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Policy *ponderings*

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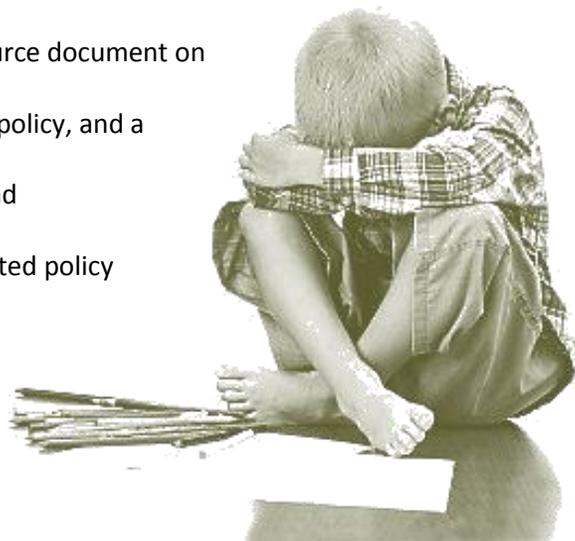
RESTRAINT AND SECLUSION

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.

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.”

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

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

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.

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

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.

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.

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.



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

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:

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

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

- Yes
- No

If yes, please list:

Was medical assistance sought?

- Yes
- No
- Na

Did any damage to property occur?

- Yes
- No

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

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: _____

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

EXHIBIT

Descriptor Code: FCC-E

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

Was a BIP created for the student post-incident?

Yes No Student already has one on file

If no, explain:

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:

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

Additional notes:

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