

Sample Restraint and Seclusion Policy

**Presented to the North Dakota Legislative
Education Committee**

Prepared by the Crisis Prevention Institute (2016)



SAMPLE RESTRAINT AND SECLUSION POLICY LANGUAGE

For consideration by the North Dakota Legislative Education Committee

A.) Definitions:

1. **Aversive intervention** means any action used to punish a Student or to eliminate, reduce, or discourage the problem behavior by use of any of the following, many of which are prohibited by the North Dakota Century Code:
 - i. Noxious odors and tastes;
 - ii. Water and other mists or sprays;
 - iii. Blasts of air;
 - iv. Corporal punishment as defined in chapter 15.1-19-02 of the North Dakota Century Code;
 - v. Verbal and mental abuse;
 - vi. Placement of a Student alone in a room, where the door is locked or held shut and the Student is prevented from leaving the room;
 - vii. Forced exercise where:
 1. the Student's behavior is related to his/her disability;
 2. the exercise would have a harmful effect on the Student's health, or
 3. the Student's disability prevents participation in activities;
 - viii. Deprivation of necessities, including
 1. food or liquid at a time when it is customarily served;
 2. medication, or
 3. use of restroom.
2. **Behavior 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. A Behavioral Intervention Plan is the product of a Functional Behavioral Assessment (see definition of Functional Behavioral Assessment).
3. **Chemical Restraint** is the use of medication, including those administered PRN (as needed), given involuntarily to control Student behavior.
4. **Covered Entity** is any educational setting receiving public funds from the North Dakota Department of Public Instruction, but not limited to: public schools, public regional programs, charter schools, private schools, special purpose private schools, Career and Technical Education schools, and public pre-kindergarten.
5. **De-escalation** is the use of behavior management techniques intended to cause a situation involving problem behavior of a Student to become more controlled, calm and less dangerous, thus reducing the risk of injury or harm.
6. **Dangerous Behavior** is behavior that presents an imminent risk of injury or harm to a Student or others.

7. **Emergency** is a sudden, urgent occurrence, usually unexpected but sometimes anticipated, that requires immediate action.
8. **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:
 - i. A description of the problem behavior;
 - ii. The identification of environmental and other factors and settings that contribute to or predict the occurrence, nonoccurrence, and maintenance of the behavior over time; and
 - iii. 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. A Functional Behavioral Assessment may include a review of existing data or new testing or evaluation as determined by the IEP team.
9. **High-risk restraint positions** are any Physical Restraints that restrict the free movement of the diaphragm or chest or that restricts the airway so as to interrupt normal breathing or speech. These positions include floor restraints in which the individual is forcibly held prone (facedown), supine (face-up), on the side, or seated.
10. **Imminent risk of injury or harm** describes a situation in which a Student has the means to cause harm or injury to self or others and such injury or harm is likely to occur at any moment; such that a reasonable and prudent person would take steps instantly to protect the Student and others against the risk of such injury or harm.
11. **Individualized Education Plan (IEP)** is a term used under special education law to reference the written document that states goals, objectives and services for Students receiving special education.
12. **Individual Health Plan (IHP)** is a plan of action for a Student with special health care needs, actual and potential. It is an adaptation of the nursing care plans commonly used in health care institutions.
13. **Mechanical Restraint** is any item worn by or placed on the Student to limit behavior or movement and which cannot be removed by the Student.
14. **Parent** means a parent, as defined in Sec. 26.002 North Dakota Education Code, with legal custody of a minor child, except that the "parent" of a child with disabilities means a parent as defined in the federal Individual with Disabilities Education Act, 20 United States Code, Section 1401 (23).
15. **Physical Restraint** means the use of any physical method of restricting an individual's freedom of movement, physical activity, or 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:
 - i. briefly holding a Student in order to calm or comfort the Student; or
 - ii. holding a Student's hand or arm to escort the Student safely from one area to another.
16. **Positive alternatives** are a set of instructional and environmental supports to teach Students pro-social alternatives to problem behaviors with high rates of positive feedback.

17. **School Day** is a day in which a school or program is in operation as an instructional day and/or a teacher in-service day.
18. **Seclusion** means the confinement of a Student alone in a room from which the Student is physically prevented from leaving.
19. **Section 504 Plan** refers to a written plan of modifications and accommodations under Section 504 of the Rehabilitation Act and the Americans with Disabilities Act.
20. **Serious bodily injury** is any bodily injury which involves—
 - i. A substantial risk of death;
 - ii. Extreme physical pain;
 - iii. Protracted and obvious disfigurement; or
 - iv. Protracted loss or impairment of the function of a bodily member, organ, or mental faculty.
21. **State approved training program** is a nationally recognized, evidenced-based training program approved by the State of North Dakota that includes the components outlined in this section.
22. **Student** is a child or adult aged 3 to 20 enrolled in a school or a program that is a covered entity as defined in this section.
23. **Timeout** 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.
24. **Transitional Hold** is a brief Physical Restraint of an individual, which may be on the ground, for the purpose of quickly and effectively gaining physical control of an individual who has met the criteria for Physical Restraint, with the intent to transition that individual to a safer, standing position as quickly as possible.

B.) LOCAL POLICY; NOTICE TO PARENTS

1. Local Policy Required

All Covered Entities shall have local policies, consistent with this rule, regarding the use of Physical Restraint and Seclusion. Covered Entities must also have a procedure available by which parents may submit a complaint regarding the use of Physical Restraint or Seclusion on their child, based upon which the covered entity shall investigate the circumstances surrounding the incident complained of, make written findings and, where appropriate, determine to take corrective action.

Covered Entities shall revise existing policies or develop policies consistent with this rule within 90 calendar days of the effective date of this rule.

2. Annual notification of rule and local policies

Annually, each Covered Entity shall provide overview and awareness information to all staff, including contracted providers, regarding the content of this rule and any local policies or procedures related to the use of Physical Restraint and Seclusion.

Each covered entity shall provide an annual notice informing parents of Students enrolled at the covered entity of this rule and any local policies or procedures related to the use of Physical Restraint and Seclusion, including the local complaint process.

C.) SECLUSION

1. Permitted uses of Seclusion

- i. Seclusion may be used only as an emergency intervention when the behavior of a Student presents imminent risk of injury or harm to the Student or others, and only after other less intrusive interventions have failed or been deemed inappropriate.
- ii. Seclusion must be implemented by staff certified in a state-approved training program to the extent possible. If, due to the nature of the emergency, untrained staff have intervened and initiated a Seclusion, trained personnel must be summoned to the scene and assume control of the situation as rapidly as possible.

2. Prohibited uses of Seclusion

- i. Seclusion may not be used for punitive purposes, staff convenience or to control challenging Behavior.
- ii. Seclusion may not be used to prevent property destruction or disruption of the environment in the absence of imminent risk of injury or harm.
- iii. Seclusion may not be used as a therapeutic or educational intervention.
- iv. Seclusion may not take place in a locked room.

3. Monitoring of a Student in Seclusion

- i. At least one adult must be physically present to monitor a Student in Seclusion at all times. Students must be continuously monitored until the Student no longer presents imminent risk of injury or harm to self or others.
- ii. In the event of an injury to the Student or staff, the local policy for emergency response must be initiated.

4. Termination of Seclusion

- i. The staff involved in the use of Seclusion shall continually assess for signs that the Student is no longer presenting imminent risk of injury or harm to self or others, and the emergency intervention must be discontinued as soon as possible.
- ii. Time must be recorded consistent with the requirements of the documentation section of this rule and local policy.
- iii. The Covered Entity may request assistance from parents at any time during the incident.
- iv. If attempts to release from Seclusion have been unsuccessful and a Student is still presenting behaviors that create an imminent risk of injury or harm to self or others, then the covered entity may request assistance from outside sources such as caregivers, case managers, crisis intervention teams, local EMS, or other community resources.
- v. If Seclusion continues for more than 10 minutes, an administrator or designee shall determine whether continued Seclusion is warranted, and shall continue to monitor the status of the Seclusion every 10 minutes until the Seclusion is terminated.

5. Location of Seclusion

Seclusion can be achieved in any part of a school building with adequate light, heat, ventilation and of

normal room height. If a specific room is designated as a Seclusion room, it must be a minimum of 60 square feet with adequate light, heat, ventilation, be of normal room height, and be free of hazardous material and objects with which a Student could self-inflict bodily injury.

D.) PHYSICAL RESTRAINT

1. Permitted uses of Physical Restraint

- i. Physical Restraint may be used only as an emergency intervention when the behavior of a Student presents imminent risk of injury or harm to the Student or others, and only after other less intrusive interventions have failed or been deemed inappropriate.
- ii. Physical Restraint must be implemented by staff certified in a state-approved training program to the extent possible. If, due to the nature of the emergency, untrained staff have intervened and initiated a Physical Restraint, trained personnel must be summoned to the scene and assume control of the situation as rapidly as possible.
- iii. Physical Restraint may be used to move a Student only if the need for movement outweighs the risks involved in such movement.
- iv. If a Student is demonstrating imminent risk while on the ground, or if during the process of a Physical Restraint the Student directs the restraint to the ground, staff should make attempts to disengage or utilize a transitional hold to move the Student back to a safer restraint position.
- v. Protective equipment or devices that are part of a treatment plan as prescribed by a licensed health care provider are not prohibited by this rule.

2. Prohibited forms and uses of Physical Restraint

- i. Physical Restraint may not be used for punitive purposes, staff convenience or to control challenging behavior.
- ii. Physical Restraint may not be used to prevent property destruction or disruption of the environment in the absence of imminent risk of injury.
- iii. No Physical Restraint may be used that restricts the free movement of the diaphragm or chest or that restricts the airway so as to interrupt normal breathing or speech (restraint-related positional asphyxia) of a Student.
- iv. No Physical Restraint may be used that involves taking the Student to the floor and forcibly holding him or her in a prone, supine, or side position.
- v. No Physical Restraint may be used that relies on pain for control, including but not limited to joint hyperextension, excessive force, take-down (supported or unsupported), the use of any physical structure (e.g. wall, railing or post), punching and hitting.
- vi. Physical Restraint may not be used as a therapeutic or educational intervention.
- vii. Aversive Intervention and mechanical and chemical restraints may not be used under any circumstances.
- viii. Prescribed assistive devices are not considered mechanical restraints when used as prescribed. Their use must be supervised by qualified and trained individuals in accordance with professional standards.
- ix. Prescribed medications administered by a health care provider consistent with a Student's health care plan are permitted.

3. Monitoring of a Student in Physical Restraint

- i. At least two adults must be present at all times when Physical Restraint is used except when, for safety reasons, waiting for a second adult is precluded.
- ii. A Student in Physical Restraint must be continuously monitored by an adult not directly involved in the restraint until the Student no longer presents imminent risk of injury or harm to self or others.
- iii. In the event of an injury, local policy must be followed.

4. Termination of Physical Restraint

- i. The staff involved in the use of Physical Restraint must continually assess for signs that the Student is no longer presenting imminent risk of injury or harm to self or others, and the emergency intervention must be discontinued as soon as possible or at the first sign of distress.
- ii. Time must be recorded consistent with the requirements of the documentation section of this rule and local policy.
- iii. The covered entity may request assistance from parents at any time during the incident.
- iv. If attempts to release from Physical Restraint have been unsuccessful and a Student is still presenting behaviors that create an imminent risk of injury or harm to self or others, then the Covered Entity may request assistance from outside sources such as caregivers, case managers, crisis intervention teams, local EMS, or other community resources.
- v. If Physical Restraint continues for more than 10 minutes, an administrator or designee shall determine whether continued Physical Restraint is warranted, and shall continue to monitor the status of the Physical Restraint continuously until the Physical Restraint is terminated.

5. Exclusions

Those restraints used by law enforcement officers or school resource officers employed by a police department in the course of their professional duties are not subject to this rule.

E.) NOTIFICATION OF INCIDENT

1. Reporting to an Administrator or Designee, others

After each incident of Physical Restraint or Seclusion, a staff member involved shall:

- i. Report to the administrator or designee by oral notification as soon as possible after each incident, but in no event later than the end of the school day of its occurrence, and
- ii. If the Student is receiving his or her education in an out-of-district placement through a tuition agreement or other agreement, report the incident to the entity responsible for the Student's education, by phone, within 24 hours.

2. Notification to parents

- i. An administrator or designee shall notify the parent that Physical Restraint or Seclusion and any related first aid have occurred as soon as practical but within the school day in which the incident occurred, utilizing all available phone numbers and other appropriate means. If the parent is unavailable, a phone message must be left for the parent to contact the school as soon as possible. If a parent does not have access to a phone, the entity must use whatever contact information is available for emergencies. The parent must be informed that written documentation will be provided to them within 7 calendar days.

- ii. If a restraint or Seclusion has occurred outside the school day, notification of the restraint or Seclusion and any related first aid must occur as soon as possible in compliance with the entity's procedures for emergency situations

3. Reporting of Serious Bodily Injury or Death

If serious bodily injury or death of a Student occurs during the implementation of restraint or Seclusion:

- i. Oral notification of the incident must follow local health and safety procedures as outlined by the covered entity's policies and procedures; and
- ii. The administrator or designee shall notify the Department of Education within 24 hours or the next business day.

F.) DOCUMENTATION; INCIDENT REPORT

1. Incident Report

Each use of Physical Restraint or Seclusion must be documented in an incident report. The incident report must be completed and provided to an administrator or designee as soon as practical after the incident and in all cases within two school days. At a minimum, the incident report must include:

- i. Student name;
- ii. Age, gender, grade;
- iii. Location of the incident;
- iv. Date of incident;
- v. Date of report;
- vi. Person completing the report;
- vii. Beginning and ending time of each Physical Restraint and Seclusion;
- viii. Total time of incident;
- ix. Description of prior events and circumstances;
- x. Less restrictive interventions tried prior to the use of Physical Restraint or Seclusion. If none used, explain why;
- xi. The Student behavior that justified the use of Physical Restraint or Seclusion;
- xii. A detailed description of the Physical Restraint or Seclusion used;
- xiii. The staff person(s) involved, their role in the use of Physical Restraint or Seclusion and their certification in an approved training program;
- xiv. Description of the incident, including the resolution and process of return to program, if appropriate;
- xv. Whether the Student has an: a. IEP; b. 504 plan; c. behavior plan; d. IHP; or e. other plan;
- xvi. If a Student or staff sustained bodily injury, the date and time of nurse or response personnel notification and the treatment administered, if any;
- xvii. Date, time, and method of parent notification; and
- xviii. Date, time of staff debriefing.

2. Incident Report Provided to Parents, others

A copy of the incident report must be provided, within 7 calendar days of the incident to

- i. The parent; and

- ii. If the Student is receiving his or her education in an out-of-district placement through a tuition agreement or other agreement, the entity responsible for the Student's education.

G.) RESPONSE TO THE USE OF PHYSICAL RESTRAINT OR SECLUSION

1. Debriefing

- i. Following each incident of Physical Restraint or Seclusion, the covered entity shall ensure that, within two school days, an administrator or designee reviews the incident with all staff persons who implemented the use of Physical Restraint or Seclusion to discuss:
 - 1. Whether the use of restraint or Seclusion was implemented in compliance with this rule and local policies, and
 - 2. How to prevent or reduce the future need for Physical Restraint and/or Seclusion.
- ii. Following each incident of Physical Restraint or Seclusion, the covered entity shall ensure that, as soon as possible, but no later than two school days or upon the return to school, an administrator or designee shall review the incident with the Student(s) involved to discuss:
 - 1. Details of the incident in an effort to assist the Student and staff in identifying patterns of behaviors, triggers or antecedents.
 - 2. Alternative positive behaviors or coping skills the Student can opt for in future incidents.
- iii. When Physical Restraint or Seclusion has resulted in serious bodily injury to a Student or staff member requiring emergency medical treatment, the debriefing must take place as soon as possible but no later than the next school day.
- iv. Following the debriefing, a written plan for response and de-escalation must be developed (or, if a plan already exists, must be revised) and implemented for the Student.

2. Multiple Incidents of Physical Restraint and Seclusion

- i. Special Education/504 Students after Third Incident. After the third incident of Physical Restraint or Seclusion in a school year of a Student who has been found eligible for special education or has a Section 504 plan, the Student's IEP or 504 team shall meet within 10 school days of the third incident to discuss the incident and consider the need to conduct an FBA and/or develop a BIP or amend an existing one.
- ii. For all other Students after Third Incident. For Students not described in Paragraph A, a team shall meet within ten school days of the third incident to discuss the incidents.
 - 1. The team shall consist of the parent, an administrator or designee, a teacher for the Student, a staff member involved in the incident (if not the teacher or administrator already invited), and other appropriate staff members.
 - 2. The team shall consider the appropriateness of a referral to special education and, regardless of whether a referral to special education is to be made, the need to conduct an FBA, and/or develop a BIP.
- iii. Nothing in this section is meant to prevent the completion of an FBA or BIP for any Student who might benefit from these measures but who has had fewer than three restraints or Seclusions.

3. Parent Participation

The covered entity shall make reasonable, documented efforts to encourage parent participation in the meetings required in section G and to schedule them at times convenient for parents to attend.

A covered entity may not seek written permission from a parent to provide restraint and Seclusion to a Student, nor may a parent waive their right to notification of an incident of restraint or Seclusion.

H.) CUMULATIVE REPORTING

1. Building-level reporting, analysis

A cumulative report by building must be made to the superintendent or chief administrator on a quarterly and annual basis to include:

- i. Aggregate number of Physical Restraint incidents;
- ii. Aggregate number of Students placed in Physical Restraint;
- iii. Aggregate number of Seclusion incidents;
- iv. Aggregate number of Students placed in Seclusion;
- v. Aggregate number of serious bodily injuries to Students related to the use of restraint and Seclusions; and
- vi. Aggregate number of serious bodily injuries to staff related to Physical Restraint and Seclusion.

The superintendent or chief administrator shall review cumulative reports received as set forth in this section and identify those areas that can be addressed to reduce the future use of Physical Restraint and Seclusion. These cumulative reports may be requested by the Department of Education at any time.

2. Reporting Data to the Department of Education

Each covered entity shall submit to the Department of Education an annual report of the incidence of Physical Restraint and Seclusion that must include:

- i. Aggregate number of Physical Restraint incidents;
- ii. Aggregate number of Students placed in Physical Restraint;
- iii. Aggregate number of Seclusion incidents;
- iv. Aggregate number of Students in placed in Seclusion;
- v. Aggregate number of serious bodily injuries to Students related to Physical Restraint and Seclusion; and
- vi. F. Aggregate number of serious bodily injuries to staff related to Physical Restraint and Seclusion.

I.) COMPLAINT PROCESS

1. Local Complaint Process

Parent complaints related to restraint and Seclusion must be submitted to the covered entity in accordance with local policy and procedure.

2. State Board of Education Complaint Process

Any parent who is dissatisfied with the result of the local complaint process may file a complaint with the State Board of Education, which complaint is not considered an appeal of that local process. The Department shall review the results of the local complaint process and may initiate its own investigation of the complaint, and shall issue to the complaining parent and the covered entity a

written report with specific findings within 60 days of receiving the complaint. If a violation is found, the Department shall develop a corrective action plan by which the entity will achieve compliance.

J.) STAFF TRAINING; APPROVED PROGRAMS

1. Staff Training

The North Dakota Department of Public Instruction shall maintain a directory of nationally recognized, evidence-based training programs approved for use on its website at <https://www.nd.gov/dpi>. These training programs must require participants to demonstrate physical and written competency to achieve certification, and must include instruction in at least the following core components:

- i.** The use of non-physical interventions for responding to potentially dangerous behaviors, including de-escalation and the use of positive alternatives;
- ii.** Identification of dangerous behaviors that may indicate the need for Physical Restraint or Seclusion and methods for evaluating the risk of harm to determine whether such interventions are warranted;
- iii.** C. Instruction and simulated experience in administering safe Physical Restraint techniques across a range of increasingly restrictive interventions, including the safe movement of a Student, and in recognizing and avoiding positions involving a high risk of restraint-related positional asphyxia (restricting a Student's ability to breathe);
- iv.** The effects of Physical Restraint and Seclusion on a Student, including monitoring physical and psychological signs of distress and when to obtain medical assistance in compliance with the covered entity's procedures for emergency interventions;
- v.** The risks and realities of Physical Restraint and Seclusion; and
- vi.** A review of the process of Student and staff debriefing.

Each covered entity shall provide all staff with training in the use of non-physical interventions for responding to potentially dangerous behaviors, including de-escalation and the use of positive alternatives and the process for Student and staff debriefing. Each covered entity shall ensure that a sufficient number of staff have additional training in the identification of dangerous behaviors that may indicate the need for Physical Restraint, how to safely administer Physical Restraint techniques across a range of increasingly restrictive interventions, including the safe movement of a Student, recognizing and understanding the risks of the use of Physical Restraint and Seclusion, including monitoring for signs of physical and psychological distress and when to obtain medical assistance in compliance with the covered entity's procedures for emergency interventions. This training shall occur at the time of hire and shall be refreshed at least annually including periodic in-service training to update, practice, and enhance skills.

2. Parent Training

The North Dakota Department of Public Instruction sees parents and caregivers as an important part of the educational process. Their involvement in supporting their children both within the home and the educational setting is integral to academic success.

Parents may receive training in the use of non-physical interventions for responding to potentially dangerous behaviors, including de-escalation and the use of positive alternatives;

- i.** Districts may also provide training in the following components:

- 1.** Identification of dangerous behaviors that may indicate the need for Physical Restraint or Seclusion and methods for evaluating the risk of harm to determine whether such interventions are warranted;
- 2.** Instruction and simulated experience in administering safe Physical Restraint techniques across a range of increasingly restrictive interventions, including the safe movement of a Student, and in recognizing and avoiding positions involving a high risk of restraint-related positional asphyxia (restricting a Student's ability to breathe);
- 3.** The effects of Physical Restraint and Seclusion on a Student, including monitoring physical and psychological signs of distress and when to obtain medical assistance in compliance with the covered entity's procedures for emergency interventions;
- 4.** The risks and realities of Physical Restraint and Seclusion; and
- 5.** A review of the process of Student debriefing.