

## SCR 4018: Interim Study of the use of Seclusion and Restraint in the Schools

Education Committee

September 21, 2015  
Roughrider Room  
Senator Don Schaible, Chair

### *Introduction and background*

In 1998, the *Hartford Courant* published a major investigative series examining deaths and injuries from restraint and seclusion in schools. Stories in that series included a 12-year-old boy with disabilities who died while being held in a prone restraint after a dispute over a teddy bear. In the intervening years since then, a great deal of research has been done on the issue of seclusion and restraint at school. In 2009, the Government Accountability Office (GAO) reported in a comprehensive decade-long study that many hundreds of students had been restrained and secluded, leading to death, injury, and psychological trauma. At least 20 of the GAO's stories involved children who died from restraint. According to that report, a seven-year-old girl died while restrained facedown and unable to breathe; kindergartners were tied to chairs with duct tape and suffered broken bones and bloody noses; a young teen hung himself while alone in a seclusion room, while his teacher sat outside. About 70% of the reported incidents involved children with disabilities.

The GAO report, entitled *Examining the Abusive and Deadly use of Seclusion and Restraint in Schools*, found that there were no current federal regulations, but a wide variety of divergent state regulations governing the use of restraint and seclusion in public and private schools. The GAO reported there were no reliable national data on when and how often restraint and seclusion are being used in the schools. The GAO also observed that problems with untrained or poorly trained staff were often related to incidents of alleged abuse of restraint and seclusion.

When the GAO report was presented to the United States Congress, the House of Representatives held a series of hearings, which led to the drafting of proposed federal legislation on the use of restraint and seclusion in schools. A House Bill, HR 4247, and two Senate Bills were introduced. The shared purpose of these bills was to:

- (1) Limit the use of restraint and seclusion in schools to cases where there is imminent danger of physical injury to the student or others at school;
- (2) Provide criteria and steps for the proper use of restraint or seclusion; and
- (3) Promote the use of positive reinforcement and other less restrictive behavioral interventions in school.

These measures also would have authorized support to the states and localities in adopting more stringent oversight of the use of restraint and seclusion in schools, and would have established requirements for collecting data on the use of these practices in schools. Although the House Bill passed and received considerable support in the Senate, to date, no federal legislation related to restraint and seclusion in the schools has been enacted.

In 2009, while these Congressional hearings were being held, Secretary of Education Arne Duncan sent a letter to the chief state school officer in each state encouraging each state to review current practices and guidelines on the use of restraint and seclusion to help ensure that every student is safe and protected, and to develop policies and guidelines so that administrators, teachers, and parents could understand the limited circumstances under which restraint and seclusion techniques may be used. Simultaneously, in 2009, the Substance Abuse and Mental Health Services Administration (SAMHSA) addressed the issue of reducing and in some cases prohibiting, the use of restraint and seclusion in mental health facilities. (In North Dakota, the use of restraint and seclusion has been prohibited in all facilities providing services for individuals with developmental disabilities, except in limited emergency situations when necessary to protect against physical harm. A copy of our statute is attached to this report as attachment A.)

### *A patchwork of state laws, regulations, nonbinding guidelines—and silence*

Perhaps in anticipation of federal legislation, most states have acted to provide various protections and safeguards through state laws, regulations, and nonbinding guidelines. A number of states adopted new laws this year, or amended old laws with new provisions. According to the newly-updated 2015 report entitled *How Safe is the Schoolhouse? An analysis of state seclusion and restraint laws and policies*, by Jessica Butler, currently 25 states have laws providing meaningful protections against restraint and seclusion for all children. 35 states have laws protecting children with disabilities. According to Butler, the remaining states have a patchwork of weak laws and regulations with limited protections and loopholes. For example, Nebraska's regulation simply instructs school districts to adopt any policy they choose; it imposes no requirements whatsoever.

Five states have nothing – no laws, regulations, or statewide guidelines. North Dakota is one of those five states. The other four states that are silent include Idaho, Mississippi, New Jersey, and South Dakota.

### *The U.S. Department Education's Resource Document*

In May, 2012, the U.S. Department of Education issued a resource document, entitled *Restraint and Seclusion: Resource Document*, to assist states, school districts, schools, parents, and other stakeholders in developing policies and procedures on the use of restraint and seclusion in schools. The document describes 15 principles for states and others to consider when developing or revising policies. These principles stress that every effort should be made to prevent the need for the use of restraint and seclusion and that any behavioral intervention must be consistent with the child's right to be treated with dignity and to be free from abuse. An excerpt from the Department of Education document, outlining the 15 principles, is attached to this report as attachment B. The principles make clear that restraint or seclusion should never be used except in situations where a child's behavior poses imminent danger of serious physical harm to self or others, and restraint and seclusion should be avoided to the greatest extent possible without endangering the safety of students and staff. According to the document, there is no evidence that using restraint or seclusion is effective in reducing the occurrence of problem behaviors that frequently precipitate the use of these techniques.

## *Definitions*

The DOE resource document provides uniform definitions of the key terms “restraint,” “physical restraint,” and “mechanical restraint,” as well as “seclusion.” These definitions were developed by the Department’s 2009-2010 Civil Rights Data Collection (CRDC). According to the GAO report, each of these types of restraints is currently being used in schools.

The CRDC defines *physical restraint* as:

“A personal restriction that immobilizes or reduces the ability of the 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 a hand, wrist, arm, shoulder, or back for the purpose of inducing the student who is acting out to walk to a safe location.”

The CRDC defines *mechanical restraint* as:

“The use of any device or equipment to restrict the student’s freedom of movement. This term does *not* include devices implemented by trained school personnel, or utilized by a student that had been prescribed by an appropriate medical or related services professional and are used for the specific and approved purpose 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 devices or mechanical supports;
- Vehicle safety restraints when used as intended during the transport of the student in a moving vehicle;
- Restraints for medical immobilization; or
- Orthopedically prescribed devices that permit a student to participate in activities without risk of harm.”

The CRDC defines *seclusion* as:

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

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

## *The North Dakota School Board Association Guidelines*

Given the absence of requirements in state law and the federal government's heightened focus on seclusion and restraints in the schools, the North Dakota School Board Association recently saw the need to develop sample restraint and seclusion policies. These sample policies incorporate

some of the guidance from the Department of Education’s Seclusion and Restraint Resource Document. The document, attached to this report as attachment C, is entitled *Policy Ponderings: Restraint and Seclusion*. These policy guidelines for school districts encourage positive behavioral interventions and supports (PBIS) to the extent possible. According to the August 2012 NDSBA document, three North Dakota school boards had adopted some form of the recommended guidelines as of that date.

*Anecdotal evidence: Examples of seclusion and restraint that is happening now in North Dakota public schools*

The following information was reported to the Protection and Advocacy Project in 2015:

1. The client is a nine-year-old white male with diagnoses of autistic disorder, ADHD, seizure disorder NOS, and asthma. The child had bruises after physical restraints were applied.
2. The client is a six-year-old Native American male with diagnoses of autism spectrum disorder and ADHD. The child was referred to P&A when he showed unexplained bruises after he was strapped in a wooden “restraint chair” in the school setting.
3. The client is a 16-year-old mixed-race male with diagnoses of cerebral palsy, bipolar disorder, ADHD, impulse control disorder, mild intellectual disability, spastic quadriplegia, and seizure disorder. The client was handcuffed in his wheelchair after trying to strike people at school. The handcuffs were left on for one-half hour.
4. The client is an 11-year-old Native American male with diagnoses of ADHD, anxiety disorder, depression, and “autism-like” behaviors. The school staff implemented a restraint involving staff sitting on the client on the floor, a procedure that was not “minimal” and was excessive in force.
5. Report of a school district investigation involving an 11-year-old Native American female on an IEP (diagnosis not reported.) The child was confined to an isolation room (essentially a small storage room with windows). The report indicated: the student on an IEP and another regular ed student were required to spend the day in the storage room by themselves, unsupervised. The student with the disability was in the room for half a year. The private investigator and an attorney hired by the school substantiated the allegations.
6. Upon receiving a report from a parent regarding the use of seclusion rooms in Bismarck schools in the spring of 2015, two P&A advocates investigated the rooms. Pictures of the rooms are attached to this report. P&A is following up and has requested information about the use of the rooms, but to date, the information has not been provided by the schools.

### *Recommendation for stakeholder input*

If our state is serious about the idea of adopting meaningful laws or regulations governing the use of seclusion and restraints in schools, Protection and Advocacy recommends that this interim committee open the process to stakeholder input. The following is a nonexclusive list of potential organizations and groups who might be included in the process:

- Parent and family advocacy organizations such as Family Voices, ND Federation of Families for Children's Mental Health, The Arc, and Pathfinders;
- NDEA;
- ND Association of School Counselors;
- ND Association of School Principals;
- ND Association of School Administrators and Superintendents;
- ND Association of Special Ed Directors and Professionals;
- ND Association of School Nurses;
- Parent-Teacher Organizations;
- ND Association of School Psychologists;
- North Dakota School Board Association

### *Recommended Resources*

National Disability Rights Network (NDRN)

Jessica Butler, the Autism National Committee

### *Conclusion*

I wish to thank Legislative Management for selecting SCR 4018 for this important interim study. Protection and Advocacy is extremely happy to participate in this study and we stand ready and willing to serve as a resource to this committee for any additional research or information you may request. It is my pleasure to appear before you. Thank you for your attention. I will try to answer any questions you may have.

**ATTACHMENT**

**“A”**

## ND Century Code Chapter 25-01.2

### **25-01.2-09. Punishment - Isolation - Physical restraints - Psychosurgery - Sterilization - Shock treatment.**

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.
4. Be subjected to psychosurgery, sterilization, medical behavioral research, or pharmacological research, except in conformity with an order of a court of competent jurisdiction. Under no circumstances may an individual receiving treatment be subjected to hazardous or intrusive experimental research which is not directly related to the specific goals of that individual's treatment program.
5. Be subjected to electroconvulsive therapy or shock treatment without that individual's written and informed consent. If the recipient of services is a minor, the recipient's parent or guardian may provide informed consent for that treatment which the parent or guardian believes to be in the recipient's best interests.

### **25-01.2-10. Seclusion or physical restraint - Facility administrator to be notified.**

Whenever a person is placed in seclusion or is physically restrained, the 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.

**ATTACHMENT**

**“B”**



# RESTRAINT AND SECLUSION: RESOURCE DOCUMENT

U.S. Department of Education





# Fifteen Principles<sup>7</sup>



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

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

## FIFTEEN PRINCIPLES

1. Every effort should be made to prevent the need for the use of restraint and for the use of seclusion.
2. Schools should never use mechanical restraints to restrict a child's freedom of movement, and schools should never use a drug or medication to control behavior or restrict freedom of movement (except as authorized by a licensed physician or other qualified health professional).
3. Physical restraint or seclusion should not be used except in situations where the child's behavior poses imminent danger of serious physical harm to self or others and other interventions are ineffective and should be discontinued as soon as imminent danger of serious physical harm to self or others has dissipated.
4. Policies restricting the use of restraint and seclusion should apply to all children, not just children with disabilities.
5. Any behavioral intervention must be consistent with the child's rights to be treated with dignity and to be free from abuse.

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<sup>7</sup> This Resource Document addresses the restraint or seclusion of any student regardless of whether the student has a disability. Federal laws, including the IDEA, the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, as amended, must be followed in any instance in which a student with a disability is restrained or secluded, or where such action is contemplated. This Resource Document does not, however, address the legal requirements contained in those laws.

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

6. Restraint or seclusion should never be used as punishment or discipline (e.g., placing in seclusion for out-of-seat behavior), as a means of coercion or retaliation, or as a convenience.
7. Restraint or seclusion should never be used in a manner that restricts a child's breathing or harms the child.
8. The use of restraint or seclusion, particularly when there is repeated use for an individual child, multiple uses within the same classroom, or multiple uses by the same individual, should trigger a review and, if appropriate, revision of strategies currently in place to address dangerous behavior;<sup>8</sup> if positive behavioral strategies are not in place, staff should consider developing them.
9. Behavioral strategies to address dangerous behavior that results in the use of restraint or seclusion should address the underlying cause or purpose of the dangerous behavior.
10. Teachers and other personnel should be trained regularly on the appropriate use of effective alternatives to physical restraint and seclusion, such as positive behavioral interventions and supports and, only for cases involving imminent danger of serious physical harm, on the safe use of physical restraint and seclusion.

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<sup>8</sup> As used in this document, the phrase "dangerous behavior" refers to behavior that poses imminent danger of serious physical harm to self or others.

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



Following is additional information about each of the 15 principles.

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

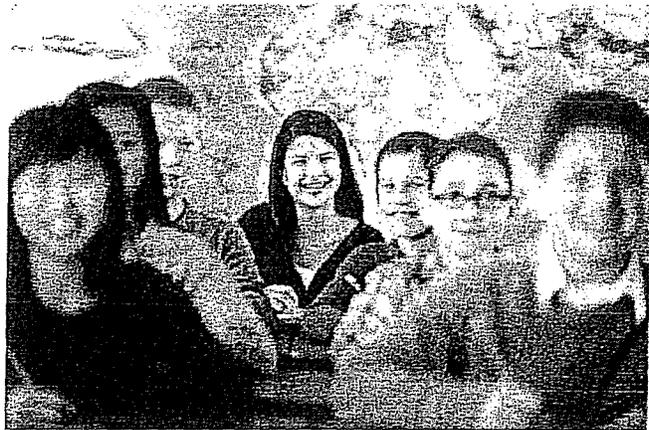
and family members should be notified immediately. In addition, preventive strategies to reduce the likelihood that restraint or seclusion will need to be used with a child should be established, documented, and communicated to the child's parents. Parents also should be encouraged to work with schools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

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

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

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

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



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

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

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

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

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

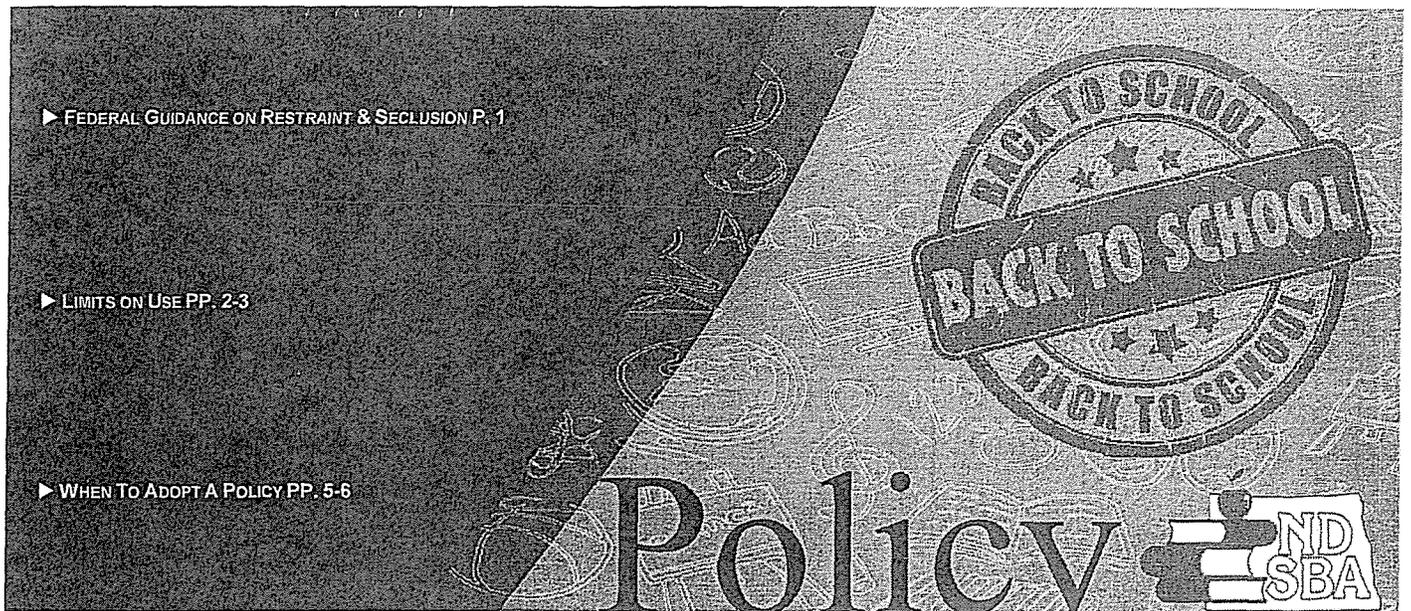
of restraint and seclusion incidents across individual children, groups of children (e.g., gender, race, national origin, disability status and type of disability, limited English proficiency, etc.), settings, individual staff, and programs, as well as the number and proportion of children who were restrained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

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

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

# **ATTACHMENT**

**“C”**



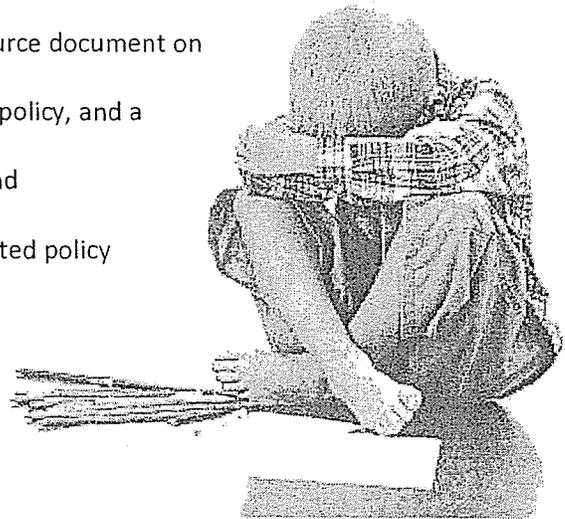
| ○ August | ○ 2012 |

# *ponderings*

## RESTRAINT AND SECLUSION

In May 2012, the U.S. Department of Education (ED) released a resource document on restraint and seclusion. Its purpose was threefold:

1. To provide federal guidance on an issue governed by state laws, policy, and a handful of court decisions;
2. To increase educators' awareness of this increasingly complex and controversial issue;
3. To provide a complete list of current state laws and state-mandated policy requirements.



According to this ED publication, North Dakota has laws governing restraint and seclusion for the developmentally disabled (NDCC 25-01.2-09 through NDCC 25-01.2-10), but such laws do not apply to all students and do not require or specify the contents of a restraint or seclusion policy. Given this absence of requirements in state law and the federal government's heightened focus on these topics, Policy Services saw a need to develop a sample restraint or seclusion policy. As described below, the sample policy (which is included at the end of this publication) combines guidance from the recent ED publication with policy standards gleaned from Eighth Circuit rulings and state law in an effort to establish reasonable and practical protections for students and staff in North Dakota school districts.

### KEY COMPONENTS OF NDSBA'S RESTRAINT OR SECLUSION POLICY

#### Applicability of Policy

Restraint or seclusion policies should apply to all students—not just special education students or another select group of students. Ensuring that the policy is applicable to all students is an important safeguard for a number of reasons: for the safety of the entire student body, to help prevent claims of discrimination, and to ensure that, regardless of the student involved, restraint or seclusion is implemented in accordance with standards established by your school board.

### Limits on Use

State law (which is only applicable to the developmentally disabled) prohibits use of restraint or seclusion **except when all of the following conditions are satisfied:** an emergency situation necessitates the use of restraint or seclusion to control “violent, disturbed, or depressed behavior which may **immediately** result, or has resulted, in harm to that person or other persons” (NDCC 25-01.2-09). ED recommends extending the above restriction to apply to all students. School district policy must at least reflect state standards for developmentally disabled students. Given ED recommendations, however, we advise making such standards applicable to **all** students through policy and encourage use of positive behavioral interventions and supports (PBIS) to the extent possible.

Implementation of PBIS includes the following steps:

1. Conducting a school-wide assessment to identify students who have the potential to act out in a dangerous manner that requires use of



restraint or seclusion. This will likely require examination of students’ disciplinary records and monitoring of student behavior patterns by school staff.

2. Developing a behavioral intervention plan (BIP) for identified students. This plan should identify environmental triggers that cause the student to engage in dangerous behavior, include procedures for diminishing or removing such environmental factors, list interventions that will be used to maintain appropriate behavior and respond to inappropriate behavior, and contain an overview of self-regulating techniques on which the student will be trained.
3. Involve parents in the development of the BIP. We recommend receiving written parental consent of this plan since this is *one of* the key determinates of permissibility in many court cases involving restraint or seclusion. In the case of mentally or physically disabled students, behavior intervention strategies should be addressed in the IEP or 504 Plan.

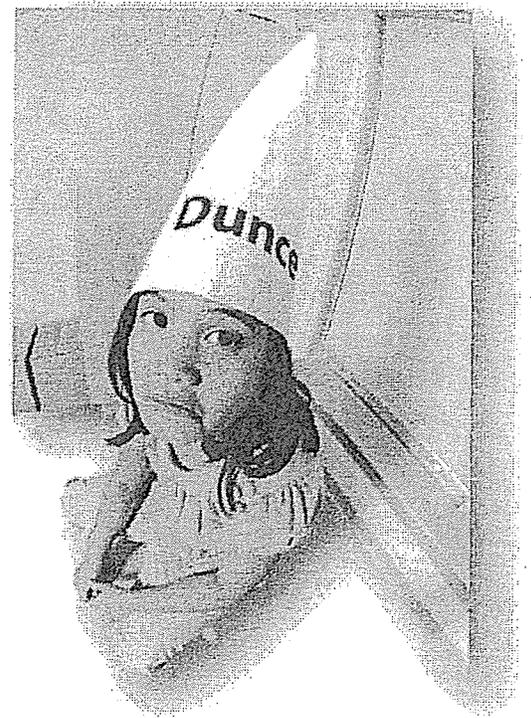
### Impermissible Restraint and Seclusion Interventions

In the limited instances in which restraint or seclusion is necessary, the Eighth Circuit has held, in at least two cases, that the restraint or seclusion intervention used **must not “substantially depart from accepted professional judgment, practice, or standards.”** Based on the ED guidance, the following restraint or seclusion techniques would likely be substantial departures from these norms and consequently **should be prohibited by school policy from use and inclusion in BIPs, 504 Plans, and IEPs.**

1. Use of restraint and seclusion interventions simultaneously
2. Use of restraint or seclusion to discipline a student
3. Use of restraint or seclusion as a behavioral intervention when behavior does not pose a threat of harm or has not resulted in harm to the student or others
4. Use of mechanical restraints (see sample policy for definition)

*Restraint or seclusion should only be used to control “violent, disturbed, or depressed behavior which may immediately result, or has resulted, in harm to that person or other persons.”*

*Restraint or seclusion must never be used as a means of disciplining a student.*



5. Use of drugs or medication to control a child (except as authorized by and administered in accordance with a qualified healthcare professional's prescription). It is important to note that under current state law, school personnel do not have clear authority to administer medication to students unless they have obtained proper medical training (e.g., a nursing degree)
6. Use of a restraint or seclusion technique that restricts breathing or ability to communicate or harms a child (e.g., requiring a student to lie down or covering a child's face)
7. Use of restraint or seclusion for longer than when the threat to the student or others has passed

**Determining Appropriate Restraint and Seclusion Interventions**

Upon review of court cases related to restraint or seclusion, one quickly realizes that there are not universally acceptable restraint or seclusion interventions. When a school identifies a foreseeable need for restraint or seclusion, it must determine the appropriate intervention based on at least the following:

1. Age of the child.

2. Behavior at issue. If behavior does not pose an immediate threat of harm or has resulted in harm to the student or others, restraint or seclusion **must not be used**.
3. Whether a proposed intervention would violate restraint or seclusion interventions prohibited by policy. **Such interventions must not be used**.
4. The child's needs.
5. Terms of the child's IEP and/or 504 Plan.
6. Whether staff have received appropriate training in the intervention proposed.
7. The number of staff needed to administer the intervention. At a minimum, two staff members should be on hand when restraint or seclusion is used—one to witness implementation of interventions and one to administer the intervention. This helps ensure that staff member(s) administering the intervention methods is doing so in a procedurally compliant and safe manner and serves as a safeguard in the event that a parent claims that interventions were not implemented correctly.

8. Whether a staff member will be available to continually monitor a student who is restrained or placed in seclusion. (NOTE: State law requires that developmentally disabled students be checked by an attendant at least every 30 minutes. ED recommends continuous visual monitoring of **any** student restrained or put in seclusion. Our policy incorporates the latter standard.) This is essential to ensure that a child is not harmed and that the intervention is only used for the duration necessary.
9. If seclusion is the recommended intervention, whether the school has a seclusion area free from any objects that the child could use to harm him/herself (consider even door handles and light switches) and in an area where a staff member is able to safely observe the child. If the school district is unable to provide

*Seclusion areas must be free from any objects that could harm a child and must be in a location where staff can safely monitor the child.*



such an environment, alternative interventions must be developed.

on prohibitions contained in policy and on proper implementation of restraint or seclusion interventions is essential.

10. Whether the proposed interventions have been reviewed and approved by a qualified licensed specialist such as a therapist or psychologist. We strongly recommend obtaining this approval when restraint or seclusion is foreseeable since this is one way of demonstrating that the restraint or seclusion intervention used does not “substantially depart from accepted professional judgment, practice, or standards.”

#### **Staff Training**

ED recommends that only trained personnel implement restraint or seclusion interventions and also recommends staff training twice a year and regular, supervised practice of intervention methods. School districts should identify staff who, due to the nature of their job duties, may be required to implement PBIS and restraint and seclusion intervention techniques (e.g., administrators, teachers, teachers’ aides, bus monitors, playground supervisors, etc.) and establish a schedule for recurring training in administrative regulations. We recommend checking with your special ed unit to inquire about available training.

restraint is necessary” (NDCC 25-01.2-10). Under state law, the administrator must authorize continuation of the intervention for the developmentally disabled child in writing for a period of no more than 24 hours. (NOTE: We recommend limiting the duration of the intervention to no more than the end of the school day in policy.) Policy must at least reflect this notification requirement contained in state law for the developmentally disabled. Our sample policy contains optional language extending the provision to any student.

11. A review of restraint or seclusion interventions used to respond to the child in the past. Any interventions that were ineffective should be modified using the above criteria.

When use of restraint or seclusion is foreseeable, the interventions used should be delineated in the parental-approved BIP, 504 Plan, or IEP. Schools will undoubtedly encounter situations in which the need for restraint or seclusion is unforeseeable but necessary, forcing staff to respond without the guidance of a BIP, 504 Plan, or IEP. In such cases, staff training

#### **Documentation, Notification, & Re-Evaluation**

For the developmentally disabled, state law requires the following: “whenever a person is placed in seclusion or is physically restrained, the facility administrator or the administrator's representative must be notified and shall determine if the isolation or

Anytime restraint or seclusion is used, a school staff member should document it using the restraint or seclusion reporting form and submit it to administration as soon as practical. A sample form is included at the end of this publication. It was developed in accordance with ED recommendations on documenting restraint or seclusion incidents. As part of this form, administrators are

prompted to contact the parents of a student subject to restraint or seclusion as soon as practical—ideally the same school day. Schools may establish an exception to the parental notification requirement if the intervention used was part of the student’s BIP, 504 Plan, or IEP and parents, in that document, waived the parental notification requirement when such intervention is used.

School administration should carefully monitor the number and content of restraint and seclusion reporting forms received. ED recommends that “when restraint or seclusion is repeatedly used, used multiple times within the same classroom, or used multiple times by the same individual,” this should trigger a review of the student’s BIP/504 Plan/IEP to determine the effectiveness of current intervention strategies and an assessment of staff members’ need for more training. If a student does not have a BIP and engages in dangerous behavior that requires use of restraint or seclusion, administration should take the appropriate steps to initiate development of a BIP.



### **Policy Dissemination, Implementation, & Review**

Prior to final board adoption of the restraint or seclusion policy, the board should give parents an opportunity to provide input on the policy. This could be done through a mass mailing, posting a survey on the district website, requesting feedback from your local PTA or PTO, or advertising a special public forum for the board to receive input on the policy.

Parents should be put on advance notice of your district’s restraint and seclusion policy once adopted and any revisions to it. This may mean placing the policy in your student handbooks, posting it on your district website, and/or including it in your district newsletter. Since most districts have already printed student handbooks for the new school year, the policy could also be sent home as a separate handout.

Finally, ED recommends that a committee (preferably including parents and trained school personnel) review the restraint or seclusion policy periodically. More specifically, ED recommends that the following factors be examined during the review:

1. Frequency of use of restraint or seclusion

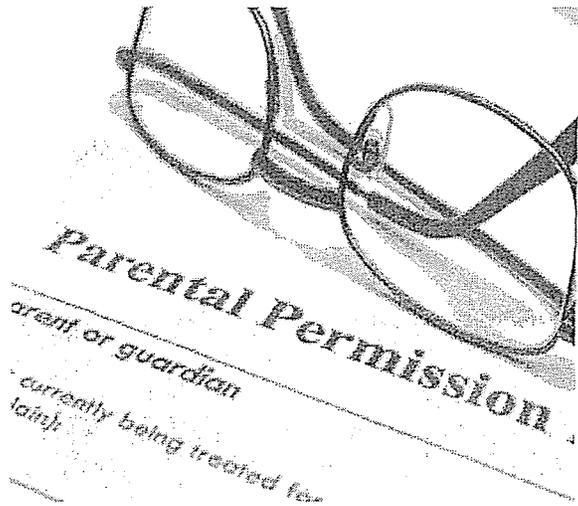
2. The outcomes of restraint or seclusion interventions
3. To determine if policy is applied consistently: demographics of students subject to restraint or seclusion, programs/settings in which such interventions are used, and frequency of each staff member’s use of these interventions
4. Whether use of restraint or seclusion is reported accurately and consistently
5. Whether data collected on restraint and seclusion are used to plan PBIS and staff development
6. Whether policy continues to protect students and staff
7. Whether policy is still aligned with law

We recommend performing this comprehensive policy review at least once during the school year and placing this review requirement in policy.

### **When to Adopt a Restraint or Seclusion Policy?**

While many school districts are waiting on issuance of a federal restraint and seclusion law to adopt a policy, in the interest of safety and liability protection, we recommend adoption of

*Staff training on prohibitions contained in policy and on proper implementation of restraint or seclusion interventions is essential.*



We recommend receiving written parental consent of BIPs containing restraint or seclusion since this is one of the key determinates of permissibility in many court cases on this matter.

policy this school year. Congress proposed several bills during 2009 but none were passed and federal legislation on this issue has not resurfaced to date, indicating a very remote possibility of federal legislation in the near future.



The recent ED guidance emphasizes the states' role in legislating restraint and seclusion, putting increased pressure on state lawmakers—especially in states where restraint or seclusion legislation is lacking or broad-based. In North Dakota, restraint and seclusion legislation only applies to the developmentally disabled, leaving room for new state mandates.

**Congrats to the following school boards for completing a customized policy manual or a policy manual update:**

**Billings County School Board**

**Hankinson School Board**

**Northwood School Board**

One way to preserve local control of the restraint or seclusion policy is to demonstrate to lawmakers that North Dakota schools have, on their own, adopted restraint and seclusion policies that contain reasonable and practical protections for students and staff—another reason to consider adopting a restraint and seclusion policy this school year.

*While this issue of Policy Ponderings has been legally reviewed, Policy Ponderings, NDSBA's sample policies, and other resource materials should not be considered as legal advice and are not intended as a substitute for the advice of your board's legal counsel.*

## RESTRAINT OR SECLUSION POLICY

Restraint and seclusion shall be implemented in a nondiscriminatory manner and in compliance with this policy on any student identified as exhibiting dangerous behavior as defined below.

### Definitions

For the purposes of this policy:

- ***Dangerous behavior*** is violent, disturbed, or depressed behavior which may **immediately** result, or has resulted, in harm to that person or other persons.
- ***Mechanical restraint*** is any device or object used to restrict or limit a student's body movement or any normal function of any portion of his/her body to prevent or manage dangerous behavior. Mechanical restraints are prohibited in **[Name of District]** Public Schools.
- ***Physical restraint*** is the use of physical intervention intended to hold a student immobile or limit a student's movement by using body contact as the only source of restraint.
- ***Seclusion*** is placing a student in a room or limited space alone except for the presence of a staff monitor who shall monitor the student directly in the space or immediately outside it. Seclusion does not include timeouts.
- ***Timeout*** is a behavior intervention strategy that occurs when the ability of a student to receive normal reinforcement in the environment is restricted. Timeout may be inclusionary (where the student remains in sight and sound of others in the classroom) or exclusionary (where the student leaves the learning environment and goes to another location but is not isolated and prevented from leaving). Timeouts are not a form of seclusion.

### Positive Behavioral Interventions & Strategies (PBIS)

To minimize the need for physical restraint or seclusion to respond to dangerous behavior, the District shall use PBIS to the extent possible. To implement PBIS the District **[shall]** **[should]** at least take the following steps:

1. Conduct a school-wide identification and assessment of students in need of PBIS.
2. Train staff on identifying the need for PBIS and on implementing these interventions once established.
3. Develop a behavioral intervention plan (BIP) for identified students. This plan should at least identify environmental triggers that cause the student to engage in dangerous behavior, include procedures for diminishing or removing such environmental factors, list interventions that will be used to maintain appropriate behavior and respond to inappropriate behavior, and

contain an overview of self-regulating techniques on which the student will be trained.

4. Involve parents in the development of the BIP and receive their consent on the document. In the case of mentally or physically disabled students, behavior intervention strategies should be addressed in the Individual Education Program (IEP) or 504 Plan.

### Prohibitions

The **[Name of District]** prohibits district employees, contractors, volunteers, and other individuals serving or working in any capacity for the District (hereafter, district staff) from use of any form of restraint and/or seclusion on students except when the following conditions are met and then only in compliance with this policy: An emergency situation necessitates the use of physical restraint or seclusion to control violent, disturbed, or depressed behavior which may immediately result, or has resulted, in harm to that person or other persons.

The District further prohibits district staff from the following:

1. Using restraint and seclusion interventions simultaneously
2. Using restraint or seclusion to discipline a student
3. Using restraint or seclusion as a behavioral intervention when behavior does not pose an immediate risk of harm or has not resulted in harm to the student or others
4. Using mechanical restraints
5. Using drugs or medication to control a child
6. Using a physical restraint or seclusion technique that restricts breathing or ability to communicate (e.g., requiring a student to lie down or covering a child's face)
7. Using a restraint or seclusion technique that will knowingly cause harm to a child. An exception to this provision may be warranted if a district staff member is attempting to obtain possession of a weapon or other dangerous object within the control of a student, is attempting to stop a physical altercation between the student and another individual, or is acting in self-defense and inadvertently causes harm to the student in the process. Administration shall investigate anytime a student was harmed during restraint or seclusion to determine the appropriateness of the intervention technique under the circumstances.
8. Using physical restraint or seclusion for longer than when the threat to the student or others has passed

**Determining Appropriate Interventions when Need for Physical Restraint or Seclusion is Foreseeable**

When the District identifies a foreseeable need for physical restraint or seclusion, it shall determine the appropriate physical restraint or seclusion intervention based on at least the following criteria:

1. Behavior at issue. If behavior does not pose an immediate risk of harm or has not resulted in harm to the student or others, physical restraint or seclusion **must not be used**.
2. Age of the child.
3. Whether a proposed intervention would violate restraint or seclusion interventions prohibited by policy. **Such interventions shall not be used.**
4. The child's needs.
5. Terms of the child's BIP, IEP, and/or 504 Plan.
6. Whether staff have received appropriate training in the intervention proposed.
7. Number of staff needed to administer the intervention. At a minimum, two staff members should be on hand when physical restraint or seclusion is used—one to witness implementation of interventions.
8. Whether a staff member will be available to continually monitor a student who is restrained or placed in seclusion. The District requires continuous monitoring of a student placed in seclusion.
9. If seclusion is the recommended intervention, whether the school has a seclusion area free from any objects that the child could use to harm him/herself. If the school district does not have such a room or area, alternative interventions must be used.
10. Whether the proposed interventions have been reviewed and approved by a qualified licensed specialist such as a therapist or psychologist. The District recommends receiving this approval to ensure that proposed physical restraint or seclusion intervention does not substantially depart from accepted professional judgment, practice, or standards.
11. A review of physical restraint or seclusion interventions used to respond to the child in the past. Any interventions that were ineffective should be modified using the above criteria.
12. Whether parents have authorized the proposed physical restraint or seclusion intervention. Such authorization is required and should be documented in a BIP, IEP, or 504 Plan.

**Determining Appropriate Interventions when Need for Physical restraint or Seclusion is Unforeseeable**

When a student engages in unforeseen dangerous behavior (i.e., dangerous behavior not covered by the BIP, IEP, or 504 Plan), trained staff members shall implement physical restraint or seclusion interventions in compliance with all prohibitions contained in this policy, should respond in at least a team of two, should consider the age of the child and his/her needs when determining the appropriate intervention method, and shall take necessary measures to ensure the safety of the student including continuously monitoring a student placed in restraint or seclusion. Staff administering restraint or seclusion under these circumstances are subject to administrator notification and reporting requirements contained in this policy.

Students engaging in unforeseen dangerous behavior shall be assessed to determine the need for a BIP, IEP, or 504 Plan.

**Staff Training**

The District shall provide training to appropriate staff in physical restraint and seclusion and shall at least provide a copy of this policy to all district staff. Only trained staff members should implement physical restraint or seclusion interventions.

If a trained staff member is not present in an emergency situation in which a student is engaging in dangerous behavior, the untrained staff member should contact a trained staff member to seek assistance. If the urgency of the situation prohibits contacting a trained staff member for assistance, the untrained staff member shall implement physical restraint or seclusion interventions in compliance with all prohibitions contained in this policy and in the BIP/IEP/504 Plan (if the staff member is aware of the contents of such plan, if such plan exists). Staff administering restraint or seclusion under these circumstances are subject to administrator notification and reporting requirements contained in this policy. The Superintendent shall ensure that the staff member is debriefed after the incident and arrange for the staff member to receive training on physical restraint and seclusion if deemed appropriate.

**Documentation, Notification, & Re-Evaluation**

Whenever [Option 1: any] [Option 2: a developmentally disabled] student is placed in seclusion or is restrained, the intervening staff member shall contact the building principal or designee as soon as practical. The building principal or designee shall determine if the seclusion or restraint is necessary and compliant with this policy; determine the appropriate duration of the physical restraint or seclusion, not to exceed the length of the school day; and shall at least issue his/her decision in writing.

Anytime restraint or seclusion is used, the school staff member administering the intervention should document it using the district's restraint or seclusion reporting form and submit it to administration as soon as practical. An administrator or designee shall attempt to contact the student's parent as soon practical to inform

him/her of the restraint or seclusion intervention used. If parents cannot be reached, the administrator should document a description of his/her notification attempts.

This notification requirement may only be waived if the parent agreed in writing to this waiver in the student's BIP, IEP, or 504 Plan and if the restraint or seclusion intervention used was part of the student's BIP, IEP, or 504 Plan.

School administration shall monitor the number and content of restraint and seclusion reporting forms received. If restraint or seclusion is repeatedly used, used multiple times within the same classroom, or used multiple times by the same individual, the District shall review the student's BIP/504 Plan/IEP to determine the effectiveness of current intervention strategies and shall assess any implicated staff member's need for more training.

**Policy Violations**

District staff who violate this policy may be subject to disciplinary action up to and including termination in accordance with law, district policy, and, if applicable, the negotiated agreement.

**Policy Adoption & Review**

The Board should seek input of district parents prior to adoption of this policy and should form a committee to review this policy and implementation of restraint and seclusion interventions at least annually. As part of the policy review, the committee should examine the following:

1. Frequency of use of restraint or seclusion
2. The outcomes of restraint or seclusion interventions
3. Demographics of students subject to restraint or seclusion, programs/settings in which such interventions are used, and frequency of each staff member's use of these interventions to determine if policy is applied consistently
4. Whether use of restraint or seclusion is reported accurately and consistently
5. Whether data collected on restraint and seclusion are used to plan PBIS and staff development
6. Whether policy continues to protect students and staff
7. Whether policy is still aligned with any applicable law

End of [Name of District] Policy FCC ..... Adopted:

RESTRAINT OR SECLUSION REPORTING FORM

Name of staff member completing this report:

\_\_\_\_\_

Location of incident:

\_\_\_\_\_

Did the student's behavior pose an immediate threat of harm or caused harm to him/herself or others?

- Yes       No

Please describe the behavior, indicating specifically how it posed an immediate threat of harm to the student or others:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Describe the student's activities leading up to the incident:

\_\_\_\_\_  
\_\_\_\_\_

Were there factors (environmental or otherwise) that caused or contributed to the dangerous behavior?

- Yes       No

If yes, please list:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Were prevention, redirection, and/or pre-correction strategies attempted prior to using restraint or seclusion?

- Yes       No

If yes, please describe. If no, please explain why they weren't used:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Describe restraint or seclusion intervention used:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

FORM MUST BE COMPLETED AND RETURNED TO THE BUILDING PRINCIPAL OR DESIGNEE AS SOON AS PRACTICAL AFTER A RESTRAINT OR SECLUSION INCIDENT OCCURRED, PREFERABLY THE SAME DAY OF THE INCIDENT

Was the restraint or seclusion intervention used part of the students BIP, 504 Plan, or IEP?

- Yes
- No
- Unsure
- No BIP, 504 Plan or IEP on file

Was administration contacted as soon as practical to determine appropriateness and proper duration of restrain or seclusion (required by law for developmentally disabled [and required by policy for all students])?

- Yes
- No

Start time of restraint or seclusion: \_\_\_\_\_  am  pm

End time of restraint or seclusion: \_\_\_\_\_  am  pm

List school staff involved in the restraint or seclusion intervention:

- |    |       |                                       |                                    |
|----|-------|---------------------------------------|------------------------------------|
| 1. | _____ | <input type="checkbox"/> Administered | <input type="checkbox"/> Witnessed |
| 2. | _____ | <input type="checkbox"/> Administered | <input type="checkbox"/> Witnessed |
| 3. | _____ | <input type="checkbox"/> Administered | <input type="checkbox"/> Witnessed |
| 4. | _____ | <input type="checkbox"/> Administered | <input type="checkbox"/> Witnessed |
| 5. | _____ | <input type="checkbox"/> Administered | <input type="checkbox"/> Witnessed |

Describe student's reaction to/behavior during the restraint or seclusion:

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Describe how the student was monitored during and after the incident:

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Did any injuries to the student, staff, or others occur during the incident?

- Yes
- No

If yes, please list:

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Was medical assistance sought?

- Yes
- No
- Na

Did any damage to property occur?

- Yes
- No

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If yes, please list:

\_\_\_\_\_  
\_\_\_\_\_

Was law enforcement contacted?

- Yes       No

How restraint ended (check all that apply):

- Determination by administrator **[or staff member]** that student was no longer a risk to him/herself or others
- Intervention by administrator(s) to facilitate de-escalation
- Arrival of law enforcement
- Arrival of medical assistance
- Other (describe):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**FOR SCHOOL ADMINISTRATION TO COMPLETE:**

Name of administrator: \_\_\_\_\_

Date and time this report form was received:

\_\_\_\_\_  am  pm

Date and time that school administrator contacted the student's parent (ideally same day as incident occurred):

\_\_\_\_\_  am  pm

- Mother     Father     Guardian

The parent/guardian has waived notification for the form of restraint or seclusion intervention described above and documented in the

BIP  504 Plan  IEP approved on: \_\_\_\_\_.

Attempts to contact parents were unsuccessful

If attempts to contact parent were unsuccessful, describe attempts (time, manner, number, etc.):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If a school staff member other than an administrator contacted parents, please list: \_\_\_\_\_

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**EXHIBIT**

Descriptor Code: FCC-E

Describe any post-incident debriefing with staff and list date and time of this meeting:

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Was a BIP created for the student post-incident?

Yes       No       Student already has one on file

If no, explain:

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Was the student referred for a 504/IDEA assessment?

Yes       No

Was the student's BIP, 504 Plan, or IEP reviewed and reassessed post-incident?

Yes       No       Na

Explain why or why not:

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List any other measures taken by district as a result of this incident:

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Additional notes:

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End of [Name of District] Exhibit FCC-E

*FORM MUST BE COMPLETED AND RETURNED TO THE BUILDING PRINCIPAL OR DESIGNEE AS SOON AS PRACTICAL AFTER A RESTRAINT OR SECLUSION INCIDENT OCCURRED, PREFERABLY THE SAME DAY OF THE INCIDENT*

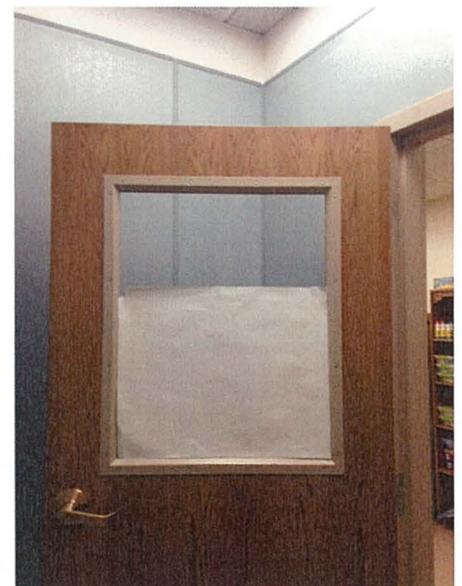
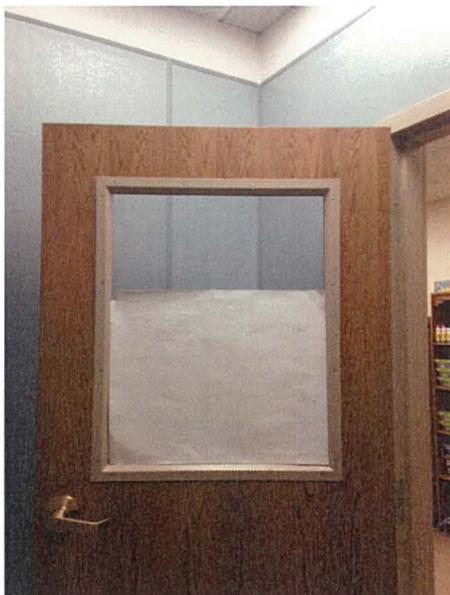
# **ATTACHMENT**

**“D”**

**Bismarck Public Schools  
Project**  
*5-22-15 School Observations*

Solheim Elementary School - Room one

- This room measures 7'6" X 5'2".
- Flooring is linoleum, the walls are a paneling. The door swings in but does not have a handle for the individual inside to grasp to open. There is a Window, however it is mostly covered. There are guidelines for use of the timeout space posted outside of the door.



## Solheim Elementary - Room 2

- This room measures 6'8" X 10', with additional space for the door swing. It is currently under construction/repair to replace the walls. There is wood sheeting half way up which will be painted. The remainder of the walls will also be painted. The flooring is a laminate. The door swings into the room but does not have a handle for the individual inside to grasp to open. There is a Window, however it is mostly covered.



*Wilmore Elementary School*

This room measures 7'5" X 4'9". Flooring is linoleum, the walls are a paneling. The door swings out, so the individual inside has access to leave by pushing the door open. There is a Window, and a Mirror to see blind spots in the front corners of the room.



Jeanette Myhre Elementary

This room measures: 6' X 8' 9". Flooring is carpet, the walls are a sheetrock/textured. The door swings in, there is a handle on the inside so the individual inside has access to leave by pulling the door open. There is a window for observation.

