(d) The mechanical restraint is applied by a member of the staff of the school who is trained and qualified to apply mechanical restraint;

(e) The pupil is given the opportunity to move and exercise the parts of his body that are restrained at least 10 minutes per every 60 minutes of restraint, unless otherwise prescribed by the physician who signed the order;

(f) A member of the staff of the school lessens or discontinues the restraint every 15 minutes to determine whether the pupil will stop or control his inappropriate behavior without the use of the restraint;

(g) The record of the pupil contains a notation that includes the time of day that the restraint was lessened or discontinued pursuant to paragraph (f), the response of the pupil and the response of the member of the staff of the school who applied the mechanical restraint;

(h) A member of the staff of the school continuously monitors the pupil during the time that mechanical restraint is used on the pupil; and

(i) The mechanical restraint is used only for the period that is necessary to contain the behavior of the pupil so that the pupil is no longer an immediate threat of causing physical injury to himself or others or causing severe property damage.

2. Mechanical restraint may be used on a pupil with a disability and the provisions of subsection 1 do not apply if the mechanical restraint is used to:

- (a) Treat the medical needs of the pupil;
- (b) Protect a pupil who is known to be at risk of injury to himself because he lacks coordination or suffers from frequent loss of consciousness;
- (c) Provide proper body alignment to a pupil; or
- (d) Position a pupil who has physical disabilities in a manner prescribed in the pupil's individualized education program.

3. If mechanical restraint is used on a pupil with a disability in an emergency, the use of the procedure must be reported in the pupil's cumulative record and a confidential file maintained for the pupil not later than 1 working day after the procedure is used. A copy of the report must be provided to the board of trustees of the school district, the pupil's individualized education program team and the parent or guardian of the pupil. If the board of trustees determines that a denial of the pupil's rights has occurred, the board of trustees may submit a report to the Department in accordance with [NRS 388.5315](#).

(Added to NRS by [1999, 3238](#))

NRS 388.5285 Mandatory education and training for staff.

1. The Department shall develop a model program of education for use by the school districts to train the members of the staff of the schools within the school districts who are identified in the individualized education programs of pupils with disabilities to provide services to those pupils. The model program of education must provide instruction in positive behavioral interventions and positive behavioral supports that:

- (a) Includes positive methods to modify the environment of pupils with disabilities to promote adaptive behavior and reduce the occurrence of inappropriate behavior;
- (b) Includes methods to teach skills to pupils with disabilities so that the pupils can replace inappropriate behavior with adaptive behavior;
- (c) Includes methods to enhance the independence and quality of life for pupils with disabilities;
- (d) Includes the use of the least intrusive methods to respond to and reinforce the behavior of pupils with disabilities; and
- (e) Offers a process for designing interventions based upon the pupil that are focused on promoting appropriate changes in behavior as well as enhancing the overall quality of life for the pupil.

2. The board of trustees of each school district shall provide for appropriate training for the members of the staff of the schools within the school district who are authorized to carry out and monitor physical restraint and mechanical restraint to ensure that those members of the staff are qualified to carry out the procedures in accordance with [NRS 388.521](#) to [388.5315](#), inclusive.

(Added to NRS by [1999, 3239](#))

NRS 388.529 Disciplinary action against person for intentional violation. In addition to any penalty prescribed by specific statute, a person who intentionally uses aversive intervention on a pupil with a disability or intentionally violates [NRS 388.527](#) is subject to disciplinary action pursuant to [NRS 391.312](#) or [391.330](#), or both.

(Added to NRS by [1999, 3240](#))

NRS 388.5295 Report of violation; corrective plan required; appointment of administrator to oversee school under certain circumstances.

1. A school where a violation of [NRS 388.521](#) to [388.5315](#), inclusive, occurs shall report the violation to the board of trustees of the school district not later than 24 hours after the violation occurred, or as soon thereafter as the violation is discovered.
2. The board of trustees of the school district where the violation occurred shall develop, in cooperation with the superintendent of schools of the school district, a corrective plan to ensure that within 30 calendar days after the violation occurred, appropriate action is taken by the school and the board of trustees to prevent future violations.
3. The superintendent of schools of the school district shall submit the plan to the Department. The Department shall review the plan to ensure that it complies with applicable federal law and the statutes and regulations of this state. The Department may require appropriate revision of the plan to ensure compliance.
4. If the school where the violation occurred does not meet the requirements of the plan to the satisfaction of the Department, the Department may appoint a licensed administrator to oversee the school to ensure that the school meets the requirements of the plan. An administrator serves at the pleasure of the Superintendent of Public Instruction and is entitled to receive such compensation as may be set by the superintendent. A school district that contains a school for which an administrator is appointed pursuant to this subsection shall reimburse the Department for any expenses incurred by the Department pursuant to this subsection.

(Added to NRS by [1999, 3240](#))

NRS 388.531 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 [NRS 388.521](#) to [388.5315](#), inclusive; or
2. Provided information regarding a violation of [NRS 388.521](#) to [388.5315](#), inclusive, by a public school or a member of the staff of the public school.

(Added to NRS by [1999, 3241](#))

NRS 388.5315 Reporting of denial of rights; investigation and resolution of disputes by Department.

1. A denial of rights of a pupil with a disability pursuant to [NRS 388.521](#) to [388.5315](#), inclusive, must be entered in the pupil's cumulative record and a confidential file maintained for that pupil. Notice of the denial must be provided to the board of trustees of the school district.
2. If the board of trustees of a school district receives notice of a denial of rights pursuant to subsection 1, it shall cause a full report to be prepared which must set forth in detail the factual circumstances surrounding the denial. A copy of the report must be provided to the Department.
3. The Department:
 - (a) Shall receive reports made pursuant to subsection 2;
 - (b) May investigate apparent violations of the rights of pupils with disabilities; and
 - (c) May act to resolve disputes relating to apparent violations.

(Added to NRS by [1999, 3241](#))

NEW HAMPSHIRE

Regulations:

http://www.gencourt.state.nh.us/rules/state_agencies/ed1100-1200.html

Part Ed 1100 Requirements for the Development and Operation of Programs for Children with Disabilities Administered by Local Education Agencies. New Hampshire Rules for the Education of Children with Disabilities.

Summary:

The Department of Education for the State of New Hampshire promotes the practices of positive behavioral interventions and prohibits the use of “aversive” behavioral interventions, which are defined in section Ed 1113.04. The rules defined in these regulations also apply to students placed out of district for services. The *Rules* were adopted in 2008 by the State Board of Education after two years soliciting input from educators, parents, the public, as well as health, human services and youth development professionals.

B. Existing Programs:

1. The Bureau of Special Education of the NH Department of Education has contributed funding for the past six years for the Center for Effective Behavioral Interventions and Strategies. The activities conducted by the Center target teachers of all students, both general education and special education. Over its years of operation, the Center has provided professional development to staff in over 200 schools across New Hampshire from pre-schools through high schools.
2. The Bureau of Special Education was awarded a five-year State Professional Development Grant (SPDG) to pilot the implementation of a three-tier Response to Intervention (RTI) model in literacy and behavior. The pilot is in its second year of operation and data is being collected to determine the effectiveness and impact of the strategy.

C. Planned Programs

After a review of the impact of existing programs, the Bureau of Special Education intends to solicit proposals for the development of behavioral intervention services and infrastructure to serve students in middle school and high school settings. High schools have been a challenge for systematic and consistent use of positive behavioral intervention practices and the state is addressing the need for increased attention by offering support for targeted assistance. The RFP is expected to be posted in September 2009.

D. Complaint Procedure

A carefully structured procedure is in place to address reports of infractions of state regulations on seclusion and restraint.

1. On receipt of a complaint, the Department assigns an investigator from its Division of Program Support to uncover the details of the incident.
2. The Investigator submits a report to the Bureau of Special Education and to the commissioner.
3. Depending on the nature of the infraction, the commissioner can recommend action against the individual responsible or request further investigation if the infraction represents a systemic

issue in a building or LEA. Individual action might include suspension or revocation of the individual's professional license.

A strong positive relationship between the Department and the NH Parent Information Center contributes to the effectiveness of the complaint procedure. Also, frequent communication between the staff of the Division for Children, Youth and Families, which operates programs for troubled and adjudicated youth, and the Department helps ensure that students outside a traditional school setting are protected from inappropriate behavioral interventions.

E. Training/ Professional Development

The New Hampshire Department of Education recognizes that policies and regulations are effective only if they are clearly known and understood by school and district leaders and staff members. The first layer of training is conducted by local education agencies for staff and administrators. The Bureau of Special Education hosts regular meetings of local special education coordinators who are charged with ensuring compliance with the policies. At the upper levels of administration, the commissioner holds monthly meetings of superintendents, and the agenda for those meetings includes periodic review of student behavior regulations.

NEW JERSEY

Statutes	Regs	Policies	Guidance	Future Plans
None	TBA	NJDOE-Office of Special Education Programs Part B Annual Performance Report #3 April 2009, p. 43	TBA	TBA; policy is being drafted.

NEW MEXICO

March 14, 2006

MEMORANDUM

To: Superintendents
Special Education Directors
Charter Schools
RECs

From: Denise Koscielniak (Signature on File)
State Director of Special Education

Through: Dr. Patricia Parkinson (Signature on File)
Assistant Secretary of Instructional Support

RE: USE OF PHYSICAL RESTRAINT AS A BEHAVIORAL INTERVENTION FOR STUDENTS WITH DISABILITIES

The use of physical restraint as a behavioral intervention for students with disabilities in public schools may be justified in certain instances, but this type of intervention can pose a serious risk to the student, as well as to the person(s) applying the restraint. Therefore, the New Mexico Public Education Department (NMPED) provides the following detailed guidance for the appropriate use of physical restraint for students with disabilities in districts and charter schools. We note that neither the Individuals with Disabilities Education Act (IDEA) nor Section 504 of the Rehabilitation Act of 1973 provides specific guidance on this issue, so the NMPED bases this guidance on a review of relevant IDEA requirements for addressing student behavior and recommended practices from experts and professional organizations.

Regulatory Requirements

In situations where a student with a disability demonstrates behavior that impedes his or her learning or that of others, the IDEA 2004 at 20 U.S.C. 1414(d)(3)(B)(i) requires the student's Individualized Education Program (IEP) team to consider positive behavioral interventions, strategies, and supports to address that behavior. In a case where the student's problematic behavior is **severe, persistent, and frequent**, the NMPED has consistently interpreted this requirement to mean that the IEP team develops a Behavioral Intervention Plan (BIP) based on a Functional Behavioral Assessment as part of the IEP for that student. The BIP needs to emphasize positive interventions, strategies, and supports that teach appropriate replacement behaviors.¹ However, an effective BIP must also address and specifically provide for emergency situations where a particular student exhibits aggressive, violent, or dangerous behavior that requires an immediate aversive intervention, such as physical restraint. In that case, physical restraint is designed to

- protect the student and others from serious injury; or
- safeguard physical property; and
- should be used only in an emergency.

¹ See the State's *Technical Assistance Manual: Addressing Student Behavior—A Guide for Educators*. This manual is available on the Special Education/Publications link at the NMPED's website at www.ped.state.nm.us

Types of Physical Restraint

The most common forms of physical restraint are **mechanical** restraints and **manual** restraints.

- **Mechanical restraint** involves the use of any device such as a blanket, tape, straps, blindfolds, or tie downs as a method of restricting a student's movement or activity.
- **Manual restraint** (also known as "therapeutic holding") involves one or more people using their bodies to restrict the student's body movement. The purpose of this type of restraint is to allow the student to reestablish self-control and/or maintain safety for others in the environment.

The NMPED does not condone the use of **mechanical** restraint of students. However, we recognize that there may be certain instances where **manual** restraint of a student may be necessary, so the remainder of this guidance addresses its appropriate use for students with disabilities.

We note that escorting a student (touching and/or holding a student without the use of force) is **not** considered a form of physical restraint. Similarly, the use of "time out" is **not** considered a form of physical restraint and the NMPED issued guidance on the appropriate use of this behavioral intervention in August 2003.² We also emphasize that nothing in this guidance would preclude a teacher or other staff member from using reasonable force to protect themselves, students, or other persons from assault or imminent, serious physical harm.

Authorization for Physical Restraint

- **In all cases**, the use of physical restraint must be approved by the student's IEP team, documented in the student's BIP, have the expressed written agreement of the parent or legal guardian, and be addressed in the public agency's Prior Written Notice of Actions Proposed (PWN) provided to parents following an IEP meeting. The IEP team approves the type of restraint to be used, who is authorized to apply it, the specific setting or conditions under which the use of restraint shall apply, how it will be monitored by other staff, as well as reporting requirements for when restraint is used.
- **In all cases**, a mental health professional (i.e., social worker, counselor, psychologist) needs to be member of the IEP team if physical restraint is being considered as an intervention. The mental health professional reviews all information about the student and observes the student prior to making recommendations at the IEP meeting about the use of physical restraint in the BIP. A recommendation could include the need for additional evaluative or other information before imposing physical restraint in the student's BIP.
- **In some cases**, the IEP team may also need to seek approval from the student's medical provider if the use of physical restraint might adversely impact or be in conflict with any medical/physical/mental condition that the student may have or be suspected of having.

Recommended Implementing Policy and Procedures

We offer the following guidance to IEP teams and building administrators:

- **The IEP team must craft the BIP so as to use a graded system of alternatives for the student's behavior.** In other words, positive interventions are the first methods for addressing unacceptable behavior. A variety of such interventions designed to de-escalate a crisis should be listed in the student's BIP, as well a provision to warn the student that restraint will be used if the target behavior does not stop. Verbal threats or refusal to comply with a staff directive or school rule would not warrant physical restraint unless this is agreed upon in the BIP. Physical

² See footnote #1 at Appendix B.

restraint is the last resort to protect the student and others from harm. However, its immediate use may be justified if there is imminent, serious danger only.

- **The IEP team needs to establish that other less restrictive interventions have not been effective.** The provision for physical restraint that is in the BIP is only appropriate if less restrictive behavioral management techniques have been tried and documented as not working for the behaviors for which physical restraint will apply.
- **The use of physical restraint must be consistent with the student's IEP and Behavioral Intervention Plan (BIP).** Applying the IDEA, the use of physical restraint is restricted the same way the law restricts the use of other teaching or behavioral interventions methods in general. That is, it is a denial of a Free Appropriate Public Education (FAPE) if the use of physical restraint is inconsistent with the student's IEP and BIP.³
- **Physical restraint procedures must be performed by trained personnel only.** (See "Staff Training" below.)
- **Restraint may not used as a form of punishment.** Nor should it be used to force compliance from a student.
- **No form of physical restraint may be used that restricts a student from speaking or breathing.** The restraint must be applied in such a way that it is safe and only reasonable force is used. A responsible third party should monitor the student's status during the restraint procedure to check respiration and skin color, and to see that limbs are not moved out of the normal range of motion. The restraint should be immediately discontinued if the student exhibits any signs of undue physical distress or injury. In addition, the restraint must not be applied any longer than is necessary to protect the student from causing harm to himself or others.
- **Do not restrain the student in front of other students.** If possible, move to another location or clear the setting of other students.

Staff Training

- **Any staff or staff team designated to apply physical restraint must be professionally trained and/or certified in the particular technique being used.** This must happen *prior to* any such procedures being used on a student. Staff chosen to be trained to apply physical restraint should be individuals who are physically able to do so and can handle a crisis in a calm manner.
- **The professional training needs to emphasize the use of positive interventions, including verbal de-escalation techniques and other strategies to be attempted prior to using physical restraint.** Resources for this kind of training include, but are not limited to, Positive Behavioral Intervention and Supports (www.pbis.org), Crisis Prevention Institute (www.crisisprevention.com), and The Mandt System (<http://www.mandtsystem.com>).

Recommended Documentation and Reporting

- **Any incident of physical restraint should be immediately reported to the building administrator and be documented.** Include the following in a written report:
 - Name of the student
 - Date and description of the incident that led to the restraints
 - Names and titles of staff member(s) who applied the restraints and monitored it

³ See OSEP Memorandum 95-16, 22 IDLER 531 (OSEP 1995).

- Other interventions tried
 - Type of restraints used
 - Length of time the restraints was applied
 - Any injuries sustained by the student or staff
 - Information about the student's behavior after the restraints and any further action taken by school staff including disciplinary action.
- **The student's parents should be informed about the use of the restraint.** Provide a verbal report to parents the same day. This should be followed up by a written report 1–2 days later.

Local Policy

Districts and charter schools should develop policies and procedures outlining the use of physical restraint. Districts and charter schools are encouraged to adopt this guidance as a minimum to their local policy on the use of physical restraint. **Local policy for physical restraint for students without IEPs should be authorized by the school's Section 504 team, or the Student Assistance Team (SAT), as well as the parents as part of the student's BIP, Section 504 Plan, or SAT Intervention Plan.⁴ Protection for students not yet eligible for special education and related services is governed by 20 U.S.C. 1415(k)(5).**

Please copy this guidance and distribute it to all relevant staff, administrators, parents, and school board members. If you have additional questions regarding the use of physical restraint with students with disabilities, please contact the Special Education Bureau at (505) 827-1457 and ask to speak to an available consultant.

PP/dk/pb

cc: Veronica C. García, Ed. D., Secretary of Education
Dr. Cross Maple, Deputy Secretary of Learning and Accountability
Mr. Willie Brown, Office of General Counsel⁴

⁴ See the State's *Technical Assistance Manual: The Student Assistance Team and the Three Tier Model of Student Intervention* available at Parents/Students link at www.ped.state.nm.us.



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DR. VERONICA C. GARCIA
SECRETARY OF EDUCATION

BILL RICHARDSON
Governor

November 16, 2009

MEMORANDUM

TO: New Mexico Coalition of School Administrators, New Mexico Coalition of Charter School Administrators, National Education Association-New Mexico, Albuquerque Teachers Federation, Legislative Education Study Committee, Parents Reaching Out, IDEA Advisory Panel, Education for Parents of Indian Children with Special Needs, Disability Rights New Mexico, Pegasus Legal Services for Children, American Civil Liberties Union

FROM: Veronica C. Garcia, Ed.D. [s/  signature on file]
Secretary of Education

RE: RESTRAINT & SECLUSION WORK GROUP CREATION

When it comes to restraint and seclusion, we at the Public Education Department want what is right for New Mexico's children but understand the need to move cautiously yet deliberately in protecting children while also acknowledging the reality of daily violence faced by teachers and students in public schools.

In May 2009, the General Accounting Office issued a comprehensive report on the varied practices of restraint and seclusion in public schools around the country; thereafter, U.S. Education Secretary Arne Duncan expressed his concerns about this issue in a letter issued to chief public school authorities in all states. Additionally, some of you wrote your own letters expressing your concerns on this topic. What became quickly apparent was that resolution of the issues surrounding restraint and seclusion could not be rushed through by law or rule without some serious reflection by all stakeholders.

To consider all of these issues and hopefully to come to a consensus in proposing a solution or viable option, I am forming the Restraint and Seclusion Work Group whose duties will consist of the following:

- A. The Restraint and Seclusion in Public Schools Work Group ("Restraint and Seclusion Work Group") is created. The work group shall function from December 1, 2009 to October 1, 2010. The work group will focus its work on the consideration of legislation and/or rulemaking on the subject of restraint and seclusion for children with disabilities in New Mexico public schools.
- B. The Restraint and Seclusion Work Group shall consist of nineteen (19) members who are representative of the New Mexico Public Education Department, New Mexico public schools and advocate groups interested in the subject of restraint/seclusion and shall be composed as follows:
- 1) Three members representing the Public Education Department, appointed by the Secretary of Education.
 - 2) Two members representing school districts with an enrollment of fewer than one thousand students, two members representing school districts with an enrollment greater than one thousand students but fewer than ten thousand students, and two members representing school districts with an enrollment greater than ten thousand students, appointed by the President of the New Mexico Coalition of School Administrators.
 - 3) One member representing charter schools, appointed by the President of the New Mexico Coalition of Charter Schools.
 - 4) One member from each of the National Education Association-New Mexico, and the Albuquerque Teachers Federation.
 - 5) One member from each of the following organizations: Parents Reaching Out, IDEA Advisory Panel, Education for Parents of Indian Children with Special Needs, Disability Rights New Mexico, Pegasus Legal Services for Children and the American Civil Liberties Union, appointed by each of those respective organizations.
 - 6) One member from the staff of the Legislative Education Study Committee (LESC), appointed by the Director of the LESC.
- C. The work group shall be chaired by a member of the Public Education Department appointed by the Secretary of Education. The work group shall meet at the call of the chair as needed.
- D. Vacancies on the work group shall be filled by appointment by the original appointing authority.
- E. Members of the work group, except for state employees, shall not be entitled to per diem and mileage as provided in the Per Diem and Mileage Act. State employees on the work group shall be entitled to all statutory benefits including compensation.
- F. Limited administrative support for the work group shall be provided by the Public Education Department.

G. The work group shall:

- 1) make recommendations regarding the scope and nature of the use of restraint and seclusion with respect to children with disabilities in New Mexico public schools;
- 2) study the best ways to address the use of restraint and seclusion with respect to children with disabilities in the public schools including surveying the practices and methods used in other states where laws and/or rules have been adopted;
- 3) consider the issue of liability that might be placed upon school employees, school districts and the state when making any recommendation; and
- 4) make recommendations for legislation and/or rule making regarding the use of restraint and seclusion on children with disabilities in public schools.

H. The work group shall report its findings and make recommendations to the Governor and the Legislative Education Study Committee on or before October 1, 2010, at which time the work group shall be deemed dissolved.

Questions regarding this work group should be directed to Albert Gonzales, (505) 827-6394. Thank you in advance for your assistance in taking on this formidable challenge!

VCG:WB

NEW YORK

The Commissioner assigned staff members to immediately review, and if appropriate, revise the state policies and guidelines to ensure that every student in every school is safe and protected from being unnecessarily restrained or secluded. On September 1, 2009, after a comprehensive review, the statewide coordinator for Special Education, Office of Vocational and Educational Services for Individuals with Disabilities, and the associate commissioner, Office of Instructional Support and Development, issued a field memorandum on this issue to publicize the regulations and guidance of the New York State Education Department (NYSED) governing the use of inappropriate interventions. This memorandum was sent prior to the start of the 2009–2010 school year to help ensure that no child is subjected to the abusive or potentially deadly use of seclusion or restraint in a school.

The memorandum was sent to district superintendents, the superintendent of schools in New York City, superintendents of state-operated schools, superintendents of state-supported schools, principals of public schools, principals of nonpublic schools, administrators of charter schools, directors of pupil personnel services, directors of special education, chairpersons of the Committee on Preschool Special Education, chairpersons of Committee on Special Education Impartial Hearing Officers, approved preschool special education programs, the commissioner’s advisory panel for special education services, the commissioner’s advisory panel for nonpublic schools, the Regional Special Education Technical Assistance Support Centers (RSE-TASC) regional coordinators and the regional school support centers.

Attachments to the field memorandum outline all the pertinent regulatory requirements relating to corporal punishment, aversive interventions, the use of time-out rooms, emergency interventions, behavioral assessments and behavioral intervention plans. Resources are also provided for Technical Assistance. Additionally, the information is posted on the [NYSED Web site](#).

From: James P. DeLorenzo
Statewide Coordinator for Special Education, Office of Vocational and Educational Services
for Individuals with Disabilities

To: Jean C. Stevens
Associate Commissioner, Office of Instructional Support and Development

Subject: Requirements Relating to the Use of Behavioral Interventions and Supports

On May 19, 2009, the United States (U.S.) House Committee on Education and Labor held a hearing to examine the uses of seclusion and restraint in U.S. schools (<http://edlabor.house.gov/documents/111/pdf/testimony/20090519GregKutzTestimony.pdf>). In light of this national report, Arne Duncan, Secretary of the U.S. Department of Education, has asked each state to publicize its policies and guidance for school districts to help ensure that "every student in every school is safe and protected from being unnecessarily or inappropriately restrained or secluded" and 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; and provide the resources needed to successfully implement the policies and hold school districts accountable for adhering to the guidelines." (see <http://www.ed.gov/policy/elsec/guid/secletter/090731.html>)

The purpose of this memorandum is to publicize the regulations and guidance of the New York State Education Department (NYSED) governing the use of such interventions and to provide information to districts on the importance of developing a district wide approach to promote academic achievement while minimizing problem behavior for all NYS students. Protecting the health and safety of its students is one of the primary responsibilities of each school. As such, each district and approved private school, special act school district and State-operated school is required to establish a school district code of conduct and discipline that meets the requirements of Title 8 of the New York Code of Rules and Regulations (8 NYCRR)⁵ §1100.2(l). Each school's code of conduct and discipline and behavioral interventions must be developed consistent with NYSED regulations that promote the use of positive behavioral supports and interventions and prohibit or limit use of certain types of behavioral interventions for students. NYSED regulations:

- Prohibit the use of corporal punishment [8 NYCRR §§19.5];
- Prohibit the use of aversive interventions, with limited exceptions [8 NYCRR §§19.5 and 200.22];
- Authorize the limited use of unlocked time out rooms where a student is observed by staff at all times when a student needs an area to safely deescalate, regain control and prepare to meet expectations to return to his or her education program [8 NYCRR §200.22(c)]; and
- Authorize the use of reasonable physical force, including the use of physical restraints only in emergency situations in which alternative procedures and methods not involving the use of physical force cannot reasonably be employed [8 NYCRR §§19.5 and 200.22(d)].

The attachment outlines the regulatory requirements relating to corporal punishment, aversive interventions, use of time out rooms, emergency interventions, behavioral assessments and behavioral intervention plans. Please reference the Official Compilation of 8 NYCRR for regulatory language and for any subsequent amendments to these regulations. An unofficial compilation of these regulations can be found at: <http://www.dos.state.ny.us/info/nycrr.htm>. School personnel should carefully review these requirements to ensure compliance.

⁵ The symbol "§" means "section" and "§§" means "sections."

Positive Behavioral Interventions and Supports

All school districts and approved private schools should be taking steps to implement school-wide, classroom, small group and individualized systems of positive development in areas including techniques of group and child management, including crisis intervention and appropriate restraint training [8 NYCRR §200.15(f)(1)].

NOTE: *This outline is based on regulations in effect as of August 28, 2009. Please reference the Official Compilation of Codes, Rules and Regulation of the State of New York (8 NYCRR) for regulatory language and for any subsequent amendments to these regulations. An unofficial compilation of these regulations can be found at:*
<http://www.dos.state.ny.us/info/nycrr.htm>.

NYSED has technical assistance resources available to promote school safety and school district implementation of school wide systems of positive behavior support, including a State Positive Behavior Interventions and Supports (PBIS) initiative. PBIS is the “decision making framework that guides selection, integration and implementation of the best evidence-based academic and behavioral practices for improving important academic and behavior outcomes for all students”⁶. NYSED will be establishing a State Technical Assistance Center on PBIS in the spring of 2010 to provide further information dissemination on this school wide initiative. Many of the boards of cooperative educational services (BOCES) also offer technical assistance resources to school districts on this topic. NYSED has also developed Quality Indicator Review and Resource Guides relating to behavioral supports and interventions (<http://www.vesid.nysed.gov/specialed/techassist/behaviorQI.htm>).

In addition, because social and emotional development and learning has an important role to play in making schools safe and maintaining a caring school climate; facilitating students’ holistic development; and enhancing student motivation, self-expectations and high achievement, NYSED has drafted for comment “Guidelines and Resources for Social and Emotional Development and Learning (SEDL).” These guidelines promote the voluntary implementation of SELDL into elementary and secondary school education programs. Additional information on SELDL is available at <http://www.emsc.nysed.gov/sss/sedl/>.

Resources for Technical Assistance

The following are NYS resources for further information and technical assistance to promote safe and appropriate educational environments.

New York State Center for School Safety

<http://nyscenterforschoolsafety.org/services.html>

Violence Prevention Technical Assistance Center

<http://www.emsc.nysed.gov/nyc/VPTAC/home.html>

Student Support Services Network

<http://www.emsc.nysed.gov/sss/NetworkCoordinators.html>

Regional Special Education Technical Assistance Support Centers

<http://www.vesid.nysed.gov/specialed/techassist/rsetasc/home.html>

Quality Indicator Review and Resource Guides relating to behavioral supports and interventions

⁶ Office of Special Education Program Technical Assistance Center on Positive Behavior Interventions and Supports - http://www.pbis.org/school/what_is_swpbs.aspx

<http://www.vesid.nysed.gov/specialed/techassist/behaviorQI.htm>

Coordinated Standards for Children's System of Care developed by the Committee on Restraint and Crisis Intervention Techniques

<http://www.ccf.state.ny.us/initiatives/RestraintRelate/RestraintResources/RestraintReport.pdf>

Thank you for your attention to this important matter. Questions on this memorandum should be directed to the Special Education Policy Unit at 518-473-2878 or to the Office of Elementary, Middle, Secondary and Continuing Education at 518-486-6090.

Attachment

Attachment

Prohibition of Use of Aversive Interventions

8 NYCRR §§19.5(b) and 200.22(e)

State regulations prohibit the use of aversive interventions to reduce or eliminate maladaptive behaviors of a student by a public school, BOCES, charter school, approved preschool program, approved private school, State-operated or State-supported school in this State, approved out-of-State day or residential school, or registered nonpublic nursery, kindergarten, elementary or secondary school in this State, except as provided pursuant to §200.22(e) and (f) of the Regulations of the Commissioner of Education relating to a child-specific exception to use aversive interventions to reduce or modify student behaviors and program standards for the use of aversive interventions. Only those students whose individualized education programs (IEPs) include a recommendation for aversive interventions as of June 30, 2009 may be granted a child-specific exception to the prohibition on the use of aversive interventions in each subsequent school year after June 30, 2009, unless the student's IEP is revised to no longer include such exception.

- Aversive intervention means an intervention that is intended to induce pain or discomfort to a student for the purpose of eliminating or reducing maladaptive behaviors, including such interventions as:
 - contingent application of noxious, painful, intrusive stimuli or activities;
 - any form of noxious, painful or intrusive spray, inhalant or tastes;
 - contingent food programs that include the denial or delay of the provision of meals or intentionally altering staple food or drink in order to make it distasteful;
 - movement limitation used as a punishment, including but not limited to helmets and mechanical restraint devices; or
 - other stimuli or actions similar to the interventions described above.

The term does not include such interventions as voice control, limited to loud, firm commands; time-limited ignoring of a specific behavior; token fines as part of a token economy system; brief physical prompts to interrupt or prevent a specific behavior; interventions medically necessary for the treatment or protection of the student; or other similar interventions.

NOTE: *This outline is based on regulations in effect as of August 28, 2009. Please reference the Official Compilation of Codes, Rules and Regulation of the State of New York (8 NYCRR) for regulatory language and for any subsequent amendments to these regulations. An unofficial compilation of these regulations can be found at: <http://www.dos.state.ny.us/info/nycrr.htm>.*

Use of Time Out Rooms

8 NYCRR §200.22(c)

- A time out room is an area for a student to safely deescalate, regain control and prepare to meet expectations to return to his or her education program. Time out rooms are to be used in conjunction with a behavioral intervention plan in which a student is removed to a supervised area in order to facilitate self-control or to remove a student from a potentially dangerous situation and as provided below.
- Except for unanticipated situations that pose an immediate concern for the physical safety of a student or others, the use of a time out room can only be used in conjunction with a behavioral intervention plan that is designed to teach and reinforce alternative appropriate behaviors.
- Each school which uses a time out room as part of its behavior management approach must ensure that the school's policy and procedures on the use of the time out room are developed and implemented consistent with §200.22(c) of the Regulations of the Commissioner of Education, including the physical and monitoring requirements, parental rights and IEP requirements for students with disabilities.
- The school's policy and procedures must minimally include:
 - prohibiting placing a student in a locked room or space or in a room where the student cannot be continuously observed and supervised;
 - factors which may precipitate the use of the time out room;
 - time limitations for the use of the time out room;
 - staff training on the policies and procedures related to the use of time out room;
 - data collection to monitor the effectiveness of the use of time out rooms; and
 - information to be provided to parents.
- A student's IEP must specify when a behavioral intervention plan includes the use of a time out room for a student with a disability, including the maximum amount of time a student will need to be in a time out room as a behavioral consequence as determined on an individual basis in consideration of the student's age and individual needs.
 - The school district must inform the student's parents prior to the initiation of a behavioral intervention plan that will incorporate the use of a time out room for a student and must give the parent the opportunity to see the physical space that will be used as a time out room and provide the parent with a copy of the school's policy on the use of time out rooms.
- The physical space used as a time out room must meet certain standards.

- The room must provide a means for continuous visual and auditory monitoring of the student and be of adequate width, length and height to allow the student to move about and recline comfortably.
- Wall and floor coverings should be designed to prevent injury to the student, and there must be adequate lighting and ventilation.
- The temperature of the room must be within the normal comfort range and consistent with the rest of the building.
- The room must be clean and free of objects and fixtures that could be potentially dangerous to a student and must meet all local fire and safety codes.
- The time out room must be unlocked and the door must be able to be opened from the inside. The use of locked rooms or spaces for purposes of time out or emergency interventions is prohibited.
- Staff must be assigned to continuously monitor the student in a time out room. The staff must be able to see and hear the student at all times.
- The school must establish and implement procedures to document the use of the time out room, including information to monitor the effectiveness of the use of the time out room to decrease specified behaviors.

NOTE: *This outline is based on regulations in effect as of August 28, 2009. Please reference the Official Compilation of Codes, Rules and Regulation of the State of New York (8 NYCRR) for regulatory language and for any subsequent amendments to these regulations. An unofficial compilation of these regulations can be found at: <http://www.dos.state.ny.us/info/nycrr.htm>.*

Emergency Interventions

8 NYCRR §§200.15(f) and 200.22(d)

- Emergency means a situation in which immediate intervention involving the use of reasonable physical³ force is necessary to protect oneself from physical injury; to protect another pupil or teacher or any person from physical injury; to protect the property of the school, school district or others; or to restrain or remove a pupil whose behavior is interfering with the orderly exercise and performance of school or school district functions, powers and duties, if that pupil has refused to comply with a request to refrain from further disruptive acts.
- Emergency interventions must be used only in situations in which alternative procedures and methods not involving the use of physical force cannot reasonably be employed.
- Emergency interventions must not be used as a punishment or as a substitute for systematic behavioral interventions that are designed to change, replace, modify or eliminate a targeted behavior.
- The school must maintain documentation on the use of emergency interventions for each student, which must include:
 - the name and date of birth of the student;
 - the setting and the location of the incident;

³ The use of mechanical restraints for emergency interventions is not allowed. (Note: This does not pertain to special transportation recommendations by a Committee on Special Education or Committee on Preschool Special Education).

- the name of the staff or other persons involved;
 - a description of the incident and the emergency intervention used, including duration;
 - a statement as to whether the student has a current behavioral intervention plan; and
 - details of any injuries sustained by the student or others, including staff, as a result of the incident.
- The parent of the student must be notified when an emergency intervention has been used with his/her child. The documentation of emergency interventions must be reviewed by school supervisory personnel and, as necessary, the school nurse or other medical personnel.
 - Staff who may be called upon to implement emergency interventions must be provided with appropriate training in safe and effective restraint procedures, as applicable.
 - Residential schools must provide, or ensure the provision of, child abuse prevention training to all administrators, employees and volunteers on a regular, but at least annual, basis. The purpose of such training must be to increase the participants' level of awareness, encourage positive attitudes and enhance knowledge and skill.

NOTE: *This outline is based on regulations in effect as of August 28, 2009. Please reference the Official Compilation of Codes, Rules and Regulation of the State of New York (8 NYCRR) for regulatory language and for any subsequent amendments to these regulations. An unofficial compilation of these regulations can be found at: <http://www.dos.state.ny.us/info/nycrr.htm>.*

Assessment of Student Behaviors

8 NYCRR §§200.1(r), 200.22(a) and 201.3

- Functional behavioral assessments (FBA) must be conducted as required in §200.4 of the Regulations of the Commissioner of Education relating to the procedures for referral, evaluation, IEP development, placement and review, and §201.3 of the Regulations of the Commissioner of Education relating to discipline procedures for students with disabilities.
- FBA means the process of determining why the student engages in behaviors that impede learning and how the student's behavior relates to the environment. The FBA must be developed consistent with the requirements in §200.22(a) of the Regulations of the Commissioner of Education relating to the assessment of student behaviors and includes, but is not limited to:
 - identification of the problem behavior;
 - definition of the behavior in concrete terms;
 - identification of the contextual factors that contribute to the behavior (including cognitive and affective factors); and
 - formulation of a hypothesis regarding the general conditions under which a behavior usually occurs and probable consequences that serve to maintain it.
- The FBA must, as appropriate, be based on multiple sources of data including, but not limited to:
 - information obtained from direct observation of the student;
 - information from the student, the student's teacher(s) and/or related service provider(s); and

- a review of available data and information from the student's record and other sources including any relevant information provided by the student's parent.

The FBA cannot be based solely on the student's history of presenting problem behavior.

- The FBA must provide:
 - a baseline of the student's problem behaviors with regard to frequency, duration, intensity and/or latency across activities, settings, people and times of the day; and
 - include the information required in §200.1(r) of the Regulations of the Commissioner of Education (definition of functional behavioral assessment) in sufficient detail to form the basis for a behavioral intervention plan for the student that addresses:
 - antecedent behaviors;
 - reinforcing consequences of the behavior;
 - recommendations for teaching alternative skills or behaviors; and
 - assessment of student preferences for reinforcement.

NOTE: This outline is based on regulations in effect as of August 28, 2009. Please reference the Official Compilation of Codes, Rules and Regulation of the State of New York (8 NYCRR) for regulatory language and for any subsequent amendments to these regulations. An unofficial compilation of these regulations can be found at: <http://www.dos.state.ny.us/info/nycrr.htm>.

Behavioral Intervention Plans

8 NYCRR §§200.1(mmm), 200.22(b) and 201.2(a)

- Behavioral intervention plan (BIP) means a plan that is based on the results of an FBA and, at a minimum, includes a description of the problem behavior, global and specific hypotheses as to why the problem behavior occurs and intervention strategies that include positive behavioral supports and services to address the behavior.
- The Committee on Special Education (CSE) or Committee on Preschool Special Education (CPSE) must consider the development of a BIP for a student with a disability when:
 - the student exhibits persistent behaviors that impede his or her learning or that of others, despite consistently implemented general school-wide or classroom-wide interventions;
 - the student's behavior places the student or others at risk of harm or injury;
 - the CSE or CPSE is considering more restrictive programs or placements as a result of the student's behavior; and/or
 - as required pursuant to §201.3 of the Regulations of the Commissioner of Education relating to discipline procedures for students with disabilities.
- In the case of a student whose behavior impedes his or her learning or that of others, the CSE or CPSE must consider strategies, including positive behavioral interventions and supports and other strategies to address that behavior.
- The IEP must indicate if a particular device or service, including an intervention, accommodation or other program modification is needed to address the student's behavior that impedes his or her learning or that of others.

- A student's need for a BIP must be documented in the IEP, and the BIP must be reviewed at least annually by the CSE or CPSE.
- The BIP must identify:
 - the baseline measure of the problem behavior, including the frequency, duration, intensity and/or latency of the targeted behaviors. Such baseline must, to the extent practicable, include data taken across activities, settings, people and times of the day. The baseline data must be used as a standard to establish performance criteria and against which to evaluate intervention effectiveness;
 - the intervention strategies to be used to alter antecedent events to prevent the occurrence of the behavior, teach individual alternative and adaptive behaviors to the student, and provide consequences for the targeted inappropriate behavior(s) and alternative acceptable behavior(s); and
 - a schedule to measure the effectiveness of the interventions, including the frequency, duration and intensity of the targeted behaviors at scheduled intervals.
- The implementation of a student's BIP must include regular progress monitoring of the frequency, duration and intensity of the behavioral interventions at scheduled intervals, as specified in the BIP and on the student's IEP.
- The results of the progress monitoring must be documented and reported to the student's parents and to the CSE or CPSE and must be considered in any determination to revise a student's BIP or IEP.

NOTE: *This outline is based on regulations in effect as of August 28, 2009. Please reference the Official Compilation of Codes, Rules and Regulation of the State of New York (8 NYCRR) for regulatory language and for and any subsequent amendments to these regulations. An unofficial compilation of these regulations can be found at:*
<http://www.dos.state.ny.us/info/nycrr.htm>.

NORTH CAROLINA

Current Statutes, Regulations, Policies and/or Guidance

The Exceptional Children's Division for years offered guidance *only* to schools and districts. Following a number of failed attempts by the Governors Advocacy Council for People with Disabilities to get a law passed regarding appropriate actions for discipline of students with disabilities; all stakeholders gathered in 2003–2004 to create the existing law. The law is written to address all students, not just students with disabilities.

Statutes

North Carolina currently has three statutes that are relevant to seclusion and restraint. Each of those statutes is listed below followed by a description of the statute.

NC Gen. Stat. §115C-391.1

Permissible Use of Seclusion and Restraint

Elementary and Secondary Education Students, Discipline

The statute defines seclusion and restraint and identifies when and how it is to be used. It outlines prohibitions; defines time-out, and distinguishes the difference between physical and mechanical restraint. The law addresses reporting requirements and professional development requirements.

(see

http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_115C/GS_115C-391.1.html)

Professional Development Requirements are listed in GS 115C-105.47(b)(9)

(see

http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_115C/GS_115C-105.47.html)

NC Gen. Stat. §115C-390

Reasonable Force

The statute provides the authority for principals, teachers, substitute teachers, volunteer teachers and teacher assistants in public schools to use reasonable force in lawful authority to restrain or correct pupils to maintain order.

(see

http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_115C/GS_115C-390.html)

NC Gen. Stat. §115C-296

Board Sets Certification Requirements

Provides for the State Board of Education to control the certifying of teacher applicants in public elementary and high schools and to set rules and regulations for renewal and extension of certificates. Requires teacher competence in positive behavior and effective strategies for defusing and deescalating disruptive or dangerous behavior.

(see

http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_115C/GS_115C-296.html)

Policies

North Carolina has three policies that have application to seclusion and restraint. Each of those policies is listed below followed by a description.

NC State Board of Education Policy Manual

Policies on Beginning Teacher Support Program

Policy ID Number: QP-A-004, page 3

“Beginning teachers must be provided orientation. Orientation must include “the safe and appropriate use of seclusion and restraint of students.”

(see <http://www.ncpublicschools.org/docs/recruitment/beginning/policysupportprogram.pdf>)

Lateral Entry License

QP-A-001

“The employing school system shall formally commit to supporting the lateral entry teacher by:
... (c) classroom management, including positive management of student behavior, effective communication for defusing and deescalating discipline or dangerous behavior, and safe and appropriate use of seclusion and restraint...”

(see <http://www.ncpublicschools.org/docs/stateboard/hrstudents/2009/health-policies.doc>)

Core Standards for All Teachers

Core Standard 2: Teachers know how to teach students.

“Indicator 5: Teachers are able to use positive student behavior management strategies for defusing and deescalating disruptive or dangerous behavior. They understand the safe and appropriate use of seclusion and restraint.”

(see <http://www.ncpublicschools.org/docs/work4ncschools/teachereducation/ihe/2ncspecialtyas.pdf>)

Guidance

Guidance documentation from North Carolina Department of Public Instruction includes the following:

School Verification Form

(see

<http://www.ncpublicschools.org/docs/research/discipline/collection/verification/verificationformschool.pdf>)

Required Reporting of Uses of Seclusion and Restraint

(see www.ncpublicschools.org/docs/safeschools/resources/housebills/hb1032required.doc)

Incident Report–Use of Seclusion and Restraint

(see <http://www.ncpublicschools.org/docs/safeschools/resources/housebills/hb1032incident.doc>)

Ongoing training is provided by the SEAs Early Childhood Division and through the Safe School Division in the North Carolina Department of Public Instruction to the LEAs.

Data collection training is now being provided for schools and districts. Professional development regarding collection procedures is also available on DVDs.

Recommended best practices in policy, regulation or guidance documents

North Carolina has evidence (bulleted items below) of each of the following recommended best practices in policy, regulation or guidance documents. Generally, the source for each of the items is North Carolina Gen. Stat. §115C-391.1 (see http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_115C/GS_115C-391.1.html). The guidance documents (described above) detail reporting procedures and training given to LEA personnel.

- Clear definitions of relevant terms such as “seclusion” and “restraint” and “emergency”
“Seclusion” means the confinement of a student alone in an enclosed space from which the student is:
 - a. Physically prevented from leaving by locking hardware or other means.
 - b. Not capable of leaving due to physical or intellectual incapacity.
“Mechanical restraint” means the use of any device or material attached or adjacent to a student’s body that restricts freedom of movement or normal access to any portion of the student’s body and that the student cannot easily remove.
“Physical restraint” means the use of physical force to restrict the free movement of all or a portion of a student’s body.
- Clear limitations on what seclusion and restraint techniques specifically are limited or not allowed
“Aversive procedure” means a systematic physical or sensory intervention program for modifying the behavior of a student with a disability which causes or reasonably may be expected to cause one or more of the following:
 - a. Significant physical harm, such as tissue damage, physical illness, or death.
 - b. Serious, foreseeable long-term psychological impairment.
 - c. Obvious repulsion on the part of observers who cannot reconcile extreme procedures with acceptable, standard practice, for example: electric shock applied to the body; extremely loud auditory stimuli; forcible introduction of foul substances to the mouth, eyes, ears, nose, or skin; placement in a tub of cold water or shower; slapping, pinching, hitting, or pulling hair; blindfolding or other forms of visual blocking; unreasonable withholding of meals; eating one’s own vomit; or denial of reasonable access to toileting facilities.

- (h) Aversive Procedures.—The use of aversive procedures as defined in this section is prohibited in public schools.
- Specifies when seclusion and restraint techniques may be used (for example, that seclusion and restraint only be used as a physical safety procedure, or if permitted as “treatment” or “behavioral intervention” in limited circumstances, the circumstances under which this is permitted)
- (1) Physical restraint of students by school personnel shall be considered a reasonable use of force when used in the following circumstances:
 - a. As reasonably needed to obtain possession of a weapon or other dangerous objects on a person or within the control of a person.
 - b. As reasonably needed to maintain order or prevent or break up a fight.
 - c. As reasonably needed for self-defense.
 - d. As reasonably needed to ensure the safety of any student, school employee, volunteer, or other person present, to teach a skill, to calm or comfort a student, or to prevent self-injurious behavior.
 - e. As reasonably needed to escort a student safely from one area to another.
 - f. If used as provided for in a student's IEP or Section 504 plan or behavior intervention plan.
 - g. As reasonably needed to prevent imminent destruction to school or another person's property.
 - (2) Except as set forth in subdivision (1) of this subsection, physical restraint of students shall not be considered a reasonable use of force, and its use is prohibited.
 - (3) Physical restraint shall not be considered a reasonable use of force when used solely as a disciplinary consequence.
 - (4) Nothing in this subsection shall be construed to prevent the use of force by law enforcement officers in the lawful exercise of their law enforcement duties.

Mechanical Restraint:

- (1) Mechanical restraint of students by school personnel is permissible only in the following circumstances:
 - a. When properly used as an assistive technology device included in the student's IEP or Section 504 plan or behavior intervention plan or as otherwise prescribed for the student by a medical or related service provider.
 - b. When using seat belts or other safety restraints to secure students during transportation.
 - c. As reasonably needed to obtain possession of a weapon or other dangerous objects on a person or within the control of a person.
 - d. As reasonably needed for self-defense.
 - e. As reasonably needed to ensure the safety of any student, school employee, volunteer, or other person present.
- (2) Except as set forth in subdivision (1) of this subsection, mechanical restraint, including the tying, taping, or strapping down of a student, shall not be considered a reasonable use of force, and its use is prohibited.

- (3) Nothing in this subsection shall be construed to prevent the use of mechanical restraint devices such as handcuffs by law enforcement officers in the lawful exercise of their law enforcement duties.

Seclusion:

- (1) Seclusion of students by school personnel may be used in the following circumstances:
 - a. As reasonably needed to respond to a person in control of a weapon or other dangerous object.
 - b. As reasonably needed to maintain order or prevent or break up a fight.
 - c. As reasonably needed for self-defense.
 - d. As reasonably needed when a student's behavior poses a threat of imminent physical harm to self or others or imminent substantial destruction of school or another person's property.
 - e. When used as specified in the student's IEP, Section 504 plan, or behavior intervention plan; and
 1. The student is monitored while in seclusion by an adult in close proximity who is able to see and hear the student at all times.
 2. The student is released from seclusion upon cessation of the behaviors that led to the seclusion or as otherwise specified in the student's IEP or Section 504 plan.
 3. The space in which the student is confined has been approved for such use by the local education agency.
 4. The space is appropriately lighted.
 5. The space is appropriately ventilated and heated or cooled.
 6. The space is free of objects that unreasonably expose the student or others to harm.
- (2) Except as set forth in subdivision (1) of this subsection, the use of seclusion is not considered reasonable force, and its use is not permitted.
- (3) Seclusion shall not be considered a reasonable use of force when used solely as a disciplinary consequence.
- If seclusion and restraint techniques are permitted as behavioral interventions, the SEA addresses these interventions in the context of behavioral intervention plans
 - (1) Physical restraint of students by school personnel shall be considered a reasonable use of force when used in the following circumstances:
 - f. If used as provided for in a student's IEP or Section 504 plan or behavior intervention plan.
- Ensures that the use of these interventions is fully documented in a form accessible to parents when requested
 - (j) Notice, Reporting, and Documentation.
 - (1) Notice of procedures.—Each local board of education shall provide copies of this section and all local board policies developed to implement this section to school personnel and parents or guardians at the beginning of each school year.
 - (2) Notice of specified incidents:
 - a. School personnel shall promptly notify the principal or principal's designee of:

1. Any use of aversive procedures.
 2. Any prohibited use of mechanical restraint.
 3. Any use of physical restraint resulting in observable physical injury to a student.
 4. Any prohibited use of seclusion or seclusion that exceeds 10 minutes or the amount of time specified on a student's behavior intervention plan.
- b. When a principal or principal's designee has personal knowledge or actual notice of any of the events described in this subdivision, the principal or principal's designee shall promptly notify the student's parent or guardian and will provide the name of a school employee the parent or guardian can contact regarding the incident.
- (3) As used in subdivision (2) of this subsection, "promptly notify" means by the end of the workday during which the incident occurred when reasonably possible, but in no event later than the end of following workday.
- (4) The parent or guardian of the student shall be provided with a written incident report for any incident reported under this section within a reasonable period of time, but in no event later than 30 days after the incident. The written incident report shall include:
- a. The date, time of day, location, duration, and description of the incident and interventions.
 - b. The events or events that led up to the incident.
 - c. The nature and extent of any injury to the student.
 - d. The name of a school employee the parent or guardian can contact regarding the incident.
- Provides for the collection of data on the impermissible use of seclusions and restraints or incidences resulting in injury, so that information is maintained on a statewide as well as local basis.
- (see GS 115-C-47(45))
- (see http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_115C/GS_115C-47.html)
- Publicizes the policies and guidelines so that administrators, teachers, and parents fully understand and consent to the limited circumstances under which these techniques may be used
- (j) Notice, Reporting, and Documentation.
- (1) Notice of procedures.—Each local board of education shall provide copies of this section and all local board policies developed to implement this section to school personnel and parents or guardians at the beginning of each school year.
- Provides a mechanism to report any potential abuses
- (5) No local board of education or employee of a local board of education shall discharge, threaten, or otherwise retaliate against another employee of the board regarding that employee's compensation, terms, conditions, location, or privileges of employment because the employee makes a report alleging a prohibited use of physical restraint, mechanical restraint, aversive procedure, or seclusion, unless the employee knew or should have known that the report was false.

Future Plans

North Carolina does not have any plans to further develop or revise laws, regulations, policies, and guidance that affect the use of seclusion and restraint.

Additional Information

2010 will be the first year that districts will actually report incidents to the SEA. Data collected in 2009 will be reported in 2010. Prior to this time the SEA has provided significant technical assistance to assist the LEAs in understanding the law and its requirements.

Building code requirements for spaces that could be used for seclusion:

(see http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_143/GS_143-138.html)

NORTH DAKOTA

1. Statutes/laws: North Dakota Century Code

- a. NDCC Chapter 15.1-19 Students and Safety
 - i. Section 15.1-02 Corporal punishment—Prohibition
- b. NDCC Chapter 25-01.2 Developmental Disability
 - i. Section 25-01.2-01 Definitions
 - ii. Section 25-01.2-09 Punishment—Isolation—Physical restraints—Psychosurgery—Sterilization—Shock treatment.
 - iii. Section 25-01.2-10 Seclusion or physical restraint—Facility administrator to be notified.
- c. NDCC Chapter 25-01.3—Committee on Protection and Advocacy
 - i. Section 25-01.3-01 Definitions

2. Policy

- a. Policy is developed by local districts.

3. Regulations

- a. No specific regulation documents.

4. Guidance

- a. Districts base development of policy on guidance from North Dakota Association of School Boards.

North Dakota Department of Public Instruction is not requesting additional technical assistance relative to this issue at this time.

OHIO

State Policies

Prior to July 2009, the majority of regulation on the use of seclusion and restraint was found in laws and policies related to health and human services. In each example below, seclusion and restraint are allowable under a specific set of guidelines.

- Ohio Revised Code
 - Title 51, Public Welfare, Department of Mental Health
- Ohio Administrative Code
 - Chapter 5112, Department of Mental Health—Administration and Director

However, two recent key developments have moved Ohio steps closer to statewide central policies.

H.B. 1 (enacted July 22, 2009): H.B. 1 included a provision that bans corporal punishment in public and nonpublic schools. Prior to this legislation, corporal punishment prohibited unless a local board policy provided allowances for the use. H.B. 1 removed the local control provision and instituted a statewide ban on corporal punishment.

Executive Order 2009-13S (effective August 3, 2009): Executive Order 2009-13S included provisions that impact restraint policies and procedures for seven Ohio state agencies, including the Ohio Department of Education. Agencies were directed to “immediate adopt” the policy within EO 2009-13S, but had the option to incorporate it into existing policies as long as they did not conflict with the executive order.

The Policy on the Use of Prone Restraint, Transitional Hold, and Other Types of Physical Restraint includes the following:

1. A statewide ban on the use of prone restraint (physical and mechanical)
2. The allowable use of transitional hold, only as determined by department-specific policy and when **all** of the following conditions apply:
 - a. “Transitional hold may be applied only by staff with current training on the safe use of this procedure, including how to recognize and respond to signs of distress in the individual;
 - b. “Transitional hold may be applied only in a manner that does not compromise breathing, including the compromise that occurs with the use of: (1) pressure or weight bearing on the back; (2) soft devices such as pillows under an individual’s face or upper body; or (3) the placing of an individual’s or staff’s arms under the individual’s head, face, or upper body;
 - c. “Transitional hold may be applied only for the reasonable amount of time necessary to safely bring the person or situation under control and to ensure the safety of the individuals involved; and
 - d. “Transitional hold may be applied only with consistent and frequent monitoring during and after the intervention with every intent to assure that the person is safe and suffers no harm.”
3. The allowable use of other physical restraints *at secure facilities* when:
 - a. There is a risk of escape or harm to self or others
 - b. It is being applied by trained staff

c. It is being applied with the guidelines within each department’s policies.

In addition to the policy, Executive Order 2009-13S also established the Ohio Policy Committee on Restraint and Seclusion. This committee will include members from 14 Ohio departments and is charged with developing a single, statewide policy on the use of seclusion and restraint.

Ohio Education Policy

Type	Laws (Executive Office, Ohio Revised Code)	Policies (Ohio Administrative Code)	Regulations (Ohio Department of Education)	Guidance (Ohio Department of Education)
Seclusion	No specific mention			
Restraint	Prone restraint ban Transitional hold allowable certain conditions Other physical restraints allowable at secure facilities (EO 2009-13S)		EO directed ODE to incorporate restraint policy	
Corporal Punishment	Prohibited (ORC§3319.41)			

OKLAHOMA

Oklahoma has a tradition of local control in education. Schools, districts and communities believe in their ability to develop and implement local policy to guide and protect the interests of their own students and address the unique and distinct educational needs of their individual communities. Currently, no state education policy specifically addresses seclusion and restraint.

One provision in Title 43A of Oklahoma statute sets standards for practices for children with mental illness. The definition of facilities used in that title includes “schools.”

Plans for further development

OSDE has convened a committee to review the current *Policies and Procedures for Special Education in Oklahoma*, 2007 (approved by the State Board of Education September 27, 2007) and develop draft guidance that will assist districts in their development and adoption of suitable restraint and seclusion policies at the local level. The draft is currently out for public comment.

Positive Behavior Interventions and Supports (PBIS)

An OSDE Special Education Services State Personnel Development Grant (SPDG) has a goal to improve educational results for children with disabilities through the implementation of Positive Behavior Interventions and Supports (PBIS). Through the SPDG, 60 sites across Oklahoma will receive training in PBIS. Training is provided in collaboration with experts from the National PBIS Center.

During the 2008–09 school year, seven schools began implementation of PBIS in their schools. Twenty new sites will begin implementation during the 2009–10 school year. Each year of the grant, districts will be invited to attend an overview, apply for participation, undergo the selection process, and receive training if selected. Each selected site will receive a subgrant to cover the cost of Schoolwide Information Software (SWIS), a stipend for the personnel responsible for data entry, and further implementation of their PBIS plan.

Documentation

The Policies and Procedures Letter from OSDE State Superintendent Sandy Garrett may be reviewed at http://www.sde.state.ok.us/Curriculum/SpecEd/pdf/Default/Policies_Letter.pdf

The Special Education Parent Handbook may be reviewed at <http://www.sde.state.ok.us/Curriculum/SpecEd/pdf/Parent/Handbook.pdf>

OREGON

Statewide Restrictions on Restraint or Seclusion	Restraint or Seclusion Restricted to Ensure Immediate Physical Safety of Student or Others	Prone Restraint Banned	Automatic Notice After Restraint or Seclusion	School Staff Training
<p>Yes</p> <p>Regulations and guidelines for both restraint and seclusion. [OAR 581-021-0062(2)]</p>	<p>Yes</p> <p>“As part of a behavior support plan when other less restrictive interventions would not be effective <u>and</u> the student’s behavior poses a threat of imminent, serious, physical harm to the student or others.” <u>And</u>, “In an emergency ... as necessary to maintain order or to prevent a student from harming him/herself, other students, and school staff or property...” [OAR 581-015-0062(2)(a)(A&B)]</p>	<p>No</p> <p>While prone restraints are not specifically banned, all districts must use approved training programs that include behavior support, prevention, de-escalation, and crisis response techniques.</p> <p>[OAR 581-015-0062(2)(e)]</p>	<p>Parent for both</p> <p>Verbal or written notification of parents or guardians following the use of physical restraint or seclusion by the end of the day the incident occurred. [OAR 581-015-0062(2)(g)]</p>	<p>Yes</p> <p>Districts must select and identify a training program and only staff who are current in the required training will implement physical restraint or seclusion with a student except in emergency situations.</p> <p>[OAR 581-015-0062(2)(e)&(f)]</p>

The Oregon Department of Education (ODE) has a 39-page technical assistance document to help districts in the implementation of regulations on the use of physical restraint and seclusion in Oregon public schools.

<http://www.ode.state.or.us/pubs/sped/tarestraintseclusion.doc>

Oregon’s statewide initiative for Positive Behavior Supports is described in the following links:

<http://www.ode.state.or.us/search/page/?id=553> and <http://www.ode.state.or.us/search/page/?id=1389>

Oregon’s statutes, regulations, policies, and guidance on seclusion and restraint include the following:

- Definitions of relevant terms such as “seclusion,” “restraint” and “emergency” (OAR 581-021-0062 and Technical Assistance document, pp. 3–6).
- Limitations on what seclusion and restraint techniques specifically are limited or not allowed (Technical Assistance document, pp. 3–6).
- Specifications of when seclusion and restraint techniques may be used (OAR 581-021-0062 and Technical Assistance document, pp. 4–6, 14).
- Guidelines on seclusion and restraint techniques as behavioral interventions, addressing these interventions in the context of behavioral intervention plans (Technical Assistance document, pp. 4, 7–8, 10–14).
- Requirements for effective personnel training in the administration of seclusion and restraint of students, including clearly indicating for whom the training is targeted, what type of training, how frequently personnel are trained and the duration of the training (Technical Assistance document, pp. 5, 10–11, 14–17).
- Requirements that school boards in Oregon must have established written policies and procedures on the use of physical restraint and seclusion. Districts must identify the training program(s) or system(s) of physical restraints and seclusion selected for use in the district and train appropriate staff (Technical Assistance document, p. 1).
- Descriptions of appropriately qualified personnel to administer seclusion and restraint interventions (Technical Assistance document, pp. 5, 10–11, 14–17).
- Notifications of parents (including specifying the timeframe for notification) when these interventions do occur (to the extent possible, before they occur) (OAR 581-021-0062 (2)(g) and Technical Assistance document, pp. 5, 7, 8, 11, 21).
- Guidelines for providing resources for training of appropriate staff (Technical Assistance document, pp. 15–17).
- Monitoring to ensure adherence to State law, regulations, policies and guidance (Technical Assistance document, pp. 5, 12).
- Provisions for a mechanism to report any potential abuses (Technical Assistance document, p. 5, requires districts to have a procedure for receiving and investigating complaints regarding restraint and seclusion practices which may be the same as in OAR 581-022-1940).

Oregon has a strong evidenced-based approach to behavioral practices that includes a focus on Positive Behavior Supports (PBS). Many Oregon schools are implementing PBS. The PBS Web site has a Bully Prevention Manual that attends to reducing bullying behavior through blending schoolwide PBS and explicit instruction. These resources are available for elementary and middle schools. Materials are located at www.pbis.org. The ODE strongly suggests that districts consider these materials.

REPUBLIC OF PALAU

The Palau Ministry of Education (MOE) does not have written policies or procedures in place governing use of “isolated restraint or physical time out.” Some elementary schools, however, may allow isolated nonphysical restraint and physical time out as a means of maintaining discipline in classrooms or as a means of punishment. At high school, current practice includes escorting a student to the principal’s office, and parents are contacted immediately. If necessary, the police department is also contacted. The principal, vice principal, or another school staff supervises the student until the parent arrives.

PENNSYLVANIA

Statutes	Regulations	Policies	Guidance	Future Plans
<p>22 Pa. Code § 14.133 (Education; State Board of Education; Miscellaneous Provisions; Special Education Services and Programs; IEP Positive Behavior Support http://www.pacode.com/secure/data/022/chapter14/s14.133.html</p> <p>Title 22, Ch. 711 Charter School and Cyber Charter School Service and Programs for Children with Disabilities. http://www.pacode.com/secure/data/022/022toc.html</p>	<p>Chapter 14 and 171 Regulations on Restraint apply to all public schools, including charter schools and cyber charter schools. Regulations also include some language on use of seclusion.</p> <p>More comprehensive regulation on seclusion to be developed using Illinois example as model.</p>	<p>Guidance is included in PaTTAN training on Positive Behavior Support</p>	<p>Pennsylvania Training and Technical Assistance Network (PaTTAN) on Behavior: http://www.pattan.net/teachlead/Behavior.aspx</p> <p>Positive Behavior Support Plan-PaTTAN: http://www.pattan.net/teachlead/SpecialProjects1.aspx</p>	<p>Continue Training and Professional Development on Positive Behavior Support.</p> <p>Develop regulations regarding the use of seclusion.</p> <p>Training and information on use of seclusion will follow.</p>

Chief or designee comments

“... Governor (Rendell) has proposed that Pennsylvania develop specific regulatory guidance on the use of seclusion. We have reviewed the Illinois Regulations and find they will be helpful to our work in this area.”

Additional information:

22 PA Code, Chapter 14, are Pennsylvania's regulations governing educational programs for students with disabilities. Section 14.133, Positive Behavior Support, and other changes to Chapter 14 became effective July 1, 2008, and are a result of extensive stakeholder input. Following are some highlights of Pennsylvania's regulations that relate to the issues in your message:

- Pennsylvania's regulations emphasize the use of positive rather than negative measures as the basis of behavior support.
- Restraint is considered a measure of last resort, to be used only after other less restrictive measures.
- The use of prone restraints is prohibited in educational programs.
- When a positive behavior support plan is needed as part of a student's IEP, it must be based on a functional behavioral assessment of the student.
- Staff members must receive training in the implementation of a positive behavior support plan; any staff members who are permitted to use a restraint must receive training.

The May 19, 2009, Government Accountability Office Report on Seclusion and Restraint, which provides an analysis of states' policies and procedures recognized Pennsylvania for having in place a number of measures to address these issues, including the following:

- Pennsylvania is one of only four states currently collecting and reporting information on the use of restraints in educational programs.
- Pennsylvania is one of 13 states that obtain consent, through the IEP process, prior to non-emergency use of restraints.
- Pennsylvania is one of 17 states requiring staff training in the use of restraints.
- Pennsylvania is one of only eight states prohibiting the use of prone restraints in educational programs.
- The governor has proposed that Pennsylvania develop specific regulatory guidance on the use of seclusion.

PUERTO RICO

No formal written statutes or guidance exist specifying procedures for the use of restraint and/or seclusion. To the contrary, when discussing these two procedures as a possible discipline mechanism for students, no one in Puerto Rico was familiar with these “techniques,” nor did anyone think the use of such procedures was pervasive in Puerto Rico. Considering this type of procedure to discipline children actually seemed like a foreign concept to interviewees, going against their cultural norms, possibly explaining the absence of legal guidance and operational procedures.

Findings

The Puerto Rico Department of Education (PRDE) does have several documents addressing the conduct of and disciplinary actions for teachers, regular education students, special education students and employees in residential programs serving students. While these documents clearly outline disciplinary procedures and their legal base in a detailed manner, they do not specifically speak to the use of student restraint and/or seclusion. The *Act for Safeguarding of Minors in the 21st Century* prohibits violence and abuse in public and private institutions, including schools, but does not explicitly prohibit corporal punishment.

Rather than describe when and how to apply the use of discipline tactics such as restraint and seclusion, procedural manuals in Puerto Rico clearly outline other procedural steps and time lines to be used for a full range of disciplinary infractions.

On page 114 of the *PRDE Special Education Procedural Manual*, it is noted that while PRDE recognizes and provides for the individualized educational and personal needs of all students, in the realm of disciplinary practices, the same set of practices are authorized for students with and without disabilities. However, an entity with the acronym COMPU is charged with reviewing discipline cases of students with disabilities to ascertain whether the discipline issue may be specifically related to the student’s disability. If that finding is determined, then COMPU may order further testing, a change of placement and alternative individualized plans for disabled students.

This section also indicates that a number of interested stakeholders, both individuals such as the school principal and groups such as the school-based Discipline Committee, are involved in reviewing disciplinary infractions and determining the appropriate response.

Sample Disciplinary Practices

Some of the discipline infractions and resulting interventions described in the *PRDE Special Education Procedural Manual* that are applicable to students with and without disabilities include but are not limited to the following:

When a student presents a risk to self or others, he or she may be assigned to another teacher’s class or other appropriate setting for a period of time not to exceed 10 days per school year.

An alternative to a changing a student’s classroom is the option of an out-of-school suspension not to exceed a period of 5 days (citation Organic Law, PRDE).

For more serious infractions such as bringing a firearm or illegal drugs to school, all students may be subject to temporary appropriate placement not to exceed a period of 45 days.

When suspensions do not render the desired results, the school principal may work with the Committee of Programs and Alternative Placements to develop a plan to evaluate the student’s conduct and/or modify the existing conduct intervention plan.

The discipline guides clearly state that parents are to be notified of and involved in decisions regarding student discipline issues, alternative placements, etc. and provide specific instances when this involvement is required and the time line to be followed.

If the discipline infraction is criminal in nature, school employees are instructed to forward the case to the proper law enforcement officials and coordinate follow-up services.

Development of Future Policies and Guidelines

Although Puerto Rico does not have specific guidelines regarding restraint and seclusion of students and though these two disciplinary tactics do not seem to be used in a widespread manner, PRDE employees were cognizant that there may be a need to develop procedures to guide employees in reacting appropriately to unexpected, dangerous and unmanageable physical threats and outbursts by students.

Existing Documents

As might be expected, Puerto Rico's laws and guidelines are in Spanish.

RHODE ISLAND

A. Regulations

Individuals with Disabilities Education Act (IDEA) Rhode Island regulations including sections on “seclusion and restraint,” sometimes using other wording, can be accessed on the Rhode Island Department of Education Web site, Office for Diverse Learners:

http://www.ride.ri.gov/Special_Populations/State_federal_regulations/Default.aspx (Effective July 1, 2008.)

B. 2002 RI Board of Regents Physical Restraint Regulations

The Board of Regents promulgated regulations for elementary education and secondary education.

2.1 Authority. These regulations are promulgated by the Rhode Island Board of Regents for Elementary and Secondary Education pursuant to R.I.G.L. 16-60-4.

2.2 Scope. These regulations govern the use of physical restraint and crisis intervention on all students in publicly funded elementary and secondary education programs, including all Rhode Island public school districts and regional public school districts, all Rhode Island State Operated Schools, all Public Charter Schools, educational programs operated by the Department for Children Youth and Families, Educational Collaborative Programs, and Local Educational Agencies operating a public education program; all of which shall hereafter be referred to as public education programs.

2.3 Purpose. The purpose of these regulations is to ensure that every student participating in a Rhode Island public education program be free from the unreasonable use of physical restraint and crisis intervention. Physical intervention, the use of manual or mechanical restraint or escort involving physical contact should only be used as a crisis intervention for the purpose of preventing harm or injury. The crisis intervention must not include procedures that intentionally cause pain, injury, trauma or humiliation. A physical restraint crisis intervention should not be used for the purpose of changing behavior in situations where no protection from harm or injury is needed. Only the least intrusive physical interaction needed to adequately protect the child or others shall be used and shall be terminated as soon as the need for protection has abated.

2.4 Construction. Nothing in these regulations shall be construed to limit the protection offered publicly funded students under other state or federal laws nor do these regulations preclude any teacher, employee or agent of a public education program from using reasonable force to protect students, other persons or themselves from imminent, serious, physical harm.

3.0 Definitions.

3.0-3.19 not provided here

3.20 Physical Restraint/Crisis Intervention.

(a) Manual Restraint- The use of physical intervention intended to hold a person immobile or limit a person’s movement by using body contact as the only source of physical restraint.

(b) Seclusion Restraint: Physically confining a student alone in a room or limited space without access to school staff. The use of “time out” procedures during which a staff member remains accessible to the student shall not be considered “seclusion restraint.” The use of seclusion restraint is prohibited in public education programs.

3.21 Positive Behavioral Supports—a set of practices used to organize teaching and learning environments and experiences for students which facilitate the student’s successful self-awareness, self-management, engagement with others and with the learning process.

3.22 Redirection encompasses a number of techniques which serve to: (1) Divert the student from an unwanted task or a problematic behavior. (2) Return the student to a more desirable task or more appropriate behavior. Redirection occurs without the coercion of negative consequences. Among these techniques are: Proximity, Cueing, Regrouping, Restructuring, Diversions, Hurdle Help.

3.23 Satiation—The repetition of a task/activity/behavior to the point that a person is unable to perform the task even one more time.

3.24 Seclusion—placing a child alone in a locked room without supervision. Such action is strictly prohibited in Rhode Island.

3.25 Section 504 of The Rehabilitation Act of 1973—A Civil Rights law prohibiting discrimination against individuals with disabilities from federally assisted programs or activities.

3.26 Self Management—The monitoring, regulation, care, guidance and treatment of one’s own behavior.

3.27 Timeout—A Punishment (Type II) procedure in which access to reinforcement is withdrawn for a certain period of time.

(a) Isolation “from the group”—Reinforcement is withdrawn and the student remains in a separate room or booth for a certain period of time. The small room or booth may or may not have a door.

3.28 Zero Tolerance—(as defined by state policy) the purpose is to provide a school environment that is conducive to learning. The underlying belief of this policy is that all children have the right to be educated in a safe and nurturing environment. Therefore, each school system shall adopt a policy of zero tolerance for weapons, violence and illegal drugs in schools. Any student found to be in possession of a weapon, or involved in an aggravated assault as defined herein, will immediately be suspended in accordance with applicable due process provisions. During this suspension, the school district will take the necessary steps in determining any additional action to be taken, which may include long-term suspension. Zero tolerance policies cannot supersede other Federal and State Regulations, such as the Individuals with Disabilities Act (IDEA), Section 504 of the Rehabilitation Act of 1973, and R.I. Special Education Regulations.

4.0 Procedures and Training.

4.1 Procedures. Public education programs shall develop written procedures regarding appropriate responses to student behavior that may require the use of physical restraint/crisis intervention. Such procedures shall be annually reviewed and provided to school staff and made available to parents of enrolled students. Such procedures shall include, but not be limited to:

(a) Methods for preventing student violence, self-injurious behavior, and suicide, including de-escalation of potentially dangerous behavior occurring among groups of students or with an individual student;

(b) A school policy regarding intervention that provides a description and explanation of the school’s or program’s method of physical restraint/crisis intervention, a description of the school’s or program’s training requirements, reporting requirements and follow-up procedures, and a procedure for receiving and investigating complaints regarding restraint practices.

4.2 Required Training For All Staff. Each public education program shall designate personnel to determine a time and methods to provide all staff with training regarding the school’s physical restraint/crisis intervention policies. Such training shall occur at least annually not later than within the

first month of each school year. For employees hired after the school year begins, this training shall take place within the first month of their employment. Training shall include information on the following:

- (a) The program's restraint policy;
- (b) Interventions that may preclude the need for restraint, including de-escalation of problematic behaviors;
- (c) Types of restraints and related safety considerations, including information regarding the increased risk of injury to a student when an extended restraint is used;
- (d) Administering physical restraint in accordance with known medical or psychological limitations and/or behavioral intervention plans applicable to an individual student; and
- (e) Identification of program staff who have received advanced training pursuant to Regulation 4.3 in the use of physical restraint/crisis intervention.

4.3 Advanced Staff Training on the Use of Physical Restraint/Crisis Intervention. At the start of each school year, every public education program shall identify staff that are authorized to serve as a school-wide based resource to assist other staff in ensuring proper administration of physical restraint and crisis interventions. These staff members shall participate in advanced training in the use of physical restraint/crisis intervention beyond the basic training offered to all staff and the public education program shall document the extent of such training.

4.4 Content of Advanced Training. The advanced training required by Regulation 4.3 in the proper administration of physical restraint/crisis intervention shall include, but not be limited to:

- (a) Appropriate procedures for preventing the need for physical restraint/crisis intervention, including the de-escalation of problematic behavior, relationship building and the use of alternatives to such restraints;
- (b) A description and identification of dangerous behaviors on the part of students that may indicate the need for physical restraint/ crisis intervention and methods for evaluating the risk of harm in individual situations in order to determine whether the use of physical restraint and crisis interventions are warranted;
- (c) The simulated experience of administering and receiving physical restraint/crisis intervention, instruction regarding the effect(s) on the person restrained, including instruction on monitoring physical signs of distress and obtaining medical assistance;
- (d) Instruction regarding documentation and reporting requirements and investigation of injuries and complaints; and
- (e) Demonstration by participants of proficiency in administering physical restraint/crisis intervention.

5.0 Determining When Physical Restraint/Crisis Intervention May Be Used.

5.1 Use of Restraint/Intervention. Physical restraint/crisis intervention may be used only in the following circumstances:

- (a) Non-physical interventions would not be effective; and (b) The student's behavior poses a threat of imminent, serious, physical harm to self and/or others; and (c) If a behavioral intervention plan has been developed for the student, those various positive reinforcement techniques have been implemented appropriately and the child has failed to respond to those reinforcement techniques.

6.1 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.

6.2 Prohibitions. Physical restraint/crisis interventions are prohibited in the following circumstances:

- (a) As a means of punishment;
- (b) As an intervention designed to, or likely to cause physical pain;
- (c) As in any intervention which denies adequate sleep, food, water, shelter, bedding or access to bathroom facilities;
- (d) As in any intervention which is designed to subject, used to subject, or likely to subject the individual to verbal abuse, ridicule or humiliation, physical pain, or which can be expected to cause excessive emotional trauma;
- (e) As in a restrictive intervention which employs a device or material or objects that simultaneously immobilize all four extremities, including the procedure known as prone containment, except that prone containment may be used by trained personnel as a limited emergency intervention when a documented part of a previously agreed upon written behavioral intervention plan;
- (f) As in seclusion, unless under constant surveillance and observation when documented as part of a previously agreed upon written behavioral intervention plan;
- (g) As in any intervention that precludes adequate supervision of the child;
- (h) Any intervention which deprives the individual of one or more of his or her senses.

7.0 Proper Administration of Physical Restraint/Crisis Intervention.

7.1 Trained Personnel. Only personnel who have had training pursuant to Regulation 4.1 may administer physical restraint/crisis intervention with students. Whenever possible, the administration of a physical restraint/crisis intervention shall be witnessed by at least one adult who does not participate in the restraint. The training requirement contained in Regulation 4.1 shall not preclude a teacher, employee or agent of a public education program from using reasonable force to protect students, other persons, or themselves from imminent, serious physical harm.

7.2 Use of Force. A person administering a physical restraint/crisis intervention shall use only the amount of force necessary to protect the student or others from physical injury or harm and shall discontinue the physical restraint/crisis intervention as soon as possible.

7.3 Safety Requirements. Additional requirements for the use of physical restraint/crisis intervention are:

- (a) No restraint shall be administered in such a way that the student is prevented from breathing or speaking. During the administration of a restraint, a staff member shall continuously monitor the physical status of the student, including skin color and respiration. A restraint shall be released immediately upon a determination by the staff member administering the restraint that the student is no longer at risk of causing imminent physical harm to him or herself or others.
- (b) Restraint shall be administered in such a way so as to prevent or minimize physical harm. If, at any time during a physical restraint/crisis intervention, the student demonstrates significant physical distress, the student shall be released from the restraint immediately, and school staff shall take steps to seek medical assistance.
- (c) Program staff shall review and consider any known medical or psychological limitations and/or behavioral intervention plans regarding the use of physical restraint/crisis intervention on an individual student.
- (d) Following the release of a student from a restraint, the Public Education Program shall implement follow-up procedures. These procedures shall include reviewing the incident with the student, as appropriate, to address the behavior that precipitated the restraint, reviewing the incident with the staff

person(s) who administered the restraint to discuss whether proper restraint procedures were followed, and consideration of whether any follow-up is appropriate for students who witnessed the incident.

8.0 Reporting Requirements.

8.1 Informing School Administration. The staff member who administered the physical restraint/crisis intervention shall inform the administration of any public education program of the use of a physical restraint/crisis intervention as soon as possible, and by a written report not later than the next working day. The administration shall maintain an ongoing written record of all reported instances of physical restraint/crisis intervention.

8.2 Informing Parents. The school administration shall have procedures to inform the student's parent(s) or guardian(s) of the use of a restraint as soon as possible, and not later than two (2) school days after each incident. Written documentation of this notification shall be maintained by the public education program.

8.3 Contents of Report. The written report required by Regulation 8.1 shall include:

- (a) The names and job titles of the staff who administered the restraint, and observers, if any, the date of the restraint, the time the restraint began and ended, and the name of the administrator who was verbally informed following the restraint;
- (b) A description of the activity in which the restrained student and other students and staff in the same room or vicinity were engaged immediately preceding the use of physical restraint/crisis intervention, the behavior that prompted the restraint, the efforts made to deescalate the situation, alternatives to restraint that were attempted, and the justification for initiating physical restraint/crisis intervention;
- (c) A description of the administration of the restraint including the holds used and reasons such holds were necessary, the student's behavior and reactions during the restraint, how the restraint ended, and documentation of injury to the student and/or staff, if any, during the restraint and any medical care provided;
- (d) Information regarding any further action(s) that the school has taken or may take, including any disciplinary sanctions that may be imposed on the student, and a behavioral intervention plan was developed or modified as a result of the restraint;
- (e) Information regarding opportunities for the student's parents or guardians to discuss with school officials the administration of the restraint, any disciplinary sanctions that may be imposed on the student and/or any other related matter.

8.4 Report to the R.I. Department of Education. Each public educational program shall provide the R.I. Department of Education a record of every incident of the use of a physical restraint/crisis intervention on an annual basis.

9.0 Emergency Situations.

These regulations shall not create a barrier to maintaining a safe school environment. While these regulations govern the use of physical restraint/crisis interventions, they do not limit the ability of school personnel or their agents from using reasonable force to protect students, other persons or themselves from imminent, serious physical harm.

10.0 Behavioral Intervention Plans.

Once the use of physical restraint/crisis intervention has been employed on a student, school personnel shall determine if the student requires a behavioral intervention plan as part of the student's education program, and if one already exists, whether that plan needs to be modified or adjusted.

C. New Rhode Island Discipline Procedures and Requirements for All Students Under IDEA

New Rhode Island Discipline Procedures and Requirements for all students under IDEA (2004) and RI Legislation effective July 1, 2005, also provided guidance on school removals for students in general education and in actions for violations of code of student conduct and best practices related to these issues.

D. Resources

Annual Physical Restraint Reporting Forms are online, as are Required Incident Report forms for schools. They are found on the Rhode Island Technical Assistance Project at Rhode Island College's link on the www.ride.ri.gov Web site.

SOUTH CAROLINA

Government Accounting Office Report	State Web Site Search	Additional Information Provided by SEA Staff	SEA Plans to Develop, Review, or Revise Statutes, Policies, or Guidelines (Yes/No)
None	<p>February 6, 2009, meeting of S.C. Advisory Council on the Education of Students with Disabilities included Dr. Joe Ryan speaking on the importance of schools establishing timeout/restraint policies.</p> <p>SC Code of Regulation contains guidance on restraints for children and adolescents in residential treatment facilities (SC-ADC 61-103). Facilities are required to maintain written policies and procedures regarding restraint and seclusion as well as provide training for staff.</p>	<p>The school safety/mental health committee of the South Carolina Advisory Council on the Education of Students with Disabilities (Advisory Council) has written two position papers with recommendations regarding seclusion and restraint. Those papers have been shared with our new Office of Exceptional Children (OEC) director, Marlene Metts. After her review, they will be submitted by the Advisory Council to Dr. Rex, state superintendent, for further review before dissemination.</p>	<p>Yes.</p> <p>Mike Paget, education associate, Office of Exceptional Children (OEC), chaired a workgroup in the South Carolina Department of Education (SCDE) to make specific recommendations regarding seclusion and restraint for the state as a whole to adopt. As of Dec. 4, 2009, a team including general and special education department personnel, protection and advocacy staff, parent center representatives, and higher education staff has completed a draft document. The draft guidelines will be reviewed by SCDE key personnel. Feedback will then be solicited from a field review team including LEA reps, parent organizations, higher ed, experienced crisis prevention institute trainers, and state agencies that deal with the needs of children and youth. At the conclusion of all reviews, final changes will be made and the</p>

SUMMARY OF SECLUSION AND RESTRAINT STATUTES, REGULATIONS, POLICIES AND GUIDANCE, BY STATE AND TERRITORY

<p>Government Accounting Office Report</p>	<p>State Web Site Search</p>	<p>Additional Information Provided by SEA Staff</p>	<p>SEA Plans to Develop, Review, or Revise Statutes, Policies, or Guidelines (Yes/No)</p>
			<p>guidelines will be released to all LEAs. The release will emanate from the general education offices of the department because the guidelines apply to all students, including those with disabilities.</p> <p>Concurrently, Protection and Advocacy (P&A), the Center for Disability Resources and the SC Developmental Disabilities Council recently conducted a survey with school districts to determine how many districts had written policies regarding seclusion and restraint, the nature of those policies, etc. The results released in mid December, 2009, will, along with the guidelines, be used to drive future decisions about seclusion and restraint actions. Advocates see a need to push for state regulations. No assistance requested at this time.</p>

SOUTH DAKOTA

Statutes/laws

- 13-32-1** Disciplinary authority over students on school premises
<http://legis.state.sd.us/statutes/DisplayStatute.aspx?Type=Statute&Statute=13-32-1>
- 13-32-2** Physical force authorized when reasonable and necessary
<http://legis.state.sd.us/statutes/DisplayStatute.aspx?Type=Statute&Statute=13-32-2>

Statutes, 13-32-1 and 13-32-2 give school personnel disciplinary authority and permits reasonable use of physical force. These policies are the only ones that apply to this topic.

At this time, South Dakota does not plan to make any statutory changes, but is considering possible methods to better educate teachers and administrators. South Dakota would appreciate any information along this line.

TENNESSEE

Current Statutes, Regulations, Policies and/or Guidance

Tennessee has one act, a rule (recently revised and passed July 31, 2009) and guidelines on seclusion and restraint. Detailed information for each area is described below.

Statutes

Tennessee has in place the *Special Education Isolation and Restraint Modernization and Positive Behavioral Supports Act*. The following paragraphs are an annotation from this Act, Tennessee Code 49-10-1301 to 1306.

The Tennessee Legislature passed the 2008 Public Chapter 1063, the *Special Education Isolation and Restraint Modernization and Positive Behavioral Supports Act*, to prevent any special education student from any unreasonable, unsafe, and unwarranted use of isolation and restraint practices. The act was to (1) ensure that special education students would be free from the unreasonable, unsafe and unwarranted uses of isolation and restraint, (2) encourage the use of positive behavior interventions and support methods in schools, and (3) ensure the proper training of staff in positive behavioral support as well as strategies to protect the student, teacher, and others from physical harm if isolation or restraint is necessary.

The act defines chemical restraint, isolation or seclusion, mechanical restraint, noxious substance, physical holding restraint, and school personnel. The act contains a section on reports and records, which explains that a special education student may be restrained or isolated only if the IEP includes its use or it is an emergency situation required to assure the safety of the student or others. Procedures are outlined for reporting an incidence of restraint or isolation, for reporting a suspected crime, and for convening an IEP meeting as a result of restraint or isolation. The act requires that school personnel remain with and continuously observe a student who is in isolation or being restrained.

A section on restrictions prohibits the following: (1) administering a chemical restraint, except when administered for therapeutic purposes under direction of physician and with parent/guardian consent; (2) mechanical restraint; (3) life-threatening restraint including that restricts the flow of air into the lungs; (4) isolation or restraint as a means of coercion, punishment, convenience, or retaliation; (5) use of a locked door or other structure that locks a student in and isolates the student. This section lists the following use of physical holding restraint as not being prohibited: (1) brief holding to calm or comfort, (2) minimum contact to escort a student to another area, (3) assisting a student in completing a task, (4) brief holding of a student to prevent impulsive behavior that threatens the student's safety. These listed circumstances do not require parent or guardian notification. School personnel are allowed to take actions to break up a fight or take a weapon from a student, and these acts shall be reported.

The act required that the Tennessee State Board of Education, in connection with other agencies, promulgate rules and regulations concerning the use of isolation and restraint with special education students.

Tennessee Code Annotated 49-10-1301 to 1306 (Education; Special Education; *Special Education Isolation and Restraint Modernization and Positive Behavioral Supports Act* can be found at the following Web site <http://www.michie.com/tennessee/lpext.dll?f=templates&fn=main-h.htm&cp=tncode>.)

Regulations

The Tennessee State Board of Education presented a draft, requested comments, prepared a second draft, held hearings to get additional comments, and then developed the final draft. This proposed rule revision passed the State Board of Education on final reading on July 31, 2009. On that date, the

Tennessee State Board of Education—Rule 0520-1-9 Special Education Programs and Services was amended with the addition of 0520-01-09-.23 Isolation and Restraint for Students Receiving Special Education Services. The amendment includes definitions for the following: emergency situation, extended isolation, extended restraint, isolation room, and noxious substance. The amendment authorizes LEAs to develop and implement training programs that include the use of positive behavioral interventions and supports, nonviolent crisis prevention and de-escalation, safe administration of isolation and restraint, and documentation and reporting requirements. LEAs are also authorized to determine an appropriate level of training required for school personnel, depending on their job description and responsibilities. LEAs are required to develop policies and procedures related to personnel authorized to use isolation and restraint, training requirements, and incident reporting procedures. The use of isolation or restraint may be authorized only by the principal or the principal's designee.

In connection to an IEP meeting, if the use of restraint or isolation is considered, parents/guardians must be advised of the provisions of Tennessee Code Annotated 49-10-1301, et seq., this rule, and the *IDEA* procedural safeguards. An IEP meeting convened pursuant to Tennessee Code Annotated 49-10-1304(b) may be conducted on at least 24 hours notice to parents. The amendment also lists several requirements pertaining to the isolation and restraint of children being provided services within a residential therapeutic setting.

Information on the proposed rule revision along with comments from the public hearing are on the Web site for the Tennessee State Board of Education at <http://www.state.tn.us/sbe/2009Julypdfs/IV%20L%20Isolation%20or%20Restraint%20for%20Students%20Receiving%20Special%20Ed%20Rules%20Cover%20Sheet%20&%20Rule.pdf>. The Web site explains the status of the amendment with the following statement: “The following rule changes were approved by the Board July 31, 2009. Following review by the Attorney General and filing with the Secretary of State, the revised rules will become effective 105 days after publication in the Tennessee Administrative Register, absent a stay of the effective date by the Government Operations Committee.”

Guidance

The Tennessee Department of Education has developed “Guidelines for Isolation and Restraint of Children with Disabilities by School Personnel.” These guidelines were in force prior to the amendment 0520-1-9 to the Rule 0520-01-09-.23.

The Master Plan Connection section of the amendment 0520-1-9 to the Rule 0520-01-09-.23 states, “This item provides sufficient resources, in the form of guidance, to help effective leaders and effective teachers determine when physical restraint is appropriate and how it should be administered to keep children from harming themselves or others.”

Recommended best practices in policy, regulation, or guidance documents

Tennessee has evidence (bulleted items below) of each of the following recommended best practices in the amendment. Specific details from the amendment follow each bullet (in italics).

- Clear definitions of relevant terms such as “seclusion” and “restraint” and “emergency”

The amendment includes definitions for the following: emergency situation, extended isolation, extended restraint, isolation room, and noxious substance.
- Clear limitations on what seclusion and restraint techniques specifically are limited or not allowed

A section on restrictions prohibits the following: (1) administering a chemical restraint, except when administered for therapeutic purposes under direction of physician and with

parent/guardian consent; (2) mechanical restraint; (3) life-threatening restraint including that restricts the flow of air into the lungs; (4) isolation or restraint as a means of coercion, punishment, convenience, or retaliation; (5) use of a locked door or other structure that locks a student in and isolates the student.

- Specifications for when seclusion and restraint techniques may be used (for example, that seclusion and restraint be used only as a physical safety procedure, or if permitted as “treatment” or “behavioral intervention” in limited circumstances, the circumstances under which this is permitted)

A special education student can be restrained or isolated only if the restraint or isolation is provided for in the student’s IEP or if there is an emergency and it is necessary to assure the safety of the students or others nearby

- If seclusion and restraint techniques are permitted as behavioral interventions, the SEA addresses these interventions in the context of behavioral intervention plans

If the student’s individualized education program does not provide for the use of isolation or restraint for the behavior precipitating such action or if school personnel are required to use isolation or restraint over an extended period of time as determined by department rules, then an individual education program meeting shall be convened within ten (10) days following the use of the isolation or restraint; if the behavior precipitating such action also warrants a change of placement, the child will have all rights provided under applicable state and federal law

- Ensure that the use of these interventions is fully documented in a form accessible to parents when requested

School personnel who must isolate or restrain a student receiving special education services, as defined by § [49-10-102](#), whether or not the isolation or restraint was in a emergency situation or provided for in the student’s individual education program, shall report the incident to the school principal or the principal’s designee who shall record the use of the isolation or restraint and the facts surrounding such use. A copy of the record shall be made available at individual education program meetings and upon the request of the student’s parent or legal guardian.

- Publicize the policies and guidelines so that administrators, teachers and parents fully understand and consent to the limited circumstances under which these techniques may be used

The guidelines were sent out several years ago to all superintendents of schools. Since they will soon become part of the statute, they will be published also wherever TDOE determines to put them.

- Provide a mechanism to report any potential abuses

If the school principal, other school personnel designated under department rules to authorize the isolation or restraint, or any person having knowledge of the isolation or restraint have reason to believe that the isolation or restraint was unreasonable, unsafe or unwarranted, and the isolation or restraint caused injury to the student, the incident shall be reported pursuant to § [37-1-403](#).

Future Plans

Rule 0520-1-9 Special Education Programs and Services was amended with the addition of 0520-01-09-.23 Isolation and Restraint for Students Receiving Special Education Services and was just passed by the State Board of Education in July, 2009, so there are no plans at this time for any changes in the future.

Additional Information

The Tennessee Department of Education had always had guidelines to address the isolation and restraint of special education students. Now they have a law to build in accountability. The Tennessee State Board of Education, in July 2009, passed on final reading an amendment to Rule 0520-1-9 Special Education Programs and Services. The existing guidelines were used in the preparation of the amendment. The new rule is available on the Web site of the Tennessee State Board of Education.

TEXAS

Policies and Procedures

State regulations are intended to ensure that all students are treated with dignity and respect as well as educated in a safe environment. Behavior management techniques and/or discipline management practices must be implemented in such a way as to protect the health and safety of the students and others. When the use of physical restraint or time-out is necessary, the state has outlined specific requirements and procedures (see TEC 37.0021 and TAC 89.1053 for further guidance).

Texas Education Code (TEC—State Statute)

Sec. 37.0021. USE OF CONFINEMENT, RESTRAINT, SECLUSION, AND TIMEOUT.

- (a) It is the policy of this state to treat with dignity and respect all students, including students with disabilities who receive special education services under Subchapter A, Chapter 29. A student with a disability who receives special education services under Subchapter A, Chapter 29, may not be confined in a locked box, locked closet, or other specially designed locked space as either a discipline management practice or a behavior management technique.
- (b) In this section:
- (1) “Restraint” means the use of physical force or a mechanical device to significantly restrict the free movement of all or a portion of a student's body.
 - (2) “Seclusion” means a behavior management technique in which a student is confined in a locked box, locked closet, or locked room that:
 - (A) is designed solely to seclude a person; and
 - (B) contains less than 50 square feet of space.
 - (3) “Time-out” means a behavior management technique in which, to provide a student with an opportunity to regain self-control, the student is separated from other students for a limited period in a setting:
 - (A) that is not locked; and
 - (B) from which the exit is not physically blocked by furniture, a closed door held shut from the outside, or another inanimate object.
- (c) A school district employee or volunteer or an independent contractor of a district may not place a student in seclusion. This subsection does not apply to the use of seclusion in a court-ordered placement, other than a placement in an educational program of a school district, or in a placement or facility to which the following law, rules, or regulations apply:
- (1) the Children's Health Act of 2000, Pub. L. No. 106-310, any subsequent amendments to that Act, any regulations adopted under that Act, or any subsequent amendments to those regulations;
 - (2) 40 T.A.C. Sections 720.1001-720.1013; or
 - (3) 25 T.A.C. Section 412.308(e).
- (d) The commissioner by rule shall adopt procedures for the use of restraint and time-out by a school district employee or volunteer or an independent contractor of a district in the case of a student with a disability receiving special education services under Subchapter A, Chapter 29. A procedure adopted under this subsection must:

- (1) be consistent with:
 - (A) professionally accepted practices and standards of student discipline and techniques for behavior management; and
 - (B) relevant health and safety standards; and
- (2) identify any discipline management practice or behavior management technique that requires a district employee or volunteer or an independent contractor of a district to be trained before using that practice or technique.
- (e) In the case of a conflict between a rule adopted under Subsection (d) and a rule adopted under Subchapter A, Chapter 29, the rule adopted under Subsection (d) controls.
- (f) For purposes of this subsection, “weapon” includes any weapon described under Section 37.007(a)(1). This section does not prevent a student's locked, unattended confinement in an emergency situation while awaiting the arrival of law enforcement personnel if:
 - (1) the student possesses a weapon; and
 - (2) the confinement is necessary to prevent the student from causing bodily harm to the student or another person.
- (g) This section and any rules or procedures adopted under this section do not apply to:
 - (1) a peace officer while performing law enforcement duties;
 - (2) juvenile probation, detention, or corrections personnel; or
 - (3) an educational services provider with whom a student is placed by a judicial authority, unless the services are provided in an educational program of a school district.

Added by Acts 2001, 77th Leg., ch. 212, Sec. 1, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1055, Sec. 6, eff. June 20, 2003.

Texas Administrative Code (TAC—Commissioner Rule)

§89.1053. Procedures for Use of Restraint and Time-Out.

- (a) Requirement to implement. In addition to the requirements of 34 Code of Federal Regulations (CFR), §300.324(a)(2)(i) and (c), school districts and charter schools must implement the provisions of this section regarding the use of restraint and time-out. In accordance with the provisions of Texas Education Code (TEC), §37.0021 (Use of Confinement, Restraint, Seclusion, and Time-Out), it is the policy of the state to treat with dignity and respect all students, including students with disabilities who receive special education services under TEC, Chapter 29, Subchapter A.
- (b) Definitions.
 - (1) Emergency means a situation in which a student's behavior poses a threat of:
 - (A) imminent, serious physical harm to the student or others; or
 - (B) imminent, serious property destruction.
 - (2) Restraint means the use of physical force or a mechanical device to significantly restrict the free movement of all or a portion of the student's body.
 - (3) Time-out means a behavior management technique in which, to provide a student with an opportunity to regain self-control, the student is separated from other students for a limited period in a setting:
 - (A) that is not locked; and

- (B) from which the exit is not physically blocked by furniture, a closed door held shut from the outside, or another inanimate object.
- (c) Use of restraint. A school employee, volunteer, or independent contractor may use restraint only in an emergency as defined in subsection (b) of this section and with the following limitations.
 - (1) Restraint shall be limited to the use of such reasonable force as is necessary to address the emergency.
 - (2) Restraint shall be discontinued at the point at which the emergency no longer exists.
 - (3) Restraint shall be implemented in such a way as to protect the health and safety of the student and others.
 - (4) Restraint shall not deprive the student of basic human necessities.
- (d) Training on use of restraint. Training for school employees, volunteers, or independent contractors shall be provided according to the following requirements.
 - (1) A core team of personnel on each campus must be trained in the use of restraint, and the team must include a campus administrator or designee and any general or special education personnel likely to use restraint.
 - (2) Personnel called upon to use restraint in an emergency and who have not received prior training must receive training within 30 school days following the use of restraint.
 - (3) Training on use of restraint must include prevention and de-escalation techniques and provide alternatives to the use of restraint.
 - (4) All trained personnel shall receive instruction in current professionally accepted practices and standards regarding behavior management and the use of restraint.
- (e) Documentation and notification on use of restraint. In a case in which restraint is used, school employees, volunteers, or independent contractors shall implement the following documentation requirements.
 - (1) On the day restraint is utilized, the campus administrator or designee must be notified verbally or in writing regarding the use of restraint.
 - (2) On the day restraint is utilized, a good faith effort shall be made to verbally notify the parent(s) regarding the use of restraint.
 - (3) Written notification of the use of restraint must be placed in the mail or otherwise provided to the parent within one school day of the use of restraint.
 - (4) Written documentation regarding the use of restraint must be placed in the student's special education eligibility folder in a timely manner so the information is available to the ARD committee when it considers the impact of the student's behavior on the student's learning and/or the creation or revision of a behavioral intervention plan (BIP).
 - (5) Written notification to the parent(s) and documentation to the student's special education eligibility folder shall include the following:
 - (A) name of the student;
 - (B) name of the staff member(s) administering the restraint;
 - (C) date of the restraint and the time the restraint began and ended;
 - (D) location of the restraint;
 - (E) nature of the restraint;

- (F) a description of the activity in which the student was engaged immediately preceding the use of restraint;
 - (G) the behavior that prompted the restraint;
 - (H) the efforts made to de-escalate the situation and alternatives to restraint that were attempted; and
 - (I) information documenting parent contact and notification.
- (f) Clarification regarding restraint. The provisions adopted under this section do not apply to the use of physical force or a mechanical device which does not significantly restrict the free movement of all or a portion of the student's body. Restraint that involves significant restriction as referenced in subsection (b)(2) of this section does not include:
- (1) physical contact or appropriately prescribed adaptive equipment to promote normative body positioning and/or physical functioning;
 - (2) limited physical contact with a student to promote safety (e.g., holding a student's hand), prevent a potentially harmful action (e.g., running into the street), teach a skill, redirect attention, provide guidance to a location, or provide comfort;
 - (3) limited physical contact or appropriately prescribed adaptive equipment to prevent a student from engaging in ongoing, repetitive self-injurious behaviors, with the expectation that instruction will be reflected in the individualized education program (IEP) as required by 34 CFR, §300.324(a)(2)(i) and (c) to promote student learning and reduce and/or prevent the need for ongoing intervention; or
 - (4) seat belts and other safety equipment used to secure students during transportation.
- (g) Use of time-out. A school employee, volunteer, or independent contractor may use time-out in accordance with subsection (b)(3) of this section with the following limitations.
- (1) Physical force or threat of physical force shall not be used to place a student in time-out.
 - (2) Time-out may only be used in conjunction with an array of positive behavior intervention strategies and techniques and must be included in the student's IEP and/or BIP if it is utilized on a recurrent basis to increase or decrease a targeted behavior.
 - (3) Use of time-out shall not be implemented in a fashion that precludes the ability of the student to be involved in and progress in the general curriculum and advance appropriately toward attaining the annual goals specified in the student's IEP.
- (h) Training on use of time-out. Training for school employees, volunteers, or independent contractors shall be provided according to the following requirements.
- (1) General or special education personnel who implement time-out based on requirements established in a student's IEP and/or BIP must be trained in the use of time-out.
 - (2) Newly-identified personnel called upon to implement time-out based on requirements established in a student's IEP and/or BIP must receive training in the use of time-out within 30 school days of being assigned the responsibility for implementing time-out.
 - (3) Training on the use of time-out must be provided as part of a program which addresses a full continuum of positive behavioral intervention strategies, and must address the impact of time-out on the ability of the student to be involved in and progress in the general curriculum and advance appropriately toward attaining the annual goals specified in the student's IEP.
 - (4) All trained personnel shall receive instruction in current professionally accepted practices and standards regarding behavior management and the use of time-out.

- (i) Documentation on use of time-out. Necessary documentation or data collection regarding the use of time-out, if any, must be addressed in the IEP or BIP. The admission, review, and dismissal (ARD) committee must use any collected data to judge the effectiveness of the intervention and provide a basis for making determinations regarding its continued use.
- (j) Student safety. Any behavior management technique and/or discipline management practice must be implemented in such a way as to protect the health and safety of the student and others. No discipline management practice may be calculated to inflict injury, cause harm, demean, or deprive the student of basic human necessities.
- (k) Data reporting. With the exception of actions covered by subsection (f) of this section, data regarding the use of restraint must be electronically reported to the Texas Education Agency in accordance with reporting standards specified by the agency.
- (l) The provisions adopted under this section do not apply to:
 - (1) a peace officer while performing law enforcement duties;
 - (2) juvenile probation, detention, or corrections personnel; or
 - (3) an educational services provider with whom a student is placed by a judicial authority, unless the services are provided in an educational program of a school district.

Source: The provisions of the §89.1053 adopted to be effective August 1, 2002, 27 TexReg 3061; amended to be effective June 7, 2004, 29 TexReg 5608; amended to be effective November 11, 2007, 32 TexReg 8129. Public Education Information Management System (PEIMS) Data Collection Related to Restraint and Seclusion.

435 SPECIAL EDUCATION CHILD RESTRAINT—STUDENT

- Only students with disabilities served by the special education program who are restrained for emergency purposes and who also have a 405 record or a 400 record with mainstream days reported will have a 435 record reported. Each instance of restraint for a student with a disability served by the special education program as referenced above must be reported through the 435 record.
- The Texas School for the Deaf, Texas School for the Blind and Visually Impaired and the Texas Youth Commission are also required to report 435 records for their respective populations related to restraint events that occur within the educational program of the school and subject to any limitations imposed by TEC 37.0021.
- Data elements DISTRICT-ID, STUDENT-ID, INSTRUCTIONAL-SETTING-CODE, REPORTING-PERIOD-INDICATOR-CODE, and PRIMARY-DISABILITY-CODE are to be used on the record according to previously established definitions. The code entered on the record should reflect current data for the student as of the time the restraint occurs.
- CAMPUS-ID-OF-RESTRAINT-EVENT indicates the unique campus identification number of the campus within the district at which a special education student was restrained. This campus ID may or may not reflect the campus ID where the special education student was enrolled but does reflect the campus ID at which the special education student was restrained. If the restraint instance does not take place on a school campus, the CAMPUS-ID-OF-RESTRAINT-EVENT should reflect the CAMPUS-ID-OF-ENROLLMENT for the student. If the restraint occurs on a juvenile justice alternative education programs (JJAEP) campus, the corresponding restraint record must be reported by the student's home district and campus.
- RESTRAINT-INSTANCE-NUMBER indicates a restraint instance that occurs on a campus. It allows a district or campus to assign a unique identification number to a restraint event to distinguish

between multiple instances of restraint that might occur at the same school on the same date for a given student with a disability.

- RESTRAINT-REASON-CODE information reflects the reason for restraint as related to requirements established under 19 TAC §89.1053(b)(1) and §89.1053(c).

19 TAC §89.1053(b)(1) [excerpt]:

(b) Definitions.

(1) Emergency means a situation in which a student's behavior poses a threat of:

(A) imminent, serious physical harm to the student or others; or

(B) imminent, serious property destruction.

19 TAC §89.1053(c) [excerpt]:

(c) Use of restraint. A school employee, volunteer, or independent contractor may use restraint only in an emergency as defined in subsection (b) of this section and with the following limitations.

- DATE-OF-RESTRAINT-EVENT reflects the actual date on which a student with a disability was restrained based on the definitions shown above.
- The number of 435 records submitted for a student must match the documentation found in the student's special education eligibility folder. There is an expectation that the number of 435 records submitted should match the total documentation contained in all student folders regarding the use of restraint for emergency purposes. A comparison of the number of PEIMS 435 records submitted and folder documentation will be subject to monitoring and audit activities.
- The 435 record will be collected in Submission 3.

Informing Parents About the Use of Restraint

Written Summary of Restraint Use Sample Form

The Written Summary of Restraint Use Sample Form has been developed pursuant to Texas Education Code

[§37.0021. Use of Confinement, Restraint, Seclusion, and Time-Out](#) and Texas Administrative Code [§89.1053. Procedures for Use of Restraint and Time-Out](#), specifically §89.1053(e)(3),(4),(5)(A-I). This form is aligned with the [PEIMS](#) Record 435 (Special Education Child Restraint—Student) reporting requirement. Districts may use this form to inform parents about the use of restraint and also to assist in the collection of data to be reported through PEIMS. Districts will be required to submit 435 data with the June 2004 PEIMS submission. The form can be downloaded in MS Word or Adobe Acrobat PDF format: Districts may use this form or create their own form based on the required items reflected in §89.1053(e)(3),(4),(5)(A-I).

English: [Adobe Acrobat PDF](#) | [MS Word](#)

Spanish: [Adobe Acrobat PDF](#) | [MS Word](#)

Professional Development

State Resources for the Use of Positive Behavioral Supports

Established in 2001 in response to Senate Bill 1196, the Texas Behavior Support Initiative (TBSI) is designed to build capacity in Texas schools for the provision of positive behavioral support (PBS) to all students. Region IV Education Service Center (ESC) leads this technical assistance function for the

state. The goal of PBS is to enhance the capacity of schools to educate all students, especially students with challenging behaviors, by adopting a sustained, positive, preventative instructional approach to school wide discipline and behavior management. This approach focuses on teaching and encouraging positive schoolwide behavioral expectations and increasing school capacity to support sustained use of empirically validated practices.

The TBSI training modules are designed to assist campus teams in developing and implementing a wide range of behavior strategies and prevention-based interventions. These skills help educators establish schoolwide, classroom and individual student level systems of support. The TBSI: Schoolwide PBS Project and TBSI Interventions for Statewide with severe behavior were developed based on needs assessment data collected during the 2002–03 school year.)

Use of Stimulus Funds

Agency guidance and presentations related to the use of the IDEA-B Stimulus funds have included Positive Behavioral Interventions and Supports (PBIS) as an important topic to consider.

Data Analysis

District Data Review

Districts may now review their reported restraint data through the Special Education Ad Hoc Reporting System (SPEARS). SPEARS is a dynamic reporting tool designed for accessing and analyzing data related to Special Education in the state of Texas. The data provided are collected from school districts and charter schools by means of the PEIMS and are provided as a service of the Texas Education Agency.

In September 2009, the Agency released information to assist districts in understanding how to run reports on restraint data available in SPEARS. Districts will be able to compare their data at the state and regional levels. The Region 4 Education Service Center is developing a tool to assist districts in understanding how to analyze the restraint data. The Agency will issue an Administrator Addressed Letter in early 2010 to remind districts of all our regulations and efforts in this area.

UTAH

Utah Code § [53A-11-802](#).

Prohibition of corporal punishment—Use of reasonable and necessary physical restraint or force.

(1) A school employee may not inflict or cause the infliction of corporal punishment upon a child who is receiving services from the school, unless written permission has been given by the student's parent or guardian to do so.

(2) This section does not prohibit the use of reasonable and necessary physical restraint or force in self defense or otherwise appropriate to the circumstances to:

(a) obtain possession of a weapon or other dangerous object in the possession or under the control of a child;

(b) protect the child or another person from physical injury;

(c) remove from a situation a child who is violent or disruptive; or

(d) protect property from being damaged.

(3) (a) Any rule, ordinance, policy, practice, or directive which purports to direct or permit the commission of an act prohibited by this part is void and unenforceable.

(b) An employee may not be subjected to any sanction for failure or refusal to commit an act prohibited under this part.

(4) A parochial or private school may exempt itself from the provisions of this section by adopting a policy to that effect and notifying the parents or guardians of children in the school of the exemption.

[53A-11-805](#). Exception.

Behavior reduction intervention which is in compliance with Section [76-2-401](#) and with state and local rules adopted under Section [53A-15-301](#) is excerpted from this part.

Utah State Office of Education (USOE) Board Rule *R277-609-3*.

School District, School and Charter School Discipline Plan Responsibilities.

A. Each school district, or school and each charter school shall develop and implement a board approved comprehensive school district, school or charter school plan or policy for student and classroom management, and school discipline. The plan shall include:

(1) the definitions of Section 53A-11-910;

(2) written standards for student behavior expectations, including school and classroom management;

(3) effective instructional practices for teaching student expectations, including self-discipline, citizenship, civic skills, and social skills;

(4) systematic methods for reinforcement of expected behaviors and uniform methods for correction of student behavior;

(5) uniform methods for at least annual school level data-based evaluations of efficiency and effectiveness;

(6) an ongoing staff development program related to development of student behavior expectations, effective instructional practices for teaching and reinforcing behavior expectations, effective intervention strategies, and effective strategies for evaluation of the efficiency and effectiveness of interventions;

(7) policies and procedures relating to the use and abuse of alcohol and controlled substances by students;

(8) policies to define, prohibit, and intervene in bullying, including the requirement of awareness and intervention strategies, including training for social skills, for students, parents, and school staff. The policies shall:

(a) provide for training specific to overt aggression that may include physical fighting such as punching, shoving, kicking, and verbal threatening behavior, such as name calling, or both physical and verbal aggression or threatening behavior;

(b) provide for training specific to relational aggression or indirect, covert, or social aggression, including rumor spreading, intimidation, enlisting a friend to assault a child, and social isolation;

(c) provide training and education specific to bullying based upon students':

(i) actual or perceived identities;

(ii) conformance or failure to conform with stereotypes.

(d) provide for training specific to cyber bullying, including use of email, web pages, text messaging, instant messaging, three-way calling or messaging or any other electronic means for aggression inside or outside of school;

(e) provide for student assessment of the prevalence of bullying in school districts, schools and charter schools, specifically locations where students are unsafe and additional adult supervision may be required, such as playgrounds, hallways, and lunch areas;

(f) complement existing safe and drug free school policies and school harassment and hazing policies; and

(g) include strategies for providing students and staff, including aides, custodians, kitchen and lunchroom workers, secretaries, paraprofessionals, and coaches, with awareness and intervention skills such as social skills training.

B. The plan shall also provide direction to school districts for dealing with disruptive students. This part of the plan shall:

(1) direct schools to determine the range of behaviors and establish the continuum of administrative procedures that may be used by school personnel to address the behavior of habitually disruptive students;

(2) provide for identification, by position(s), of individual(s) designated to issue notices of disruptive student behavior; and

(3) provide for documentation of disruptive student behavior prior to referral of disruptive students to juvenile court.

C. School district or school plans or sections of plans, including directives about bullying and disruptive students, shall also:

(1) include strategies to provide for necessary adult supervision;

(2) be clearly written and consistently enforced; and

(3) include administration, instruction and support staff, students, parents, community council and other community members in policy development, training and prevention implementation so as to create a community sense of participation, ownership, support and responsibility.

USOE R277-609-4.

A. School districts, schools and charter schools shall implement strategies and policies consistent with their plans.

B. School districts, schools and charter schools shall develop, use and monitor a continuum of intervention strategies to assist students whose behavior in school falls repeatedly short of reasonable expectations, including teaching student behavior expectations, reinforcing student behavior expectations, re-teaching behavior expectations, followed by effective, evidence-based interventions matched to student needs prior to administrative referral.

C. As part of any suspension or expulsion process that results in court involvement, once a school district, school or charter school receives information from the courts that disruptive student behavior will result in court action, the school district, school or charter school shall provide a formal written assessment of habitually disruptive students. Assessment information shall be used to connect parents and students with supportive school and community resources.

D. Nothing in state law or this rule restricts local districts/charter schools from implementing policies to allow for suspension of students of any age consistent with due process and with all requirements of Individuals with Disabilities Education Act 2004.

(Attachment 2: USOE Board Rule at a Glance Document)

USOE Special Education Rules

III.I. Development, Review, and Revision of the IEP (§300.324)

b. The IEP team, in conducting a meeting to develop, review and, if appropriate, revise a student's IEP, must consider the following special factors:

(5) in the case of a student whose behavior impedes the student's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.

(a) When making decisions on behavioral interventions, the IEP team must refer to the USOE *Special Education Least Restrictive Behavior Interventions (LRBI) Guidelines* for information on research-based intervention procedures.

(b) The purpose of the *LRBI Guidelines* related to the use of positive behavioral supports and behavioral interventions in schools is to:

(A) Protect the safety and well being of students with disabilities;

(B) Provide protection for students, teachers, other school personnel, LEAs, and the USOE; and

(C) Ensure that parents are involved in the consideration and selection of behavior interventions to be used with their students.

(c) When an emergency situation occurs that requires the immediate use of moderately or highly intrusive interventions to protect the student or others from harm, the staff shall complete and submit the emergency contact information to the LEA and notify the student's parents with 24 hours.

(d) As appropriate, the student should receive a functional behavioral assessment and behavior intervention services and modifications that are designed to address the behavior (§300.530(d)(1)(ii)).

USOE Special Education Least Restrictive Behavior Interventions (LRBI) Guidelines

Regulations Specific to Seclusion Rooms:

Utah Health Department Rules

- Rule R3922-200-5. Sanitary Facilities and Controls.
- Rule R392-200-6. Construction and Maintenance of Physical Facilities.
- R3922-200-5.1.D.1.J. Walls, floors, and ceilings shall be light colored, smooth, non-absorbent, easily cleanable, and shall be kept clean and maintained in good repair.
- R392-200-6.A.1. Construction shall be of sound construction with floors, walls, and ceilings constructed of nonporous, cleanable material and shall be maintained in good condition.

Utah Fire Marshal Rules

- R710. Public Safety, Fire Marshal.
- R710-4. Buildings Under the Jurisdiction of the State Fire Prevention Board.
- 3.12 Time Out and Seclusion Rooms
- 3.12.1. Time Out and Seclusion Rooms are allowed in occupancies fully protected by an automatic fire sprinkler system and fire alarm system.
- 3.12.2. A vision panel shall be provided in the room door for observation purposes.
- 3.12.3. Time Out and Seclusion Room doors may not be fitted with a lock. Unless it is a self-releasing latch that releases automatically if not physically held in the locked position by an individual on the outside of the door.
- 3.12.4. Time Out and Seclusion Rooms shall be located where a responsible adult can maintain visual monitoring of the person and room.

(Attachment 4 & 5: USOE Best Practice Guidelines on the Construction of Seclusion Rooms & Blueprints)

An instructional package has been developed by USOE with regard to time-out procedures both exclusionary and seclusionary. These materials are available to all LEA's within the state on request. If it is determined to be helpful with regard to the response for Secretary Duncan's request, the instructional package can be provided through the mail.

Positive Behavioral Interventions and Supports in Utah:

Utah's Academic, Behavior & Coaching Initiative (ABC-UBI) is a set of personnel development activities sponsored by the Utah State Office of Education, the Utah Personnel Development Center and the Utah State Personnel Development Improvement Grant. ABC-UBI is committed to the implementation of Positive Behavioral Interventions and Supports (PBIS) and effective behavioral support systems in Utah schools. Adhering to behavioral research, ABC-UBI follows a schoolwide model of prevention of problem behaviors and support of positive behaviors. The training activities under ABC-UBI have taken place within Utah school systems for the past seven years. For further information please refer to www.updc.org/abc .

State of Utah House Bills 286 S2 & 212 (Current charges reflect)

R277. Education, Administration.

R277—609. Standards for School District, School and Charter School Discipline Plans

R277-609-2.B. The purpose of this rule is to define bullying and outline requirements for school discipline plans and policies which school districts and charter schools shall meet to qualify for funding.

R277-609-2. Authority and Purpose

Section 53A-11-901 which directs local school boards and charter school governing boards to adopt conduct and discipline policies and directs the Board to develop model policies to assist local school boards and charter school governing boards.

R277-609-3. School District, School and Charter School

Responsibility to Develop Plans

A. Each school district, or school and each charter school shall develop and implement a board approved comprehensive school district, school or charter school plan or policy for student and classroom management, and school discipline. The plan shall include:

- (1) the definitions of Section 53A-11-910;
- (2) written standards for student behavior expectations, including school and classroom management;
- (3) effective instructional practices for teaching student expectations, including: self-discipline, citizenship, civic skills, and social skills;
- (4) systematic methods for reinforcement of expected behaviors and uniform methods for correction of student behavior;
- (5) uniform methods for at least annual school level data-base evaluations of efficiency and effectiveness;
- (6) an ongoing staff development program related to development of student behavior expectations, effective instructional practices for teaching and reinforcing behavior expectations, effective intervention strategies, and effective strategies for evaluation of the efficiency and effectiveness of interventions;
- (7) policies and procedures relating to the use and abuse of alcohol and controlled substances by students;
- (8) policies to define, prohibit, and intervene in bullying, including the requirement of awareness and intervention strategies, including training for social skills, for students and school staff.

The policies shall:

- (a) provide for training specific to overt aggression that may include physical fighting such as punching, shoving, kicking, and verbal threatening behavior, such as name calling, or both physical and verbal aggression or threatening behavior;
- (b) provide for training specific to relational aggression or indirect, covert, or social aggression, including rumor spreading, intimidation, enlisting a friend to assault a child, and social isolation;
- (c) provide for training specific to cyber bullying, including use of email, web pages, text messaging, instant messaging, three-way calling or messaging or any other electronic means for aggression inside or outside of school;

- (d) provide for student assessment of the prevalence of bullying in school districts, schools and charter schools, specifically locations where students are unsafe and additional adult supervision may be required, such as playgrounds, hallways, and lunch areas;
- (e) complement existing safe and drug free school policies and school harassment and hazing policies;
- (f) include strategies for providing students and staff, including aides, custodians, kitchen and lunchroom workers, secretaries, paraprofessionals, and coaches, with awareness and intervention skills such as social skills training;
- (g) direct schools to determine the range of behaviors and establish the continuum of administrative procedures that may be used by school personnel to address the behavior of habitually disruptive students;
- (h) provide for identification, by position(s), of individual(s) designated to issue notices of disruptive student behavior;
- (i) provide for documentation of disruptive student behavior
- ([g]j) include strategies to provide for necessary adult supervision;
- ([h]k) be clearly written and consistently enforced; and
- ([g]l) include administration, instruction and support staff, students, parents, community council and other community members in policy development, training and prevention implementation so as to create a community sense of participation, ownership, support and responsibility.

R277-609-4. Implementation

- A. School districts, schools and charter schools shall implement strategies and policies consistent with their plans.
- B. School districts, schools and charter schools shall develop, use and monitor a continuum of intervention strategies to assist students whose behavior in school falls repeatedly short of reasonable expectations, including teaching student behavior expectations, reinforcing student behavior expectations, reteaching behavior expectations, followed by effective, evidence based interventions matched to student needs prior to administrative referral.
- C. As part of any suspension or expulsion process that results in court involvement, once a school district, school or charter school receives information from the courts that disruptive student behavior will result in court action, the school district, school or charter school shall provide a formal written assessment of habitually disruptive students. Assessment information shall be used to connect parents and students with supportive school and community resources.
- D. Nothing in state law or this rule restricts local districts/charter schools from implementing policies to allow for suspension of students of any age consistent with due process and with all requirements of Individuals with Disabilities Education Act 2004.

R277-609-5. Parent/Guardian Notification and Court Referral

- A. Through school administrative and juvenile court referral consequences, school district, and school and charter school policies shall provide procedures for qualifying minors and their parents to participate in decisions regarding consequences for disruptive student behavior.
- B. Policies shall provide for notice to parents, information about resources available to assist parents in resolving school-age minors' disruptive behavior.
- C. Policies shall provide for notices of disruptive behavior to be issued by schools to qualifying minor(s) and parent(s) consistent with:

(1) numbers of disruptions and timelines in accordance with Sections 53A-11-901 (3) and (5);

(2) school resources available; and

(3) cooperation from the appropriate juvenile court in accessing student school records, including attendance, grades, behavioral reports and other available student school data.

D. Policies shall provide due process procedures for minors and parents to contest allegations and citations of disruptive student behavior.

R277-609-6 USOE Model Policies

The USOE shall develop, review regularly, and provide to local school boards and charter school governing boards model policies to address disruptive student behavior and appropriate consequences.

VERMONT

A. Legislation/Regulation

There is currently neither legislation nor regulations governing the use of these procedures with students. Both restraint and seclusion are currently being used in Vermont, and the guidelines or directions (if any) for use exist at the local level. There is discussion about initiating rulemaking in spring 2010.

B. Existing Programs

Over 50 Vermont schools are currently engaged in the Vermont DOE's Positive Behavioral Intervention and Support (PBIS) initiative. There are approximately 20 new schools beginning this work during the current school year. Vermont has a group of consultants, the BEST team, who provide extensive training and technical assistance to school personnel and others regarding students with challenging behaviors. In addition to the PBIS initiative, this group trains school personnel in Crisis Prevention and Intervention and Life Space Crisis Prevention. A BEST institute is held every June. Schools send teams to this event and receive training and engage in planning about best practices for working with students with challenging behaviors.

C. Programs in Development

A project by the Vermont Family Network has been supported by the Vermont Developmental Disabilities Council for about one and half years to explore these strategies, referred to as Restrictive Behavioral Interventions (RBI); collaborate with partner organizations; and possibly draft state guidelines and legislation. It is summarized below. In addition, a letter to the legislature drafted by the project coordinator, Claudia Inés Pringles, is provided below.

Status of Project:

- During the 2008–09 Legislative Session, House Bill 400 was drafted by Vermont Protection and Advocacy and the Disability Law Project to address Restrictive Behavioral Interventions.
- At a March 12, 2009, meeting, a stakeholder meeting was held and a decision was reached to work collaboratively on building consensus for legislation.
- In May, the letter to legislators was drafted, requesting a hold on House Bill 400 (to give more time for collaborative effort). The project coordinator scheduled three separate focus groups that would include representation from groups with experience in this area with these students. Groups were composed of 10 to 12 participants and included behaviorists. Since then, two groups have met twice, and one only once. The goal is to put together language for legislation.
- Three areas are being discussed:
 - Physical restraints, the prone, face-down position being the most contentious. The position that is being put forward is that it should be only used for a crisis situation, not as a regular intervention.
 - Data collection. How schools report on incidents. There was a reporting requirement, but schools were not reporting accurately or consistently and the requirement was dropped.
 - Positive Behavioral Intervention and Support and how to promote it. Functional Behavioral Assessments, Behavior Plans, etc. are critical strategies to the DOE which has been promoting their use on a volunteer basis.

- There will be another round of focus group meetings, and then in October, there will be a consensus meeting to gather the three groups and come to consensus on the three areas.
- In November, this group agreed to go forward with rule making to address the issue. There were several areas where consensus was not reached. It is unclear at this time whether one of the organizations that sent representatives plans to introduce legislation.
- A meeting was held with the new commissioner; the director of Student Support Services; and representatives of the Vermont Family Network, the Federation for Families for Children's Mental Health, and the Disability Law Project. The commissioner stated a strong preference (at the time) for rule making rather than legislation.
- Because there are various parent factions, an Autism Parent Summit will be conducted in September for all the support groups to inform, educate, and generate investment.

VIRGINIA

Current Statutes, Regulations, Policies, and/or Guidance

Statutes

8 Va. Admin. Code § 20-670-130 (Education; State Board of Education; Regulation Governing the Operation of Private Day School for Students with Disabilities; Program Requirements)

Existing Regulations Governing the Operation of Proprietary Schools and Issuing of Agent Permits, 8 VAC 20-13, provides the basis upon which private trade, technical, business, and correspondence schools, and private day schools for children with disabilities can be established and operated within the Commonwealth. Within the statute the term physical restraint is defined. Policies and procedures that are required for behavior management programs are also specified in this statute.

(see

<http://74.125.95.132/search?q=cache:9H4Toa6u5doJ:legis.state.va.us/codecomm/register/vol20/iss24/f8v20670.doc+%2220-670-130%22+and+%22virginia%22&cd=4&hl=en&ct=clnk&gl=us>)

Guidelines

The Virginia Department of Education's Office of Special Education Instructional Services issued guidelines for Virginia Public Schools in November 2005. The document is titled "Guidelines for the Development of Policies and Procedures for Managing Student Behaviors in Emergency Situations in Virginia Public Schools Focusing on Physical Restraint and Seclusion."

Recommended best practices in policy, regulation or guidance documents

Virginia demonstrates evidence (bulleted items below) of each of the following recommended best practices in the amendment. The source for each bulleted item is the "Guidelines for the Development of Policies and Procedures for Managing Student Behaviors in Emergency Situations in Virginia Public Schools Focusing on Physical Restraint and Seclusion." Specific guidelines follow each bullet (in italics).

- Clear definitions of relevant terms such as 'seclusion' and 'restraint' and 'emergency'
 - Exclusion** means the removal of a student to a supervised area for a limited period of time during which the student has an opportunity to regain self-control and is not receiving instruction including special education, related services, or support.*
 - Physical Restraint** means the use of approved physical interventions or "hands-on" holds by trained staff to prevent a student from moving his/her body to engage in a behavior that places him/her or others at risk of physical harm. Physical restraint does not include:*
 - *briefly holding a student in order to calm or comfort the student; or*
 - *holding a student's hand or arm to escort the student safely from one area to another*
 - Emergency** means a situation that requires a person(s) to take immediate action to avoid harm, injury, or death to a student or to others, or to avoid substantial property damage*
- Clear limitations on what seclusion and restraint techniques specifically are limited or not allowed
 - School divisions should have written policies and procedures that include, but are not limited to:*

- *Methods for preventing student violence, self-injurious behavior, and suicide, including de-escalation of potentially dangerous behavior occurring among groups of students or with an individual student,*
- *Methods for identifying child abuse and/or neglect and the reporting requirements for such occurrences,*

A policy clearly stating that corporal punishment and abusive techniques and interventions are not authorized, permitted, or condoned in Virginia's public schools,

A policy stating that corporal punishment is prohibited by state law, as well as the identification of the consequences prescribed by law,

A policy regarding physical restraint provides:

- *a determination of the behavior management program adopted by the school division and advising parents and students of the program*
- *a description and explanation of the school division's or program's criteria for the use of physical restraint*
- *a statement that the use of physical restraint is allowed only in emergency situations*
- *the conditions under which physical restraint is allowed- training and certification requirements*
- *incident reporting requirements*
- *follow-up procedures after each incident*
- *a procedure for receiving and investigating complaints regarding the use of physical restraint, and*
- *a statement of how and when the parents will be informed of each occurrence of physical restraint.*

See Appendix C for a sample format for a policy. This sample format is not considered a model to be duplicated without considering the particular needs of the school division. It is not intended to supplant or replace any existing policy, but rather to provide a structure for divisions that will be developing new or revised policies.

A policy regarding the use of seclusion that provides:

- *a description and explanation of the school division's or program's criteria for the use of seclusion,*
- *a statement that the use of seclusion is allowed only in emergency situations,*
- *the conditions under which seclusion is allowed,*
- *training requirements,*
- *room and monitoring requirements,*
- *incident reporting requirements,*
- *follow-up procedures after each incident,*
- *a procedure for receiving and investigating complaints regarding the use of seclusion, and*
- *a statement of how and when the parents will be informed of each occurrence of seclusion.*

A policy identifying corrective measures to be followed when a review reveals improper implementation procedures.

A policy statement assuring the provision of students' rights

- Specifies when seclusion and restraint techniques may be used (for example, that seclusion and restraint only be used as a physical safety procedure, or if permitted as 'treatment' or 'behavioral intervention' in limited circumstances, the circumstances under which this is permitted)

Exclusion means the removal of a student to a supervised area for a limited period of time during which the **student** has an opportunity to regain self-control and is not receiving instruction including special education, related services, or support

Removal means excluding the student from the place where current educational services are provided

Long-term removal means suspension of a student with a disability to an alternative setting for more than 10 consecutive school days in a school year; or, when the student is subjected to a series of removals that constitute a pattern because they cumulate to more than 10 school days in a school year

Short-term removal means suspending a student with a disability to an alternative setting for 10 school days or less in a school year. It also applies to removals when the cumulative amount is 10 school days, but not consecutive, and does not constitute a pattern or change of placement.

Time-out means assisting a student to regain control by removing the student from his immediate environment to a different, open location until the student is calm or the problem behavior has subsided. In some instances, the student may self-select this procedure

No particular behavior management program is recommended or endorsed by the Virginia Department of Education. The selection of a behavior management program is a school division decision.

- If seclusion and restraint techniques are permitted as behavioral interventions, the state education agency (SEA) addresses these interventions in the context of behavioral intervention plans

Behavioral Intervention Plan (BIP) means a plan that utilizes positive behavioral interventions and supports to address behaviors that interfere with the learning of a student, the learning of others, or require disciplinary action

Functional Behavioral Assessment (FBA) means the systematic process of gathering information to guide the development of a positive, effective, and efficient behavioral intervention plan for a problem behavior. The process includes:

- a description of the problem behavior,
 - the identification of environmental and other factors and settings that contribute to or predict the occurrence, nonoccurrence, and maintenance of the behavior overtime, and
 - the determination of the underlying cause or functions of a student's behavior that impede the learning of the student with a disability or the learning of the student's peers
- Describes how the State uses the data and whether the data are publicly reported

Reporting

In the reporting process the procedures would include at a minimum:

- *the procedures for informing school/program administration,*
- *the procedures for informing parents, and*
- *the procedures for transmitting the report to a review committee where a determination would be made on whether the school division's policies and procedures have been followed.*

Investigation of Injuries and Complaints

School divisions should develop policies and procedures that detail the process by which injuries and/or complaints are investigated and reported to local authorities, if required by law. The policies and procedures should address injuries and complaints filed by all parties, including educational professionals, parents, and students. It is essential that all injuries, incidents, accidents, or other related activities be fully documented at the time they occur. In any complaint process, it is essential that all parties involved be identified, the time of actions be recorded fully, the events and behaviors preceding the incident be investigated, and any other relevant data or evidence be documented. Copies of documentation of incidents should be maintained in the appropriate records and provided to the school and the central administration as set forth in division policy or as otherwise required by the school division or by law. School administration should ensure that any incidents with special reporting requirements are promptly reported and appropriately documented.

See Appendices A and B for sample reporting forms that include the required elements of an incident report.

- *Requires effective personnel training in the administration of seclusion and restraint of students, including clearly indicating for whom the training is targeted, what type of training, how frequently personnel are trained, and the duration of the training*

Training and Staff Development

Each principal or program administrator should determine a time and method to ensure that all staff, personnel, parents, and students are familiar with the school division's policies and procedures regarding the use of behavior management techniques, physical restraint, and seclusion in emergency situations.

The school division should ensure that everyone concerned has information on these interventions, and should decide who needs to receive specific training. Training should occur within the first month of each school year for all staff and, for employees hired after the school year begins, within one month of their employment. Periodic in-service training should be scheduled to update information and to give staff an opportunity to practice and enhance skills. Attendance at each training should be documented. At a minimum, training should include information on the following:

Examples of severe behavior requiring interventions are provided for training purposes, in various behavior management programs.

- *the identification and implementation of the behavior management program(s) adopted by the school division.*
 - *procedures to be followed when informing students and parents of the adopted program and the implementation procedures,*
 - *the local policies on the use of behavior management techniques, physical restraint, and seclusion,*

- *interventions and alternatives that may preclude the need for physical restraint and seclusion, e.g. de-escalation of problematic behavior,*
- *procedures to be followed when physical restraint or seclusion is necessary,*
- *related safety considerations, including information regarding the increased risk of injury to a student when physical restraint is implemented or a student is secluded,*
- *administering physical restraint and implementing seclusion procedures in accordance with established medical or psychological limitations and when applicable, as specified in a student's Behavioral Intervention Plan (BIP),*
- *identification of staff who have received training and are certified to administer procedures in the use of physical restraint and seclusion, and*
- *procedures to be followed when documenting and reporting incidents of physical restraint or seclusion to parents and school administration.*

School divisions should develop policies and procedures regarding the amount of training that identified staff will need to administer physical restraint and seclusion effectively and safely while also protecting and respecting the dignity and rights of the individual student involved. The training should include, but not be limited to:

- *specific instruction to meet licensure/certification requirements of individual behavior management programs,*
 - *strategies and techniques for de-escalation,*
 - *clearly identifiable conditions under which physical restraint and seclusion are allowed,*
 - *procedures to be followed when physical restraint and seclusion are implemented,*
 - *opportunities to practice through simulations, prior to actual use,*
 - *demonstrations of proficiency in administering physical restraint and implementing seclusion procedures,*
 - *instruction on the effects of physical restraint and seclusion on the student involved, monitoring for physical signs of distress, and procedures for obtaining medical assistance,*
 - *instruction regarding incident documentation and reporting requirements, and the procedures for investigating injuries and complaints, and*
 - *annual and periodic in-service training scheduled to update, practice and enhance skills.*
- Provides for monitoring to ensure adherence to State law, regulations, policies and guidance

Policy Implementation and Monitoring

When a policy has been drafted and approved, whether existing, revised, or new, that policy is implemented through the division's procedures and any related methods for monitoring the use of those procedures.

Essential to this process are:

- *ensuring that proper documentation exists,*
- *ensuring that reporting requirements are in place and are properly used,*
- *ensuring training of building and program staff on the policies and procedures,*
- *investigating incidents, and*

- *resolving complaints.*
- Ensures that the use of these interventions is fully documented in a form accessible to parents when requested

Documentation

In the documentation process, each incident report would require at a minimum:

incident, including the date, time, location of incident, persons involved partially and fully, and other relevant details,

a justification statement setting forth why physical restraint, seclusion, or other behavioral interventions were necessary,

The school division should consult the school board attorney for a review of its implementation and monitoring procedures.

Multiple behavioral interventions should not be merged into a single report.

- *a substantial explanation why less intrusive interventions were deemed inappropriate or inadequate, and*
- *a comprehensive list of persons who must be informed or notified of the incident.*

Future Plans

The Virginia Department of Education (VDOE) will continue to work with Virginia's State Special Education Advisory Committee (SSEAC) to monitor implementation of appropriate physical restraint and seclusion practices and related guidance. VDOE is not requesting assistance in revising or strengthening policy or regulations at this time, but they are interested in information that may become available as a result of this compilation reports from the states.

Additional Information

The VDOE, in collaboration with SSEAC, surveyed Virginia school divisions (LEAs) and, based on the information compiled from that survey, decided school divisions needed guidance in writing policies and procedures on physical restraint and seclusion. The guidance document was prepared and distributed to school divisions in 2005. The Virginia Constitution limits the authority of the Virginia Board of Education and its department of education to impose regulations and policies on local school divisions. The preface for the guidelines states, "These guidelines are informational and are neither mandated nor required."

A Superintendent's Memo requesting that all school divisions review the guidelines relevant to their policies and practices was released in October 2009.

(see http://www.doe.virginia.gov/info_centers/administrators/superintendents_memos/2009/294-09.shtml)

U.S. VIRGIN ISLANDS

Draft Policy on Restraint and Seclusion

Virgin Islands Department of Education

September 2009

I. Background Information Supporting Need for Policy

All students in the Virgin Islands are entitled to a school environment that encourages learning, promotes student well-being, and encourages relationship building in a caring and safe environment. Nationally, there have been a number of incidents of injuries and deaths as a result of improper use of restraint and seclusion of children in hospitals, residential treatment centers, and in both public and private educational settings. Because of this national issue, in 1999, the General Accounting Office (GAO) was directed by Congress to collect data on institutional practices to review existing research, and to report its findings to Congress and make policy recommendations (General Accounting Office, 1999). Since the GAO's report, other national studies have been launched to investigate what policies, guidelines and regulations states have in place to monitor and regulate the use of restraint and seclusion techniques in other educational settings, such as schools (May 19, 2009, GAO study: "Seclusions and Restraints: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers"). In 2009, the National Disability Rights Network published an investigative report called "School is Not Supposed to Hurt: Investigative Report on Abusive Restraint and Seclusion in Schools" which described incidents of injury and death sustained by children in schools due to prolonged and/or inappropriate restraint and/or seclusion by school staff. The May 18, 2009 GAO report, in addition to reviewing whether states had policies or guidelines for restraint and seclusion, found that techniques of restraint and seclusion were often used on the most vulnerable children and involved struggling, interruption of breathing, and pressure placed on children's chests for dangerous and prolonged periods of time.

As a result of the reports from the GAO and the National Disability Rights Network, there has been increased attention to this issue, including a plea from the U.S. Department of Education. In a letter from the U.S. Department of Education's Secretary, Arne Duncan, to Chief State School Officers, he urged each state to review or develop policies and guidelines "to ensure that every student in every school . . . is safe and protected from being unnecessarily or inappropriately restrained or secluded." (July 31, 2009 Letter addressed to Chief State School Officers).

It is against this background that this policy is written.

II. Current Legislation and Policy in Effect in the Virgin Islands

There are no policies, procedures, laws or guidelines on seclusion or restraint currently in effect in the Virgin Islands. There are however, two (2) statutory provisions, one on discipline and one on punishment, and a policy from 1993 on the use of corporal punishment. It is imperative to recognize and understand that restraint and seclusion are neither discipline nor punishment. Notwithstanding, the statutory provisions on discipline and punishment and the corporal punishment policy are important to restate herein in order to understand what they do and do not say and to recognize their limitations and required reporting mandates.

A. Statutory Provisions

1. Title 17, Chapter 11, § 130 "Authority to discipline children"

All principals and teachers in the public schools shall have the right to exercise the same authority, as to conduct and behavior, over pupils attending their schools during the time they are in attendance, including the time required in going to and from their homes, as parents, guardians or persons in parental relations to such pupils.

2. Title 17, Chapter 9, Subchapter 1, § 87 "Punishment of pupils by school authorities"

All principals and teachers in the public schools in the Virgin Islands shall have the right to exercise the same authority, as to conduct and behavior, over pupils attending their schools during the time they are in attendance, including the time required in going to and from their homes, as parents, guardians, or persons in parental relation to such pupils.

B. Policy Memorandum No. 008-94 (July 14, 1993)

Issued to Insular Superintendents from Commissioner of Education

Subject: Corporal Punishment

Rationale: The doctrine of *in loco parentis* gives the Government of the Virgin Islands broad powers to protect the property interests and the persons of children, and by this policy, the Department of Education expressly recognizes this authority in its public schools. Although authorized by law, our administrators must implement alternatives to corporal punishment.

Policy: Punishment of pupils by school authorities:

1. Corporal punishment is the discipline of **last resort**. Emphasis must be placed on changing the student's behavior by means other than imposing physical corporal punishment. The school official imposing such discipline must document each alternative offered to the student prior to administering physical punishment. This documentation must be recorded and submitted to the Insular Superintendent. (Exhibit omitted).

2. If corporal punishment is administered, the law provides that all principals and teachers in the public schools in the Virgin Islands shall have the right to exercise the same authority, as to conduct and behavior, over pupils attending their schools during the time they are in attendance, including the time required in going to and from their homes, as parents, guardians, or persons in parental relation to such pupils.

3. The District must ascertain, before any discipline is administered to a student with a disability and before any change in the current educational placement is made, whether the misconduct bears any relationship to the student's disability. The "stay put" provision of the "Individuals with Disabilities Act" (IDEA), 20 USC 1400 et. seq., mandates that the student remain in the current placement pending review proceedings of the disruptive conduct.

4. Remember, although the law provides for corporal punishment, any school official who exercises this right must do so with moderate restraint and correction. No one is to use excessive force on a student or such force that could amount to an assault and battery. Excessive force defeats the inflicter [sic] of the normal protections under this law by removing governmental immunity and making the inflicter [sic] personally liable for costs and attorneys fees.

Taken together, the two (2) statutory provisions on discipline and punishment and the policy on corporal punishment are permissive in nature but in light of the policy on corporal punishment, their intent is that such methods are to be utilized as a last resort. Consistent with the review of studies, investigative

reports, literature review, and the review of legal issues conducted by Congressional Research Service (“The Use of Seclusion and Restraint in Public Schools: The Legal Issues”, by Nancy L. Jones and Jody Feder, April 14, 2009) neither restraint nor seclusion should be used a means of punishment. Instead, both “techniques” are to be utilized as emergency measures for only so long as it takes to remove the threat of imminent harm which precipitated the use of the restraint or seclusion, or for the student to regain control.

III. Definitions⁸

A. Restraint is generally broken down into three (3) categories: mechanical, chemical and physical⁹.

1. *Mechanical Restraint*: Mechanical restraint involves the use of any device or object to limit an individual’s ability to move or to prevent or manage out of control behavior. The types of devices or objects associated with mechanical restraint have included without limitation: tape, ropes, weights, and weighted blankets. In law enforcement situations, handcuffs are a form of mechanical restraint and in clinical hospitals items such as straps and straightjackets are the types of mechanical restraints most frequently utilized.

For purposes of this policy, the appropriate use of handcuffs by duly authorized law enforcement officers when employed in a manner consistent with police department policies and procedures are not to be considered use of mechanical restraint. Similarly, properly prescribed and appropriately used supports and aids for students to assist and provide support for their ability to learn when ordered by physicians, occupational therapists, or physical therapists are not to be considered mechanical restraints. Also, seat belts and other safety devices when used for their appropriate safety purposes are not considered mechanical restraints for purposes of this policy.

⁸ Restraint and Seclusion techniques originated in hospital and mental health treatment centers. As a result, most entities who have sought to define restraint and seclusion have based their definitions on existing legislation in the mental health care arena. The definitions found in the Children’s Health Act of 2000 (42 USC §§ 284 *et seq.*, as amended,) seem to be the most widely accepted and used definitions of restraint and seclusion. See Part H-Requirements Relating to the Rights of Residents of Certain Facilities, Section 591 (d) of H.R. 4365.

⁹ Primary definitions are based on The Council for Children with Behavioral Disorders (CCBD) Position Summary on The Use of Physical Restraint Procedures in School Settings (revised and approved by the Executive Committee on 7-08-09).

2. Chemical restraint: Chemical restraint is the use of medication for the sole purpose of controlling behavior or restricting freedom of movement. This does not include medication prescribed by a physician and administered according to that physician's directions (including but not limited to medication for disabilities and health conditions such as: seizure disorders, hyperactivity, bi-polar disorder, HIV, diabetes, etc.).

3. Physical restraint: Physical restraint is also sometimes referred to as therapeutic holding, manual restraint or physical intervention. The International Society of Psychiatric and Mental Health Nurses (1999) define physical restraint as any method of one or more persons restricting another person's freedom of movement, physical activity, or normal access to his/her body. It is a means of controlling that person's movement, reconstituting behavioral control, and establishing and maintaining safety for the out-of-control client, other clients, and staff. (American Academy of Child and Adolescent Psychiatry, 2000). Restraint is a last resort emergency safety intervention. It is an opportunity for the student to regain self-control.

Physical restraint is not intended, for purposes of this policy, to forbid actions undertaken:

- To break up a fight;
- To take a weapon away from a student;
- To briefly hold a student by an adult in order to calm or comfort;
- To provide the minimum contact necessary to physically escort a student from one area to another;
- To assist a student in completing a task/response if the student does not resist or resistance is minimal in intensity or duration; or
- To hold a student for a brief time in order to prevent an impulsive behavior that threatens the student's immediate safety (such as running in front of a car).

B. Seclusion is the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving. This includes situations where a door is locked, as well as where

the door is blocked by other objects or held by staff. Any time a student is involuntarily alone in a room and prevented from leaving should be considered seclusion.¹⁰ Timeout should not be seclusion.

IV. Use of Restraint and Seclusion in School Settings

A. General Principles

Restraint and Seclusion should rarely, if at all, be used in school settings. If used, these techniques should only be used by trained personnel and only in emergency situations.

1. Emergency situations are defined as those situations when:

- The student's actions pose a clear, present, and imminent physical danger to the student or to others;
- Less restrictive measures have not effectively de-escalated the risk of injury;
- The restraint lasts only as long as necessary to resolve the actual risk of imminent danger or harm; (or) the seclusion lasts only as long as necessary to resolve the actual risk of danger or harm or while awaiting law enforcement or crisis intervention personnel's arrival in cases where the student may have had a weapon or committed a crime; and
- In the case of restraint, the degree of force is the minimum needed to protect the student or other persons from imminent bodily injury.

2. Restraint and Seclusion shall not be used:

- For the convenience of staff;
- As a substitute for an educational program;
- As a form of discipline;
- As a form of punishment;
- As a substitute for less restrictive alternatives;
- As a substitute for adequate staffing; or

¹⁰ Definition is from CCBD's Position Summary on The Use of Seclusion in School Settings (Revised and approved by the Executive Committee on 7-08-09).

- As a substitute for staff training in alternative forms of behavioral correction such as positive behavior supports, crisis prevention, and crisis intervention.

3. Timeout. Timeout is not to be used as method of seclusion in that a student's movement should not be physically restricted. If timeout is used, it should be used for limited purposes, for specified times, and should not be in an environment where students have access to positive reinforcement. Timeout should be used as a procedure that allows students to regulate and control their own behavior. Timeout is and should be utilized as removal from positive reinforcement.

A preferred continuum of timeout procedures, which goes from least to most invasive, includes: planned ignoring, withdrawal of materials, contingent observation and exclusionary timeout.¹¹ Any use of timeout must be tempered in time and procedure by considering the student's chronological age, cognitive abilities, other known disabilities, as well as the student's ability to understand the timeout and regain sufficient control to rejoin the group as quickly and as non-disruptively as possible.

4. Emergency use of restraint or seclusion may not be used in place of other more appropriate and less restrictive interventions.

5. Any emergency use of restraint or seclusion must be done in a manner that is:

- Safe;
- Appropriate; and
- Proportionate to and sensitive to the student's:
 - Dignity;

¹¹ Definitions of terms from Michigan Department of Education: Supporting Student Behavior: Standards for the Emergency Use of Seclusion and Restraint (Adopted by the Michigan Board of Education December 12, 2006).

Planned Ignoring: the systematic withdrawal of social attention for a predetermined time period upon the onset of mild levels of problem behavior.

Withdrawal of materials: removal of materials the student is using upon the occurrence of the inappropriate behavior.

Contingent observation: student remains in a position to observe the group without participating or receiving reinforcement for a specified period of time.

Exclusionary timeout: the student is removed from the immediate instructional setting in response to behavior that requires immediate and direct cessation. This form of timeout can take place within the same classroom or in a nearby location that can be supervised by an adult.

- Severity of behavior;
- Chronological and developmental age;
- Physical size;
- Gender;
- Physical condition;
- Medical condition;
- Psychiatric condition; and
- Personal history, including any history of physical, emotional, or sexual abuse.

6. Emergency restraint and seclusion shall not be used any longer than necessary to allow a student to regain control of his/her behavior. The following guidelines shall be the maximum amount of time staff may use a restraint or seclusion procedure unless there are extenuating circumstances. For elementary level students, they should be exposed to no more than fifteen (15) minutes of restraint or seclusion; for middle and high school students, no more than twenty (20) minutes. If these timeframes are insufficient for the student to regain control, then additional staff such as: a crisis intervention specialist, a counselor, psychologist or other professional personnel who are trained in de-escalation techniques are to be brought in to assist, observe and document.

7. Anytime restraint or seclusion is used, it must be documented and reported to the parent or guardian immediately. Similarly, the principal and the insular superintendent must notified in writing by no later than twenty-four (24) hours of each occurrence. Documentation must be in writing, include the names of staff involved, their official positions, the date and time of incident that precipitated the use of the restraint or seclusion procedure, an objective description of the type of restraint or seclusion and how it was used, (length of time, type, amount of force, position of student, position of staff, other alternatives used before resorting to restraint or seclusion) as well as the result of the restraint or seclusion procedure.

8. When the student is able to discuss the incident, if cognitively able, there shall be a debriefing which the parent shall be invited to attend and which should include the principal and relevant. As part of the debriefing, a determination should be made as to whether a functional behavior assessment needs to be conducted and whether a behavior intervention plan needs to be developed (or modified, if one exists) in order to prevent similar situations from occurring in the future.

9. There shall be staff in each school who are trained and currently certified in cardio-pulmonary resuscitation (CPR) and basic first aid. Whenever restraint or seclusion is used, these staff should be called immediately to where the student is being restrained or secluded in the event there is any physical distress.

10. There shall be no use of:

- prone restraint (restraint of a person face down);
- mechanical restraint;
- chemical restraint;
- anything constituting child abuse;
- anything that would deprive a student of basic needs (food, drink, use of bathroom, etc.);
- the intentional application or use of any noxious substance or stimuli which might result in physical pain or extreme discomfort. A noxious substance or stimuli may be one that is generally acknowledged or one that may be specific to that student.

11. Staff shall be trained in de-escalation techniques.

12. School administrators shall be responsible for ensuring that all support staff, paraprofessionals and substitute teachers are knowledgeable of this policy and understand what they can and cannot do. Substitute teachers shall not use any form of restraint or seclusion and shall be trained by school

administrators to call upon regular professional staff for assistance and how to use less restrictive means of controlling acts and behaviors of students while waiting for assistance.

13. There shall be training, no less than annually, for all professional staff, paraprofessional staff, support staff and regularly assigned substitute teachers on this policy, de-escalation techniques and alternative methods to support positive behaviors such as positive behavior supports intervention.

WASHINGTON

Washington has statewide regulations addressing both restraint and seclusion. Restraint is restricted to ensuring the immediate physical safety of the student or others. There is comparable language regarding isolation or seclusion. (See WAC 392-172A-03120 through 03135).

The Washington Office of the Superintendent of Public Instruction (OSPI) requires staff training for any person who will be permitted to use aversive interventions. It also requires that the aversive intervention plan specify who is allowed to use the interventions (WAC 392-172A-03135).

Washington also requires that any determination that a student may require the use of an aversive intervention be made by the IEP team, which must include a team member who understands the appropriate use of an aversive intervention. The determination that a student requires an aversive intervention plan can be used only as a last resort. The use of positive behavioral supports must be used prior to determining that a student would require an aversive intervention plan, and those supports must be described in the plan. The Washington regulations also require districts to document each use of an aversive intervention, the circumstances under which it was used and the length of time of use. Finally, districts must establish a means for evaluating the use of aversive interventions.

More information is available at <http://apps.leg.wa.gov/WAC/default.aspx?cite=392-172A-03120>.

WEST VIRGINIA

Current Statutes, Regulations, Policies and/or Guidance

To date, West Virginia has restraint and seclusion policies that relate only to West Virginia Pre-K settings. West Virginia has not developed policies or procedures that limit the use of restraints and seclusion for any other school-aged population served by West Virginia's public schools.

West Virginia State Policy 2525, Universal Access to a Quality Early Education System, addresses restraint and seclusion for West Virginia Pre-K schools.

Specifically this Policy states:

8.14. Handling Behavior Problems. Staff members and other adults in West Virginia Pre-K Classrooms shall not handle behavior problems by:

8.14.3. Restraining a child by any means other than a firm grasp around a child's arms or legs and then for only as long as is necessary for the child to regain control;

8.14.7. Isolating a child without supervision or placing the child in a dark area

Other state policies, including Policy 2510, mention safe learning environments that foster learning. When a student receives special education services and has an individualized education plan (IEP), all services and interventions should be included in and communicated to parents through that document. Policy 2419 includes considerations for services that are needed to meet a student's needs.

Future Plans

West Virginia does not have any plans to further develop or revise laws, regulations, policies and guidance that affect the use of seclusion and restraint.

Additional Information

Positive Behavior Intervention and Support (PBIS) training, technical assistance, and evaluation of implementation to all participating districts and schools in the state. West Virginia works to promote PBIS as a framework for behavioral interventions that are part of the response to intervention process used with all students. The Office of Special Programs provides information and training related to these processes for districts and schools. At this time, implementation of PBIS is optional and a local decision. The WVDE Healthy Schools Division promotes "Respect & Protect," another discipline program for documenting and reacting to problem behavior.

West Virginia has developed state policies or procedures that limit the use of restraints and seclusion for preschool-age children in public schools (see Current Statutes, Regulations, Policies, and/or Guidance section of report above).

WISCONSIN

Statutes:

§ 118.31,(3) Wis. Statutes

School district employees may use reasonable and necessary force in certain situations.

Guidance:

The Wisconsin Department of Public Instruction (DPI) has issued a document titled "Directives for the Appropriate Use of Seclusion and Physical Restraint in Special Education Programs." Attached in Appendix (No such document exists to provide specific guidance to teachers in regular education classrooms.)

Resources related to this particular topic are housed and accessed through the state's Special Education Web site.

The link below leads to the portion of the Special ED Web site that provides resources on seclusion and restraint, including a full document and a summary document of the department's "Directives."

Also included on the Web site listed below is a PowerPoint titled, "The Appropriate Use of Seclusion and Restraint Practices in Special Education Programs." Working with DPI, the Wisconsin Council of Administrators of Special Services (WCASS) developed the presentation based on the WDPI Directives. Also participating in this cooperative effort were SAA (the School Administrators Alliance), AWSA (the Association of Wisconsin School Administrators), WASDA (the Wisconsin Association of School District Administrators), and WEAC (the Wisconsin Education Association Council). The presentation was developed as a training tool.

<http://dpi.wi.gov/sped/sbseclusion.html>

Also provided by DPI, see the following link: <http://www.dpi.wi.gov/sped/sbseclusion.html> (Joint Educational Organizations PowerPoint on Seclusion and Restraint). "The Appropriate Use of Seclusion and Restraint Practices in Special Education Programs" was developed by WCASS with the cooperation of SAA, AWSA, WEAC, and WDPI.

The Wisconsin Department of Public Instruction (WDPI) also provided a copy of the WDPI Directives for the Appropriate Use of Seclusion and Physical Restraint in Special Education Programs.

A task force was convened in summer 2004 to develop an initial draft of these directives. During fall 2004, the materials were reviewed by WDPI staff and additional input gathered. A working document was posted to the WDPI Web site in February 2005. At that time, feedback was invited. Comments were reviewed and revisions made and a document posted in September 2005. Department staff continually reviews the directives as issues are raised, and minor edits are made. This most recent document was updated in August 2009.

Currently, new legislation or policies are not being developed.

DPI would like technical assistance in the future.

WYOMING

Statewide Restrictions on Restraint or Seclusion	Restraint or Seclusion Restricted to Ensure Immediate Physical Safety of Student or Others	Prone Restraint Banned	Automatic Notice After Restraint or Seclusion	School Staff Training
None				

At this time, Wyoming has no state statutes, regulations, policies, or guidance on this issue. During the September Superintendent Advisory Council (SAC), Peg Brown-Clark, state special education director, shared Secretary Duncan’s recent letter on seclusion and restraint. She proposed an approach for developing state definitions for seclusion and restraints and a proposal for moving forward to develop state guidance on seclusion and restraint. An action plan for this work will be developed including other State Agencies (e.g., Department of Family Services) and local stakeholders.

The state would welcome technical assistance from OSEP and the NWRCC on this work.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

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