

2021 HOUSE EDUCATION

HB 1318

2021 HOUSE STANDING COMMITTEE MINUTES

Education Committee Coteau AB Room, State Capitol

HB 1318
1/19/2021

Relating to the adoption of a restraint and seclusion policy by school districts.

Chair Owens called the meeting to order at 11:00 AM. **Roll call:** Reps. Owens, Schreiber-Beck, Heinert, Hoverson, D. Johnson, M. Johnson, Longmuir, Marschall, Pyle, Richter, Simons, Zubke, Hager and Guggisberg present.

Discussion Topics:

- Restraint protection policies
- Situation deescalation update
- Grant opportunities
- Ramifications for not following IEP
- Seclusion and restraint monitoring
- Uniformity statewide restraint policies

Rep. Mary Johnson introduced the bill

Sen. Joan Heckaman #1549

Nicki Kehr – Parent/advocate #1411

Kirsten Dvorak, presenting testimony for **Carlotta McCleary**, Ex. Dir., ND Federation of Families for Children's Mental Health #1382

Kirsten Dvorak – Executive Director, ARC of North Dakota #1406

Roxanne Romanick, Executive Director, Designer Genes #1465

Mandy Dendy – Attorney, Protection and Advocacy Project answers question

Vicki Peterson – Family Voices of North Dakota, Family Consultant #1206

Matthew McCleary – ND Federation of Families for Children's Mental Health reading testimony for **Brady Burkes** #1319

Russ Ziegler, NDCEL #1307

Recess

Alexis Baxley, ND School Boards Association, #1603

Ashly Wolsky, Director, North Central Special Education #1521

John Porter, Director, South Valley and Rural Cass Special Education Units #1468

Additional Written testimony:

Tyler Schultz, #1413

Mary Schultz, #1412

Jennifer Nett, #1379

Heidi Amundson Grindberg, #1281

Melanie Suda, #1217

Donene Feist, Director, Family Voices of ND, #1176

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Brenda Bergsud, Chair, ND Behavioral Health Planning Council, #1050
Amy and Terry Hamilton, #1020

Closed the hearing on HB 1318 at 2:11 pm.

Bev Monroe, Committee Clerk

HB 1318

Mr. Chairman and Members of the House Education Committee:

I am Senator Joan Heckaman and I represent District 23. I am here to support HB 1318 that adds protections for students, families, teachers, and administrators through good policy adoption by school boards across the state. HB 1318 requires schools to adopt a written policy regarding the use of restraint and seclusion methods with clear expectations so everyone can understand how these policies would be applied.

Section 1 of the bill established uniform definitions for seclusion and methods of restraint. This provides clarity for educators, parents, administrators, and when applicable, the student. Of importance is the differentiation between seclusion and time-out on lines 20-24 on page 1.

Section 2 is the part of the bill that addresses the adoption of a written policy providing guidance for school personnel. This portion adds another level of consistency of implementation as students and school staff across the state have the same safety protections through training and policy.

Subsection 2 (a) prohibits the use of seclusion as defined on the previous page, the use of mechanical restraint, or chemical restraint.

Lines 6-11 on page 2 address exceptions to prohibitions of physical restraint. Addressed here is the case where physical restraint may be used if a student's behavior poses imminent danger of harm to them selves or other individuals after all other interventions have been unsuccessful.

Subsection 2 (c) prohibits the use of physical restraints that may impair a student's ability to breathe or communicate distress.

Subsection 2 (d) addresses professional development and training requirements on positive behavior interventions and trauma-informed practices as described in line 21.

I would propose that a well-crafted policy provides direction, so everyone involved has the proper understanding and training to address issues as they arise. All students can be educated as to when situations arise and how they can be helpful for their fellow students. Parents are also looking for skills they can use at home when their child has a meltdown. But most important is the education and continual updates educators and administrators need in order to learn to deescalate and defuse student aggression, melt downs, and just plain "bad moments". That gives everyone the power to all help in these situations.

You will hear today the legal premise for this bill, and I ask you to listen carefully to that testimony. It is important-very important. But in the end, please consider all testimony. We can help these students, parents, educators, and administrators make school success possible for all students. But we need to start with policy, work to educate, and then through interventions, get students to the point where they can interact positively every day.

Thank you for your time and I would stand for any questions you may have.

As a parent as a witness to my own son's trauma with seclusion/restraint, I would like to address misuse of law enforcement or SROs in the school setting that may not be credentialing certified to work with kids of such nature. I am concerned that there is ZERO representation of tracking circumstances for these children charged by SRO's or School Districts that address specifically the lack of fidelity to the legal binding contract of the child's IEP (Individual Educational Plan) to which is Federally mandated by Law or that child's Positive again Positive Behavioral Plan(BIP). The criteria that is inputted into these legal binding documents is what results from that child's Functional Behavioral Assessment (FBA) if conducted by the appropriate licensed workers.

As parents and advocates we want to bring awareness that restraint deaths at the hands of well-intentioned professionals are just limited to the streets as well witnessed on social and televised media. Any restraint carries the very real risk of injury, trauma, and death no matter the training or the expertise. Medically, there are increased risks when restraints involved holding an individual in such a way that the individual's chest, abdomen, or neck becomes restricted, resulting in cardiopulmonary injury or death. Please refer to the following information for regarding Max Benson from CA who died from such a restraint last year and Cornelius Fredericks who died this past April or the child that was Autistic dying after deputies sat on him for 9 minutes in LA.

https://www.virginiamercury.com/2020/07/10/if-were-serious-about-uprooting-racism-and-abuses-of-power-we-should-start-with-restraints-in-our-schools/?fbclid=IwAR0wmHsd8ZmFVcPaPGMz8fuftFOBglWf9VRmYcvmYrMSAVb_27cn9xf1u1k

Adults/Kids are dying at the hands of untrained or unwillingly members of either school officials or the Police Department.

As a parent I am pushing for the reevaluation of seclusion/restraint protocols usage on and off school grounds.

School Resource Officers have been a common fix in North Dakota schools since 2001, but was it a smart choice?

Their Mission Statement Reads:

SRO's provide a wide variety of non-traditional police services to community youth, educators, and parents. School Resource Officers build positive rapport among students by being visible and accessible to student bodies, initiating interactions, and serving as strong role models. The position requires flexibility, time management, multi-tasking skills and well developed interpersonal and de-escalation skills

Goals

The goals of the School Resource Officer Program are:

- To promote public safety and respect for people and property
- Increase positive attitudes towards law enforcement
- Teach students about crime prevention and avoiding victimization
- Reduce crime by helping students formulate an awareness of rules, authority, and justice

Duties

The duties of the School Resource Officers are:

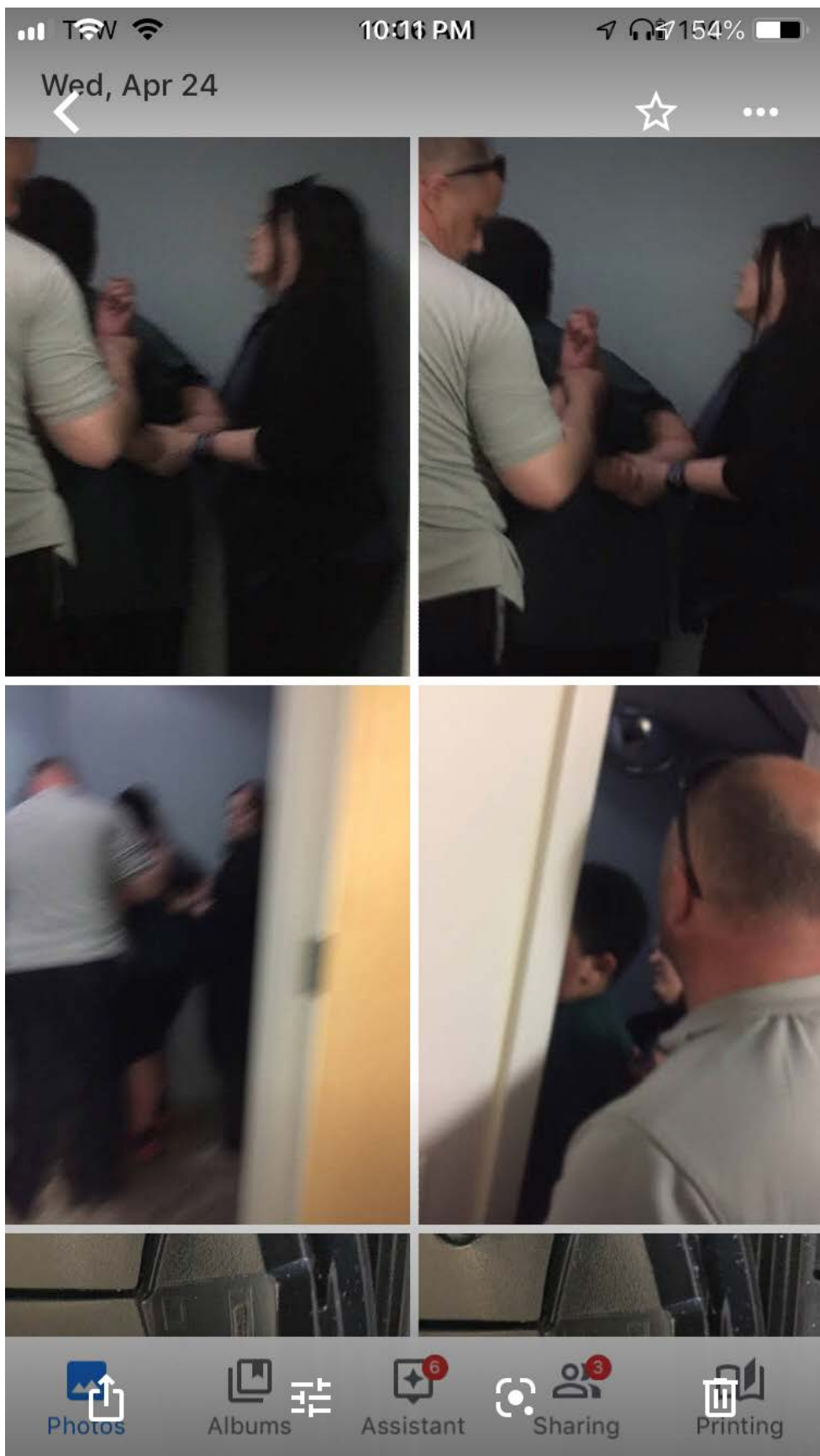
- Provide educational presentations to school staff, students, and parents
- Conduct prevention/deterrence activities in school buildings, school parking lots, extra-curricular activities, and neighborhoods immediately surrounding schools
- Assist school administrators to investigate non-law enforcement incidents that may result in disciplinary actions or proceedings
- Coordinate K-9 searches
- Enforce local, state, and federal laws to provide students, staff, and residents with safe learning and living environments.

Examples of laws enforced are:

- o Disorderly Conduct
- o Alcohol and Tobacco Violations
- o Assaults
- o Possession of Controlled Substances
- o Traffic Violations
- o Gang Issues
- o Runaway
- o Truancy

I would like my question answered where does it State that when a child's IEP or BIP is NOT followed and the child is in escalation phase does it state that SRO has the right to physically force themselves onto a child that is already in distress. I would like to point out that their examples of Laws enforced does not show this scenario.

Some SRO's and by looking at the pictures I took of TWO SRO's that threw my ASTHMATIC son who was in HIGH distress because his BIP had not been followed against a concrete wall who was crying IT HURTS, IT HURTS PLEASE LET GO IT HURTS and the more he cried out the more the SRO pushed his arm up higher and pushed him harder against the wall until I the mother stepped in and pushed the SRO off my son. Yes, there were plenty of witnesses and I had words with that SRO. He was not there to be a POSITIVE reflection he wanted to teach my child a lesson and he physically hurt my child and Emotionally traumatized my child. I took him to the doctor that day and he had torn parts of his shoulder. That next day I met with the Lieutenant of the SRO's and his exact words were "I don't care if the child has down syndrome or anything you are lucky we didn't throw him down to the ground" . To serve and protect right??????????? My son's confrontation with the SRO's have become violent have mirrored interactions between police officers and people on our Bismarck streets. That is a Huge Red Flag for you Senators to be aware of.



Some SROs' have been accused of using excess force toward students and contributing to the school to prison pipeline according to the ACLU report published in 2017. I would also like to point out that The CRDC (OCR Data Collection) which is a "voluntary" mandated collection of the S/R that the teachers' union and legislators used to defeat prior bills is noted for many ND LEA's as recording as "0" or under reporting which means someone lied about using this as a reliable source for tracking.

I have major parental concern due to the current Century Codes, ND DPI and national guidance that impact the daily school encounter between SROs and Students. Students with disability related behaviors, minority populations and male gender.

- ND Century Code on Corporal Punishment ALLOWANCES:

15.1-19-02. Corporal punishment -- Prohibition -- Consistent policies.

1. A school district employee may not inflict, cause to be inflicted, or threaten to inflict corporal punishment on a student.

2. This section does not prohibit a school district employee from using the degree of force necessary:

- a. To quell a physical disturbance that threatens physical injury to an individual or **damage to property.**
- b. **To quell a verbal disturbance.**
- c. For self-defense.
- d. **For the preservation of order;** or
- e. To obtain possession of a weapon or other dangerous object within the control of a student.

3. For purposes of this section, **corporal punishment means the willful infliction of physical pain on a student; willfully causing the infliction of physical pain on a student; or willfully allowing the infliction of physical pain on a student.**

- Further Guidance on Seclusion and Restraint of Individuals with Developmental Disabilities within a public Agency: ○

25-01.2-09. Punishment - Isolation - Physical restraints - Psychosurgery – Sterilization - Shock treatment. An individual with a developmental disability receiving services at any institution, facility, or individualized setting from a public or private agency or organization **may not at any time: 1. Be subjected to any corporal punishment. 2. Be isolated or secluded, except in emergency situations when necessary for the control of violent, disturbed, or depressed behavior which may immediately result, or has resulted, in harm to that individual or other individuals. 3. Be physically restrained in any manner, except in emergency situations** when necessary for the control of violent, disturbed, or depressed behavior which may immediately result, or has resulted, in harm to that individual or to other individuals.

○ **25-01.2-10. Seclusion or physical restraint - Facility administrator to be notified. 1. Whenever an individual with a developmental disability** receiving services from a public or private agency or organization not licensed by the department, **is placed in seclusion or is physically restrained, the public or private agency or organization administrator or the administrator's representative must be notified and shall determine if the isolation or restraint is necessary.** The isolation or restraint may be continued only upon written order of the administrator or the administrator's representative and for a

period of not more than twenty-four hours. Any individual who is in seclusion or who is physically restrained must be checked by an attendant at least once every thirty minutes.

2. A public or private agency or organization licensed by the department to provide services to an individual with a developmental disability **may not place an individual in seclusion. To use physical restraints, the restraint must follow the individual's person-centered service plan or done in accordance with the public or private agency's or organization's emergency restraint policy.**

- Professional development LAWS 15.1-07-34. Provision of youth behavioral health training to teachers, administrators, and ancillary staff.

- 1. Every two years, each school district shall provide a minimum of eight hours of professional development on youth behavioral health to elementary, middle, and high school teachers, and administrators. Each school district shall encourage ancillary and support staff to participate in the professional development. Based on the annual need's assessment of the school district, these hours must be designated from the following categories:

Trauma, Social/Emotional Learning (including resiliency), Suicide Prevention, Bullying, Understanding/Recognizing the prevalence and impact of youth behavioral health wellness on family dynamic , education , juvenile services, law enforcement and health care and treatment from providers, Knowledge of behavioral health symptoms and risks, and other factors that can reduce students' risk factors.

ND lacks a Century Code that describes, regulates, or requires any specific training. or designates accountability of a School Resource Officer actions as they service a multifaceted role in our schools. ○ Position statements from National Association of SRO found here:

<https://www.nasro.org/>

The only state guidance from ND is noted here:

<https://safesupportivelearning.ed.gov/sites/default/files/discipline-compendium/North%20Dakota%20School%20Discipline%20Laws%20and%20Regulations.pdf>

School Resource and Safety Officers (SROs/SSOs) and Truant/Attendance Officers Authority and power to implement school arrest

Laws -NO RELEVANT laws found. No Relevant Regulations are found-

NDA SRO <https://www.ndasro.org/> which lacks any identifying training on special education or students with disability related behaviors. Mental health training for children and adolescents

Developmental psychology to understanding the stages of "growing up" and how a child's brain lacks executive functioning and focusing skills noted in adulthood.

The Alliance against Seclusion and Restraint:

https://endseclusion.org/2020/05/20/what-is-the-school-to-prison-pipeline/?fbclid=IwAR3ksEsutC00fpmVco3mrckhoV1ePFPqxEYhrMcsu8wqpUF2sSQd_a_znNQ

Data from The Alliance against Seclusion and Restraint 06/11/2020:

- ○ 75% of restraints inflicted onto children in schools are disabled children.

- ○ 60% of children subjected to seclusion are disabled.
- ○ Individuals with Disabilities Education Act (IDEA), signed in 1975, promised to appropriate a 40% per student federal funding. IDEA has never been fully funded. It is 13.7% per student now.
- ○ Disabled children are segregated out of general education in the highest numbers now since IDEA passed.
- ○ Self-contained classrooms are supposed to benefit disabled children, but when 75% of restraints, 60% of seclusions, over 40% of suspensions and expulsions, and 65% of juveniles incarcerated are from this population, special education is clearly failing.
- ○ 50% of police shootings are disabled people.
- ○ Disabled Americans have the highest per capita unemployment and poverty rates.
- ○ Disabled Americans are the highest per capita who do not have health insurance and who are denied medical attention.
- ○ Americans with Disabilities Act has narrow protections.

As I was here two years ago advocating on this same subject, I remember the Senators asking for solutions to this issue. What would you do? What could be some changes. My answer this time around is we parents have become committed advocates to making sure our Children feel safe going to school and that we as a parent feel safe that the school is upholding our child's legal binding contract of the IEP and BIP.

In my own story instead of hands on I fought for change. I fought for not only a new team but a restorative change in my son's IEP and BIP. That included the behaviorist coming in and teaching the staff how to interact with my son. She taught them how to speak to him, how to redirect him, how to get on his level. We worked collaboratively on his BIP. His Case Manager took it upon himself to access specific trainings to understand and better assist my son in a crisis. And I am happy to note that there have been no issues since. I removed the SRO and the punitive from my son's environment and I forced the school to learn and make changes based on the understanding of my sons' Mental Health/Disability needs versus bringing the streets into the school.

No one knows these children better than their own parents. Why pass laws that will not have the best interest of the child at stake? Why pass a law that does not even give the parents a VOICE after all do not, they know their child the best?

Why pass a law that continues to allow professionals to treat our children like a criminal?

Where is the accountability upheld for these ADULTS when you expect children to be help accountable?

Yes sometimes the kids get violent, yes they can throw things, they can cuss- but what needs understanding is rather than seclusion and restraint tactics why NOT come back together and find out what is not being done or what has to be changed in that child's plan/environment. Why does a child have to be restrained or secluded when someone did not willingly do their job correctly or did not get the proper training to do their job properly or they did not follow the Laws of the Child's right? Why does that child then have to suffer for someone else's wrong doing?

Was this a solution that was not followed thru on?

2015-2047 This plan was submitted to the Federal Office of Juvenile Justice and Delinquency Prevention

https://www.legis.nd.gov/files/committees/64-2014/appendices/17_5089_03000appendixb.pdf

– Resources have previously been allocated to address the school to prison pipeline issue with funding provided for training by the National Association of School Resource Officers, several SCHOOL bases programs and implementation of the effective Police Interactions with Youth Curriculum.

-Provide a Mental Health Training curriculum that includes Trauma- Informed Practices for system partners will be explored and expanded

-Data will be collected

- Technical assistance will be sought for training for school personnel and school resource offices on the use of positive behavioral interventions in the classroom

Research and funding provided to implement nonpunitive approaches to address misconduct at schools such as restorative justice programming. Training for providing restorative justice measures in schools will be provided to school educators and other professionals.

I must ask here. WHO IS NOT DOING THEIR JOB?

Take Police out of schools and bring more counselors and behavioralists in. Require not “Suggest” these trauma trainings. There are many places in Bismarck that offer trainings for free, so I must ask is it all about Willingness to learn?

Fargo Public school is piloting an alternative program call **Ukeru** <https://www.ukerusystems.com/> which allows alternatives to seclusion and restraint for neurobiophysical reaction individuals suffer from a stressful encounter. It has had a successful first year at pilot schools in Fargo, so part of our collaboration is why are we not training our SROs in Ukeru? Are our SROs trauma-informed trained? What training is mandated for SROs nationally, state or locally? Is it not time to clarify this important role? Especially when SROs can restraint students.

Russ Riehl as Simle has Psychologists in his school as part of his pilot program which has decreased the number of issues.

I hope this is very eye opening to you fellow Senators and I appreciate your time and allowing me to speak on behalf of my son and all children who have been victims of a seclusion or restraint.

Nicki Kehr /De’Vyon Kehr (son/victim of seclusion/restraint)

Mother, Advocate

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House Education Committee
Sixty-seventh Legislative Assembly of North Dakota
House Bill 1318
January 19, 2021
Honorable Mark S. Owens, Chair

Good morning Chairman Owens and Members of the House Education Committee. I am Carlotta McCleary, Executive Director of Mental Health America North Dakota and Executive Director of the North Dakota Federation of Families for Children's Mental Health. Today I speak on behalf of the Mental Health Advocacy Network (MHAN). MHAN advocates for a consumer /family driven mental health system of care that provides an array of service choices that are timely, responsive and effective.

We work extensively with students and their families who struggle with educational issues. These struggles can look and feel like bad behavior which is all too often instead a manifestation of the student's disability and one resulting from an unnoticed or unmet need. A manifesting behavior can create a situation in which the student is restrained – meaning an adult uses his or her body to restrict or immobilize the student. The other situation which can occur is seclusion which means that an adult will put the child in a separate room by him or herself where the student is physically prevented from leaving. These are scary, dangerous, and traumatic situations for everyone - the school personnel performing the restraint or seclusion, onlooking classmates and fellow students, but most of all for the student who is subjected to restraint or seclusion.

Why is this an issue?

We know this happens in North Dakota because we see it in our work.

Schools are not required to report instances of restraint or seclusion to the North Dakota Department of Public Instruction, but schools are required to report the number of seclusions and restraints as part of the U.S. Department of Education's biennial Civil Rights Data Collection survey (CDRC). The 2017 survey revealed 1,409 seclusions, of which two-thirds involved students with disabilities. The 2017 survey showed 1,983 restraints, of which three-fourths involved students with disabilities. Those numbers are almost triple what they were in the 2015 survey. Considering that only 15% of all North Dakota students for that survey were students with disabilities, you can see how this is a huge problem in the work that we do.

What HB 1318 does to address the problem.

HB 1318 creates a new section to Chapter 15.1-19 of the North Dakota Century Code.

The Bill will require each school district to adopt a written policy, with minimum standards, regarding the use of restraint and seclusion methods by school district personnel. Each district's policy will at minimum, prohibit the use of seclusion, mechanical restraint, and chemical restraint in its school buildings, while allowing the use of physical restraint under limited circumstances. The heart of this bill is its provision requiring all districts to provide evidence-based training and support for their employees on methods proven to reduce the need for physical restraint in the first place.

The Bill is made up of two main sections—definitions and policy requirements. The first section defines key terms. The Bill's definitions are based on those in the mandatory CDRC survey, so these terms are very standardized and widely used. This legislation is, in part, based on a resolution adopted by the American Bar Association (ABA) in August 2020, urging federal, state, local, and tribal governments to adopt and enforce legislation,

as well as educational policy with the prohibitions contained in this bill. I have included the ABA's report accompanying its resolution, which talks about why this is a public policy issue, the impact of restraint and seclusion, and alternatives to restraint and seclusion.

The next part of the Bill sets forth the requirement that each school must adopt a written policy regarding use of restraint and seclusion methods by school personnel. There are three main areas each policy must contain. First, is a prohibition on the use of seclusion, mechanical restraint and chemical restraint on all students pre-K through grade 12.

Second, is the prohibition of physical restraint, except in situations where the student's behavior poses a threat of imminent danger of serious physical harm to the student or other individuals – keeping the safety of everyone in mind – and only if other less intrusive, nonphysical interventions have been attempted unsuccessfully or deemed inappropriate to protect the safety of the student or others involved. Recognition and definition of imminent danger is an element that will need to be addressed locally by districts through the training and support provided to their staff. The third provision prohibits dangerous ways for a physical restraint to be used, for example – positions which may impair the student's ability to breathe or communicate distress.

The Bill's final provision requires all school districts to deliver annual professional development and training in evidence-based programs and strategies to avoid the use of restraints and seclusions such as positive behavior interventions and trauma-informed practices, which are already implemented in many North Dakota schools. The bill additionally specifies crisis-de-escalation, restorative practices, and behavior management. Chairman Owens and members of the Committee, this is the key. Support

for school staff in the form of annual training and professional development will put tools into their toolboxes, tools which have been proven to help identify struggling students and prevent problems before they even start. But, if challenging situations should occur in the classroom, the cafeteria, or the hallway; staff will know what to do to avoid or de-escalate the behavior, and how to do it in the safest way possible, with the option that if all those tools fail and there is a threat of imminent danger, the student can be safely restrained in the least traumatic way possible for everyone involved.

Why restraint and seclusion needs to be legislated

Almost half of North Dakota schools do not appear to have a policy specifically addressing restraint and seclusion in their buildings, despite being federally mandated to report any occurrences of restraint and seclusion. A December 2020 internet search for online school district policies revealed that out of 174 districts reviewed, only 108 of those have written and published policies specifically relating to restraint and seclusion. Of the remaining school districts, 22 did not have restraint and seclusion policies, 15 did not have policies specific to restraint and seclusion included in their online policy manuals, and 28 did not have any policies published online. This is despite the fact that the North Dakota School Board Association has a model restraint and seclusion policy available to its members and has had one since at least 2013. No educational entity in North Dakota has been able to effect a statewide uniform policy in our schools. So it is up to you, the Legislature, to get a written and minimally uniform restraint and seclusion policy in 100% of our schools. Every student should know that no matter where he or she attends school in our state, that he or she is protected from the unreasonable use of restraints or seclusion and all adults working in our schools statewide deserve to have the

tools to feel confident in helping each child not just be their best learner, but achieve their best behavior.

In conclusion, I am asking for your support for HB 1318. This Bill is about the safety of everyone in a school building but will especially impact the safety and welfare of students with disabilities, who are more likely to be restrained or secluded than their peers without disabilities.

Mr. Chairman, thank you for your time. I would be happy to answer any questions the committee may have.

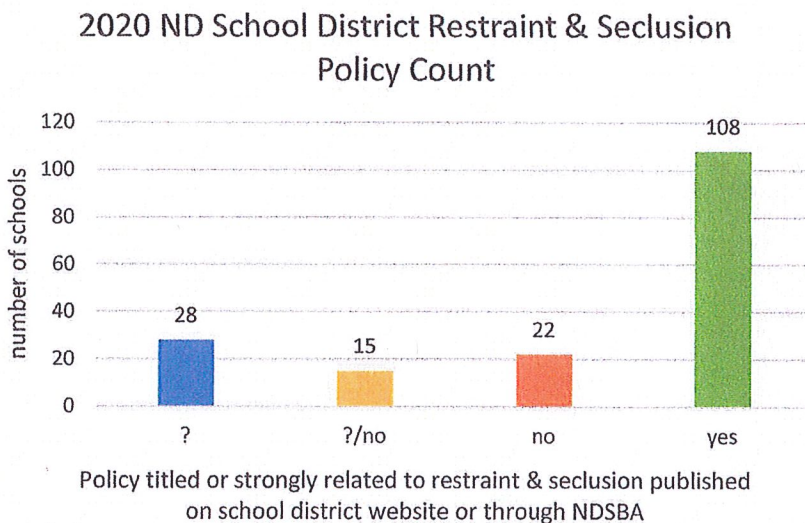
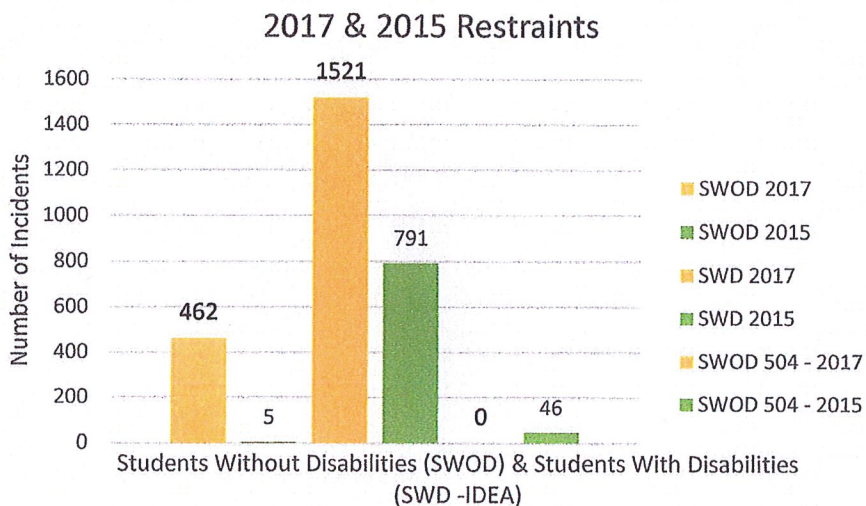
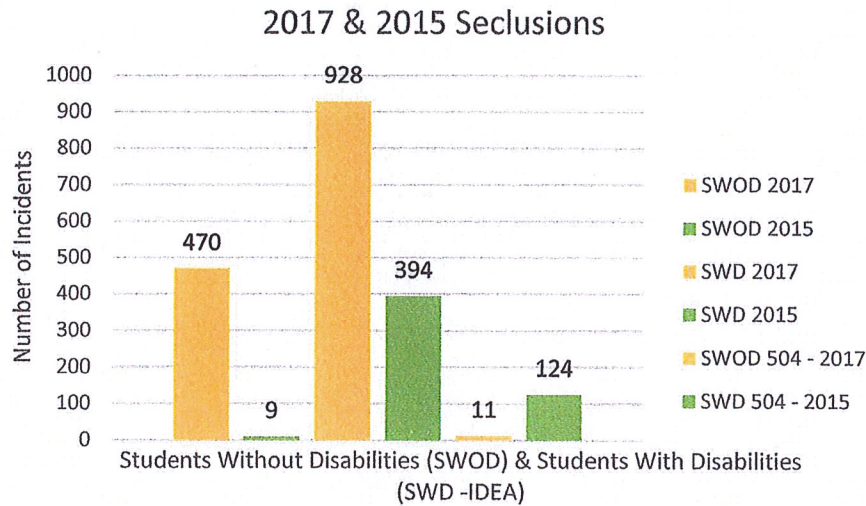


Chart information

2017 & 2015 Restraint and Seclusion data was taken from the Office of Civil Rights website for the survey years 2017 & 2015 and compiled by district before being combined to show the aggregate totals.

SWOD (Students without disabilities)

SWD (Students with disabilities)

SWD 504 (Students with disabilities – Section 504 only)

Total Seclusions 2017 – 1,409

Total Seclusions 2015 – 527

Total Restraints 2017 – 1,983

Total Restraints 2015 – 842

Based on a December 2020 search of school board policies available online at the school district website or NDSBA website (172 total)

*in order to be considered a **yes**, the policy had to be primarily related to or titled restraint and seclusion in the policy manual

**? and ?/no means that the policies either were not available online or the policy manual was available online and there appeared to be no policy relating to restraint and seclusion.

ADOPTED**AMERICAN BAR ASSOCIATION****COMMISSION ON DISABILITY RIGHTS
SECTION OF CIVIL RIGHTS AND SOCIAL JUSTICE****REPORT TO THE HOUSE OF DELEGATES****RESOLUTION**

1 RESOLVED, That the American Bar Association urges federal, state, local, territorial, and
2 tribal governments to adopt and enforce legislation, as well as educational policy, that:

- 3
- 4 (a) prohibits school personnel from using seclusion, mechanical, and chemical
5 restraints on preschool, elementary, and secondary students;
6
- 7 (b) prohibits school personnel from using physical restraint on preschool, elementary,
8 and secondary students unless the student's behavior poses an imminent danger
9 of serious physical injury to self or others, and only after all less intrusive, non-
10 physical interventions have been tried and failed or deemed inappropriate to
11 protect the student or others;
12
- 13 (c) prohibits, in situations where physical restraint is used because there is an
14 imminent danger of serious physical injury, the use of restraints in a face-down
15 position or any other position that is likely to impair a student's ability to breathe or
16 communicate distress, places pressure on a student's head, neck, or torso, or
17 obstructs a staff member's view of a student's face; and
18
- 19 (d) requires professional development and ongoing training in positive behavior
20 interventions and trauma-informed care, including crisis de-escalation, restorative
21 practices, and behavior management practices, for all school personnel.

REPORT

I. The Relationship to Existing ABA Policy

The ABA has, over the years, adopted resolutions encouraging changes in law and policy to address school discipline, keep students in school, and make schools safe, supportive, and caring places for students to learn. For example, in 2018 the ABA adopted policy urging federal, state, local, territorial, and tribal governments to enact laws and adopt policies that prohibit the use of out-of-school suspension and expulsion of pre-kindergarten through second grade students, except in cases where: (1) the student poses an imminent threat of serious physical harm to self or others that cannot be reduced or eliminated through the use of age-appropriate school-based behavior interventions and supports, and (2) the duration of the exclusion is limited to the shortest period practicable.¹

In 2016, the ABA “urged all federal, state, territorial and local legislative bodies and governmental agencies to adopt policies, legislation, and initiatives designed to eliminate the school to prison pipeline,” recognizing the disproportionate impact of over-discipline on students of color, students with disabilities, and LGBTQ students, resulting in disparate push-out rates and juvenile justice system or prison interactions.² Also, in 2009 the ABA passed a resolution urging federal and state legislatures to pass laws and national, state, and local education, child welfare, and juvenile justice agencies to implement and enforce policies that “[h]elp advance the right to remain in school, promote a safe and supportive school environment for all children, and enable them to complete school.”³

This resolution is consistent with these policies. It advocates for regulation of restraint and seclusion, aversive behavior interventions that transform school from the nurturing, safe place it should be to a punitive, traumatizing, and potentially dangerous, even lethal, environment. Specifically, the resolution urges the adoption and enforcement of legislation and policy that prohibits school personnel from using seclusion, mechanical restraint, and chemical restraint on preschool, elementary, and secondary students. The resolution also prohibits school personnel from using physical restraint unless the student’s behavior poses an imminent danger of serious physical injury to self or others, and only after all less intrusive, non-physical interventions have been tried and failed or have been deemed inappropriate to protect the student or others. In situations where physical restraint is used because there is an imminent danger of serious physical injury, a student cannot be restrained in a face-down position or any other position that is likely to impair the student’s ability to breathe or communicate distress, places pressure on a student’s head, neck, or torso, or obstructs a staff member’s view of the student’s face.

¹ ABA Resolution 18A116B,

<https://www.americanbar.org/content/dam/aba/images/abanews/2018-AM-Resolutions/116b.pdf>.

² ABA Resolution 16A115, https://www.americanbar.org/groups/child_law/resources/attorneys/school-to-prison-pipeline.html.

³ ABA Resolution 09A111B at 8,

https://www.americanbar.org/content/dam/aba/directories/policy/2009_am_118b.authcheckdam.pdf.

Accordingly, restraint should be implemented by trained personnel and cease immediately when the student no longer poses an imminent danger. The resolution also requires professional development and ongoing training in positive behavior interventions and trauma-informed care, including crisis de-escalation, restorative practices, and behavior management practices for all school personnel.

For purposes of the resolution, seclusion is the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving. It does not include a timeout, a behavior management technique that is part of an approved program, involves the monitored separation of the student in an unlocked setting, and is implemented for the purpose of calming. Physical restraint is a personal restriction that immobilizes or reduces a student's ability to move their torso, arms, legs, or head freely. It does not include a physical escort, a temporary touching or holding of the hand, wrist, arm, shoulder, or back to induce a student to walk to a safe location. Mechanical restraint is the use of any device or equipment to restrict a student's freedom of movement. Chemical restraint is the administration of psychoactive medication for the purpose of convenience, sedation, discipline, or punishment rather than for treatment. In this report, "restraint and seclusion" includes all these forms of intervention.

II. Emergence of Restraint and Seclusion As a Public Issue and Policy Efforts to Address Their Use

Although courts have addressed the use of restraint and seclusion in institutional settings since the early 1970s,⁴ their use came to the public's attention in 1998 through a series of investigative articles published by the *Hartford Courant*.⁵ Based on a commissioned, first-of-its-kind national study, the reporters examined restraint deaths in facilities and group homes for children and adults with mental health and intellectual disabilities. The *Courant* confirmed 142 restraint or seclusion deaths over the previous decade but noted that, because many cases went unreported, the actual number of deaths could have been as high as 1,500, according to a statistical study. The authors of the series advocated oversight of and uniform standards for use of these practices.

By the early 2000s, several states, including Texas, Nevada and Maryland, enacted legislation to govern the use of restraint and seclusion in the school setting. Over the course of the decade, other states enacted laws, regulations, or policies. However, there was wide variance in how, or whether, states chose to address the use of restraint and seclusion in schools.⁶

⁴ *Wyatt v. Stickney*, 344 F. Supp. 387 (M.D. Ala. 1972) (prohibiting the use of seclusion and barring the use of physical restraint unless (1) when absolutely necessary to protect residents from injury to self or to prevent injury to others, (2) if alternative techniques have failed, and (3) such restraint imposes the least possible restriction consistent with its purpose).

⁵ <https://www.courant.com/news/connecticut/hc-xpm-1998-10-11-9810090779-story.html>.

⁶ GOVERNMENT ACCOUNTABILITY OFFICE, SECLUSIONS AND RESTRAINTS: SELECTED CASES OF DEATH AND ABUSE AT PUBLIC AND PRIVATE SCHOOLS AND TREATMENT CENTERS, GAO-09-719T (MAY 19, 2009), <https://www.gao.gov/products/GAO-09-719T>.

In January 2009, the National Disability Rights Network (NDRN), the membership organization for the protection and advocacy (P&A) system,⁷ published *School Is Not Supposed to Hurt: Investigative Report on Abusive Restraint and Seclusion in Schools*, which documented many instances of restraint and seclusion in school, some lasting for hours and resulting in death.⁸ In May 2009, the Council of Parent Attorneys and Advocates (COPAA), which had issued a declaration of principles opposing restraint, seclusion and aversive interventions in 2008,⁹ issued *Unsafe in the Schoolhouse: Abuse of Children with Disabilities*.¹⁰ The report summarized incidents of abusive use of restraint and seclusion nationwide and made policy recommendations, including a legislative ban on the use of prone, chemical, and mechanical restraints; restraints that interfere with breathing; restraint or seclusion that is medically and psychologically contraindicated for a child; any other restraint, except when a student poses a clear and imminent physical danger to self or others; and locked seclusion rooms or other rooms from which a child cannot leave unless there is an imminent threat of immediate bodily harm, in which case a child can be placed in a locked room while awaiting the arrival of law enforcement or crisis intervention team.¹¹

That same month, the U.S. Government Accountability Office (GAO) published a report on restraint and seclusion-related deaths and abuse at public and private schools and residential treatment centers, providing an in-depth examination of 10 case studies.¹² GAO found that there were no federal laws addressing the use of restraint or seclusion in the school setting and “widely divergent” laws at the state level.¹³

In 2011, Equip for Equality, the Illinois P&A System, with funding from Congress and in cooperation with the National Disability Rights Network and medical, nursing and forensic experts, conducted a study that examined and analyzed the deaths of 61 individuals with disabilities ranging in age from nine to 95 years in various settings across 12 states that occurred following the use of restraint.¹⁴ The study revealed alarming abuses of these dangerous interventions, including prone (face-down) physical restraint,

⁷ The protection and advocacy system, created by federal law, has the authority to investigate abuse and neglect of children and adults with disabilities and to seek redress for violations of their rights. See Developmental Disabilities Assistance and Bill of Rights (DD) Act of 2000, 42 U.S.C. § 15043; Protection and Advocacy for Individuals with Mental Illness (PAIMI) Act of 1986, as amended, 42 U.S.C. § 10801 *et seq.*; and Protection and Advocacy for Individual Rights (PAIR) Program of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794(e), (f) (incorporating the general authorities, including access authorities as set forth in the DD Act.) Every state and territory has a protection and advocacy organization.

⁸ <https://www.ndrn.org/wp-content/uploads/2019/03/SR-Report2009.pdf>.

⁹ COPAA DECLARATION OF PRINCIPLES OPPOSING THE USE OF RESTRAINTS, SECLUSION, AND OTHER AVERSIVE INTERVENTIONS UPON CHILDREN WITH DISABILITIES (JUNE 2008), https://cdn.ymaws.com/copaa.site-ym.com/resource/resmgr/copaa_declaration_of_princip.pdf.

¹⁰ https://cdn.ymaws.com/www.copaa.org/resource/collection/662B1866-952D-41FA-B7F3-D3CF68639918/UnsafeCOPAAMay_27_2009.pdf.

¹¹ *Id.* at 11.

¹² GOVERNMENT ACCOUNTABILITY OFFICE, *supra* note 6.

¹³ *Id.* at i.

¹⁴ EQUIP FOR EQUALITY, NATIONAL REVIEW OF RESTRAINT RELATED DEATHS OF CHILDREN AND ADULTS WITH DISABILITIES: THE LETHAL CONSEQUENCES OF RESTRAINT (2011), <https://www.equipforequality.org/wp-content/uploads/2014/04/National-Review-of-Restraint-Related-Deaths-of-Adults-and-Children-with-Disabilities-The-Lethal-Consequences-of-Restraint.pdf>.

exacerbated by a critical lack of oversight and data collection. Consequently, Equip for Equality strongly recommended action to reduce and ultimately eliminate the use of restraint.

In 2012, the United States Department of Education (ED) issued *Restraint and Seclusion: Resource Document*, outlining 15 principles to guide the development or revision of policies and procedures regarding the use of restraint and seclusion in schools.¹⁵ Among other principles, the ED declared that: every effort should be made to prevent the need for the use of restraint and seclusion with any student, whether disabled or not; physical restraint and seclusion should never be used in a way that restricts breathing or harms the child; schools should never use mechanical restraints or drugs or medication to control behavior or restrict movement; physical restraint and seclusion should not be used unless the child's behavior poses imminent danger of serious harm to self or others and other interventions are ineffective; and restraint and seclusion should be discontinued as soon as there is no longer imminent danger of physical harm.¹⁶

The ED further outlined principles addressing training of school staff, documentation of the use of restraint and seclusion, notification of parents, monitoring of students subjected to restraint or seclusion, review of behavior plans if restraint or seclusion is used repeatedly, and development of policies.¹⁷ This was the first statement about restraint and seclusion by the ED. It remains an important document because of its emphasis on not using restraint and seclusion as routine school safety measures, but rather only in situations where a child's behavior poses imminent danger of serious physical harm to self or others.

III. The Problem of Seclusion and Restraints and Their Deleterious Impact on Students and Their Families

National research shows that students have been subjected to restraint and seclusion in schools as a means of discipline, to force compliance, for convenience of staff, as retaliation, or as a substitute for appropriate educational and behavioral support.¹⁸ The use of restraint and seclusion in schools has resulted in serious physical injury, psychological trauma, and death to students. Restraint and seclusion can be contraindicated based on a student's disability, healthcare needs, or medical or psychosocial history. Despite the widely recognized risks, the use of restraint and seclusion in schools continues.

¹⁵ UNITED STATES DEPARTMENT OF EDUCATION, RESTRAINT AND SECLUSION: RESOURCE DOCUMENT 12-23 (MAY 2012), <https://www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf>.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Keeping Students Safe Act, HR 7124 and S 3626 (115th Cong., 2017-18), SEC. 2. FINDINGS (1), <https://www.congress.gov/bill/115th-congress/house-bill/7124/text?q=%7B%22search%22%3A%5B%22keeping+all+students%22%5D%7D&r=1>; <https://www.congress.gov/bill/115th-congress/senate-bill/3626/text>.

According to data from the Civil Rights Data Collection (CRDC), in the 2015–2016 school year 124,500 students across the country were restrained or secluded.¹⁹ Students with disabilities and African American students were restrained and placed in seclusion at disproportionate rates compared to other students.²⁰ Although students with disabilities make up 12 percent of total enrollment across the country, they make up 71 percent of students who were restrained and 66 percent of the students who were secluded.²¹ African American students make up 15 percent of total enrollment, and yet represent 27 percent of those students restrained and 23 percent secluded.²²

However, the numbers of students restrained or secluded may be higher because the CRCD data do not reflect all incidents of restraint and seclusion. According to GAO's analysis of federal restraint and seclusion data for the 2015-16 school year (the most recent available), ED's quality control processes for data it collects from public school districts on incidents of restraint and seclusion are largely ineffective or do not exist. Specifically, 70 percent of all districts reported zero incidents, but the CRCD rule requiring districts to verify zeros only applied to 30 of the nation's 17,000 districts. Absent more effective rules to improve data quality, determining the frequency and prevalence of restraint and seclusion will remain difficult.

Current laws and guidelines are not sufficient to protect students and keep them safe in schools. Congress has yet to pass federal legislation that comprehensively regulates the use of seclusion and restraint in schools. A decade ago, members of Congress introduced legislation to address this issue, which failed to become law. Over the past several years, members of Congress have introduced the Keeping All Students Safe Act aimed at prohibiting seclusion and tightly governing restraint and the circumstances under which it could be used.²³

Notwithstanding their incompleteness, the CRDC data reveal significant use of restraint and seclusion. For example, for the 2015-16 school year Clark County School district in Nevada, a district with 326,238 students at the time, reported 1,107 incidents of restraint. Gwinnet County, Georgia, with a student population of 175,958, reported 427 incidents of restraint. Baltimore County, Maryland, with 110,786 students, reported 388 incidents of restraint and 157 incidents of seclusion.

The regulation of restraint and seclusion in schools has been left to the states. Although the increase in state laws on seclusion and restraint since 2009 shows progress, the protections provided vary, ranging from comprehensive to inadequate to non-existent, despite the widely recognized risks of restraint and seclusion. Important safeguards

¹⁹ U.S. DEPARTMENT OF EDUCATION OFFICE FOR CIVIL RIGHTS, 2015-16 CIVIL RIGHTS DATA COLLECTION, SCHOOL CLIMATE AND SAFETY 11 (APR. 2018, REVISED MAY 2019), <https://www2.ed.gov/about/offices/list/ocr/docs/school-climate-and-safety.pdf>,

²⁰ *Id.*

²¹ *Id.* at 12.

²² *Id.* at 11.

²³ See, e.g., HR 4247 and S 2860 (111th Cong., 2009-10); HR 1381 and S 2020 (112th Cong., 2011-12); HR 927 and S 2036 (114th Cong., 2015-16); HR 7124 and S 3626 (115th Cong., 2017-18).

present in some states are absent in others. Some states have only suggested guidelines, while others have nothing at all.

In July 2019, The Autism National Committee published an updated version of *How Safe is the Schoolhouse? An Analysis of State Seclusion and Restraint Laws and Policies*.²⁴ First published in 2012, this report represents the most current survey of state laws regarding restraint and seclusion. According to the report, 42 states and the District of Columbia have enacted some form of legislative or regulatory restriction on the use of restraint and seclusion, but these laws range from weak to meaningful.²⁵

Thirty states have laws providing meaningful protections against restraint and seclusion for all children, while 39 for children with disabilities.²⁶ Only 22 states by law require that an emergency situation of threatening physical danger exist before restraint can be used for all children; 26 states impose the threatening physical danger requirement for children with disabilities.²⁷ Restraints that impede breathing and threaten life are prohibited in 31 states for all children and in 35 states for children with disabilities.²⁸ Twenty-one states ban mechanical restraint for all children; 25 for students with disabilities.²⁹ Twenty-one states prohibit dangerous chemical and drug restraints for children with and without disabilities.³⁰ Twenty-five states either ban seclusion or require staff to continuously watch all students in seclusion; 35 states, for students with disabilities.

Further, there are wide variations in how school districts report restraint and seclusion, making it impossible to get a full picture of its use, and suggesting that these practices are more common than the data show.³¹ In January 2019 ED announced the Office for Civil Rights (OCR) and the Office of Special Education and Rehabilitative Services (OSERS) will work in partnership to protect students with disabilities by providing technical assistance and support to schools, districts, and state education agencies regarding restraint and seclusion and to strengthen oversight. Among other things, OCR will work with school districts to improve the quality of the data submitted in accord with

²⁴ Jessica Butler, *How Safe is the Schoolhouse? An Analysis of State Seclusion and Restraint Laws and Policies*, <http://autcom.org/pdf/HowSafeSchoolhouse.pdf>.

²⁵ *Id.* at 127-34 (AZ, AL, AK, AR, CA, CO, CT, DE, DC, FL, HI, IL, IN, IO, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NE, NV, NH, NJ, NM, NY, NC, OH, OR, PA, RI, SD, TN, TX, UT, VT, WA, WVA).

²⁶ *Id.* at x.

²⁷ *Id.*

²⁸ *Id.* at xi.

²⁹ *Id.*

³⁰ *Id.*

³¹ See, e.g., Asmar, Melanie, "Behind closed doors: When it comes to seclusion and restraint, Colorado schools 'are investigating themselves,'" *Chalkbeat*, Feb. 20, 2020, <https://co.chalkbeat.org/2020/2/20/21178602/behind-closed-doors-when-it-comes-to-seclusion-and-restraint-colorado-schools-are-investigating-them>; Williams, Ed, "Restraint, Seclusion, Deception: Parents, regulators left in the dark over school behavior management techniques," *NM Political Report*, Nov. 10, 2019, <https://nmpoliticalreport.com/2019/10/11/restraint-seclusion-deception-parents-regulators-left-in-the-dark-over-school-behavior-management-techniques/>.

the requirements of the CRDC and to provide technical assistance to schools on data quality.³²

What these numbers do not explain is the impact that each restraint and seclusion incident has on the child or youth and their family, or who these children and youth are. Death in restraint or seclusion occurs, although it is a rare occurrence, but trauma and injuries are not.³³ Families must deal with the repercussions of the use of restraint and seclusion with their children; parents and guardians have reported regression, toileting accidents, children not wanting to sleep in their own beds, and school phobia, in addition to the physical injuries children and youth sustain, ranging from bruises and scratches to broken fingers and bones.³⁴

As previously noted, students with disabilities are restrained and placed in seclusion at disproportionate rates compared to students without disabilities. These students have a variety of disabilities ranging from autism to intellectual disability to emotional and behavioral disabilities or, often, a combination of disabilities. For many of these students, particularly those who are nonverbal or who have limited verbal skills or difficulty expressing themselves, their behavior is a form of communication.³⁵ When challenging behavior is not recognized as communication but is simply viewed as something to be eradicated, restraint and seclusion become punitive and even more traumatizing. One boy with autism and behavioral issues was reportedly restrained or secluded more than 400 times from 2013 to 2016. As a result, he hated school, was more violent, and distrusted authority figures.³⁶

All students deserve to be safe in schools. Restraint and seclusion have a profoundly traumatizing impact not just on students and their families, but also on the students who witness the use of these aversive interventions and on school staff³⁷ themselves. Given the widely recognized risks involved with the use of restraint and seclusion, it is incumbent upon policymakers to enact legislation to restrict, and eventually eliminate, these practices and promote practices that allow educators and other school personnel to support students with positive interventions that are evidence-based, trauma-informed, and tailored to meet their individual needs.

³² <https://www.ed.gov/news/press-releases/us-department-education-announces-initiative-address-inappropriate-use-restraint-and-seclusion-protect-children-disabilities-ensure-compliance-federal-laws>.

³³ Williams, *supra* note 31.

³⁴ Examples from cases handled by Disability Rights Maryland, the protection and advocacy organization for Maryland.

³⁵ See, e.g., "Challenging Behavior as Communication," American Speech-Language-Hearing Association, <https://www.asha.org/NJC/Challenging-Behavior-as-Communication/>.

³⁶ Abamu, Jenny, "How Some Schools Restrain or Seclude Students: A Look at a Controversial Practice," NPR, June 15, 2019, <https://www.npr.org/2019/06/15/729955321/how-some-schools-restrain-or-seclude-students-a-look-at-a-controversial-practice>.

³⁷ Asmar, *supra* note 31.

IV. Alternatives to Restraint and Seclusion

School staff turn to restraint and seclusion when they do not know what else to do. Accordingly, they need to have an array of strategies in hand to prevent a crisis, defuse a crisis, and make sense of what has happened after a crisis has occurred. If services are scaffolded to support students and assist them to manage effectively in the school environment and the other places where they spend their time, crises can often be averted, and the need for restraint or seclusion can be reduced or eliminated.³⁸

School staff must have the necessary tools to meet their students' academic, social-emotional, and behavioral needs. Robust teacher, administrator, and service provider preparation programs, professional development, and ongoing technical assistance and support are all critical to increasing the likelihood that school staff will be able to establish and maintain safe, nurturing, and supportive learning environments for the children and youth who enter their buildings each day. Use of proactive strategies and supports provides needed structure and supports to children and youth, ensuring school system accountability.

The regulations implementing the Individuals with Disabilities Education Act (IDEA)³⁹ require that for students with behavior that impedes their learning or the learning of others, the team designing their individualized education programs must consider positive behavior supports, interventions, and strategies.⁴⁰ The use of physical restraint as a planned intervention shall not be written into a student's education plan, individual safety plan, behavioral plan, or individualized education program.⁴¹ At its core, positive behavior supports are ways of addressing behavior that do not rely on punishment or aversive interventions such as suspension, restraint or seclusion. Much has been written about positive behavior supports in general and the three-tier system of Positive Behavior Interventions and Supports (PBIS) developed by George Sugai and Robert Horner, a school-wide systems change model that focuses on progressively more intensive interventions beginning with the whole school and then intervening with smaller groups of students who do not respond to the previous level of intervention.⁴² The effective implementation of positive behavior supports is linked to greater academic achievement, significantly fewer disciplinary problems, increased instruction time, and staff perception

³⁸ See, e.g., DEPARTMENT OF EDUCATION, *supra* note 15, at 13-14 (when integrated with effective academic instruction, comprehensive, prevention-oriented, positive behavioral systems such as PBIS reinforces appropriate behaviors while reducing instances of dangerous behaviors that may lead to the need to use restraint or seclusion).

³⁹ 20 U.S.C. §§ 1400 *et. seq.*

⁴⁰ 34 C.F.R. § 300.324(a)(2)(i).

⁴¹ Keeping All Students Safe Act, *supra* note 18, at SEC. MINIMUM STANDARDS; RULES OF CONSTRUCTION 5(a)(5).

⁴² See, e.g., Office of Special Education Programs (OSEP) PBIS Technical Assistance Center at <https://www.pbis.org> (includes links to research articles); "Positive Behavior Support (PBS)—A Discussion," Safe & Civil Schools, www.safeandcivilschools.com/research/papers/pbs.php; Robert H. Horner, "Positive Behavior Supports" in *Mental Retardation in the 21st Century* (2000, M.L. Wehmeyer & J.R. Patton eds.), citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.910.4491&rep=rep1&type=pdf.

of a safer teaching environment.⁴³ Training for school personnel that is focused on the dangers of restraint and seclusion as well as training in positive behavior supports, de-escalation techniques, and physical restraint and seclusion prevention, can reduce the incidence of injury, trauma, and death.⁴⁴

Trauma-informed care in the school setting recognizes that children are affected by trauma they experience, such as abuse or neglect, loss of a loved one, or other negative event, or series of events, and that those experiences can have an impact on brain development and how a child behaves in and outside of school.⁴⁵ Increasingly, resources are becoming available to assist school staff in applying the principles of trauma-informed care to the classroom by engaging in practices such as setting up predictable classroom routines, creating a safe, uncluttered classroom, providing movement breaks for students, and having students repeat verbal instructions.⁴⁶

A number of states have adopted trauma-informed practices. For example, Massachusetts encourages schools to adopt a “Flexible Framework” for Trauma-Sensitive Practices in Schools; this framework includes strategies designed to address school culture and infrastructure, staff training, links to mental health professionals, academic instruction for students who have experienced trauma, nonacademic strategies, and school policies, procedures and protocols.⁴⁷ Washington State has a handbook entitled *The Heart of Learning and Teaching: Compassion, Resiliency, and Academic Success*, issued through its Superintendent’s Office, containing principles that should guide interactions with students who have experienced trauma.⁴⁸

V. Conclusion

Restraint and seclusion are not educational strategies, nor are they therapeutic. They are aversive interventions used by desperate school staff when they do not know how else to manage students in their classrooms and schools. Prohibiting seclusion and restricting restraint to situations posing only imminent serious physical injury while at the same time providing staff with the professional development and ongoing support and technical assistance necessary to provide appropriate educational instruction, positive behavior supports and trauma-informed care will go a long way toward making school a nurturing, safe, and supportive learning environment for children, especially those who need a refuge from an otherwise stormy world.

⁴³ Keeping All Students Safe Act, *supra* note 18, at SEC. 2. FINDINGS (6).

⁴⁴ *Id.* at SEC. 2. FINDINGS (3).

⁴⁵ See, e.g., Maura McNerney, J.D. & Amy McKlindon, M.S.W., “Unlocking the Door to Learning: Trauma-Informed Classrooms & Transformational Schools” (Education Law Center, 2014), <https://www.elc-pa.org/wp-content/uploads/2015/06/Trauma-Informed-in-Schools-Classrooms-FINAL-December2014-2.pdf>.

⁴⁶ “Creating a Trauma-Sensitive Classroom,” National Education Agency, <http://www.nea.org/tools/tips/creating-a-trauma-sensitive-classroom.html>.

⁴⁷ McNerney & McKlindon, *supra* note 45, at 8.

⁴⁸ *Id.* at 9.

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Respectfully submitted,

Denise Avant
Chair, Commission on Disability Rights
August 2020

GENERAL INFORMATION FORM

Submitting Entity: Commission on Disability Rights

Submitted By: Denise Avant, Chair

1. Summary of the Resolution(s). Urges the adoption and enforcement of legislation and policy that prohibits school personnel from using seclusion, mechanical restraint, and chemical restraint on preschool, elementary, and secondary students, and prohibits the use of physical restraint unless the student's behavior poses an imminent danger of serious physical injury to self or others, and only after all less intrusive, non-physical interventions have been tried and failed or have been deemed inappropriate to protect the student or others. In situations where physical restraint is used because there is an imminent danger of serious physical injury, a student cannot be restrained in a face-down position or any other position that is likely to impair the student's ability to breathe or communicate distress, places pressure on a student's head, neck, or torso, or obstructs a staff member's view of the student's face. The resolution also requires professional development and ongoing training in positive behavior interventions and trauma-informed care, including crisis de-escalation, restorative practices, and behavior management practices, for all school personnel.
2. Approval by Submitting Entity. August 10, 2019 at the Commission on Disability Rights Business Meeting. April 4, 2020 the Section of Civil Rights and Social Justice approved co-sponsorship of the resolution.
3. Has this or a similar resolution been submitted to the House or Board previously? No
4. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption? In 2009 the ABA passed a resolution urging federal and state legislatures to pass laws and national, state, and local education, child welfare, and juvenile justice agencies to implement and enforce policies that "[h]elp advance the right to remain in school, promote a safe and supportive school environment for all children, and enable them to complete school." ABA Resolution 09A111B at 8, https://www.americanbar.org/content/dam/aba/directories/policy/2009_am_118b.authcheckdam.pdf. This resolution expands the scope of the 2009 policy, promoting a safe and supportive school environment for all children by prohibiting or restricting the use of restraint and seclusion on preschool, elementary, and secondary students.
5. If this is a late report, what urgency exists which requires action at this meeting of the House? N/A
6. Status of Legislation. (If applicable). Keeping All Students Safe Act. HR 7124 (115th Congress, 2017-18) was introduced by Representative Donald Beyer Jr. (D-VA-8) and

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was referred to the Subcommittee on Military Personnel on November 15, 2018. S 3626 (115th Congress, 2017-18) was introduced by Senator Murphy Christopher (D-CT) and referred to the Committee on Health, Education, Labor, and Pensions. Legislation has yet to be introduced in the 116th Congress.

7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates. We would work with federal, state, local, territorial, and tribal governments to adopt or strengthen existing laws or policies on the use of restraint and seclusion in schools. We would also be able to support any pending legislation in Congress.

8. Cost to the Association. (Both direct and indirect costs) None

9. Disclosure of Interest. (If applicable) N/A

10. Referrals.

Litigation Section
State and Local Government Law Section
Center on Children and the Law
Commission on Youth at Risk

11. Contact Name and Information prior to the Meeting. Amy Allbright, 703.336.2501, amy.allbright@americanbar.org.

12. Contact Name and Information. (Who will present the Resolution with Report to the House?) Denise Avant, 773.991.8050, davant1958@gmail.com

EXECUTIVE SUMMARY

1. Summary of the Resolution

Urges the adoption and enforcement of legislation and policy that prohibits school personnel from using seclusion, mechanical restraint, and chemical restraint on preschool, elementary, and secondary students, and prohibits the use of physical restraint unless the student's behavior poses an imminent danger of serious physical injury to self or others, and only after all less intrusive, non-physical interventions have been tried and failed or have been deemed inappropriate to protect the student or others. In situations where physical restraint is used because there is an imminent danger of serious physical injury, a student cannot be restrained in a face-down position or any other position that is likely to impair the student's ability to breathe or communicate distress, places pressure on a student's head, neck, or torso, or obstructs a staff member's view of the student's face. The resolution also requires professional development and ongoing training in positive behavior interventions and trauma-informed care, including crisis de-escalation, restorative practices, and behavior management practices, for all school personnel.

2. Summary of the Issue that the Resolution Addresses

Seclusion and various forms of restraint (mechanical, chemical, and physical) are punitive measures used in schools from elementary through high school in lieu of therapeutic interventions with students. Notwithstanding the long-standing recognition that these forms of behavioral intervention cause significant harm to children, school officials continue to deploy them to an unacceptably high degree. The Resolution calls for an end of the use of seclusion, mechanical and chemical restraints and significant limitations on the use of physical restraints, and in their place urges the use of positive behavioral supports and trauma-informed care to help children to thrive.

3. Please Explain How the Proposed Policy Position Will Address the Issue

The proposed policy position directly addresses this issue by calling for governments to adopt legislation and policies banning or limiting the above harmful practices.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

None



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Testimony of Support House Bill 1318
House Education
January 19, 2021

Chairman Owens and the committee members, my name is Kirsten Dvorak, executive director of The Arc of North Dakota, which includes all six Arc chapters in North Dakota: Bismarck, Bowman, Dickinson, Fargo, Grand Forks, and Valley City. Our mission is to improve people's quality of life with intellectual and developmental disabilities and actively support their full inclusion and participation in the community.

People with intellectual and/or developmental disabilities need supportive and caring relationships to develop full and active lives. Historically, people with intellectual and/or developmental disabilities across the age span have frequently been subjected to aversive procedures (i.e., electric shock, cold water sprays, and deprivations like withholding food or visitation with friends and family) that may cause physical pain, discomfort and/or psychological harm. Children and adults with intellectual and/or developmental disabilities are frequently subjected to physical restraint, including the use of life-threatening prone restraints.

Research indicates that aversive procedures such as deprivation, physical restraint, and seclusion do not reduce challenging behaviors and can inhibit the development of appropriate skills and behaviors. These practices are dangerous, dehumanizing, result in a loss of dignity, and are unacceptable in a civilized society. But students remain at



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risk of being subjected to traumatic, dangerous, and dehumanizing practices, referred to as seclusion and restraint, as a means of managing challenging behavior in school.

North Dakota Century Code addresses punishment, isolation, seclusion, and use of physical restraints, as well as other forms of punitive action in 25-01.2-09 and 25-01.2-10. This law expressly prohibits using isolation, seclusion, or physical restraints on individuals with developmental disabilities, except in extreme emergencies where there is a risk of harm to self or others. And even then, there are stringent rules surrounding the use and monitoring of seclusion and restraint. If North Dakota believes that all individuals with developmental disabilities who receive care from institutions, facilities, or individual settings, whether they are public or private agencies or settings, should not be subjected to seclusion and restraint, then why is it okay for our schools to engage in such dangerous and dehumanizing practices?

We ask that North Dakota legislation to protect our most valuable citizens, our children. We ask for a do pass on HB 1318.



HB 1318
House Education
Tuesday, January 19, 2021

Chairman Owens and Members of the House Education Committee:

My name is Roxane Romanick and I'm representing Designer Genes of ND, Inc., as their Executive Director. Designer Genes' membership represents 260 individuals with Down syndrome that either live in our state or are represented by family members in North Dakota. Designer Genes' mission is to strengthen opportunities for individuals with Down syndrome and those who support them to earn, learn, and belong.

We ask for a "do pass" on HB 1318 from this committee. Our organization is often called upon to support parents who are struggling with behavioral issues. Individuals with Down syndrome have made many strides in living in their homes, schools, and communities because of educational advances, public policy, and advocacy efforts. The language in HB 1318 represents a guarantee to North Dakota students with Down syndrome and other disabilities that their educational experience in our public schools will be safe even when their ability to communicate and exhibit desirable behavior becomes challenging.

Dr. David Stein, a leading expert in positive behavioral supports for children with Down syndrome, states that one in three children with Down syndrome experience a behavior problem "serious enough to be diagnosed by a professional (<http://tdsn.org/wp-content/uploads/2017/02/Behavior-Guide-for-Down-Syndrome.pdf>). Health issues, executive functioning challenges, sensory concerns, expressive communication delays, and impulse control factors can add together to result in significant behavioral issues for individuals with Down syndrome. This puts them at a higher risk for behavioral strategies that may include seclusion and restraint practices.

Why are school policies as described in HB 1318 important to parents, students, and teachers? School policies provide a safety net that parents can turn to when relinquishing care and control over to the school of their child. Parenting a child with intellectual disabilities and behavioral concerns has nuances that other parents don't experience. Our children are generally very poor self-reporters and parents with children with diagnoses like Down syndrome typically find themselves information-deficient. Parents have little choice but to trust the adults in their children's schools and yet they are often operating with very little information to do so. Due to most safety protocols and physical barriers, parents wait outside of the school to pick up their child and don't interact with educational staff. Often, instructional aides or paraprofessionals, who may be walking the child out or into school, do not have permission to speak with parents. Teachers are sincerely busy and so parent communication may be reduced to only reporting behavioral incidents or unwanted behavior, leaving parents guessing what the

antecedents or full extent of the consequences looked like. Permission to accompany or observe your child is difficult to obtain. These conditions can create a breeding ground for distrust and break-down of relationships. Policies that insure training, consistent approaches, and communication help everybody on a student's team.

I have had the privilege of observing public school teams tackle some of the most entrenched and undesirable behavioral output from students with Down syndrome. At the core of that work were solid functional behavioral assessments, dedicated resources, ramped-up accommodations and communication supports, ongoing communication and dialogue with the parents, and most importantly, a belief that there was a place at that school for the student.

School policy on seclusion and restraint is protective of everyone. When student behavior that is undesirable happens, the emotional response and reaction is elevated for everyone. In those moments, staff need to rely on robust training and protocol because they will also have to deal with their own emotional responses to what is happening. They have to be focused in real time to help the student regulate and then hopefully acquire other skills for communication and coping for future moments. This takes skill when you, as a teacher, are hurt in some way.

While this example is not school-specific, it exemplifies a mother's message that is so very relevant in dealing with students who have increased needs for communication and behavioral supports. In mid-January of 2013, Ethan Saylor, a young man living with Down syndrome, lost his life in a movie theater because of a prone restraint. He wanted to stay for a second viewing of the movie he had just watched but didn't have a ticket. His support staff had stepped away to go buy tickets for them. He could not communicate this to the movie theater staff or the security officers that were called in to have him removed. His mother, Patti Saylor, has made it her life work to tell his story and to ask all professionals encountering undesirable behavioral communication to stop for a moment and instead of seeing the individuals as the problem to be solved, ask the question: "What are the problems that these individuals need solving and how can we help them?" HB 1318 is a statement that our legislative body has asked this question and is providing guidance to our public schools.

Thank you for your time and I will take any questions that you may have.

Roxane Romanick
Executive Director
Designer Genes of ND, Inc.
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HB 1318

Adoption of a Restraint and Seclusion Policy by Schools

1/19/2021

Chairman Representative Owens, Vice Chairman Representative Schreiber-Beck, and members of the House Education Committee:

My name is Vicki Peterson, I am a Family Consultant for Family Voices of ND and I am also a parent of a young adult with Autism Spectrum Disorder. I am here today to testify in favor of HB 1318.

North Dakota does not currently require schools to have a restraint and seclusion policy. Requiring schools to adopt and publish a restraint and seclusion policy will protect all school persons, including students, teachers, paras, bus drivers, protect all is the purpose of such a policy. Clear and consistent definitions must also be established.

The use of seclusion and restraint in schools is not limited to a small group of students, however, is disproportionality remains students with disabilities. We need to protect these students and all students. Results of restraint and seclusion for students may result in physical injuries, psychological trauma and even death. Results of restraint and seclusion for school staff may result in physical injuries, psychological trauma as well. As a Family Consultant for Family Voices of ND (Family to Family Health Information Center in ND), I have received many disturbing calls from parents describing the usage of restraint and seclusion that has been carried out on their child. I have also received calls from school staff including teachers and paras who have sought after emotional support since restraint and seclusion has been used in their school.

A concern with the use of restraint and seclusion in a school is there is no uniform policy in place across the state of ND. This may allow for a loose interpretation which may increase the inappropriate use of restraint and seclusion. Policies and procedures that are consistent will be straightforward to interpret and will enhance the safety of all students and all staff. The lack of a state policy on restraint and seclusion has a negative impact on how the use of restraint and seclusion is being used in school settings. The training for school personnel in de-escalation techniques and positive behavior supports is necessary as to protect the safety of all and effectiveness of behavior management. When untrained staff members implement restraint and seclusion the risk of physical and emotional harm to both students and staff members increases. Everyone needs to be on board and policies need to be fully implemented with proper training and support through evidence-based tools to reduce the need for restraint and seclusion in the first place and then, if it occurs, to make sure it is carried out in the safest way possible for everyone involved.

The creation of a consistent and uniform policy will create positive learning environments for all. Putting in place a policy and support to ensure that restraint and seclusion are always tools of last resort, and only used by trained individuals who can perform them safely is very necessary. I am asking you to please support HB1318 in requiring schools in ND to have uniform and consistent restraint and seclusion policy and the training that is required.

Thank you for your time and consideration.

Vicki L Peterson

Family Consultant

Family Voices of ND

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HB 1318 Testimony
House Education Committee
Representative Mark Owens, Chairman
January 19, 2021

Chairman Owens and members of the committee, my name is Brady Burkes. I was born and raised in Grand Forks, North Dakota. When I was 3 years old when I started with the lifelong struggle of dealing with mental health problems. Throughout my life I have been diagnosed with my mom calls, “alphabet soup.” I have been given many labels and diagnoses over my 27 years, such as ADD, ADHD, OCD, Depression/Anxiety disorder, intermittent explosive disorder, emotional/behavioral disorder, and the list could go on.

I tell you the list of disorders I have been plagued with; in order to explain what my life was like as a child and the difficulties I faced in the public school system. I lived through the worst times of my life in the public school system and most of it was due to the use of seclusion and restraint that I was subjected to on a daily basis. I am writing this to let you know that I strongly oppose the use of seclusion and restraint in the classroom and throughout the public school system. Let me share with you, one day of my life as a child in the public school system.

When I was 7 years old, I remember arriving at school and the teachers would automatically assume what my mood was or what I was thinking based on my expression and body language, which often did not match what was going on in my mind. If I was quiet, they thought I was in a bad mood. When they would question me about being in a bad mood, I wouldn’t reply and they would keep asking me, which did provoke me to become upset. Then I would be threatened with the “quiet room,” (which was a small room within the classroom, that was wall to wall carpeting, and nothing else) instead of letting me have control of my emotions, the way my mom had told them to do. She knew my triggers and what would provoke me into a fit of rage. This would happen when I felt badgered and threatened. I would then become angry, kick desks, yell at other kids, and

teachers, which put me in the “quiet room,” This use of seclusion they justified by saying that the door did not have a lock on it and the child inside was safe. The truth of this was, an adult would stand at the door and hold it shut while I was fighting to get out. I felt like a caged animal in there and it only excelled my rage. I would kick, scream, fight to get out of that room until my body was exhausted and I crumbled on the floor and cried. I was confused, mad, sad, scared all at the same time. NO child should EVER be locked in a room like an animal. This only caused me to become untrusting of adults and scared that every emotion I had would result in the seclusion. When the seclusion didn’t achieve whatever goal it was they had, I would be restrained, so I would not run away from the school.

When you are trying to work with a child that has emotional disorders, the last thing that should be done is to seclude or restrain that child. What I want people to understand is the mind of the child. The anger overtakes the body, and the mind. By using force it only intensifies the turmoil the child is experiencing. I always “came out of the episode” confused, not really knowing what had just taken place, other then I was so sad and so scared. I lived this everyday of my life while I was in school. I trusted very few people and I lived in fear of being punished and misunderstood and to be locked up or held down in some terrible way. I strongly oppose the use of seclusion and restraint in the schools; it scars a child well into adulthood, and caused me to drop out of school when I turned 16. I was not able to continue dealing with the bias and hatred I felt around me.

Thank you for your time in listening to this brief opposition of the use of seclusion and restraint. I beg you to please do the right thing, protect the children; they are being abused everyday in our schools. Abuse that would have them removed from their homes, but seems to be acceptable in the public school system. Please support HB 1318.

Brady Burkes
Grand Forks, ND
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Email: kanetheeth_2011@hotmail.com



HB 1318 – Relating to adoption of restraint and seclusion policy by school districts

January 19, 2021

Chairman Owens and members of the House Education Committee – My name is Dr. Russ Ziegler, and I am the assistant director for the North Dakota Council of Educational Leaders. I am testifying today in opposition to HB 1318.

It is always difficult to stand up here and testify in opposition to a bill that on face value looks like it would be good for kids and easy to implement. Unfortunately, this is one of those times. NDCEL believes that all students need to be treated with respect and dignity, and that students should never be placed in any danger by school staff or other students. The intent of this bill does that, it places the students first, which it should. However, there are parts of this bill that we simply do not understand what the implication would be on students or their districts. There are a number of school professionals that will visit with you about this bill and may be able to better answer specific questions you may have.

If the intent of this legislation is to have every school in the state adopt a seclusion and restraint policy, then we can all get behind that. When that policy is dictated and unclear with some aspects then the waters get muddied. There are districts in the state that have spent numerous hours and funds on writing a seclusion and restraint policy (Mainly the larger ones) that works for them. Then there are other districts in the state that have adopted the Seclusion and Restraint policy that was created by NDSBA. Would this policy have to be implemented in place of what they already have? I do know that there are schools who have not adopted a seclusion and restraint policy. However, the ND School Boards Association does have a policy that they could easily adopt. The easiest solution to this quandary would be to have a bill that simply states that schools must adopt a seclusion and restraint policy.

In my testimony I would also like to focus on the last paragraph of the bill. This paragraph states:

Requires school district personnel to receive annual professional development and training in positive behavior interventions and trauma-informed practices, including crisis de-escalation, restorative practices, and behavior management.

This is an area that is of great concern for NDCEL and member districts. The first question that comes to my mind would be is this for all school district personnel including business managers, kitchen staff, bus drivers, coaches, maintenance staff, administrative assistants, para-educators, teachers, etc? It has been estimated it costs \$7.5 million to train just teachers for a day in North Dakota. That cost would be considerably higher if you included all district personnel. The next question that comes to my mind is how long should the training be? For example, Trauma-informed practices could be a 4 day training just by itself, Crisis de-escalation (CPI) is a 2 day training, restorative practices and behavior management training could also be lengthy. With this



36 policy how long would individuals be required to take which trainings to be compliant? Then
37 comes the question about who will do the training? Who makes that determination of what
38 trainings will count and which ones will not? Are there enough certified trainers in or around ND
39 to make this feasible, especially if the trainings are over multiple days? The final question that I
40 have is who will be paying for the training? We have noticed that there is not a fiscal note attached
41 to this bill, which is also a concern for the members of NDCEL.

42 It is for these reasons why I respectfully stand in opposition to HB 1318 as it currently stands.

43 Thank you for your time and I can stand for any questions.

**NDSBA****NORTH DAKOTA SCHOOL
BOARDS ASSOCIATION**

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HB 1318
House Education Committee
January 19, 2021
Testimony of Alexis Baxley

Good morning Chairman Owens and members of the House Education Committee. My name is Alexis Baxley, and I serve as the executive director of the North Dakota School Boards Association. NDSBA represents the elected school boards of all 175 public school districts and several special education units in North Dakota.

I come to you today in opposition to HB 1318. One of the main services NDSBA provides to its members is policy-related services. School districts come to us for templates for the multitude of policies they use to operate their districts. In addition, we provide maintenance and manual services to some of these districts. As of last month, 109 of the 175 school districts in North Dakota have adopted a restraint and seclusion policy. Many of those districts have used our template, while others have worked with their own legal counsel to draft a policy specific to their district.

While NDSBA does not believe mandating policy is the best approach, that is not the main driver of our opposition. We are concerned with the very specific nature of the policy laid out in this bill and the limitations it may unnecessarily place on districts and their ability to work with students. In this regard, we agree with the amendments proposed earlier today.

Additionally, we are concerned by the lack of agility that is created when a policy is codified in this way. I believe most of the individuals in this room would agree that the science and best practices surrounding the behavior interventions, management, and practices that we are talking about today are continually evolving and getting better. By codifying a policy, we are locking ourselves into that language for at least a biennium, rather than being able nimbly adopt a policy change at the local level that might better serve students or teachers. We believe districts are best positioned to adopt policy specifics appropriate for their students, staff, and schools.

Finally, we are opposed to the professional development required on page 2, subsection d. While these are worthwhile subjects for pd, we can reasonably estimate that a single day of professional



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development statewide costs \$8 million. The trainings referenced in this section, if available, can take multiple days each. If the state wishes to mandate this training, it should also provide adequate funding to districts to do so.

It is for these reasons Mr. Chairman that we oppose HB 1318. I would be happy to stand for any questions.

Testimony
Senate Bill No. 1318
January 15, 2021
Ashly Wolsky, Special Education Director
East Central Special Education
701.412.4360

Mr. Chairman and members of the committee:

My name is Ashly Wolsky and I am the Special Education Director for East Central Special Education in New Rockford, ND. Our special education cooperative serves the surrounding communities of: Carrington, Fessenden-Bowdon, Kensal, New Rockford-Sheyenne, Oberon, and Pingree-Buchanan. This is my third year serving as a Director for East Central, previously I taught in the Fargo Public Schools for 13 years as a special education teacher for students with emotional disturbance. I am here to provide information regarding the restraint and seclusion Senate Bill No. 1318 in North Dakota.

As a special education teacher in Fargo, I worked closely with our classroom teachers, students, parents, counselors, principals, school psychologists, doctors and police to ensure the safety of our students and staff on a daily basis. At times restraint and seclusion was needed due to out of control behavior and physical violence in the school settings. I can confidently state the current training and policies that were in place ensured the safety for all students and staff. Below you will find a picture of the destruction to my classroom by one of students, unfortunately this happened on a daily basis if not more. Students with emotional disturbances have difficulty self-regulating and they depend on the adults around them to provide a safe environment, which at time includes restraint and seclusion. I often had parents ask “why do

you let my child destroy your classroom?” and my response was “stuff is stuff, and it can be replaced.” I have sat in IEP meetings with parents requesting restraint and seclusion to ensure the safety of their child, other students, and staff.

Switching gears to my current role as Director, I can successfully share with you today we have not needed restraint or seclusion for the last 3 years, across 6 school districts. Our



Unit successfully completed Crisis Prevention Intervention (CPI) yesterday and we follow our local restraint and seclusion policies even though they are not needed on daily basis. To be honest, it has taken the last 3 years to recover from the out-of-control behavior and physical outbursts that I encountered on a daily basis while teaching in Fargo.

In conclusion, I do not support the state mandating that local school districts to adopt a restraint and seclusion policy. Rather, I believe that if a district determines a need for a restraint and seclusion policy, they will adopt one. In the end, all districts are required to adopt a policy on restraint and seclusion. I am asking that you leave it at that---without all the definitions and parameters that are listed in this bill proposal. Further for this bill in particular the last statements regarding ‘required professional development’ are quite extensive and would be expensive in terms of time and resources to carry out as indicated by each school district. I do not oppose the topics or the need for training in those areas, but please do not mandate it without funds in order to carry it out.

TESTIMONY
HOUSE EDUCATION COMMITTEE
1-18-2021
by John Porter, Special Education Director
701-640-1421
South Valley and Rural Cass Special Education Units

Chairman Owens and members of the committee:

My name is John Porter and I am the Special Education Director for the South Valley and Rural Cass Special Education Units in southeast North Dakota. I am here to provide testimony in opposition of House Bill 1318.

The topics of restraint and seclusion in schools can be very polarizing topics that have been discussed numerous times at the legislative level. However, all people will likely agree that the end goal is to ensure the safety and well-being of all people involved when crisis situations occur in North Dakota schools. In general, my opposition to the House Bill 1318 stems from a belief that legislation mandating North Dakota school districts to create policies is not the most effective means to change practices.

North Dakota school districts have access to sample policies provided by the North Dakota School Board Association. When districts in North Dakota have felt it is necessary to have policies related to restraint and seclusion, those districts have adopted such policies through their local school boards. These policies were adopted, as their local school board and administrators have deemed necessary, to ensure the safety and well-being of students and staff while supporting the continued goal of maintaining an effective learning environment for all students.

Beyond just philosophical, some areas of concern rest with the language included in House Bill 1318. Line nine on page one refers to pace behavior, this is not a term used by school districts, which will make it difficult to implement. The

definition of mechanical restraint as written on page one along with the language prohibiting its use on page two could be interpreted to limit school district's utilization of mechanical restraints such as car seats, which are used to transport preschool students with special education needs. This same language could also be interpreted to restrict the utilization of pieces of equipment used for mobility and transition purposes by occupational and physical therapists. Ensuring that the language in line 17 and 18 of page two is followed becomes very challenging for staff when there is a student who is in need of physical restraint but is attempting to spit at or bite staff members. The concern to see the student's face is likely to be sure staff can monitor their airway, which is already addressed in line 14 and 15. The language included in lines 19, 20 and 21 develops a requirement for annual training for school district personnel. The training topics mentioned in this section are all excellent topics that are relevant for schools. I am supportive of training being provided to school staff about these topics. However, I believe professional development topics are best left to local administrators and local leadership teams who know their school's needs. Additionally, to cover these topics adequately on an annual basis would require a substantial increase in professional development days added to many school district calendars and negotiated agreements. Adding days would come at a tremendous cost to the state.

The topic of restraint and seclusion in schools is not a new topic brought before the legislature. If the goal of House Bill 1318 is to ensure all school districts in North Dakota have a policy related to restraint seclusion, my suggestion would be to simplify this legislation by eliminating all the other language and to simply state: by June 30 of 2022 all school districts in North Dakota will have in effect a policy addressing restraint and seclusion in their school. This language would allow school districts to develop policies that align with their own operations and belief systems.

Perhaps the overall goal of House Bill 1318 is to change practices in schools, out of a concern for the safety and well being of students and staff in schools. If this is the case, my experience is this is best accomplished by working with school districts to implement research based best practices with professional development aligned to their local school district improvement plans.

Such a policy is absolutely essential, what we have now is that school district staff are too quick to go for the restraint option. It is extremely traumatizing to the kids that are being restrained or secluded.

I consider myself lucky that I was able to overcome the trauma caused to me by the use of restraint and seclusion.

One loop hole that I see in HB 1318 is that the term "time out" can be used to describe actual seclusion practices, I have personally experienced this. They called what they did to me "time out" when I was actually removed from the classroom and put in a seclusion room.

I personally know of people who have developed PTSD from being restrained and secluded. I still to this day have difficulty speaking of the treatment I received without becoming overwhelmed.

Thank you,

Tyler Schultz

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As President of North Dakota PTA I served on a ND State Task Force on Restraint and Seclusion. I then worked with my local school district SPED Director to review and update our Restraint and Seclusion Policy. At that time there were only a few school districts in ND that actually had any Restraint and Seclusion policies.

During the past several years in working as an advocate for children and families I have heard so many times from parents about the treatment their child has received and the trauma it has caused. Pulling a child out from under a table by the feet when he is trying to find a safe place to avoid the adult who is yelling at him is not an appropriate action to calm the child.

I believe that every school district in ND should have a Restraint and Seclusion policy to protect our vulnerable students. There must also be explicit reporting guidelines, reporting to administration and to parents. These children more often than not cannot tell their parents what happened or why. Sometimes they can only tell their parent that they were hurt at school.

When my son was in elementary school he was restrained and secluded. He still remembers these incidents. When these incidents occurred he couldn't tell me anything about it, he didn't understand what was happening or why. As he grew and matured he was able to tell me about being "put in the time out room" (a free standing room that was built with a door that could be closed to keep the child inside. The door had a window yet no staff member was watching him while he was in there. He was put in it by school staff for anything that they thought inappropriate. He was also put in a janitor/storage closet as a "time out" space.

He had also been restrained many times, one in particular was when the school SPED teacher and the school principal carried him by the arms and feet down the hall to another room. He had no idea why and couldn't tell me that it had happened. Reporting to the parent/s is not a priority and many parents do not find out about these incidents. During his middle school years there was a time that he was being "kept" in one of the principal's offices, he was in that office and two adults were in there and one of them stood at the door blocking his exit. I was in the building and heard him screaming for help and had to rescue him from being kept in that room. As soon as I went into the room he was able to calm and we were able to determine what the problem was that caused the adults to block him in the room. Recently as an adult he asked me why I didn't stop them, the teachers, paras and school staff - I had to admit that I hadn't been informed of any of these incidents of restraint and seclusion.

We need to move forward in putting this bill into effect. Policies must address the who, what, where and why of restraint and seclusion as well as very clear procedures for reporting.

Thank you,

Mary Schultz

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Dear House Committee Members,

I am sharing our story to support HB1813. Physical restraint, seclusion and segregation at school must be stopped. We are needlessly damaging our youngest children and perpetuating the school to prison pipeline. We are destroying natural curiosity and desire to learn at the youngest of ages. Please pass this bill. It is a strong starting point. The use of the SROs, (School Resource Officers), to get around restrictions on physical and mechanical restraint at school must also be stopped.

This is our story.

4th grade:

"I can't go back to school. I don't feel safe at school. I'm not afraid of the kids, Mom, I'm afraid of losing control. I don't trust the teachers and staff. They don't know how to help me stay calm. They make me angry when I am controlling my rage, and then I lose that control. I get in trouble, you or dad have to leave work and lose money, and I get in trouble at home too."

This is what my son told me after his first full blown panic attack. It was the morning of his first day at his new school. We changed schools on the unanimous recommendation of his 2, (state and local), advocates, after my son was traumatized by use of unwarranted mechanical and physical restraint methods in the 2017-2018 school year. We were advised by those advocates that my son was being triggered by staff nearly 50% of the time and was developing more maladaptive behaviors as a result. The following was the pivotal traumatic incident that led us to this point. The incidents almost always stemmed from "defiance", which was actually the freeze portion of his fight or flight response. Staff would force the issue, usually academic tasks, (even though he was very successful academically, scoring 97th to 99th percentile in standardized testing year after year), while my child was already shut down by his anxiety, and thus trigger him from freeze into fight/flight.

In November 2017, a para observed friendly finger poking among a small group of students who were messing around during music class. The teacher was never aware of the situation at all. The students were directed to stop by the para. My son took 2 prompts more than the other students before he stopped. (Typical of a child with ADHD.) He did stop, and there was no escalation or aggression among peers, they were just having fun. "The rule is hands to self", was all that needed to be said!

Per my son's IEP, the undesired activity was noted on his daily point sheet and addressed at his end of day check-out with his case manager. The Special Ed case manager began the conversation by referring to an "incident" in music and referencing "a physical behavior" as well as stating this could be seen as "unsafe behavior". These are trigger words for my son, so he became mildly dysregulated by the belief that he was now in big trouble for an uneventful social interaction he had enjoyed. He felt he had been included in a successful, positive peer interaction, (an area where my son struggles). I am aware that this is not an uncommon interaction among his peers, in spite of the "hands to self" rule. Upset by this, he pounded a fist

on a table and turned his body away from the teacher to calm, using one of his taught strategies. Instead of allowing him time to calm, praising use of a tool and connecting before redirecting, the case manager advised him that since he was upset he could go home and they could meet to discuss it in the morning.

Such things are to be processed at end of day per his IEP, due to slow emotional processing. That way, he can go home to calm and process after the correction. My son agreed to meet in the morning to review his point sheet, but stated there was "nothing to discuss about music because nothing happened."

By morning, the issue had been escalated to include the principal and I was summoned at drop off to join them. Again, this was mutual playful finger poking that did not escalate. The case manager began as before, using the trigger language stated above. My son stated in response, through gritted teeth, but calmly, that "nothing happened". The principal then asked if he had been upset or angry when it happened. The case manager spoke up that they didn't think that. My son responded anyway with "No, I wasn't upset, we were just messing around, having fun. Nothing happened, duh!" Minutes of silence followed after which my son stood and walked to the door. I asked where he was going and in a calm voice, he said "to class, we're done here. This is stupid."

The principal stated, "See, this is what we are dealing with! We need to call him back down and hold him accountable." The Case Manager said "Yeah. He still owes me that check out time, too." His check out time was 10 minutes and this had taken 30 minutes. I replied with a question. "Maybe you clarified with him before I joined you, but what did you need from him just now?" I was told "He needed to listen and say OK." I was familiar with the WFPS mantra of "listen, say OK and do it right away". Yet, he had listened and answered the question asked. He had waited and left calmly. (I am aware this issue was not addressed with the other students involved.) There was no escalated incident or aggressive behavior. The rule "hands to self" should have simply been reviewed and the matter dropped.

I had to go to work and asked if they could just discuss the disrespect, his use of "duh!", at his next check-in an hour later. The case manager replied "if he even comes to his check-in now". I mused silently, but incredulously, over why he might possibly not want to attend these check-ins. I reminded them his team was meeting the next day and stated we could discuss it then as I needed to rush to work. I asked them to just let him get through the day.

After I left, the principal asked the Student Teacher to tell my son that I was in the office and he needed to come down. My son knew I was at work, so he refused. He correctly assumed this was still regarding the peer interaction of the prior day, and was trying to stay calm to get through his day. The SRO was called, and the classroom teacher was advised to take the class to the library and bring books as they needed to separate my son for this defiance. Seeing the SRO, principal and case manager, my son attempted to stay with his class and go to the library. The staff blocked his way with their bodies. (If my son blocked others with his body that would be considered physical aggression, just for the record.) This was now in the presence of his

peers.

He eventually tried to push his way by the adults and was then placed in a hold against the wall. He continued to struggle and a soft lockdown was called for the whole school. (What?!? He was already restrained! His peers correctly assumed the lock down was about my son, adding to his social challenges.) He was then placed in a prone restrain on the floor, with a knee in his back. My son then bit the SRO's wrist, in full fight or flight mode, as he tried to get away. The knee on his back was hurting him. He was carried, feet dragging, or transported, to the OT room. This was supposed to be his safe space for breaks, used for him to calm. There is a door with a window, and per his plan, the protocol is to leave him in the room and allow him to calm, with all focus on de-escalation. He was never one to self harm. The SRO did not leave the room. My son screamed for him to leave, get out, go away, let him be, leave him alone... Failing that, he began throwing objects at the SRO.

My son's father arrived to this scene and knew nothing of the situation. I was in session with clients and unaware of the situation escalating. The officer, (SRO), asked his father "cuff him?", and his father replied with uncertainty, "yes?" out of deference to authority. (This was asked in ear shot of my son, which has severely damaged the relationship between my son and his father, and never should have been asked or suggested.) My son was then handcuffed, hands behind his back, prone, (face down), on the floor in his safe space, sobbing until he threw up. No one has been able to tell me how long that lasted and no restraint form was filled out. These reports are not required when the SRO restrains a child. Mechanical restraints are not allowed by school staff, but are allowed by the SRO as a contracted service provider, per the information I was given. The SRO is neither expected nor required to uphold the IEP.

No imminent danger existed. This was nowhere near the least toxic response. The SRO could and should have simply left the room and closed the door. There is a window in the door allowing for observation. My son has no history of self harm. The door is not locked and my son does not try to leave the room. He just needs space and a calm place to recover.

After this incident, his anxiety became much more notable. Fight or flight became a more rapid default response. We finished the school year working from home. He had lost his love for learning. My son was 10 and I began homeschooling him for a healing break, with the hope that he would eventually return to public school.

He tried to return to public school in 6th grade with the hope that middle school would be a big enough change and knowing that the SRO involved in that trauma was not associated with the middle school. Sadly, he could not overcome the trauma he endured to succeed in that environment again. The damage could not be undone.

2nd quarter of 6th grade:

"I can't go back to public school. I can't trust the adults at school to help me and not hurt me. I don't think it will ever be the right place for me again."

Please inform yourselves, and those who work with our children in this way, about the detrimental effects of physical restraint, seclusion and taking away lunch and recess. Please learn and teach those adults about the science of brain neuroplasticity and what negative impact fear and punishment or "poking the lizard", (engaging the primitive or reptilian brain of a child during an emotional outburst), have on developing brains. I highly recommend Dr. Ross Greene and his CPS method or Dr. Daniel Siegel, No Drama Discipline. Either of these strategies can be, and in some places already are, readily utilized with children like mine in school.

Thank you for hearing our story. Please help our children and pass this bill into law! Please do not rest on this issue until School Resource Officers are also no longer allowed to circumvent these rules and perpetuate the school to prison pipeline! The first rule should always be "do no harm"!

Respectfully,
Jennifer Nett

January 18, 2021

Dear Ladies and Gentlemen,

I'm writing and sharing our experiences regarding the support of HB1318, Restraint and Seclusion policies, as current policies had a direct impact on my son and his education.

For the sake of my son's privacy, I will refer to him as Z throughout this letter. Z is a ten year old boy with Autism. Currently, Z is homeschooled by myself after a number of failures that occurred while he attended Legacy Elementary in WFPS. Up until May 2019, my son had enjoyed a lovely special education teacher, who took extra care and support not only my son, but of other children during chance encounters.

In May of 2019, Z was experiencing difficulties within the secluded, classroom at Legacy. It was evident to myself and his teacher he was struggling. I visited with Z's therapist and Z was excused from the last couple weeks of school. At that time, I shared verbally with his teacher, the principal and dean of students within the principal's office that the use of Z's behavioral supports, token board, rewards, and specifically the use of taking away pieces of a puzzle to motivate him to redirect was having an adverse reaction and I had been told by Z's therapist that he needs positive supports without causing stress.

Fast forward, September 2019, Z had returned to school with a new special education teacher who had no degree in special education and had only been a fourth grade teacher for four years with typical children. Z started to show signs of stress at home and school. At school, Z was having meltdowns, throwing items throughout the room, and eloping from staff, to name a few things. I had taken a positive proactive step to request a FBA, functional behavioral analysis with Anne Carlson as Z's therapist is employed there and could assist the team. I was denied that request by special education coordinators and assistant special education director. I was not offered a choice, and therefore agreed for them to proceed. Z's "behaviors" non-functional communication was increased with protests, outbursts, eloping, throwing, etc.

I asked for another meeting after many emails discussing Z. At that meeting I was asked why Z's BIP, behavioral intervention plan, didn't have a safety plan. I listened and talked a bit, then left the meeting and started working on getting Z out of Legacy, as I knew the plan that was developing as I had a family member's child go through the same thing at Westside Elementary two years prior. So, I was trying to prevent Z from being handcuffed, charged with something and sent to Prairie Psych for the remainder of the school year being given medications that are inappropriate and a violation of a child's right to a free and appropriate education and the American's with Disabilities Act.

I moved rather fast, calling ND Protection & Advocacy's intake and having Z's therapist as well as his pediatrician. Mid-October 2019, things were unraveling quickly with no FBA completed but I was sent a new Behavioral Intervention Plan. A completed FBA determines the behavioral intervention plan! The email sent included his old Behavioral plan and the

addition of a safety plan that was the exact policy of WFPS seclusion and restraint policy.....NOT an individual plan developed for him.

The next day, I picked up Z at school. He hopped in the back seat, buckled up and said, "they put a mat over the door and I couldn't get out". I quickly parked and called my sister, and asked Z to repeat what he had just told me. I informed protection and advocacy, Z was given a week off per his therapist recommendation and I set out for war after that. My son wasn't going back to school, I wanted to homeschool, as he has private occupational therapy, speech, and physical therapy.

I started homeschooling Z, as Protection and Advocacy of ND stepped in helping achieve what was in Z's best interest. In addition an investigation was being performed as well. The conclusion of the investigation is that Z had suffered abuse and neglect.

In the end, Protection and Advocacy was helpful in advocating for Z and we left Legacy official in January 2020. Then and currently, ND Century Code was that Z had to be schooled in a school because he has a disability. WFPS Special Education had two requirements from his IEP, individual education plan, that they wanted to have:

1. Speech 60 minutes per week
2. Social skills equaling two and a half hours per week.

We took the deal, and in doing so Z lost free and appropriate education protections as well as IDEA protections.

During that fall of 2019, I spoke with a ND state legislator, whom I've sought information from previously, and he provided me a few names of ND legislators who I did email and I see their names are on this HB. I had no contact back from my district legislators or any of the other two I sent.

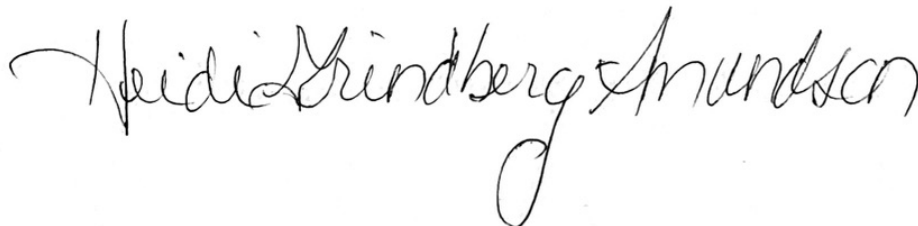
That same state legislator has shared with me that he has in past been asked by Autism parents what to do when anything in the school system isn't working:

"Move to Minnesota", is what he tells them. Although that would require a great deal of work, if it's the cost of my son having homeschooling or legislation that's flexible and meets his needs, we'll do it!

Please consider this progressive step towards approving this bill and standing up for the children that need it the most.

Sincerely,

Heidi Grindberg Amundson

A handwritten signature in black ink that reads "Heidi Grindberg Amundson". The signature is written in a cursive, flowing style with a large, stylized 'H' and 'A'.

House Education Policy Committee
House Bill 1318
Representative Mark Owens, Chairperson
January 18, 2021

Our names are Melanie and Mike Suda. Our son, Sam Suda, attends Century Intermediate Elementary School, Grafton ND. He will be in fourth grade. Sam is a young boy who loves his brothers, is fun-loving, and will warm your heart when you hear his giggle. Sam loves to sing and dance – he loves having an audience. If you ask him, he will tell you he wants to be either an actor, a mechanic or a plumber when he grows up. He loves checking fields with his dad and especially loves time spent at the lake in the summer with our family.

Sam has Down Syndrome and has been diagnosed with ADHD, Pediatric Autoimmune Neuropsychiatric Disorder Associated with Streptococcal Infections (PANDAS), Sensory Processing Disorder and a Sensory Modulation Disorder. All his diagnoses contribute to behavioral challenges. **What is important to understand, however, is that the behaviors reflect unmet needs, fear, anxiety, worry, pain, sensory challenges, and lack of skills to do differently.** The purpose of his behaviors is to tell us something he cannot tell us in ways that are more ‘typical,’ or ‘acceptable.’

Since Sam first started attending school, we have worked to ensure he has opportunities to learn, both via special education services and in regular classroom settings. We want and expect he will have various appropriate opportunities to learn – just like any child. Too often, our efforts to work with the school have involved a struggle – a struggle with a system that promotes and responds best to status quo.

The most recent challenges with Sam’s school resulted in our obtaining advocacy services as well as using the assistance of ND Department of Public Instruction’s dispute resolution process, i.e., IEP facilitation. Sam was spending an unacceptable amount of time on an alternate schedule due to his behaviors. The use of the ‘alternate schedule’ resulted in Sam going to a designated room – away from his peers. There, he spent countless hours receiving his education in a room with no windows, that was confined in space, and was also used for other students who needed “resets.” This exposed Sam to language and behaviors to which he should not have been exposed. Progress - behavioral or academic – did not improve via the use of the room. Yet, more of the same was done – day after day. Sam was spending the majority of his time on the alternate schedule.

Sam’s team did not seem to have a way to determine how to successfully provide services to support the change they wanted to see. We repeatedly brought concerns to the team, to the Special Ed. Coordinator and Director and we were met with resistance or lip service. Finally, this Spring we requested a different Case Manager, had a sensory evaluation update, obtained updated behavioral programming and had DPI facilitate Sam’s IEP. We were still in the process of IEP facilitation when COVID hit, though two meetings had already occurred. The IEP facilitation did seem to help Sam’s team make progress in developing an IEP and behavioral supports we hope will support Sam’s skills and development when school resumes.

Special education students need educational services and positive behavior supports to address their disabilities and to prevent/respond to incidents where school safety is an issue. We wholeheartedly agree all children, teachers and staff have a right to a safe environment. But we don't agree that the onus for the safe environment is on the child when she/he does not have a school that is responsive to providing an individualized, appropriate educational environment specific to his or her needs. For so long, Sam's behavioral programming did little more than exacerbate behaviors. Of course, we do not believe this was the intent of Sam's IEP team, but, instead, it reflected the limitations of our current systems to: 1) admit outside help is needed and 2) obtain appropriate outside help to build better programming and 3) monitor progress and make adjustments accordingly.

Teachers and other support staff need training and administrative support from their principals, district administration and Boards and special education units so they can teach and support all children, including children with disabilities. There is an increasing shortage of teachers, including special education teachers, in North Dakota and nationally. Misplaced blame on students with disabilities for safety problems in schools and segregating them from their schools and peers is not the answer.

Melanie & Mike Suda
1704 Western Avenue
Grafton, ND
701-520-2007

UPDATE

The above was written and submitted for testimony (regarding school safety) that was presented to the Legislative Interim – Education Policy Committee on July 2, 2020.

We appreciate this opportunity to provide an update and to, once again, submit a summary of our experiences as testimony related to the hearing of House Bill 1318 regarding the use of restraint and seclusion in the schools.

In the last spring and early fall of last year, as a result of persistent and diligent efforts to effect change for our son in school, we were able to work with the special education unit and Sam's IEP team to do the following:

- obtain services from a behavioral specialist who brought a fresh perspective and skill set to behavioral programming;
- incorporate findings from a sensory evaluation in the IEP. A sensory evaluation had been done years prior by the same evaluator and with similar findings, but this time the information was given credence it has not been given before.

The above changes have made significant positive differences in Sam's experiences and participation at school. Examples of the changes include:

- Sam no longer has an alternate schedule;
- Sam is learning alongside his same-aged peers;
- Sam's IEP team monitors his progress on a regular basis and are open and receptive to looking at different ways to approach change;
- Best of all, Sam now looks forward to going to school.

Things are not perfect, but we don't expect perfection. However, we can tell you that this year has been a huge improvement. This improvement is a result of our not giving up and asserting our rights, and also as a result of the skills of professionals who supported the much needed change.

Melanie & Mike Suda
1704 Western Avenue
Grafton, ND
701-520-2007

HB Bill 1318-support
House Education Committee
Tuesday, January 19, 2021

Chairman Owens and Members of the House Education Committee.

My name is Donene Feist and I am the Executive Director for Family Voices of ND. Family Voices of ND is the Family to Family Health Information Center in ND

I am before you in support of House bill 1318, a bill to adopt seclusion and restraint policy for school districts.

Our work includes working with families who have children and youth with disabilities, chronic health conditions and special needs. We also work with professionals in educating the overall health needs of persons with disabilities. Each year we receive calls from both parents and professionals regarding seclusion and restraint issues for a child. We have seen pictures of bruises, teachers in tears, parents horrified, and children traumatized.

Our staff has worked with many families whose children have been a victim of seclusion and restraint but no story more poignant than a family one of our FVND staff had worked with a family in ND that had moved here from another state, living in rural ND. There had been multiple incident reports of their youth with a disability on seclusion and restraint, along with bullying issues at school. This had been going on for over a year. Parents had been seeking help everywhere but were told it was in the hands of the local school. No help was to be found. After a year or so of torment, this youth decided life was too tough and committed suicide. The trauma was so severe on the mother, when she returned to her home in another state, she also committed suicide. Left was a father searching for answers. This should not be happening to anyone.

Every Human Services system; hospitals, mental health facilities, residential treatment facilities, juvenile justice and senior services facilities are controlled by federal legislation that seriously limits seclusion and restraint to emergency and imminent situations , EXCEPT in the public-school system. **According to the Education Department data, 122,000 students across the country were subject to restraint and seclusion during the 2015-2016 academic year. 71% of those restrained and 66% of those secluded were in special education.(U.S. Department of Education January 2019).**

Main points:

- Both restraint and seclusion are dangerous practices. By nature, they involve physical contact between a staff member and student. A result that may end up in students and teachers getting hurt. We need to protect both staff and students.
- There is a myth that restraint and seclusion are necessary to keep our schools safer. **In fact, many schools that report they have eliminated the use of seclusion and restraint, have reported significant declines in worker's compensation claims. (U.S. Department of Education, July 2018.)**
- For Behavior Management, restraint and seclusion can cause more harm than good. The physical confrontation, the being secluded in many times a small room alone, traumatizes the student, but also can traumatize school personnel, and other children watching or witness to an incident. There is evidence **(National Child Traumatic Stress Network)** that students as well as staff have an enhanced "flight- fright" response. It is noted that a "flight-fight" response is not a willful choice but is triggered biologically in the stressed person.
- Impact on a child's developing brain is both short and long term. The ACES study (Adverse Childhood Experiences) shows both long- and short-term effects include; **(US Department of Justice and Education, 2018)**

1. Social and health problems
2. Depression
3. Alcoholism
4. Drug use

5. Chronic disease
6. Suicide
7. Involvement within a Justice System

- Behavior is a form of communication. The behaviors children display is often a manifestation of a disability. Most children who have communication deficits can learn and develop communication strategies, which in turn can diminish the behavioral (communication) issues. Supports and Services are needed to accomplish this. ***We need to think intervention not punishment.*** The need for seclusion and restraint is a result of insufficient investment in prevention.

On a personal note, one of my very close relatives was a victim of seclusion and restraint as a youngster. The long term PTSD effects of his experience from school seclusion and restraint are haunting. He has experienced every one of the ACE Study long term effects listed above. Talented, bright, over-achiever who continues to battle PTSD today. If only, he had been treated differently. He talks about the many times he was labeled the bad kid, the good for nothing kid, the kid that his teachers were embarrassed of, held down and couldn't breathe. Defenseless, scared and no one to help him. He talks about every time there was an incident they would look to him as being the guilty party. He became the scape-goat. Can you imagine living your entire life thinking you were not good enough? Many years later, he still has those same thoughts. That no one cares, no one sees the potential. We can do better, we need to stop this madness.

Let's work together and invest with the commitment of supports and services.

I thank you for your time and consideration for House Bill 1318.

Donene Feist

Family Voices Director

fvnd@drtel.net 701-493-2634

HB 1318
House Education Committee
January 19, 2021

Chair Owens and members of the Committee, I am Brenda Bergsrud, Chair of the Behavioral Health Planning Council. The Council is mandated by the federal government and operates out of the Department of Human Services/Behavioral Health Division. There are 30 members which consist of consumers, family members, and other stakeholders.

The Council supports HB 1318 which would require each school district in ND to have a written policy that prohibits the use of chemical and mechanical restraint as well as seclusion. It further proposes regulation on the use of physical restraints to make sure it is used only when it is absolutely necessary, that being when there is a threat of imminent danger to the student or others and after other less intrusive methods have been tried in a safe way.

North Dakota is one of a few states that does not have any legislation related to seclusion and restraint. This legislation would ensure that every school in the State enacts a written policy with consistent requirements, including one that requires districts to provide training and support for school personnel to give them behavior management tools which will hopefully reduce the need for using seclusion or restraint in the first place. This is important for everyone who works at or attends school. It will especially have an impact on students with disabilities, who are much likelier to find them selves in situations where they are restrained or secluded due to behavioral issues related to their disabilities.

Thank you for reviewing the Council's position on this significant matter.

bbergsrud@yahoo.com

We are against segregation restraints and of children, specifically special needs; it is shown to have detrimental effects on a child's wellbeing and mental health. Our son has suffered from being segregated in this way in the Fargo Public School District. It gave him heightened anxiety and PTSD as a result from restraints and forceful segregation. We strongly believe that the education system lacks the knowledge and tools to support a healthy relationship with special-needs students. Because of generalized segregation, not only during meltdowns, it becomes hard to maintain the relationships needed between both students and teachers.

Special-needs students in particular have to trust the adults around them, and not spending as much time with their teachers and other staff as other students becomes hard to build that trust. Tools and education given to adult staff helps the students build and maintain strong relationships that are needed to have a beneficial school experience. The Advocacy, autism awareness groups, special education courses for teachers to take teach them how to work with a special needs child(ren). More often than not, special needs people need that extra time and attention in order to fully express what they need and want. Seeing as the teacher's job is to give their time and energy to teach students and prepare them for the future, these kinds of courses should naturally be given and used.

The North Dakota Advocacy and autism awareness groups used free of charge will help to educate the educators for the needs of special-needs children. The school districts seem to spend a lot of time and money for extra curricular activities, yet don't spend their time looking into the details for the necessities of special-needs students. That, in itself, is a problem for the student because little is done for support, help, and understanding of their educational needs. Having been to the schools frequently, using IEP guidelines and not having the facility or the administration following said IEP is an insult to the student, parents, and other students in school with the special-needs child. When a child is special-needs starts to escalate, instead of finding the root of the situation, they segregate and punish the student without ever trying to find out how the situation arose. The instructors take a question asked from the student and twist it into an act of defiance instead of teaching and trying to answer the question in order to serve them and the other students as their job entails. The policy of removing the student and the disruption of the classroom is easier to do than it is to find the cause of escalation. This, in turn, only makes the student feel unwanted and left out. It becomes difficult to make friends because all the other students see is the child getting angry, then forced to leave the room. It makes the special-needs child feel left out because their escalation scared the other students. And instead of learning from the instructor as to what should be done, the child is simply sent away. This leads the child to be subjected to ridicule and from their peers and judged by the administration, and possibly bullying as well, which has been a large issue for a while.

Since we've tried seclusion and restraints and the problem hasn't been solved it leads to medical issues, both physical and mental, of the child being secluded. Why not try a different approach from the teachers and faculty and follow the IEPs and see if this doesn't change the problem that we have in the school system? We don't know if it happens in all school districts, but there have been many cases from the North Fargo district. The continuation of making the student feel like it's their fault is not working. That doesn't fix the problem, and in fact makes it worse.

We are asking the senators and legislators to be our voice and hold into account what we're saying and to speak for the children that can't speak and get them the help that they need to become active members of society. People need to remember that companies like Microsoft were derived from and rely on people with special-need's abilities to run as they do today. At the end of the day, these students are people also. They deserve to be treated like the other students.

2021 HOUSE STANDING COMMITTEE MINUTES

Education Committee
Coteau AB Room, State Capitol

HB 1318
1/20/2021

Relating to the adoption of a restraint and seclusion policy by school districts.

Chairman Owens called the meeting to order at 11:00 AM.

Roll Call: Reps. Owens, Schreiber-Beck, Heinert, Hoverson, D. Johnson, M. Johnson, Longmuir, Marschall, Pyle, Richter, Simons, Zubke, Hager and Guggisberg were present.

Discussion Topics:

- Amendments
- State incident reports
- School incident reports

Rep. M. Johnson: oral testimony.

Chairman Owens closed the hearing 11:06 AM

Bev Monroe, Committee Clerk

2021 HOUSE STANDING COMMITTEE MINUTES

Education Committee Coteau AB Room, State Capitol

HB 1318
2/8/2021

Relating to adoption of restraint and seclusion policy by school districts
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Chairman Owens called the meeting to order at 10:55 AM. Roll call: Reps. Owens, Schreiber-Beck, Heinert, Hoverson, D. Johnson, M. Johnson, Longmuir, Marschall, Pyle, Richter, Simons, Zubke, Guggisberg and Hager present.

- Definition of equipment
- Reporting requirements
- Incidents per student per day

Rep. M. Johnson presented Amendment 21.0751.01002, #5879

Rep. M. Johnson moved amendment 21.0751.01002 and revision on Page 2 after line 21 under 3 a and 3 b insert after "The number of incidents, not to exceed one incident per student per day for state purposes" seconded by **Rep. Guggisberg**

Voice Vote Motion carried.

Rep. M. Johnson moved a **Do Pass as Amended LC #21.0751.01003**, seconded by **Rep. Hager**

Roll call vote:

Representatives	Vote
Representative Mark S. Owens	N
Representative Cynthia Schreiber-Beck	N
Representative Ron Guggisberg	Y
Representative LaurieBeth Hager	Y
Representative Pat D. Heinert	N
Representative Jeff A. Hoverson	N
Representative Dennis Johnson	N
Representative Mary Johnson	Y
Representative Donald Longmuir	N
Representative Andrew Marschall	N
Representative Brandy Pyle	N
Representative David Richter	N
Representative Luke Simons	N
Representative Denton Zubke	N

Motion failed 3-11-0

Rep. Zubke motioned for a **Do Not Pass as Amended**, seconded by **Rep. Richter**

Roll call vote:

Representatives	Vote
Representative Mark S. Owens	Y
Representative Cynthia Schreiber-Beck	Y
Representative Ron Guggisberg	Y
Representative LaurieBeth Hager	Y
Representative Pat D. Heinert	Y
Representative Jeff A. Hoverson	Y
Representative Dennis Johnson	Y
Representative Mary Johnson	N
Representative Donald Longmuir	Y
Representative Andrew Marschall	Y
Representative Brandy Pyle	Y
Representative David Richter	Y
Representative Luke Simons	Y
Representative Denton Zubke	Y

Motion carried 11-3-0 Do Not Pass as Amended Rep. Hoverson is the carrier

Chairman Owens closed the meeting at 11:13 AM

Bev Monroe, Committee Clerk

97
2/8/21

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1318

Page 1, line 9, remove "pace"

Page 1, line 12, after the underscored period insert "The term does not include devices that are designed or prescribed for therapeutic or safety purposes, and which are used by trained school district personnel on a student or by a student on the student's own body."

Page 2, after line 21, insert:

- "3. Beginning July 1, 2023, and annually by July first each year thereafter, each school district shall submit a written report to the superintendent of public instruction. The report must include:
 - a. The number of incidents, not to exceed one incident per student per day for state purposes, of both restraint and seclusion in each school located within the district during the preceding calendar year, and whether the student who was the subject of the restraint or seclusion was on an individualized education program, or a 504 plan in compliance with the requirements of section 504 of the Rehabilitation Act [29 U.S.C. 794];
 - b. The number of students, not to exceed one incident per student per day for state purposes, who were the subject of restraint and seclusion methods by school district personnel during the preceding calendar year, and whether the students were on an individualized education program, or a 504 plan in compliance with the requirements of section 504 of the Rehabilitation Act [29 U.S.C. 794]; and
 - c. The type of restraint or seclusion used during each incident.
4. The superintendent of public instruction shall publish the data received under subsection 3 to the department's website within ninety days of receipt of the data."

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1318: Education Committee (Rep. Owens, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (11 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). HB 1318 was placed on the Sixth order on the calendar.

Page 1, line 9, remove "pace"

Page 1, line 12, after the underscored period insert "The term does not include devices that are designed or prescribed for therapeutic or safety purposes, and which are used by trained school district personnel on a student or by a student on the student's own body."

Page 2, after line 21, insert:

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 - b. The number of students, not to exceed one incident per student per day for state purposes, who were the subject of restraint and seclusion methods by school district personnel during the preceding calendar year, and whether the students were on an individualized education program, or a 504 plan in compliance with the requirements of section 504 of the Rehabilitation Act [29 U.S.C. 794]; and
 - c. The type of restraint or seclusion used during each incident.
4. The superintendent of public instruction shall publish the data received under subsection 3 to the department's website within ninety days of receipt of the data."

Renumber accordingly

21.0751.01002
Title.

Prepared by the Legislative Council staff for
Representative M. Johnson
February 5, 2021

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1318

Page 1, line 9, remove "pace"

Page 1, line 12, after the underscored period insert "The term does not include devices that are designed or prescribed for therapeutic or safety purposes, and which are used by trained school district personnel on a student or by a student on the student's own body."

Page 2, after line 21, insert:

- "3. Beginning July 1, 2023, and annually by July first each year thereafter, each school district shall submit a written report to the superintendent of public instruction. The report must include:
- a. The number of incidents of both restraint and seclusion in each school located within the district during the preceding calendar year, and whether the student who was the subject of the restraint or seclusion was on an individualized education program, or a 504 plan in compliance with the requirements of section 504 of the Rehabilitation Act [29 U.S.C. 794];
 - b. The number of students who were the subject of restraint and seclusion methods by school district personnel during the preceding calendar year, and whether the students were on an individualized education program, or a 504 plan in compliance with the requirements of section 504 of the Rehabilitation Act [29 U.S.C. 794]; and
 - c. The type of restraint or seclusion used during each incident.
4. The superintendent of public instruction shall publish the data received under subsection 3 to the department's website within ninety days of its receipt."

Renumber accordingly