

USE OF RESTRAINT AND SECLUSION PROCEDURES IN SCHOOLS

2015 Senate Concurrent Resolution No. 4018 directs the Legislative Management to study the use of restraint and seclusion procedures in schools.

RESTRAINT AND SECLUSION - DEFINITIONS

According to the United States Department of Education, the term "restraint" may refer to either physical restraint or to mechanical restraint.

"Physical restraint" refers to a "personal restriction that immobilizes or reduces the ability of a student to move his or her torso, arms, legs, or head freely. The term physical restraint does not include a physical escort. Physical escort means a temporary touching or holding of the hand, wrist, arm, shoulder, or back for the purpose of inducing a student who is acting out to walk to a safe location." [See, United States Department of Education, *Restraint and Seclusion: Resource Document*, Washington, D.C., 2012.]

"Mechanical restraint" refers to the "use of any device or equipment to restrict a student's freedom of movement. This term does not include devices implemented by trained school personnel, or utilized by a student that have been prescribed by an appropriate medical or related services professional and are used for the specific and approved purposes for which such devices were designed, such as:

- Adaptive devices or mechanical supports used to achieve proper body position, balance, or alignment to allow greater freedom of mobility than would be possible without the use of such devices or mechanical supports;
- Vehicle safety restraints when used as intended during the transport of a student in a moving vehicle;
- Restraints for medical immobilization; or
- Orthopedically prescribed devices that permit a student to participate in activities without risk of harm." [See, Id.]

According to the United States Department of Education, "seclusion" means the "involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving. It does not include a timeout, which is a behavior management technique that is part of an approved program, involves the monitored separation of the student in a non-locked setting, and is implemented for the purpose of calming." [See, Id.]

FEDERAL LAW

Congress has provided a set of national standards that must be adhered to by psychiatric treatment facilities. The standards differ, depending on whether the facility is a non-medical community-based facility for children and youth or a healthcare facility. The former includes group homes. The latter includes hospitals, intermediate-care facilities, or other health care facilities, if they receive federal funds.

The standards require that facilities comply with the general principle of protecting and promoting an individual's right to be free from restraint and seclusion for purposes of discipline or convenience and require that restraint or seclusion be used:

- Only to ensure the physical safety of the individual or others; and
- Only upon the written order of a physician or other duly authorized licensed practitioner.

[See, Children's Health Act of 2000, Pub. L. 106-310, sections 3207-3208]

Medications and drugs that are used to control behavior and are not a standard treatment for the individual's condition are considered a form of restraint. Accordingly, they are subject to the same requirements. [See, Bazelon, *Federal Standards for Use of Restraint and Seclusion*, <http://www.bazelon.org/LinkClick.aspx?fileticket=omYbFQEMJkY%3D&tabid=321>]

If the facility is a "non-medical, community-based facility for children and youth," the use of restraint or seclusion is limited to emergency situations within which it is necessary to protect the immediate physical safety of the individual or of others. Furthermore, restraint and seclusion may be utilized only by individuals who have been trained and certified by a state-recognized body in a list of competencies, that include understanding the physiological and psychological impact of restraint and seclusion, monitoring for physical signs of distress, and preventing the use of restraint and seclusion.

Because, in these facilities, time-outs and physical escorts are not defined as restraint or seclusion, the new standards do not apply to such procedures. However, in these facilities, mechanical restraints and drugs may not be used as a form of restraint. Seclusion may be used only when a staff member is engaged in face-to-face monitoring of the individual. [See, Id.]

FEDERALLY SUGGESTED PRINCIPLES

The United States Department of Education has identified 15 principles that it believes states and school districts should consider if they elect to develop and implement policies and procedures related to the restraint or seclusion of a student. These principles are designed to ensure that restraint or seclusion is not used in a school, unless there is a threat of imminent danger i.e., of serious physical harm to the student or others. Under such a circumstance, the restraint or seclusion may be used only in a manner that protects the safety of all students and adults at the school.

Principle No. 1

Every effort should be made to prevent the need for the use of restraint and for the use of seclusion. The United States Department of Education bases this principle on the premise that environments can be structured to greatly reduce, and in many cases eliminate, the need to use restraint or seclusion.

Principle No. 2

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

Principle No. 3

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

The United States Department of Education suggests that physical restraint or seclusion should not be used as a response to displays of disrespect, noncompliance, insubordination, or any other inappropriate behavior that does not rise to the level of posing an imminent danger. The Department suggests having planned behavioral strategies to de-escalate potentially violent behavior and to identify and support appropriate behavior.

Principle No. 4

Policies restricting the use of restraint or seclusion should apply to all students, not just students with disabilities.

Principle No. 5

Any behavioral intervention must be consistent with the student's right to be treated with dignity and to be free from abuse.

The United States Department of Education suggests that schools should consider implementing an evidence-based schoolwide system or framework of positive behavioral interventions and supports. Key elements of such a system or framework include:

- Universal screening to identify students who are at risk for behavioral problems;
- Using a continuum of increasingly intensive behavioral and academic interventions for students who are identified as being at risk;
- Teaching and acknowledging behaviors and social skills that are expected of individual students and schoolwide; and
- Monitoring the responsiveness of individual students to behavioral and academic interventions.

Principle No. 6

Restraint or seclusion should never be used as a punishment or as discipline. It should never be used as a means of coercion or retaliation, and it should never be used as a convenience.

Principle No. 7

Restraint or seclusion should never be used in a manner that restricts a student's breathing or causes harm to the student.

The United States Department of Education suggests that any restraint or seclusion technique should be consistent with the student's known medical or other special needs. The Department also suggests that school personnel should be aware that certain restraint or seclusion techniques are more restrictive than others and they should use only the least restrictive technique necessary to end the threat of imminent danger. A student's ability to communicate should not be restricted unless less restrictive techniques would not suffice to prevent the imminent danger. This reference to a student's ability to communicate includes verbal communication, and sign language or other forms of manual communication, as well as assistive technology.

Principle No. 8

The use of restraint or seclusion should trigger a review, particularly if a student is subjected to its repeated use, if it is used on multiple occasions within the same classroom, or if it is used multiple times by the same individual. Under any such circumstances, the use of restraint or seclusion should also trigger a revision of strategies that are currently in place for the purpose of addressing dangerous behavior.

The United States Department of Education suggests that in cases where a student has a history of dangerous behavior for which restraint or seclusion was considered or used, the school should have a plan in place for teaching and supporting more appropriate behavior and for determining positive methods to prevent behavioral escalations that have previously resulted in the use of restraint or seclusion. This plan should be developed by trained personnel working in concert with the student's parent and appropriate professionals.

Principle No. 9

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

The United States Department of Education suggests that behavior does not occur in a vacuum. It is associated with conditions, events, requirements, and characteristics of a given situation or setting. Information collected through direct observation, interviews, and records can help to identify the situations that trigger certain dangerous behaviors and serve as a basis for:

- Addressing the characteristics of the setting and events;
- Removing the triggering antecedents;
- Adding antecedents that maintain appropriate behavior;
- Removing consequences that escalate dangerous behaviors;
- Adding consequences that maintain appropriate behavior; and
- Teaching self-regulation techniques.

Principle No. 10

Teachers and other personnel should be regularly trained on the appropriate use of effective alternatives to physical restraint and seclusion, and they should be regularly trained on the safe use of physical restraint and seclusion, in those instances involving imminent danger.

The United States Department of Education suggests that training should emphasize the importance of making every effort to prevent the need for restraint or seclusion. The Department also suggests that staff should be trained in the collection and analysis of data in order to determine the effectiveness of various procedures in increasing appropriate behaviors and decreasing inappropriate behaviors. The training should be conducted at the beginning of a school year and during the middle of the year, at a minimum. If the school enrolls a student with a history of behavior requiring restraint or seclusion, the training should be conducted with greater frequency.

Principle No. 11

Every instance in which restraint or seclusion is used should involve careful and continuous visual monitoring to ensure the appropriateness of the restraint or seclusion and the safety of the student, the safety of other students, and the safety of teachers and other personnel.

The United States Department of Education suggests that if restraint or seclusion is used, the student must be monitored by trained school staff who are knowledgeable about:

- Restraint and seclusion procedures and effective alternatives;
- Emergency and crisis procedures;
- Strategies to guide and prompt staff members engaged in restraint or seclusion procedures; and
- Procedures and processes for working as a team to implement the use of restraint or seclusion, to monitor the use of restraint or seclusion, and to debrief after the conclusion of an incident involving the use of restraint or seclusion.

Furthermore, the monitoring staff should be trained to ensure that the restraint or seclusion does not harm the student or others and that all procedures are implemented, as planned. The staff should also be trained to determine when the imminent danger has dissipated, so that the restraint or seclusion can be immediately discontinued.

Principle No. 12

A student's parent should be informed regarding school policies on restraint and seclusion, as well as applicable federal or state laws.

The United States Department of Education suggests that the aforementioned information should be provided to parents at least annually and included in district handbooks.

Principle No. 13

A student's parent should be notified as soon as possible after each incident in which the student is restrained or secluded.

The United States Department of Education suggests that parents should also be informed about school procedures for parental notification. In addition, the Department suggests that the phrase "as soon as possible" should be defined at the state or local level.

Principle No. 14

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

The United States Department of Education suggests that the aforementioned review should be conducted by a team that includes parents and professionals familiar with the education and support of students who exhibit dangerous behaviors in school or in community settings. The review should examine available data on the use of restraint or seclusion, including:

- The frequency of use;
- The gender, race, national origin, and disability status of students who have been restrained or secluded;
- The settings and staff members involved in each incident;
- The accuracy and consistency of data collection;
- The extent to which data collection is used in planning behavioral interventions and staff training;
- Whether procedures for restraint and seclusion are being implemented consistently;
- Whether the existing policies and procedures governing the use of restraint or seclusion are adequate to protect students and staff; and
- Whether the existing policies and procedures governing the use of restraint or seclusion remain properly aligned with applicable state laws and local policies.

Principle No. 15

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

- The starting and ending times of the restraint or seclusion;

- The location of the incident;
- The individuals involved in the restraint or seclusion;
- The date and time that the student's parent was notified;
- Events possibly triggering the behavior that led to the restraint or seclusion;
- Prevention, redirection, or pre-correction strategies that were used before the incident;
- A description of the restraint or seclusion strategies that were used during the incident;
- A description of any injuries or physical damage that occurred during the incident;
- How the student was monitored during and after the incident;
- The staff debriefing that occurred after the incident;
- The extent to which staff adhered to the procedural implementation guidelines (if such had been established by the state, district, or school); and
- Any follow-up activities that have been scheduled.

The United States Department of Education suggests that the documentation should be used to prevent the future use of restraint or seclusion by creating a record for consideration when developing a plan to address a student's needs or when developing a plan for staff training.

STATE LAWS

Overview

A 2015 report entitled *How Safe is the Schoolhouse?* states that "as of March 18, 2015, only 22 states had meaningful protections in their statutes and regulations protecting all children from both restraint and seclusion . . ." The referenced states are Alabama, Alaska, Colorado, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Maine, New Hampshire, North Carolina, Ohio, Oregon, Rhode Island, Vermont, West Virginia, Wisconsin, and Wyoming. [See, Jessica Butler, *How Safe is the Schoolhouse?* <http://www.autcom.org/pdf/HowSafeSchoolhouse.pdf> (2015).]

According to the report, some states offer meaningful protections against restraint or seclusion only for students with disabilities. Sixteen states require that an emergency condition in which there is a threat of physical danger exist before restraint can be used on any student. Two states ban seclusion for all students and five states ban seclusion for students with disabilities.

North Dakota law

North Dakota, together with Idaho, Mississippi, New Jersey, and South Dakota is credited in the aforementioned report with having no laws that protect **students** from seclusion or restraint. Ensuing are descriptions of laws that apply to individuals in non-school settings.

North Dakota Century Code (NDCC) Section 25-01.2-09 provides that:

No individual receiving services at any institution or facility for individuals with developmental disabilities may 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. . . .

Whenever an individual is placed in seclusion or physically restrained, NDCC Section 25-01.2-10 requires that:

. . . . [T]he facility 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 person who is in seclusion or who is physically restrained must be checked by an attendant at least once every thirty minutes.

North Dakota Administrative Code (NDAC) Section 33-14-04-01(13) provides the following standards for the use of restraint or seclusion in "residential care centers for the mentally retarded":

- a. Restraints or seclusion should be used only when all reasonable methods have failed and then should be used only for as brief a period as reasonably possible.
- b. Restraints may be applied only by written order of the attending physician. In case of an emergency a verbal order may be accepted, but must be placed in writing on the resident's record within twelve hours.
- c. When restraints[sic] or seclusion is used, a record shall be kept which will show:
 - (1) Name, age, and sex of resident.
 - (2) Type of procedure and device.
 - (3) Justification.
 - (4) Name of authorizing doctor.
 - (5) Date and hour placed in restraint or seclusion.
 - (6) Date and hour removed from restraint or seclusion.

Similar language is used in NDAC Section 33-14-05-01(12) with respect to residents of halfway houses, hostels, and group homes.

The use of "emergency safety interventions" is permitted in psychiatric residential treatment facilities for children. North Dakota Administrative Code Section 75-03-17-01 considers emergency safety interventions to be "special treatment procedures" used in response to unanticipated resident behavior that places the resident or others at serious threat of violence or injury.

The conditions for the use of restraint are set out in NDAC Section 75-03-17-06:

3. Physical restraints.
 - a. Physical restraints must be ordered by a physician and may be imposed only in emergency circumstances and must be used with extreme caution to ensure the immediate physical safety of the child, a staff member, or others after all other less intrusive alternatives have failed or have been deemed inappropriate;
 - b. All restraints must be applied by staff who are certified in the use of restraints and emergency safety interventions; and
 - c. The facility staff shall have established protocols that require:
 - (1) Entries made in the child's file as to the date, time, staff involved, reasons for the use of, and the extent to which physical restraints were used, and which identify less restrictive measures attempted;
 - (2) Notification within twenty-four hours of the individual who lawfully may act on behalf of the child; and
 - (3) Face-to-face assessment of children in restraint completed by a physician, registered nurse, or other licensed health care professional or practitioner who is trained in the use of safety, emergency interventions. The face-to-face assessment must be documented in the child's case file and include assessing the mental and physical well-being of the child. The face-to-face assessment must be completed as soon as possible, and no later than one hour after the initiation of restraint or seclusion.

The conditions for the use of seclusion are set out in NDAC Section 75-03-17-06:

4. Seclusion. Seclusion must be ordered by the attending physician and may be imposed only in emergency circumstances after all other less intrusive alternatives have failed or have been deemed inappropriate. Seclusion is to be used with extreme caution, and only to ensure the

immediate physical safety of the child, a staff member, or others. A child's bedroom may not be used for seclusion. If seclusion is indicated, the facility shall ensure that:

- a. The proximity of the staff allows for visual and auditory contact with the child at all times;
 - b. Staff conduct assessments of the child every fifteen minutes and document the assessments in the child's case file;
 - c. The seclusion room is not locked, or is equipped with a lock that only operates with staff present such as a push-button lock that only remains locked while it is being pushed;
 - d. All nontherapeutic objects are removed from the area in which the seclusion occurs;
 - e. All fixtures within the room are tamperproof, with switches located outside the room;
 - f. Smoke-monitoring or fire-monitoring devices are an inherent part of the seclusion room;
 - g. Security mattresses used are made of fire-resistant material;
 - h. The room is properly ventilated;
 - i. Notification of the individual who lawfully may act on behalf of the child is made within twenty-four hours of a seclusion and is documented in the child's case file;
 - j. A child under special treatment procedures is provided the same diet that other children in the facility are receiving;
 - k. No child remains in seclusion:
 - (1) For more than four hours in a twenty-four-hour period; and
 - (2) Without physician approval;
 - l. Seclusion is limited to the maximum timeframe per episode for fifteen minutes for children aged nine and younger and one hour for children aged ten and older; and
 - m. Face-to-face assessment of children in seclusion is completed by a physician, registered nurse, or other licensed health care professional or practitioner who is trained in the use of safety, emergency interventions and is documented in the child's case file. The face-to-face assessment must include assessing the mental and physical well-being of the child. The face-to-face assessment must occur no later than one hour after the initiation of restraint or seclusion.
5. Within twenty-four hours of each use of seclusion or physical restraint, the facility shall conduct a debriefing which includes appropriate personnel and the child and which:
- a. Evaluates and documents in the child's case file the well-being of the child served and identifies the need for counseling or other therapeutic services related to the incident;
 - b. Identifies antecedent behaviors and modifies the child's individual person-centered treatment plan as appropriate;
 - c. Analyzes the incident and identifies needed changes to policy and procedures, staff training, or both.

With respect to students in school settings, however, Century Code only addresses the matter of corporal punishment. NDCC Section 15.1-19-02 provides the following:

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. Physical pain or discomfort caused by athletic competition or other recreational activities voluntarily engaged in by a student is not corporal punishment. A school board may not expand through policy the definition of corporal punishment beyond that provided by this subsection.
4.
 - a. The board of each school district shall develop policies setting forth standards for student behavior, procedures to be followed if the standards are not met, and guidelines detailing how all incidents are to be investigated.
 - b. The board shall ensure that the policies, procedures, and guidelines applicable to all elementary schools in the district are identical, that the policies, procedures, and guidelines applicable to all middle schools in the district are identical, and that the policies, procedures, and guidelines applicable to all high schools in the district are identical.

In response to the requirements of NDCC Section 15.1-19-02, the North Dakota School Boards Association has developed a model policy on restraint and seclusion, a copy of which is attached as an [appendix](#).

CONCLUSION

Much of the literature addressing the use or prohibition of restraint and seclusion in schools focuses on the need to protect students from the risk of physical and psychological harm, stemming from their restraint or seclusion. The sought-after ideal seems to involve a strong national directive that would ensure meaningful protections for all students, even if they move from one state to another or from one school district to another. Short of achieving that goal, meaningful state-level protections appear to be encouraged.

The literature, however, points out that meaningful protections are based not only on the content of the directive itself, but equally so on the willingness of a state to implement its legislation, regulations, or policies, and enforce such in a manner that does not undermine either meaning or intent.

ATTACH:1