

2015 SENATE EDUCATION

SCR 4018

2015 SENATE STANDING COMMITTEE MINUTES

Education Committee
Missouri River Room, State Capitol

SCR 4018
2/9/2015
Job # 23465 (36:51)

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

INITIAL HEARING

Directing the Legislative Management to study the use of seclusion and restraint procedures in schools

Minutes:

7 attachments

Chairman Flakoll called the committee to order at 10:00am with all committee members present.

(3:10) **Dick Dever**, District 32 Senator

Senator Dever: This bill calls for a study on the use of seclusion and restraint procedures in our schools. It is not to suggest that it is a large problem but is to put in place guidelines so people know what is acceptable or not. Educators are all concerned about the welfare for the students in their care, but there are some inconsistencies that should be addressed. I serve as chairman of the committee on protection advocacy which is the governing body of the quasi state agency. I was asked by the director of Protection and Advocacy and also the director of Mental Health America to introduce this bill. There is legitimacy to why I am introducing this resolution.

Chairman Flakoll: This bill doesn't propose the definitions of different types of restraints but proposes study methodologies, correct?

Senator Dever: This resolution simply provides for a study to consider what guidelines are out there. I understand the difficulties with emotions associated in dealing with issues concerning children and parents.

Chairman Flakoll: but your long-term goal isn't necessarily to get that and then have reports that are filed.

Senator Dever: That might be a result of the study.

(6:50) **Christine Hogan**, attorney for the Protection and Advocacy Project (*see attachment #1 & #1a*)

(15:05) **Vice Chairman Rust:** You mentioned that these instances can result in death. Are you aware of any deaths recorded in North Dakota?

Hogan: No, not in North Dakota; however there have been 20 deaths and many injuries reported nationally.

Chairman Flakoll: What happens in cases when the student can overpower the teacher?

Hogan: Most states provide for the use of physical restraints and seclusion in an absolute, life-threatening situation. There a lot of other preventative measures that can take place.

Chairman Flakoll: Do you have data on when it took more than one individual to restrain an individual?

Hogan: I am not an expert in which techniques are being used. I am assuming there are situations with grown up and/or larger sized children where physical restrain may be necessary in an emergency.

Chairman Flakoll: What about if the teacher has a conceal carry permit and gets in this altercation?

Hogan: I do not have this data. The report I have provided is an analysis of the seclusion and restraint laws. I'm not sure if there is a correlation with gun laws. That may be a separate issue.

Chairman Flakoll: My concern is the possibility of the restrained taking a weapon from the restrainer.

Hogan: I understand that there could be a number of emergency situations that could arise.

(19:30) **Carlotta McCleary**, Executive Director of the ND Federation of Families for Children's Mental Health (*see attachment #2*)

Senator Schaible: If the IEP as a group decides that restraints are necessary, it seems that if those are considered it would be an appropriate action. IEP's decide what the best plan for the child is. If that is part of the plan, wouldn't that be considered what is best for the student and the best way to handle a situation?

McCleary: When we talk about accommodations, it is things like highlighted texts. Any time a child would need a book for instance, they would have an accommodation for all their subjects to ensure they receive highlighted texts throughout their education. It is something that is routinely done. In the area f seclusion or restraint, we're talking about emergency, last resort only. Seclusion and restrained should not be an ongoing, daily activity. We are not suggesting that they don't have the ability in emergency situations to do that, but it really doesn't belong in the accommodations section of an IEP.

Senator Schaible: An IEP is an ever-revolving plan, something constantly updated. The need or lack thereof with these situations would be addressed and part of the plan.

McCleary: We don't want to offer something that should be used in emergency to be offered all the time. Then the child may be unnecessarily secluded and restrained consistently.

Senator Marcellais: In a past session, we passed a law on bullying. How do you feel this study should interrelate with that bullying law?

McCleary: This can be similar to policy development for schools so that the safety of the children and staff are maintained.

Chairman Flakoll: How much time would it take to adequately train a teacher?

McCleary: Perhaps an 8 hour course.

Vice Chairman Rust: Isn't it common practice for most special education units to train their staff members on restraints, especially knowing there are children in the system that could have a violent behavior?

McCleary: Some school districts do provide therapeutic intervention or other types of instruction. Usually they have a team within the school. I don't see it as something that has been provided to all. Even in the schools that are implementing some of this kind of training, it certainly hasn't been available to all staff.

(28:25) McCleary handed in testimony for **Carl Young**, recent Governor Appointee and current Chair of the North Dakota Mental Health and Substance Abuse Planning Council and parent (see attachment #3-7)

Vice Chairman Rust: My daughter is a special education teacher. She has been harassed many times in many different ways. Does this study include the staff members since they are subjected to having to control an out of control student? It's the duty of that staff member to protect the other children in the room at that time because they are sometimes the victims as well.

McCleary: It absolutely should. We are recommending that it have all the parties involved to take a look at those issues. You cannot simply fix it for one situation and have it not be okay in the other, so we are looking a very comprehensive look from all perspectives.

Chairman Flakoll closes the hearing on SCR.

Vice Chairman Rust: Do we need to amend it to ensure safety for staff as I just stated?

Chairman Flakoll: I don't think it would. This study has enough latitude.

Vice Chairman Rust: Are you aware of any litigation that schools may be involved in currently in this area?

Chairman Flakoll: not that we are aware of. The ND School Board's Association has indicated that they haven't, but they are limited to what they could say.

Senator Marcellais makes the motion for a DO PASS to SCR 4018.

Senator Schaible seconds the motion.

Senator Davison: I'm wondering about the cost and the time to train people and the different levels of training.

Chairman Flakoll: 8 hours one day is 5.7 million dollars.

A vote was taken: Yes: 6, No: 0, Absent: 0

Senator Marcellais will carry the bill.

**2015 SENATE EDUCATION COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 4018**

Senate Education _____ Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Senator Marcellais Seconded By Senator Schaible

Senators	Yes	No	Senators	Yes	No
Chairman Flakoll	X		Senator Marcellais	X	
Vice Chairman Rust	X		Senator Oban	X	
Senator Davison	X				
Senator Schaible	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Marcellais

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SCR 4018: Education Committee (Sen. Flakoll, Chairman) recommends DO PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SCR 4018 was placed on the
Eleventh order on the calendar.

2015 HOUSE EDUCATION

SCR 4018

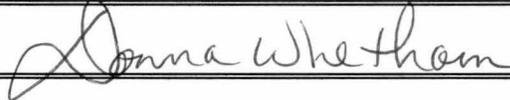
2015 HOUSE STANDING COMMITTEE MINUTES

Education Committee
Pioneer Room, State Capitol

SCR 4018
3/18/2015
25073

Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Directing the Legislative Management to study the use of seclusion and restraint procedures in schools.

Attachment # 1-2.

Minutes:

Chairman Nathe: opened the hearing on SCR 4018.

Christine Hogan: lawyer with Protection and Advocacy : introduced SCR 4018. (1:45-6:43). (See Attachment # 1).

Rep Schreiber Beck: Do you know of incidents in North Dakota they obviously have reported them is that correct and is there some reporting mechanism?

Christine Hogan: There is literally is no reporting requirement in North Dakota for seclusion or restraint, no data collection or tracking mechanism, there is literally nothing. Not even in psychiatric facilities, but in Developmental facilities they do have to report seclusion and restraint to Protection Advocacy to investigate. There is no duty to report seclusion and restraint in schools and yes there are a lot of incidents. Our agency gets referrals from parent and observers. There are a lot of incidents and no tracking mechanism for them and no method to find out what is going on in our state as far as data.

Rep Schreiber Beck: If there is a confirmed incident is that determined as an assault or what are the legal ramifications?

Christine Hogan: I am not an expert on that but it can be an assault, I do know that.

Rep Rohr: Do you know of any lawsuits in North Dakota that parents have brought forth in and from our surrounding states?

Christine Hogan: I am not aware of any lawsuits but our agency is investigating a current incident of use of extensive physical and chemical restraints. That is where it is at right

now and I can look into the research that has been done into lawsuits and get that information to you.

Rep Rohr: When you say chemical restraints are you saying the schools are administering medications to calm the child?

Christine Hogan: Yes.

Rep Kelsh: Has there been any deaths that you are aware of, but with no reporting probably not?

Christine Hogan: Not in the schools but there have been deaths from restraints in DD facilities.

Rep B. Koppelman: In your third paragraph you say the most basic right of children at school is to be safe. What you are getting at is the concern of excessive use is causing harm to the child that is being restrained, maybe more like Special Ed than not. Is there an equal concern if there is a premise that all children have the right to be safe, is there a right time they should be used where they can be used to keep other children safe from a student. To provide them an equal opportunity to be safe?

Christine Hogan: Yes. Many of the state statutes do allow in emergency situations where there is life threatening for the use of restraints and seclusion. But recent research has shown that the states that eliminated the seclusion and restraint even as a last resort have seen there is less need because everyone is trained in de-escalation techniques to prevent the situations. There are other techniques and ways, positive supports that can prevent the need for seclusion and restraint in the first place. For example there is clear the room techniques where other children would be removed from the room, or evasion techniques.

Rep B. Koppelman: In states where they are using it as a last resort, if a Special Ed or Disabled student was to assault another child when the training and techniques you have described did not work. Would the same consequences happen to that Special Ed student as if it was assault by another non- special needs student? Are we having the same level of safety?

Christine Hogan: This bill doesn't differentiate between Special Education students and other students. It can arise with both kinds of children. Children with Disabilities are over represented in the data everywhere. There was some information that has gotten to the federal government that showed a report that included information from North Dakota and I don't know where they got it since we don't have a recording requirement. It did say that 70% of the children that had been reported restrained or secluded did have disabilities.

Rep Meier: For an individual that needs medications administered to them wouldn't they have to have parental permission in order for that medication administered by the school district?

Christine Hogan: Yes, and there has to be physicians orders but we have a situation we are investigating involving a school not following those orders and over medicating.

Rep Rohr: I have a question about even needing a resolution for this. Do you think if we passed a bill that would provide that schools would have to provide classes on de-escalation techniques or do you think it needs to go through and in depth study such as this?

Christine Hogan: I don't know how many and to what extent that teachers are trained, I am sure many are. I think a study need to be in place to look at regulation by law. We don't even have any guidelines in North Dakota that have been adopted by everyone.

Carlotta McCleary: Executive Director of the ND Federation of Families for Children's Mental Health: (16:45-19:54) in support of SCR 4018. (See Attachment #2).

Chairman Nathe: Any other support? Any opposition for SCR 4018? Seeing none. Closed the hearing on SCR 4018.

Rep Meier: Moved Do Pass on SCR 4018 and place on the consent calendar.

Rep Looyesen: Seconded.

Rep Schreiber Beck: As looking at this concerning the other students in the school setting, we are studying this but are we in turn studying the other children to study the violence in the schools.

Chairman Nathe: If this gets picked by legislative management that is something the chair of the committee can decide and there will be discussions.

Rep. Olson: It does state on line 4 and 5 behavior that places the student or other students at risk of injury so it is in there.

A Roll Call Vote was taken. Yes: 11 No: 1 Absent: 1. Motion carried.

Rep. Olson: will carry the bill.

Date: 3/18/15
 Roll Call Vote #: 1

**2015 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 4018**

House Education Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Meier Seconded By Rep. Jooyen

Representatives	Yes	No	Representatives	Yes	No
Chairman Nathe	✓		Rep. Hunskor	✓	
Vice Chairman Schatz		✓	Rep. Kelsh	✓	
Rep. Dennis Johnson	A		Rep. Mock	✓	
Rep. B. Koppelman	✓				
Rep. Looyesen	✓				
Rep. Meier	✓				
Rep. Olson	✓				
Rep. Rohr	✓				
Rep. Schreiber Beck	✓				
Rep. Zubke	✓				

Total (Yes) 11 No 1

Absent 1

Floor Assignment Rep. Olson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SCR 4018: Education Committee (Rep. Nathe, Chairman) recommends DO PASS and BE PLACED ON THE CONSENT CALENDAR (11 YEAS, 1 NAYS, 1 ABSENT AND NOT VOTING). SCR 4018 was placed on the Tenth order on the calendar.

2015 TESTIMONY

SCR 4018

#1
2/9/2015

Senate Education Committee
~~Senate Bill No. 2332~~ SCR 4018
February 9, 2015
Missouri River Room
Honorable Tim Flakoll, Chair

Chairman Flakoll and Members of the Committee, my name is Christine Hogan. I am an attorney for the Protection and Advocacy Project [P&A]. The Protection & Advocacy Project is an independent state agency whose mission is to advocate for the disability-related rights of persons with disabilities. We also act to protect persons with disabilities from abuse, neglect, and exploitation. Education is one of P&A's highest priorities. We support Senate Concurrent Resolution 4018.

P&A advocates for students with disabilities to receive disability-related education services consistent with state and federal laws. One of our roles is to support students, parents, and educators in advocating for students' needs and ensuring students' rights under the law.

Perhaps the most basic right children have at school is the right to be safe and free from injury and harm. I am here today to talk about something you may not know about or even have heard about, but which goes on in North Dakota and in every other state in the country – seclusion and restraint in the schools. The practice of seclusion and restraint in schools has been studied and reported upon at the local level, state-level, and national level at great length in the past decade. It is not been studied or reported upon in our state.

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We are here today asking for Legislative Management to study seclusion and restraint in the schools during the interim and to report its findings and recommendations to the legislature in the next legislative session.

What is seclusion and restraint?

The states that have laws restricting or prohibiting seclusion generally define it as the use of rooms that children are prevented from exiting, whether the door is locked, blocked, or obstructed so a child cannot leave. Restraints are generally defined as “physical holding,” mechanical restraints, and chemical restraints. Some states specifically prohibit prone restraints and restraints that impede breathing or threaten life. Mechanical restraints include chairs and furniture that children are locked into; devices that restrain arms, legs, and other body parts; and duct tape, straps, cords, or ropes used to tie children to furniture or to tie limbs together.

Governing law

Currently, there is no federal statute governing the use of restraint and seclusion in schools. State law presently controls the issue. State approaches vary widely. Around the country there is a patchwork of state laws, regulations, executive orders, and voluntary guidance. Some states have strong laws; others have weak laws. Some states have statutes; others have regulations; and some have both. Guidelines or policies, unlike statutes and regulations, are not mandatory; they lack the force of law. In the last three years, at least seven states have determined their voluntary guidelines were insufficient to protect children from seclusion and restraint, making state legislation necessary. Only five states have nothing. North Dakota is one of those five states which lack both laws and voluntary principles. The others are Idaho, Mississippi, New Jersey, and South Dakota.

It is time to act

Seclusion and restraint is a safety issue for our children, teachers, and school staff. It can result in injury and trauma, and even death. National and state-collected data tell us that seclusion and restraint are disproportionately used with children with disabilities.

There is a large amount of research conducted within the last few years which tell us that restraint and seclusion not only expose children to danger, but actually escalate behaviors and lead to a cycle of violence. By contrast, the research shows that the use of positive interventions and de-escalation and calming techniques resolve difficult situations more effectively and help prevent and reduce the use of restraint and seclusion. There is a huge amount of information and resources that are now available for our state to look at if we decide, as a state, that we ought to prevent and reduce the use of seclusion and restraint in our schools. A comprehensive new analysis of state seclusion and restraint laws and policies is available on line at www.autcom.org.

In North Dakota, we do not have a handle on the use of restraint and seclusion in our schools. As I said, you may not have even heard that seclusion and restraint in schools as an issue in our state. That is because right now there is no mandatory reporting requirement; nor is there mandatory notification of parents when seclusion and restraint are used in a school.

It is time for our state to direct a study of the issue. It is time to acquire data about the use of seclusion and restraint in our schools. It is time to look at

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what other states are doing and to develop best practices for keeping children free from restraints and seclusion. And it is time to report back to the public and to this body about recommendations and proposed legislation for addressing the issue.

In closing, I wish to ask for your support for Senate Concurrent Resolution 4018. Thank you for your attention and for offering me this opportunity to appear before you on this important Bill. I would be happy to try to address any questions you may have.

#19
2/9/15

SCP 4018

**Does State Have A Law Providing Meaningful Protections and Who Does It Cover?
(May 2, 2013)**

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Feel free to copy, redistribute, and share--see p.i for more instructions. Please leave my name and email on the chart. **D means Children with Disabilities Only; ALL Means All Children.**

State	All Students	Students w/Disabilities	Other
AK			Weak Law-All Children. Permits restraint for physical harm, property destruction, educational disruption. No safeguards. Nonbinding suggested guidelines for childrens with disabilities. Guidelines not law; can be easily changed.
AL	Meaningful Law	<i>Included in All Children's Law</i>	
AR			Meaningful Law Applicable to Only One Procedure (Seclusion)
AZ			Weak Law, requiring parental notice; permitting seclusion for any reason with parent consent; seclusion in emergencies threatening physical harm without consent; no limitations on restraint.
CA		Meaningful Law	
CO	Meaningful Law	<i>Included in All Children's Law</i>	
CT		Meaningful Law	
DC			Weak Reg (bans "unreasonable restraint"). <i>All-Students Nonbinding Guidance (Not Law; easily changed by state)</i>
DE			Weak Law - Autism Only. Authorizes conduct, rather than protects students. Bill Failed in 2012.
FL		Meaningful Law	
GA	Meaningful Law	<i>Included in All Children's Law</i>	
HI			Weak Law; Authorizes conduct rather than protects students.
IA	Meaningful Law	<i>Included in All Children's Law</i>	
ID			Nothing

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State	All Students	Students w/Disabilities	Other
IL	Meaningful Law	<i>Included in All Children's Law</i>	
IN	Meaningful Law (April 30, 2013)		
KS	Meaningful Law (2013)	<i>Included in All Children's Law</i>	
KY	Meaningful Law (2013)	<i>Included in All Children's Law</i>	
LA		Meaningful Law	
MA	Meaningful Law	<i>Included in All Children's Law</i>	
MD	Meaningful Law	<i>Included in All Children's Law</i>	
ME	Meaningful Law	<i>Included in All Children's Law</i>	
MI			Weak Law (restraint only; force purpose) <i>All-Students Nonbinding Guidance (Not Law; easily changed by state)</i>
MN		Meaningful Law	
MO			Weak Law (unlocked, unattended seclusion while awaiting law enforcement) <i>All-Students Nonbinding Guidance (Not Law; easily changed by state)</i>
MS			Nothing
MT		Meaningful Law	
NC	Meaningful Law	<i>Included in All Children's Law</i>	
ND			Nothing
NE			<i>Weak regulation requires LEAs to adopt a policy, but does not require anything in it. Nonbinding Guidance (Not Law; easily changed by state)</i>
NH	Meaningful Statute (Restraint Only)	Meaningful Regulation (Seclusion Only)	
NH	Meaningful Law (restraint only)		
NJ			Nothing
NV		Meaningful Law	

State	All Students	Students w/Disabilities	Other
NY	some protections for all children, but not as full as those for children with disabilities	Meaningful Law	
OH	Meaningful Law (2013)	<i>Included in All Children's Law</i>	Also meaningful Exec. Order applicable to physical restraint.
OK			<i>Nonbinding Guidance (Not Law; easily changed by state)</i>
OR	Meaningful Law	<i>Included in All Children's Law</i>	
PA		Meaningful Law	
RI	Meaningful Law	<i>Included in All Children's Law</i>	
SC			<i>All-Students Nonbinding Guidance (Not Law; easily changed by state)</i>
SD			Nothing
TN		Meaningful Law	
TX		Meaningful Law	
UT			<i>Nonbinding Guidance (Not Law; easily changed by state). Weak law requires reference to guidelines. Another law requires parental notice.</i>
VA			<i>Nonbinding Guidance (Not Law; easily changed by state)</i>
VT	Meaningful Law	<i>Included in All Children's Law</i>	
WA	some protections for all children, but not as full as those for children with disabilities	Meaningful Law	Bill also awaiting Governor's signature that would add parental notice and related requirements.
WI	Meaningful Law (2012)	<i>Included in All Children's Law</i>	
WV	Meaningful Law	<i>Included in All Children's Law</i>	
WY	Meaningful Law	<i>Included in All Children's Law</i>	
TOT	19 full; 2 partial[*]	31 full; 1 partial[*]	
[*] New Hampshire is counted in each column, as it has a restraint statute for all children and a seclusion provision in its special education regulations for children with disabilities			

2/9/15

Testimony
Senate Education Committee
Senator Flakoll, Chairman
February 9, 2015

Chairman Flakoll, members of the Senate Education Committee, I am Carlotta McCleary, Executive Director of the ND Federation of Families for Children's Mental Health (NDFFCMH), which is a parent run organization that focuses on the needs of children and youth with emotional, behavioral, or mental health needs and their families. As the result of an affiliation agreement between NDFFCMH and Mental Health America of North Dakota (MHAND), I am also the Executive Director for MHAND, whose mission is to promote mental health through education, advocacy, understanding, and access to quality care for all individuals.

I am here to testify in support of SCR 4018 to study the use of seclusion and restraint procedures in schools. According to the "How Safe is the Schoolhouse?" report series created by Jessica Butler of the Council of Parent Attorneys and Advocates, North Dakota is one of five states that, "does not have any statute, regulation, or guidance specific to schools and restraint/seclusion." It was noted that two of those five states, Idaho and New Jersey, have attempted to address the issue although they have not yet succeeded.

Seclusion and Restraint procedures can be dangerous for both staff and students. Seclusion and restraint guidelines can promote the best care, welfare, safety and security for all involved. This study should include all stakeholders including (Parents, ND United, ND Council of Educational Leaders, ND School Board Association, ND Department of Public Instruction, and Advocacy groups).

One concern that I have is in North Dakota we are seeing seclusion and restraint listed as an accommodation in children's Individual Education Program or IEP. Seclusion and restraint should be used in emergency situations and utilized as a last resort only. An accommodation on the other hand, is seen as a regularly employed strategy in individual education program. Accommodations are offered as a way a child gains access to their education. North Dakota

doesn't have anything stating that the procedure must end when the emergency ends. North Dakota offers no protection by law or voluntary guidelines.

We need more resources available to the staff in our schools to address the many issues that arise as a result of implementing seclusion and restraint procedures. I ask you to support the study on the use of seclusion and restraint procedures in schools so that North Dakota can provide guidance so that we can provide the best care, welfare, safety and security for all involved.

Thank you for time. I would be happy to answer any questions that you may have

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#3
2/9/15

Chairman Flakoll and members of the committee.

My name is Carl Young, as a recent Governor appointee and current Chair of the North Dakota Mental Health and Substance Abuse Planning Council, I encourage you to approve SCR 4018. It is imperative that we ensure the children entrusted to the care of education professionals the safest possible experience.

Schools are tasked with documenting many things about the educational lives of the young people in their care.

To include such things as:

- meals cooked
- days attended
- grades
- athletic achievements
- honor records
- suspensions and tardies
- there are many other items...

Yet!

One of those things is not Seclusion or Restraint events.

Without data to analyze we can not ensure that our children are safe from harm when they are most vulnerable. Our institutions are supposed to be safe havens for all children, please help extend this safe environment to those children who are most vulnerable.

The vulnerable include children with mental illness. Children often can't speak for themselves, and look to adults they know to do so for them.

SCR 4018 does nothing more than study the issue at hand and recommend adoption of any recommendations that come as a result of the study. The very least the children in our state deserve is a study regarding the use Seclusion and Restraint.

Respectfully Submitted

Carl Young
carl@clientfactor.com
701-463-7804

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2/9/15

SCR 4018

Chairman Flakoll and members of the committee.

I write today as a parent of a child with mental illness.

My son has been in and out of facilities for most of the last 4 years. While in public school we have had many instances where the school felt that he had to be restrained, or secluded in a room. Often times these instances were precipitated by nothing more than a vacant look in my son's eye.

We want what is best for him, and all children regardless of need. That is to be safe in school. By definition school is supposed to be the one place outside of the family home, where children can expect to be protected by the adults in their lives.

I write a blog where I detail our struggle to get services for our son, Marc. You can find it at <http://www.whynotfathers.com> I realize that each of you is incredibly busy, so have included the attached three posts from my blog. (attachments #5-7)

Our son has not returned to his home district for nearly three years. Between placements in residential facilities, hospitalizations, and the schools own denial of education access, he has been out of the home district.

A review of the school records shows no history of any of the events that I have detailed. They are not part of the educational record.

That I know of, there is no reporting mechanism for when a child is restrained or placed in seclusion while in public or private school.

As a result, there is no demonstrable proof beyond the testimony of parents, children and therapists that these events even occur.

I welcome questions, my email is carl@clientfactor.com

Respectfully submitted

Carl Young

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#5 2/9/15

>*\$(%*& School!!! | Why Not Fathers?

http://whynotfathers.com/2011/02/school.html

SC 4018



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>*\$(%*& School!!!

Posted on February 4, 2011 by carl • 1 Comment

>By M's standards, he had a good week. Unitl 2:30 pm on Friday afternoon. He rolled his pencil away and said he didn't want to. School ends at 3:10. Couldn't we just let it go.

Nope.

Got a call at 2:50 that the sheriff was at the school for M.

Seems that after M said no, someone who doesn't work with him, got involved and leaned on the table using her fists to hold herself up. (which some would consider a threatening position.) To quote the teacher who is working with M, he vacated which is the term that we use to describe what happens to him when he has a manic episode. It took two people to restrain him, and one person got bit in the process. The person who got bit was the person who doesn't work with him and who helped (in my view) escalate the whole process.

The school followed the IEP in that they called me, couldn't reach me, so called the sheriff. Reports were files, and now M has another assault charge pending.

I asked for a copy of the report since M is a minor. Was told that one of the teachers who wrote a report was uncomfortable with me having a copy of the report.

I have been in touch with a number of people and agencies since this happened.

I have been in touch with Protection and Advocacy. I have been in touch with the Sheriffs office to get a copy of the report. As a parent of the person charged, who is a minor, I feel I should have a right to receive the statements. I have been in touch with M's probation officer. I have been in touch with the psychiatrist.

I even tried to get in touch with the superintendent of the school.



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M has mental health issues that the school knows about. Someone approached him in a manner that he saw as confrontational. (even unconsciously) He is not innocent. I am not say that he is.

M is on three days of out of school suspension.

Early next week, we will be demanding meetings with the superintendent, we are hoping to bring protection and advocacy. We are hoping and planning for M to be reinstated.

For the record, the probation officer (PO) gave me her opinion. She doesn't think that the school is doing enough for him. I explained to the PO that we hadn't her from Partnerships yet. I also explained who all I talked with as a result of this incident.

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#6
2/9/15
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>Appeal results

Posted on November 17, 2011 by carl • 3 Comments

>We received notice of our appeal determination today. Evidently the only people who can appeal the decision is the person found to have committed the abuse or neglect. Our appeal was denied because we weren't the ones who had been accused of the abuse of neglect.

So evidently, in the state of North Dakota, it is acceptable practice to lock a child with special needs in a room all by himself as a means of restraint or control.

For some reason, I have a huge problem with that.

1. the room was on the second floor, and by the school's own admission, our son was banging on the windows with a chair. what would have happened if the window had broke out, and he had gone through the window?

2. in the room there was a desk, in that desk our son found two pairs of scissors, and by the school's own admission, he threatened to use them.

Granted the principal later qualified her statement and said that our son just wanted to cut some paper. But still, he had access to what could have been a dangerous weapon.

3. If our son had developed a medical emergency of some kind while locked in that room, would they have been able to get the room unlocked fast enough to save him?

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#7
2/9/2015

SCR 4018

>meeting regarding reentry into the school

Posted on February 9, 2011 by carl • 0 Comments

>

we were invited to a meeting about M returning to school after his suspension for assaulting his teacher. We asked on Friday for copies of the teacher's statements that were given to the deputy sheriff and were denied. We received copies of the statements yesterday my wife met with the school this morning. M did not need to attend this meeting about his reentry into the school. So my wife brought up the deputies report and statements provided by the teachers. she was told by one of the teacher's involved that the deputies report was wrong. If the deputies report is based on the teacher's statements, then are the teachers statements wrong? we also asked the following questions:

1. If the teacher's had nothing to hide, why were we not given copies of the statements written by the teachers immediately after the incident occurred? we had to contact the Sheriff directly to get the statements, we received the statements on February 8, 2011. Without accurate information we have only been able to form an opinion based on what M has told us.
2. Where in the CPI training manual does it say that it is ok to carry a child that is not your own, as a means of restraint.
3. Why did a teacher put M into a hold on the floor? Is this taught by CPI?
4. Why do the statements made by the teachers' have so many variations? And which statement is accurate?
5. Where in the Parent/Student Handbook does it state that it is mandatory to file criminal charges against a child for assaulting a teacher?
6. Where in the Parent/Student Handbook does it state that the child has to be suspended for three days for assaulting his teacher?
7. Where is our copy of the IEP that was developed for M?
8. If the Love Logic principles of discipline are being used, where in the

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#1
SCR 4018
3/18/15

House Education Committee
Senate CR No. 4018
March 18, 2016
Pioneer Room
Honorable Mike Nathe, Chair

Chairman Nathe and Members of the Committee, my name is Christine Hogan. I am an attorney for the Protection and Advocacy Project [P&A]. The Protection & Advocacy Project is an independent state agency whose mission is to advocate for the disability-related rights of persons with disabilities. We also act to protect persons with disabilities from abuse, neglect, and exploitation. Education is one of P&A's highest priorities. We support Senate Concurrent Resolution 4018.

P&A advocates for students with disabilities to receive disability-related education services consistent with state and federal laws. One of our roles is to support students, parents, and educators in advocating for students' needs and ensuring students' rights under the law.

Perhaps the most basic right children have at school is the right to be safe and free from injury and harm. I am here today to talk about something you may not know about or even have heard about, but which goes on in North Dakota and in every other state in the country – seclusion and restraint in the schools. The practice of seclusion and restraint in schools has been studied and reported upon at the local level, state-level, and national level at great length in the past decade. It has not been studied or reported upon in our state. We are here today asking for Legislative Management to study seclusion and restraint in the schools during the interim and to report its

findings and recommendations to the legislature in the next legislative session.

What is seclusion and restraint?

The states that have laws restricting or prohibiting *seclusion* generally define it as the use of rooms that children are prevented from exiting, whether the door is locked, blocked, or obstructed so a child cannot get out. *Restraints* are generally defined as “physical holding,” mechanical restraints, and chemical restraints. Some states specifically prohibit prone restraints, and restraints that impede breathing or threaten life. Mechanical restraints include chairs and furniture that children are locked into; devices that restrain arms, legs, and other body parts; and duct tape, straps, cords, or ropes used to tie children to furniture or to tie limbs together.

Governing law

Currently, there is no federal statute governing the use of restraint and seclusion in schools. State law presently controls the issue. State approaches vary widely. There is a patchwork of state laws, regulations, executive orders, and voluntary guidance. Some states have strong laws; others have weak laws. Some states have statutes; others have regulations; and some have both. Guidelines or policies, unlike statutes and regulations, are not mandatory; they lack the force of law. In the last three years, at least seven states have determined their voluntary guidelines were insufficient to protect children from seclusion and restraint, making state legislation necessary. Only five states have nothing. North Dakota is one of those five states which lack both laws and voluntary principles. The others are Idaho, Mississippi, New Jersey, and South Dakota.

It is time to act

Seclusion and restraint is a safety issue for children, teachers, and school staff. It can result in injury and trauma, and even death. National and state-collected data tell us that seclusion and restraint are disproportionately used with children with disabilities. There is a large amount of research conducted within the last few years which tell us that restraint and seclusion not only expose children to danger, but actually escalate behaviors and lead to a cycle of violence. By contrast, the research shows that the use of positive interventions and de-escalation techniques resolve difficult situations more effectively and help prevent and reduce the use of restraint and seclusion.

In closing, I wish to ask for your support for Senate Concurrent Resolution 4018. Thank you for your attention and for offering me this opportunity to appear before you on this important Bill. I would be happy to try to address any questions you may have.

Testimony
House Education Committee
Representative Nathe, Chairman
March 18, 2015

2
SCR 4018
3/18/15

Chairman Nathe, members of the House Education Committee, I am Carlotta McCleary, Executive Director of the ND Federation of Families for Children's Mental Health (NDFFCMH), which is a parent run organization that focuses on the needs of children and youth with emotional, behavioral, or mental health needs and their families. As the result of an affiliation agreement between NDFFCMH and Mental Health America of North Dakota (MHAND), I am also the Executive Director for MHAND, whose mission is to promote mental health through education, advocacy, understanding, and access to quality care for all individuals.

I am here to testify in support of SCR 4018 to study the use of seclusion and restraint procedures in schools. According to the "How Safe is the Schoolhouse?" report series created by Jessica Butler of the Council of Parent Attorneys and Advocates, North Dakota is one of five states that "does not have any statute, regulation, or guidance specific to schools and restraint/seclusion." It was noted that two of those five states, Idaho and New Jersey, have attempted to address the issue although they have not yet succeeded.

Seclusion and Restraint procedures can be dangerous for both staff and students. Seclusion and restraint guidelines can promote the best care, welfare, safety and security for all involved. This study should include all stakeholders including (Parents, ND United, ND Council of Educational Leaders, ND School Board Association, ND Department of Public Instruction, and Advocacy groups).

One concern that I have is in North Dakota we are seeing seclusion and restraint listed as an accommodation in children's Individual Education Program or IEP. Seclusion and restraint should be used in emergency situations and utilized as a last resort only. An accommodation on the other hand, is seen as a regularly employed strategy in individual education program. Accommodations are offered as a way a child gains access to their education. North Dakota

doesn't have anything stating that the procedure must end when the emergency ends. North Dakota offers no protection by law or voluntary guidelines.

We need more resources available to the staff in our schools to address the many issues that arise as a result of implementing seclusion and restraint procedures. I ask you to support the study on the use of seclusion and restraint procedures in schools so that North Dakota can provide guidance so that we can provide the best care, welfare, safety and security for all involved.

Thank you for time. I would be happy to answer any questions that you may have

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