

2017 SENATE EDUCATION

SB 2275

# 2017 SENATE STANDING COMMITTEE MINUTES

Education Committee  
Sheyenne River Room, State Capitol

SB 2275

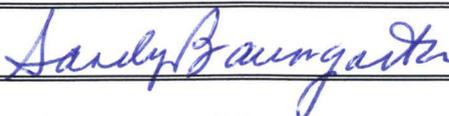
2/7/2017

Job Number 27986

Subcommittee

Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to the adoption of a restraint and seclusion policy by school districts and the reporting of incidents of restrain and seclusion

## Minutes:

#1, #2, #3, #4, #5, #6, #7, #8, #9, #10, #11, #12

**Chairman Schaible:** Call to order. Roll taken: all members present except Senator Davison. Meeting for SB 2275.

**Joan Heckaman:** Senator from District 23. Introduce SB 2275. Testimony #1. It is reported that 900 students were secluded or restrained last year. That is on an average of 4-5 students a day. According to the School Boards Association, there are about 70-80% of schools with policies now.

**Senator Kannianen:** Who made up the group to come up with this bill?

**Joan Heckaman:** We had a variety of people from school boards, parents, youth correctional, advocacy groups, teachers and others.

**Chairman Schaible:** What purpose does #7 serve?

**Joan Heckaman:** The Office of Civil Rights already collects this information and it is put into the State Longitude Data System to tract the number of incidents. We don't know if all incidents are reported.

**Rose Stoller:** Testimony for the Consensus Council in Bismarck #2.

**Chairman Schaible:** What are you doing with the data that is reported and what information is reported and what does the system do with it?

**Rose Stoller:** We are hoping that legislature would let us know what they want to know more about. It is so much data and we thought you could point us to 10 things you would like to know. Whether it is the number of total occurrences, or which region, district or school has restraint and seclusion issues and how these can be studied and reviewed.

**Senator Oban:** There are concerns that everything the teachers do is going to go against this policy. Definition of seclusion provides flexibility.

**Rose Stoller:** Training is important using a model that would relay the worries of teachers. Definition of seclusion needs to be defined. Is staying in for recess or detention seclusion? We need to keep the same set of language throughout.

**Cody Wager:** Disabilities Advocate for Protection and Advocacy Project: Testimony # 3.

**Senator Rust:** There were 900 incidents reported.

**Chairman Schaible:** Did you investigate any of these?

**Cody Wager:** No, we just identified the districts that reported.

**Chairman Schaible:** The reporting requirements is already required by federal law, so what purpose would it be for this?

**Cody Wager:** Many school districts may not have collected data and so we don't know if it is accurate. We also know that in some informal surveys some districts are not currently collecting data. This to help enforce that each school will report uniformly. There is some confusion as what is seclusion and detention? Is it keeping kids in for recess? That is not the intent.

**Vice Chairman Rust:** How many times have you been called into a school district in the last 3 years for a parent or student to advocate for them?

**Cody Wager:** I don't have the exact numbers. In 2016 we had 22 cases that we were involved in with seclusion or restraint. I believe the previous year was 20 separate cases. We had 3 cases in 2007 when we first started tracking, and each year has steadily increased. Yes, the majority receives Special Ed. services. First we gather facts, IEP information, school policy and work with family and school to come up with a solution that is comfortable for the student and school.

**Cody Wager** read testimony #4 for Deborah Jendro, parent, grandparent and concerned citizen of Fargo.

**Kristin Dvorak:** Executive Director of ARC of Bismarck, read testimony #5 from Robert Marx of Dickinson. ARC supports SB 2275. It helps put our minds at ease about what is seclusion and restraint.

**Carlotta McCleary:** Executive Director of the ND Federation of Families for Children's Mental Health. Testimony #6 in support of SB 2275.

**Vice Chairman Rust:** Would the IEP have a reference to seclusions or restraints?

**Carlotta McCleary:** IEP's are for support and help for student services. Seclusions and restraints are for emergencies and are not usually included in IEP's.

**Carlotta McCleary** read testimony #7 from Brady Burkes of Grand Forks.

**Bruce Murry:** Executive Director of ND Association of Community Providers gave testimony #8 in support of SB 2275.

**Vice-Chairman Rust:** Any other testimony in favor? Any opposition?

**Anita Thomas:** General Counsel of ND School Boards Association testimony #9. NDSBA request a Do Not Pass on this bill.

**Senator Rust:** Are you aware of any school district in litigation over this?

**Anita Thomas:** I am not aware of litigation that is on-going. Request for assistance has magnified in recent years.

**Senator Oban:** Do you think it is appropriate to have a policy where everyone knows where the line is drawn? What is acceptable and what is not? What protects the child? What protects the teacher?

**Anita Thomas:** I believe much of that is already involved in other documents that involve students. We have IEP plans, we have 504 plans, we have intervention plans. When we get to a situation where we are looking at restraint and seclusion, it is because something is happening that should not be happening. It usually involves a danger either to the student or to other students or the teachers. As a last case resort, I don't think any teacher would be looking at seclusion and restraint as a first response.

**Senator Oban:** Do you think 900 incidents is too many? Do you think that this shows a last case resort?

**Anita Thomas:** You have to look at the data and see where the school is and the students involved. Look at the IEP's and look at the situation and see if that school environment is the best place for that student. Definitions of seclusion and restrain needs to be defined.

**Senator Rust:** You said 112 out of 179 schools have policies already.

**Russ Ziegler:** Assistant Director for the ND Council of Educational Leaders, Testimony #10. We did contact the schools with the high incidents. One was in Minot where the students would have been sent to outside agencies, but Minot has created a school within a school to educate these students. That would increase the high incidents because the kids are all in one school. The other is in Jamestown and it is the same situation there. The students with high incidents are located in one location for ease of staff. In

those situations, there is a high student to teacher ratio. Those classrooms could have as high as 2 paras per student and 3-4 Special Ed. teachers. You will have more seclusions and restraints in Special Ed. students.

**Senator Oban:** Would you support a bill that says, “before July 1, 2018, that each school district should adopt a policy regarding the use of restraint and seclusion methods by school district personnel”?

**Russ Ziegler:** Yes, we will.

**Chairman Schaible:** Out of these 2 high incidents schools, do you think that what this bill asks is already accomplished in those 2 schools? They had definitions and policies?

**Russ Ziegler:** Yes, and both of those schools have the teachers that are working with the students are trained in CPI. They are doing what the policy says in guidance. That goes with the reporting of high numbers. The more information we get, the more people become aware, the more they will report. They will know what they are reporting on.

**Senator Rust:** We are asked to report restraint and reclusions numbers. Is there any place where we ask for students that are hurt by students or staff members and teachers hurt by a student? These issues need to be addressed as well.

**Russ Ziegler:** OCL does no reporting of any injuries to others. Dickinson and Jamestown are putting that information in their reports. They use it for data to see who was injured, how were they injured, how many times does it occur, so they can change their policy or procedure as they go along. Certain schools are keeping track of that. I know of no state area where they would have to place that information.

Discussion followed about the students attending the Minot or Jamestown school with high incidents.

**Aimee Copas** read testimony #11 of Rob Lech, Superintendent of Jamestown Public Schools.

**Senator Oban:** Would NDCEL support a bill that says “before July1,2018, each school district shall adopt a policy regarding seclusion and restraint”?

**Aimee Copas:** Yes, we would.

**Ben Schafer:** Superintendent of K-12 School in Ray, ND. Testimony #12 in opposition of SB 2275. We have the administrative rule for our policy like Fargo does. We have had incidents where police have had to be called. It has been better in the recent past because of the oil industry. We have had training and expanded it besides to the special ed. teachers. I am in opposition because of the funding.

**Chairman Schaible:** Any other testimony in opposition? Any agency? None. I will close the hearing.

# 2017 SENATE STANDING COMMITTEE MINUTES

Education Committee  
Sheyenne River Room, State Capitol

SB 2275  
2/8/2017  
Job Number 28063

- Subcommittee  
 Conference Committee

Committee Clerk Signature

*Sandy Baumgartner*

## Explanation or reason for introduction of bill/resolution:

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

## Minutes:

**Chairman Schaible:** Open for SB 2275

**Senator Oban:** I was asked to provide some clarification for the committee members. Cody, with PNA, provided the percentages of incidents specific to one school district in the 2011-2012 school year and the 2013-2014 school year. Russ Ziegler from NDCEL, said that one year it was Minot and the other was Jamestown and was specific to the "school within a school". That is not accurate. The schools with the highest of incidents in 2011 was Grand Forks and 2013-14 was Bismarck. 2013-2014 was the first year Bismarck Schools had a policy and began collecting data. We wanted to make sure that the committee understood it was not the case for Minot and Jamestown. In conversation following the hearing, it sounds like a lot of supporters of this bill really like the school board's policy draft that they have. I think that policy has already been written and already adopted by a lot of school districts. Maybe us trying to rewrite this policy and having more additions is not the right way to go. However, I also heard that everybody wants a policy in place. I know that this committee and many of us don't want to force anybody to anything. But for me that is the bare minimum that school districts have a policy. So for the sake of that discussion, I would move an amendment. I don't have it drafted, but perhaps Jeff could easily write this. Strike all the language on page 1, lines 11-22 all the way over to page 2 lines 1-10. So that the bill would read "that every school district must adopt a policy by July 1, 2018".

**Chairman Schaible:** A year from now?

**Senator Oban:** Yes

**Chairman Schaible:** Is that a motion?

**Senator Oban:** Yes, Mr. Chairman.

**Chairman Schaible:** We have a motion for an amendment. Is there a second? Is there a second? Seeing none the motion died for lack of a second. Is there any other discussion?

**Senator Rust:** With regard to discussion I contemplated seconding that motion.

**Senator Oban:** I thought there was an agreement with the Senate when one of the members of the minority makes a motion that there would be a second for discussion purposes.

**Chairman Schaible:** I think the agreement is that Senator Heckaman can come down and do that and I missed that, so I guess you should have that right. Yes, if you want that right I will do that. I agree. I can't make a second, I believe.

**Senator Rust:** For the purposes of discussion only, I will second the motion.

**Chairman Schaible:** It died. You have to remake the motion.

**Senator Oban:** I would make the same motion I made about 2 minutes ago.

**Senator Rust:** I second.

**Chairman Schaible:** We have a motion and second for an amendment that would only allow for basically section 1, subsection 1. The first line would say "each school district shall adopt a policy regarding the use of restraint and seclusion methods by the school district personnel".

**Senator Rust:** As I said, I would only second it for the sake of discussion and we didn't wait for Senator Heckaman come here. I don't think that would really do us much good. I am going to vote against it. I really think that the amendment does precious little. There are 112 schools out of about 170 plus school districts that have already adopted a policy. That covers about 85% of the kids in the state of ND. Any time you say "shall", it is another regulation that you are putting on school districts. I really think it isn't necessary. School boards and districts know whether or not they need that. The ones that have them have decided to take a proactive approach or they may have had some issues in the past and decided to do a policy. The ones who haven't are probably school districts that feel they don't have the issues or don't need the policy. It is a local control issue. They should be able to decide what policies they need. It would be interesting to know how many of the parents have had an issue and have gone to their school board and said you need a policy on this. Or did they say that wasn't going to work, so they went to the state and try to force it on them? I would look at those numbers. My guess is that those people have a seclusion and restraint policies and now they are reporting. I think the IEP in most of these cases covers restraint and seclusion. School personnel sign those IEP's and they are one-year deal. They are reviewed each year and revised requirement. The parents are given a copy of the safeguards every year that tells the safeguards and rights. Most of the IEP's will have an intervention and behavior plan. That should be a part of the IEP which is a contract between the parent, school and teacher. Many schools train their people in CPI. There is no federal legislation on this. I have concerns on unintended consequences. If the policy is in motion, you have to do some training. Then you have to have the money.

**Senator Oban:** I can agree with Senator Rust about somethings. I really don't want to force a school district to adopt a policy. A regulation can also mean a protection. Waiting to respond to something before it happens is a very bad way to make plans for policy. Putting a policy in place doesn't mean that it is setting up for bad things to happen after that. It is to provide recourse or something to refer to if something does happen. I think that the very fact that we continue to talk about kids on IEP's should be considered for them. It shows a complete lack of understanding of first children with disabilities and second the difference between children with disabilities and children with emotional disorders who are not always on IEPs. It tends to probably be the ones where seclusion and restraint may more often be used. Human Services was here yesterday and did want to talk about the lack of understanding of kids with emotional disturbances and kids with disabilities with IEPs. There needs to be some education and I think that needs to be provided through policy. I know it doesn't always require training to the tune of \$500,000 but then there is something the families can refer to. Policy is to protect the student, teacher, or administrator.

**Senator Rust:** I don't feel that the legislature should be having to dictate to school boards what they need to do in their schools. When you adopt a policy, sometimes that policy can be used against you. Administrators go to conferences where these subjects are discussed and probably encouraged to adopt a policy. School board members go to convention where these things are discussed and that they should have a policy. I think it is the local school board to make that decision and not the state.

**Chairman Schaible:** I think it is the right thing to adopt a policy. But to put this into law and not have any recourse for not having it doesn't make sense. What are we really trying to do? I don't like legislation that doesn't do anything but make everyone feel good. I think we need to pass laws that have some meaning and affect. We have reporting requirements that don't have any teeth. We have mandates in policy that don't have any teeth. I resist that because I don't think it does anything except make people feel good. I don't think that is a good idea for what we are doing.

**Senator Oban:** I want to make my case about basing decisions on feelings and not facts. This is not a feeling for me. This is a fact that 900 and some cases were brought forward. To me that shows that there needs to be some sort of recourse. At least we are giving a response to the 900 cases of last year. Some have a policy and at least they have something to reference.

**Chairman Schaible:** You don't believe that the schools that are having these multiple issues are not trying to make improvements to their plan and policy? This has been brought up before and we never found a solution that everyone was satisfied with. It is a work in progress.

**Senator Rust:** In the 900 cases, we made the assumption that someone did something wrong. I don't know if they did anything wrong. They had an incident and they reported it. They may have followed their policy totally, but they still had to report it and now we make the assumption that they did something wrong. I don't know it that is justifiable.

**Senator Oban:** It would be nice to know if they are all using the same language.

**Chairman Schaible:** We have a motion and a second on the table requiring a policy by July 1 of 2018. Everybody understand the amendment. Clerk take roll.

Roll taken: 1 yea, 4 nays, 1 absent

**Senator Rust:** I move for a "Do Not Pass" on SB 2275

**Senator Vedaa:** Second.

**Chairman Schaible:** Any other discussion. Clerk take roll

Roll taken: 4 yeas, 1 nay, 1 absent

After discussion and changed carrier.

**Senator Schaible** will now carry

Date: 2-8-17  
 Roll Call Vote #: 1

2017 SENATE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 2275

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 Oban    Seconded By Rust

Senators	Yes	No	Senators	Yes	No
Chairman Schaible		✓	Senator Oban	✓	
Vice-Chairman Rust		✓			
Senator Davison	<u>ab</u>				
Senator Kannianen		✓			
Senator Vedaa		✓			

Total (Yes) 1 No 4

Absent 1

Floor Assignment N/A

If the vote is on an amendment, briefly indicate intent: Strike language on p. 1-11-22 and p. 2-1-10  
Should read "that every school district must adopt a policy by July 1, 2018."

Date: 2-8-17  
Roll Call Vote #: 2

2017 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2275

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 Rust Seconded By Vedaa

Senators	Yes	No	Senators	Yes	No
Chairman Schaible	✓		Senator Oban		✓
Vice-Chairman Rust	✓				
Senator Davison	ab				
Senator Kannianen	✓				
Senator Vedaa	✓				

Total (Yes) 4 No 1

Absent 1

Floor Assignment Schaible

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

**REPORT OF STANDING COMMITTEE**

**SB 2275: Education Committee (Sen. Schaible, Chairman)** recommends **DO NOT PASS** (4 YEAS, 1 NAYS, 1 ABSENT AND NOT VOTING). SB 2275 was placed on the Eleventh order on the calendar.

2017 TESTIMONY

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SB 2275

SENATOR JOAN HECKAMAN

Chairman Schaible and Members of the Senate Education Committee:

I am Senator Joan Heckaman from New Rockford and I represent District 23. I am here today to introduce SB 2275 to you.

First of all, I would like to thank Chairman Schaible for his consideration in scheduling this at this time. This allows the opportunity for some individuals who were out of state last week to come and be part of the presentation this morning.

This bill has had a long journey, so for the new members of the committee I will give you a brief history on the bill.

The Interim Education Committee was tasked with studying seclusion and restraint of students in ND schools. I was a part of that committee. Since the committee only meets quarterly, a group of stakeholders felt that more time was needed to do an in depth study on this issue. This Task Force was not part of the Interim Education Committee nor was it established by the committee.

TASK FORCE: A group of over 35 stakeholders met 5 full days over a span of 5 months. We had some Task Force directed presentations and many excellent opportunities at general discussion bringing us to the point we were ready to present our supports to the Interim Education Committee. These "supports" were presented in September with the hope of attaching them to one of the bill drafts as amendments. However, the committee did not bring either one of the 2 bill drafts forward for consideration so there was not an opportunity to attach these supports.

After the September Education meeting, the Task Force convened one more time to determine the next step. It was felt by some members that since we had completed our work, we would not proceed any further. Other stakeholders felt that the supports were still pertinent to the issue and felt that a bill draft should be prepared. I volunteered to do that bill draft.

So before you is the product of much conversation, deliberation, and compromise. I am going to go briefly through the 8 supports in this bill as agreed upon by the remaining Task Force members.

SUPPORTS:

1. School districts shall have a policy on restraint and seclusion by July 2018
2. Definitions of seclusion, physical restraint, and mechanical restraint as defined by Office of Civil Rights be incorporated in the policy
3. The methods addressed in the policy must not restrict the breathing of a student.
4. The policy supports other safety policies in extreme instances
5. A copy of the policy must be filed with Superintendent of Public Instruction
6. Schools shall report all incidents of restraint and seclusion to Office of Civil Rights as required
7. Statewide longitudinal system committee shall include OCR data
8. Schools shall provide annual training on seclusion and restraint adopted under the school policy

There is an appropriation of \$500,000 out of the Foundation Aid Stabilization Fund to provide training.

Thank you for your time with this important issue. I trust you will give SB 2275 your complete attention and consideration. If a school board policy is a good one, it will be good for students, parents, teachers, staff, administrators, and the school board.

That concludes my testimony and I would stand for any questions, but I would prefer if you would wait until you hear other testimony as some of that may clarify any questions you have.

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Testimony from the Consensus Council, Inc.  
Regarding the North Dakota Seclusion & Restraint Task Force:  
*Keeping Everyone Safe in Our Schools*  
For the Senate Education Committee  
February 7, 2017

Chairman Schaible and members of the Senate Education Committee, my name is Rose Stoller, from the Consensus Council. I am here today to provide you with an overview of the work of the ND Seclusion & Restraint Task Force: *Keeping Everyone Safe in Our Schools*. The Task Force was co-convened by the North Dakota Department of Public Instruction (NDDPI), the North Dakota Protection and Advocacy Project (NDP&A), the North Dakota Council of Education Leaders (NDCEL), North Dakota United (NDU) and the North Dakota Center for Persons with Disabilities (NDCPD).

Since early 2016, the Consensus Council assisted the Task Force through planning, facilitation and documentation of their shared work. The Task Force was comprised of over 40 North Dakotans who came together voluntarily to represent a broad range of disciplines and sectors.

The Task Force met monthly, April through August, and held one additional meeting in December. Not all stakeholders attended all meetings. However, attendance generally exceeded 25 people. Between meetings, there was a smaller Planning/Writing Team, comprised of representatives from the co-convening organizations, that followed up on Task Force requests, secured presentations, conducted research and information gathering, and any other work as directed by the Task Force. The Task Force received educational presentations on best practices in Seclusion & Restraint policies, programs and implementation, from the Crisis Prevention Institute (CPI), the ND Youth Correctional Center (YCC), the developmental disabilities sector, the ND Boys & Girls Ranch, and the Bismarck Public Schools. The Task Force also received detailed information and data about the incidence and prevalence of the use of seclusion and restraint in North Dakota schools. This data is required reporting by all school districts to

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the US Department of Education, Office for Civil Rights (OCR). The Task Force also received information from an informal survey done through the ND Council on Educational Leaders (NDCEL).

The entire body of work of the Task Force, including agendas, meeting summaries and presentations, is posted to a dedicated website and available for public review at any time: <http://agree.org/seclusion-and-restraint-task-force/>. These postings promoted a continuous feedback loop if stakeholders identified inaccuracies in the information. It also aided in the timely sharing of information with constituencies represented by individual Task Force stakeholders.

At the August 25 Task Force meeting, the following agreements were reached:

- The Task Force supports use of the USDOE, Civil Rights Data Collection (CRDC) definitions of physical restraint, mechanical restraint and seclusion.
- The Task Force supports all ND school districts being required to have a policy regarding seclusion and restraint.
- The Task Force supports seclusion and restraint policy being developed at the local level.
- The Task Force supports prohibition of prone restraints or any restraints that could impede breathing.
- The Task Force supports biannual reporting of select data, gleaned from already mandatory OCR reporting, to Legislative Management.
- The Task Force supports legislators determining which data they want to receive.
- The Task Force supports training for school district personnel in the area of seclusion and restraint.
- The Task Force does not support unfunded mandates and thus, recommends necessary fiscal support for seclusion and restraint training for school personnel.

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Senate Bill 2275 reflects these agreements. The Consensus Council's role is not to support or oppose legislation but, rather, to help leaders and citizens to reach agreements on difficult issues of public policy. In the case of the Seclusion & Restraint Task Force, I can say that while each stakeholder might not have agreed completely with each bullet point, there was a shared spirit of purpose about these agreements and a commitment to making improvements in the manner schools assist students who present challenges.

Thank you for your time and consideration of this important issue.

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Senate Education Committee

Sixty-fifth Legislative Assembly of North Dakota

Senate Bill No. 2275

February 7, 2017

Good Morning, Chairman Schaible and Members of the Senate Education Committee: I am Cody Wager, a Disabilities Advocate for the Protection & Advocacy Project (P&A).

P&A is an independent state agency. Its mission is to advocate for the human, civil, and legal rights of people with disabilities. P&A strives to ensure that every individual with a disability is treated with the same dignity and respect as all other ND citizens.

P&A is here today to support SB 2275 and the adoption of restraint and seclusion policies by school districts, along with the reporting of incidents to the United States Department of Education, Office for Civil Rights (OCR) as federally required. P&A also supports that educational personnel receive the needed annual training regarding their district's policy.

As a disability rights agency, P&A works extensively with students and their families that struggle with educational issues. Through our work with students and schools it is evident that we have great schools. However, all too often we hear that seclusion and restraint of students with disabilities is occurring. In 2007, P&A began tracking the number of cases that involve

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the use of seclusion and restraint in schools. In 2007 we had 3. That number has steadily increased since that time to 22 new cases in 2016 alone.

P&A has been an active member of the Seclusion & Restraint Taskforce over the past year. One of the activities that the Taskforce completed was to gather and review the available data regarding the use of seclusion & restraint in North Dakota. Through this data gathering process, it was learned that beginning in 2011 all ND schools were required to participate in the biannual Department of Education OCR Civil Rights Data Collection (CRDC). Every other year, schools are to report data regarding seclusion and restraint in their schools. Attachment A is a handout summarizing what data is collected. You will see data is collected on the number of students who were involved in the use of seclusion & restraint, along with the number of incidents. This data can be de-segregated by gender, race, students with disabilities or without disabilities, and more. Data from the 2011-12 and 2013-14 school years is the most recent data available. I would like to highlight a few things from the data:

- During the 2011-12 school year 730 incidents of seclusion or restraint were reported by North Dakota schools:
  - 203 students were reported to be subjected to seclusion or restraint
  - 94% of the incidents were reported at the elementary level
  - 17% of districts reported the use of seclusion or restraint

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- 50% of all incidents were reported by one district alone
- 16% of all incidents were reported by one school
- During the 2013-14 school year 961 incidents of seclusion or restraint were reported
  - 415 students were reported to be subjected to seclusion or restraint
  - 79% were reported at the elementary level
  - 15% of districts reported the use of seclusion or restraint
  - 54% of all incidents were reported by one district alone (different district than previous report)
  - 33% of all incidents were reported by one school (different school than previous report)

To try to address some of the questions that this data raised (Why were so many reports coming from one district? Do districts have the same definitions of seclusion and restraint?), an informal survey of school administrators was conducted with the help of the ND Council of Educational Leaders (NDCEL). This survey clarified that we have districts across the state who are not speaking the same language. For example, one administrator identified detention may be a form of seclusion. Some administrators identified that they do not currently collect data. So, one of the only things that can really be derived from the OCR data is that we know that seclusion & restraint are being used in our ND schools.

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Physically putting your hands on child is a big deal. It affects the student, his or her classmates, staff, and families. It's such a big deal that the U.S. Department of Education issued the *Restraint and Seclusion: Resource Document*<sup>1</sup> in May of 2012. The North Dakota School Board Association soon followed with a sample policy for school districts to consider. The sample policy is excellent and we support any school district who adopts it or uses it as a framework for the development of their own district policy.

P&A has also reviewed research that has been done by experts in this field. Jessica Butler is an attorney who has conducted extensive research around the country on the use of seclusion and restraint in schools. Jessica recently published her research in a document titled *How Safe is the Schoolhouse*.<sup>2</sup> In her research she identifies:

- "There are 4 states which are silent on both restraint and seclusion. They have no laws or even voluntary principles. They are Idaho, North Dakota, New Jersey, and South Dakota".
- "28 states have laws providing meaningful protections against restraint and seclusion for all children; 38 states include laws pertaining to children with disabilities".
- "There are 19 states that protect all children from non-emergency seclusion; 23 protect children with disabilities."

<sup>1</sup> <https://www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf>

<sup>2</sup> <http://www.autcom.org/pdf/HowSafeSchoolhouse.pdf>

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- "Restraints that impede breathing and threaten life are forbidden by law in only 27 states for all children; 33 states, for children with disabilities" (Jessica Butler, [jessica@jnba.net](mailto:jessica@jnba.net)).

P&A supports the passage of SB 2275, which will require each school district to adopt a policy for use within their local school district. This is with a recognition that schools within the state do not have the same needs. This bill creates a degree of uniformity with definitions and minimum standards so that there is a degree of consistency within the state. This, coupled with consistent reporting, will result in a better understanding of what is occurring in our schools regarding this issue.

P&A recognizes that our schools are very complex in today's world. Teachers and administrators have heavy loads and limited time. We believe teachers and other school personnel want to do the right thing – they need the resources to do so. This bill does not create "extra" work. What it does do is create uniformity in concepts and formalizes the data collection that is already required, with the intent to create consistency in the reporting processes. It also includes training, as well as direction for educators through the development of policies. P&A agrees that there should not be unfunded mandates, which is why the bill includes a funding opportunity for the Department of Public Instruction to work with ND schools regarding training.

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

# Office of Civil Rights: Civil Rights Data Collection Seclusion and Restraint Data Overview

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The Civil Rights Data Collection (CRDC) is a biennial (i.e., every other school year) survey required by the U.S. Department of Education's (Department) Office for Civil Rights (OCR)

• Data is collected from all public local educational agencies (LEA) and schools, including long-term secure juvenile justice facilities, charter schools, alternative schools, and schools serving students with disabilities.

## WHAT DATA DOES THE CRDC PROVIDE?

- Data every other school year on:
  - Number of instances of restraint and seclusion reported
  - Number of students reported to be involved
- Detailed data breakdowns on:
  - Number of INCIDENTS and STUDENTS INVOLVED by:
    - State
    - School district (LEA)
    - School
  - Data regarding NUMBER OF STUDENTS by:
    - Type of procedure: Seclusion, Mechanical Restraint, Physical Restraint
    - Race: Hispanic, American Indian/Alaska Native, Asian, Native Hawaiian/Pacific Islander, Black, White, Two or more races
    - Sex
    - Disability: Receives special education, regular education
    - Limited English Proficiency
  - Data regarding the NUMBER OF INCIDENTS by:
    - Type of student: Students without disabilities, students who have a disability and receive special education, student who have a disability and are served under a 504 plan
    - Type of procedure: Seclusion, Physical Restraint, Mechanical Restraint

## INFORMATION THAT CAN BE OBTAINED FROM THE CRDC?

- Detailed data on the number of students involved, types of students involved, and the number of instances reported (see previous)
- Data specific to each school and district
- Data by school type: elementary, middle/junior high, high school
- Data by school and district size
- Trends (every other year) by restraint type, student type, race, sex, LEP, district, school, school type, school/district size

## CONSIDERATIONS OF THE INFORMATION THAT CAN BE OBTAINED FROM THE CRDC?

- Every other year survey
- About a 2 year wait for data
  - Example: 2013-14 school year data released in June 2016
- Data is not student specific
  - Students involved and number of instances cannot be correlated
- Data needs to be obtained from OCR
- Data needs to be processed and analyzed to obtain specific information wanted

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Senate Bill 2275  
Testimony for Public Hearing  
Education Committee

Deborah Jendro  
2709 Elm Street  
Fargo ND 58102

Good morning Education Committee Members. I am in favor of Senate Bill 2275, in regards to the state adopting seclusion and restraint policies for ND School Districts.

My name is Deborah Jendro. I am a parent, grandparent and concerned citizen from Fargo ND. I would like to address the issue of seclusion and restraint in our schools and the lack of reasonable protection for our children who are exposed to their use.

As I am writing this, I struggle with thoughts of little children wrestling with the world to overcome their fears and anxieties. I have come here for a purpose. To make aware the necessity of rules, regulations, and policy in regards to the smallest of us and the use of adverse measures for discipline and control except in extreme circumstances.

I am haunted by visions of my own child, sitting alone in a small room at the school. Tears dripping off of his little freckled nose. Between the redness of his hair and the swollen redness of his eyes, he looked like a little boy on fire. He was just a little boy. Ever since he was tiny, he exhibited issues of anxiety. Difficulty with separation from family and the comfort of his own home. When it came time for school, his anxiety escalated. There were many painful days of leaving him in the kindergarten room, kicking and screaming as a kind, well-meaning teacher would hold him back as I walked away with my own tears and a little boy tearing at my heart strings. This will get better they said, he just has to get used to it. As we marched through elementary school, there were times when separation and school anxiety would get the best of him. There were days he would lock himself in the bathroom and refuse to come out. There was the day he jumped out of the moving car. There was the day he put his fist through the dining room window and we went to the E.R. instead of school. There was the day he told his teacher he had a doctor appointment and his mother was picking him up. No one checked and he was allowed to leave the school. The reality was, no one was even home and my 2<sup>nd</sup> grader was home alone the better part of the day. Now we know why a kid needs a note to get out of class!! With the help of professionals, the decision was made to have a case aide come to our home every morning and get him to school. I would have to leave before he was awakened as he would cling and beg to stay home. There were days when this would work and then there were the other days when I would get called to the school and find him sitting alone in seclusion.

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As a parent, I was frustrated and confused. The law said he must be educated. I must get him to school or face the dreaded call from social services yelling neglect in my face. So we pushed on. Between school avoidance, and the bullying he had to put with there, we knew middle school would never work. We pulled him from public school and put him in an independent learning center. Forgoing our free public education, we paid \$375 a month to get him an education. They were patient and kind. No seclusion, no bullying, no crowds or large groups to test his anxiety. Small numbers, narrower focus, working on 2 classes instead of 5. No homework. More one on one attention to maintain focus. Eventually he did well and was maintaining a B average. Then the bomb came. The learning center was closing its doors. He had one more year left of study. We contemplated returning to public school in an alternative setting, but ND would not accept his credits. They said the Learning Center was not accredited, even though it was in Minnesota, where it was accredited they would not accept his transfer and he would have to start over as a freshman. The result: a high school dropout. Eventually, he got his GED. He spent several years floundering. Living at home. Difficulty holding a job. Sleeping days and wandering the house at night. Little social life.

Fast forward to today. For the past year has been confined to his little efficiency apartment with a type of anxiety disorder in which you fear and often avoid places or situations that might cause you to panic and make you feel trapped, helpless or embarrassed. (Agoraphobia). He is a gifted young man. He excelled in Math and the Arts. We applaud every step he takes toward his independence and hope someday he will gather the energy to pursue his life's dreams.

Now, we have talked about memories I try hard to suppress and my son will not talk about. I have brought them forward today, not for your sympathy but to make a point of the importance of protecting our children from negative consequences that can affect them the rest of their life. It is time to write the rules!! Accentuate the positive. Insist on documentation. Keep data. Keep parents informed. Educate school personnel to equip them with the tool to determine when and if seclusion and restraint is necessary. Require schools to provide training on alternative approaches such as Positive Behavioral Interventions and Supports, crisis prevention, intervention and de-escalation. Let us work on brining ND into the here and now in the name of the children. Thank you

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Testimony

Senate Bill 2275 Education Committee

Senator Schaible, Donald Chairman

Tuesday February 7 2017

Good Morning Mr. Chairman Schailbie and members of the Committee.

My name is Robert Marx. I am from Dickinson, ND. I live in District 37.

I am here to testify in favor of Senate Bill 2275. This requires school to policies regarding seclusion and restraint.

I was almost put in the padded room when I was in school when I was mad. I would not go in it. I walked away. I went to go to shop to calm down instead.

The kids need go to the padded room they need call the parents first.

They need a special room with a rings and toys.

Thanks you From Robert Marx,

I will put my Email address is robertmarx80@gmail.com

Robert Marx

560 8 St se #6 Dickinson N.D. 58601

Phone # (701) 483-0038

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**Testimony**  
**Senate Education Committee**  
**Senator Donald Shaible, Chairman**  
**February 7, 2017**

Chairman Shcaible, 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. 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 the need to create a statute regarding 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." Seclusion and restraint are **highly dangerous interventions that have led to death, injury, and trauma in children**. The Government Accountability Office (GAO) documented at least 20 stories of children who died in restraint, and other children have died and been injured in seclusion. I have personally been involved in a case in which a little five year old child with asthma could have been killed as a result of two adults laying on top of this child, causing that child to have difficulty breathing. It is instances like this that can turn a lapse of judgment into the death of a child in their school. Seclusion and Restraint procedures can be dangerous for both staff and students.

Department of Education (DOE) in collaboration with Substance Abuse and Mental Health Services Administration (SAMHSA) identified 15 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

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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.
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; 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.
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.

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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.

On December 28, 2016, the U.S. Department of Education, Office of Civil Rights released a Dear Colleague letter regarding the use of seclusion and restraint in public schools. This included a summary of national data regarding the prevalence of seclusion and restraint and also gave guidance regarding the Department's interpretation of federal law. First, we will go over national data and compare that to data North Dakota provided to the Office of Civil Rights. It will be an apples to apples comparison. What we know about the use of seclusion and restraint in public schools is that students with disabilities "were subjected to mechanical and physical restraint and seclusion at rates that far exceeded those of other students." The data collected by the Civil Rights Data Collection (CDR) showed that despite students with disabilities served under the Individuals with Disabilities Education Act representing only 12% of the nation's students, they were 67% of all students who were subjected to seclusion and restraint. During the 2013-2014 school year, North Dakota reported to the Office of Civil Rights the following:

- 80.3% of all reported uses of seclusion and restraint were for students covered under the Individuals with Disabilities Education Act.
- 79.2% of all reported uses of seclusion and restraint were for students in elementary schools.

The 2013-2014 school year was the second year that data was collected. The first year was the 2011-2012 school year.

The Dear Colleague Letter of December 28 provided guidance to schools regarding adherence to Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act.

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The letter provides several clear examples or stories showing how seclusion or restraint can violate Section 504 in an individual case if *any* of the following can be demonstrated:

1. Constitutes unnecessary different treatment of the student with a disability
2. Is based on a policy, practice, or procedure that has a discriminatory effect on students with disabilities; or
3. Denies a student's right to free and appropriate public education (FAPE).

Violations can be reported to the Office of Civil Rights, which could result in the Office of Civil Rights investigating the school district, and, if a violation were to be found, crafting an appropriate remedy. The Dear Colleague letter then refers to the Department of Education's Restraint and Seclusion Resource Document, which outlined the fifteen principles that were already referred to in this testimony. They define that the *bare minimum* 3 core principles of protections for students include that: 1) school districts *never* use mechanical restraint, 2) that school districts *never* use physical restraint or seclusion for disciplinary purposes, and 3) that trained school officials should use physical restraint or seclusion *only* if a child's behavior poses imminent danger of serious physical harm to self or others.

I am going to provide a few materials for you in order to give you resources that the Seclusion and Restraint Task Force used in their deliberations. I am attaching a copy of the December 28<sup>th</sup> Dear Colleague Letter from the U.S. Department of Education, Office for Civil Rights regarding Seclusion and Restraint. The Consensus Council hosted the Seclusion and Restraint Task Force and has most of the relevant materials available. You will find newspaper articles discussing the use of seclusion and restraint in North Dakota, the Civil Rights Data Collection report on data that was collected about seclusion and restraint use in North Dakota, and the task force's meeting summaries, as well as many other items. You will find the link in the footnote below.<sup>1</sup>

NDFFCMH and MHAND support SB 2275. As you can see, in comparison to recommendations by the Department of Education, SB 2275 is a very small step forward in addressing the widespread use of seclusion and restraint in North Dakota.

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<sup>1</sup> <http://agree.org/seclusion-and-restraint-task-force/>

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

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**Notice of Significant Guidance.** The U.S. Department of Education (Department) has determined that this letter is significant guidance under the Office of Management and Budget's Final Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. 3432 (Jan. 25, 2007). *See* [www.whitehouse.gov/sites/default/files/omb/memoranda/fy2007/m07-07.pdf](http://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2007/m07-07.pdf). Significant guidance is non-binding and does not create or impose new legal requirements. The Department is issuing this guide and the accompanying letter to provide State and local educational agencies, including charter schools, with information to assist them in meeting their obligations under Federal civil rights laws, including Section 504 of the Rehabilitation Act of 1973, and implementing regulations that it enforces. 29 U.S.C. § 794; 34 C.F.R. Part 104. This document also provides members of the public with information about their rights under the law and regulations.

If you are interested in commenting on this letter or have questions, please send them to OCR by email at [OCR@ed.gov](mailto:OCR@ed.gov), by phone at 800-421-3481 (TDD 800-877-8339), or by mail to the Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue SW, Washington, DC 20202. For further information about the Department's guidance processes, please visit [www.ed.gov/policy/gen/guid/significant-guidance.html](http://www.ed.gov/policy/gen/guid/significant-guidance.html).



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

December 28, 2016

Dear Colleagues:

I write to explain the limits that Federal civil rights laws enforced by the U.S. Department of Education's Office for Civil Rights (OCR) impose on the use of restraint and seclusion by public elementary and secondary school districts.<sup>1</sup> In particular, this guidance informs school districts how the use of restraint and seclusion may result in discrimination against students with

<sup>1</sup> In this document, *school district* and *public elementary and secondary school systems* are used synonymously and include all local educational agencies (LEAs) and public charter schools. Charter schools are subject to the same Federal civil rights obligations as all other public schools. The use of the term *charter schools* includes schools that are public schools of a school district as well as charter schools that operate as LEAs under State law. For additional information about the applicability of Federal civil rights laws to charter schools, *see* OCR and Office of Special Education and Rehabilitative Services, *Dear Colleague Letter about the Rights of Students with Disabilities in Public Charter Schools* (Dec. 28, 2016), [www.ed.gov/ocr/letters/colleague-201612-504-charter-school.pdf](http://www.ed.gov/ocr/letters/colleague-201612-504-charter-school.pdf), and OCR, *Frequently Asked Questions about the Rights of Students with Disabilities in Public Charter Schools under Section 504 of the Rehabilitation Act of 1973* (Dec. 28, 2016), [www.ed.gov/ocr/docs/dcl-faq-201612-504-charter-school.pdf](http://www.ed.gov/ocr/docs/dcl-faq-201612-504-charter-school.pdf).

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[www.ed.gov](http://www.ed.gov)

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disabilities, thereby violating Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (Title II) (both as amended).<sup>2</sup>

In broad terms, restraint of a student means restricting the student's ability to move his or her torso, arms, legs or head freely, and seclusion of a student is confining a student alone in a room or area that he or she is not permitted to leave (see detailed definition below in the accompanying questions and answers). OCR's Civil Rights Data Collection (CRDC), which includes self-reported data on 99 percent of the public school districts in the nation, indicates that schools restrain and seclude students with disabilities at higher rates than students without disabilities.<sup>3</sup>

According to the CRDC, during the 2013-14 school year, students with disabilities were subjected to mechanical and physical restraint and seclusion at rates that far exceeded those of other students.<sup>4</sup> Specifically, students with disabilities served by the Individuals with Disabilities Education Act (IDEA) represented 12% of students enrolled in public schools nationally, but 67% of the students who were subjected to restraint or seclusion in school.<sup>5</sup> Based on data reported to OCR, approximately 100,000 students were placed in seclusion or involuntary confinement or were physically restrained at school to immobilize them or reduce their ability to move freely, including more than 69,000 students with disabilities served by the IDEA.<sup>6</sup> Data disparity alone does not prove discrimination. The existence of a disparity, however, does raise a question regarding whether school districts are imposing restraint or seclusion in discriminatory ways.

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<sup>2</sup> Section 504 is a Federal law that prohibits discrimination against individuals with disabilities in programs or activities of entities, such as public schools and charter schools, that receive Federal financial assistance. 29 U.S.C. § 794; 34 C.F.R. pt. 104. OCR enforces Section 504 against entities that receive Federal financial assistance from the Department, including public school districts. Title II is a Federal law that prohibits discrimination against individuals with disabilities in State and local government services, programs, and activities (including public schools and public school districts), regardless of whether they receive Federal financial assistance. In the education context, OCR shares in the enforcement of Title II with the U.S. Department of Justice (DOJ). Section 504 and Title II use the same definition of disability. 29 U.S.C. § 705(9) (B), (20) (B) (definition of disability under Section 504 is the same as under the ADA); 42 U.S.C. § 12102. As a general rule, because Title II provides no less protection than Section 504, violations of Section 504 also constitute violations of Title II. 28 C.F.R. § 35.103. Accordingly, this guidance will not directly address Title II requirements. To the extent that Title II provides additional or greater protection, covered entities must also comply with Title II's substantive requirements. 42 U.S.C. § 12201(a).

<sup>3</sup> OCR, *2013-2014 Civil Rights Data Collection: A First Look*, 4 (updated Oct. 28, 2016), [www.ed.gov/ocr/docs/2013-14-first-look.pdf](http://www.ed.gov/ocr/docs/2013-14-first-look.pdf); see also U.S. Government Accountability Office, GAO-09-719T, *Seclusions and Restraints: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers*, 1 (May 19, 2009), [www.gao.gov/assets/130/122526.pdf](http://www.gao.gov/assets/130/122526.pdf) (reporting that seclusion and restraint "can be dangerous because they may involve physical struggling, pressure on the chest, or other interruptions in breathing," and that "individuals can be severely traumatized during restraint").

<sup>4</sup> OCR, *2013-2014 Civil Rights Data Collection: A First Look*, 4 (updated Oct. 28, 2016), [www.ed.gov/ocr/docs/2013-14-first-look.pdf](http://www.ed.gov/ocr/docs/2013-14-first-look.pdf).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

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A school district discriminates on the basis of disability in its use of restraint or seclusion by (1) unnecessarily treating students with disabilities differently from students without disabilities; (2) implementing policies, practices, procedures, or criteria that have an effect of discriminating against students on the basis of disability or defeating or substantially impairing accomplishment of the objectives of the school district's program or activity with respect to students with disabilities; or (3) denying the right to a free appropriate public education (FAPE).<sup>7</sup> When investigating a school district, OCR would examine any available data as well as the school district's policies, practices, procedures, and criteria to determine whether unlawful discrimination has occurred and, if so, would craft an appropriate remedy with the school district.

Through a series of questions and answers below, OCR provides a summary of the disability discrimination laws that it enforces and seeks to clarify for schools, school districts, States, parents, students and other stakeholders how the use of restraint and seclusion can violate these Federal laws. While this guidance addresses the circumstances under which the use of restraint or seclusion can violate Section 504 and Title II, a May 15, 2012, *Restraint and Seclusion: Resource Document* publication by the U.S. Department of Education on this issue offers further information on the topic, including discouraging the use of restraint or seclusion more generally.<sup>8</sup> OCR notes that in the *Resource Document*, as a part of fifteen guiding principles, the Department recommended that school districts never use mechanical restraint, that school districts never use physical restraint or seclusion for disciplinary purposes, and that trained school officials should use physical restraint or seclusion only if a child's behavior poses imminent danger of serious physical harm to self or others. This guidance, however, is intended to clarify Federal laws, but does not add additional requirements for complying with existing statutes.

OCR is committed to ensuring equal access to education, and to promoting educational excellence throughout the nation, through vigorous enforcement of civil rights. An important part of our mission is to ensure that students with disabilities are not subjected to discrimination. We look forward to working with you to achieve this shared goal.

Sincerely,

/s/

Catherine E. Lhamon  
Assistant Secretary for Civil Rights

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<sup>7</sup> 34 C.F.R. §§ 104.4, 104.33-35.

<sup>8</sup> U.S. Department of Education, *Restraint and Seclusion: Resource Document* (May 15, 2012), [www.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf](http://www.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf).

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Testimony of Brady Burkes  
2503 Estabrook Dr.  
Grand Forks, ND 58201

My name is Brady Burkes. I was born and raised in Grand Forks, North Dakota. When I was 3 years old when I started with the lifelong struggle of dealing with mental health problems. Throughout my life I have been diagnosed with my mom calls, "alphabet soup." I have been given many labels and diagnoses over my 22 years, such as, ADD, ADHD, OCD, Depression/Anxiety disorder, intermittent explosive disorder, emotional/behavioral disorder, and the list could go on.

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

When I was 7 years old, I remember arriving at school and the teachers would automatically assume what my mood was or what I was thinking based on my expression and body language, which often did not match what was going on in my mind. If I was quiet, they thought I was in a bad mood. When they would question me about being in a bad mood, I wouldn't reply and they would keep asking me, which did provoke me to become upset. Then I would be threatened with the "quiet room", (which was a small room within the classroom, that was wall to wall carpeting, and nothing else) instead of letting me have control of my emotions, the way my mom had told them to do. She knew my triggers and what would provoke me into a fit of rage. This would happen when I felt badgered and threatened. I would then become angry, kick desks, yell at other kids, and teachers, which put me in the "quiet room," This use of seclusion they justified by saying that the door did not have a lock on it and the child inside was safe. The truth of this was, an adult would stand at the door and hold it shut while I was fighting to get out. I felt like a caged animal in there and it only excelled my rage. I would kick, scream, fight to get out of that room until my body was exhausted and I crumbled on the floor and cried. I was confused, mad, sad, scared all at the same time. NO child should EVER be locked in a room like an animal. This only caused me to become untrusting of adults and scared that every emotion I had would result in the seclusion. When the seclusion didn't achieve whatever goal it was they had, I would be restrained, so I would not run away from the school.

When you are trying to work with a child that has emotional disorders, the last thing that should be done is to seclude or restrain that child. What I want people to understand is the mind of the child. The anger overtakes the body, and the mind. By using force it only intensifies the turmoil the child is experiencing. I always "came out of the episode" confused, not really knowing what had just taken place, other than I was so sad and so scared. I lived this everyday of my life while I was in school. I trusted very few people

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and, I lived in fear of being punished and misunderstood and to be locked up or held down in some terrible way. I strongly oppose the use of seclusion and restraint in the schools; it scars a child well into adulthood, and caused me to drop out of school when I turned 16. I was not able to continue dealing with the bias and hatred I felt around me.

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

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SENATE BILL 2275  
SENATE EDUCATION COMMITTEE  
SENATOR DONALD SCHAIBLE, CHAIRMAN  
NORTH DAKOTA ASSOCIATION OF COMMUNITY PROVIDERS TESTIMONY  
FEBRUARY 7, 2017

Good morning Chairman Schaible and members of the Senate Education Committee. I am Bruce Murry, executive director of the North Dakota Association of Community Providers (NDACP). NDACP members historically have provided services to North Dakotans with developmental or intellectual disabilities.

NDACP supports SB 2275. First, restraint that interferes with a person's breathing is dangerous. The National Disability Rights Network has reports outlining the negative health consequences, including death, of people restrained in ways that restrict breathing.

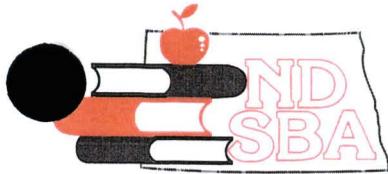
Second, a local policy on the use of seclusion and restraint serves as a means for local schools to identify the issues they face, the best ways to deal with behavioral challenges, and the circumstances under which more extreme measures need to be taken.

Finally, resorting to the restraint or seclusion of students when not absolutely necessary reduces a student's ability to access an appropriate education with one's peers in the least restrictive environment. As such, we believe it would violate special education laws as well as the North Dakota Human Rights Act and the Americans with Disabilities Act. A local policy serves as a defense against the improper use of restraint and seclusion, and against unwarranted complaints about their careful and proper use.

Thank you for your time and I am happy to answer any questions.

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NORTH DAKOTA  
SCHOOL BOARDS  
ASSOCIATION  
I N C O R P O R A T E D

*Excellence in North Dakota public education through local school board governance*

**SB 2275 – TESTIMONY**

**L. Anita Thomas, J.D., LL.M.  
General Counsel  
North Dakota School Boards Association  
February 07, 2017**

SB 2275 provides that, prior to July 1, 2018, each school district shall adopt a policy regarding the use of restraint and seclusion methods by school district personnel.

Let us begin with what this policy would have to include.

**Each school district policy must include the definitions of seclusion, physical restraint, and mechanical restraint as defined by the United States Department of Education Office for Civil Rights.**

Bills can include references to specific federal statutes and regulations. If they do, the statutes or regulations must be appropriately cited, so that everybody has due notice of the intended language and there is no confusion about the words being applied. Moreover, when that is done, there should be a specific reference to the federal statute or regulation, as it existed on a specific date. What we have here is a reference to an office within a federal agency. Those who have to administer the law and those who are subject to it do not know whether one should look for the definition in a statute, a regulation, a guidance letter, an opinion, a policy statement, a memorandum, a bulletin, or any other directive that may or may not have the force and effect of law.

**Each school district policy must prohibit the use of restraint methods in any manner that restricts the breathing of a student.**

This seems like an obvious declaration on its face. We most certainly do not want anyone to cover a student's nose or mouth with a pillow or a washcloth. If, however, the student had a firearm or other dangerous weapon, we might want to have some leeway to deal with the situation using any means necessary.

North Dakota already has a law (NDCC section 15.1-19-02) that prohibits a school district employee from willfully inflicting physical pain on a student, willfully causing the infliction of physical pain on a student, or willfully allowing the infliction of physical pain on a student. Those parameters are waived to the degree necessary if there is a physical disturbance that threatens physical injury to an individual or damage to property, a verbal disturbance, the need for self-defense, the need to preserve order, or the need to obtain possession of a weapon or other dangerous object within the control of a student.

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**The policy must support the use of safety policies in extreme instances.**

This policy appears to require yet another policy -- a "safety policy." Safety policies generally pertain to the creation of a safe and healthy work environment. That does not appear to be what was intended.

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**A copy of the policy must be filed with the Superintendent of Public Instruction.**

Why? What will the Superintendent of Public Instruction do with 179 policies? There appears to be no reason for her to read each one. Barring that, this requirement is simply creating additional paperwork at the school district and at the state level. Policies are open records and publicly available.

**[T]he Superintendent of Public Instruction submit an annual report regarding school district policies to an interim committee designated by the Legislative Management.**

The bill requires each school district to adopt a policy as of July 1, 2018. What would be the content of this required report? Year -- after year -- after year . . .

\*\*\*\*\*

**Each school district shall report all incidents of restraint and seclusion to the United States Department of Education Office for Civil Rights as required by the Office for Civil Rights.**

Every public school and school district in the country is already mandated to participate in Civil Rights Data Collection -- a project that has been underway by the Department of Education's Office for Civil Rights since 1968. The information required by the federal government with respect to restraint and seclusion is as follows:

- Students (K-12) subjected to mechanical restraint:
  - Number of non-IDEA students subjected to mechanical restraint (disaggregated by race, sex, disability-504 only, LEP); and
  - Number of students with disabilities (IDEA) subjected to mechanical restraint (disaggregated by race, sex, LEP).
- Students (K-12) subjected to physical restraint:
  - Number of non-IDEA students subjected to physical restraint (disaggregated by race, sex, disability-504 only, LEP); and
  - Number of students with disabilities (IDEA) subjected to physical restraint (disaggregated by race, sex, LEP).
- Students (K-12) subjected to seclusion:
  - Number of non-IDEA students subjected to seclusion (disaggregated by race, sex, disability-504 only, LEP); and
  - Number of students with disabilities (IDEA) subjected to seclusion (disaggregated by race, sex, LEP).
- Number of instances of mechanical restraint, physical restraint, seclusion (disaggregated by students without disabilities, students with disabilities-IDEA, students with disabilities-504 only).

There is no need to place into state law a provision that simply repeats a federal requirement.

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**The Statewide Longitudinal Data System Committee shall include data submitted to the United States Department of Education Office for Civil Rights regarding the use of restraint and seclusion in the report required under section 54-59-36.**

NDCC section 54-59-36 directs the statewide longitudinal data system committee to provide a report regarding the statewide longitudinal data system, including recommendations for further development, cost proposals, proposals for legislation, and recommendations for data sharing governance. This report pertains to the SLDS system. Why would one require the inclusion of federally mandated data that is already available through OCR within a report regarding SLDS?

\*\*\*\*\*

Ultimately, the question before us is whether this bill is necessary.

Currently, there are no federal laws that regulate the use of restraints or seclusion in school settings. That's particularly odd because going back to at least 2009, the United States House of Representatives heard testimony that students had been injured in schools by teachers secluding or physically restraining them. Yet, a Congress that over the last decade had no difficulty imposing one-size-fits-all mandates on the states was not compelled to enact a national standard governing restraint and seclusion.

So now, the state is being asked to intervene. As state legislators, you have the ability to craft legislation that clearly spells out what one must do and what one may not do. Yet, this bill did not take that path. Instead, it directs school districts to enact a policy.

Currently, 112 districts have a restraint and seclusion policy in place and 8 more are in the process of adopting one. That's 9 more districts that have adopted policies since the numbers were reported to the 2015-16 interim education committee. Those districts represent nearly 81,000 students – more than 76 percent of all ND public school students.

Districts do not need a law telling them to adopt a policy addressing restraint and seclusion. They can make that decision based on their own needs and circumstances. What they do need is legitimate assistance in helping them address the issues that prompt this discussion in the first place.

Schools are education providers. They are not mental health providers. They are not behavioral health providers. No policy, however well intended, puts special education teachers, trained aides, or counselors in our schools - especially in our rural schools. No policy, however well intended, creates openings for students to be evaluated when psychologists and therapists are booked solid for weeks or months. No policy enables a hospital to keep a student who has been brought there when the issue is not medical. No policy creates residential bed space or alters parental insurance coverage for such services.

As for staff training, that too takes time and money. This bill states that "[e]ach school district shall provide annual training to school district personnel on the appropriate use of restraint and seclusion methods under the school district policy." Right now, the state pays for two days of professional development. That's a very limited period of time given the multiple challenges that school districts face and feel compelled to address. Moreover, the required training is not exclusively limited to licensed personnel of which there are about 9,300 in the public schools. Nonlicensed personnel account for

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another 6,300 and include aides, custodians, food service workers, sign language interpreters, bus drivers, school nurses, school social workers, etc. Any or all of whom could find themselves in a situation where a response is necessary.

Mr. Chairman, student behavioral health is a systemic concern. It impacts students who need services and students who do not. It raises issues of safety and security for all students and staff. It is a challenge for families and communities alike. A bill requiring a policy is not the answer.

What we would appreciate is a strengthened commitment on the part of the state to actively pursue solutions that will ensure access to services and a collective and coordinated approach to addressing the issues that students are bringing into our schools.

The NDSBA respectfully requests a **DO NOT PASS** on SB 2275.



**Senate Bill No. 2275**

**Testimony in Opposition**

**North Dakota Council of Educational Leaders, Russ Ziegler**

Good morning Chairman Schaible and members of the Senate Education Committee. For the record, my name is Russ Ziegler, I am the assistant director for the North Dakota Council of Educational Leaders. Thank you for the opportunity to testify in opposition to Senate Bill 2275.

NDCEL participated on the Seclusion and Restraint consensus meetings. The one item that we did agree upon was that districts should have a Seclusion and Restraint policy. The main reasons that NDCEL is in opposition of Senate Bill 2275 are the mandatory training, lack of funding and perceived local control. During our meetings NDCEL fought against any mandatory training of school personal, we do know that training is necessary in the schools where it is needed, but we also know that schools are already training the appropriate staff. We feel that mandatory training for all staff would put unnecessary burdens on the districts funds and the districts limited professional development time. Currently a lot of the schools' professional development time is taken up with unfunded mandates which include: Bullying prevention, suicide prevention, and 8 hours of mental health training. Please, don't get us wrong these trainings are good, but not every school has the same needs at the same time. The same goes with seclusion and restraint. There are numerous schools in the state that do not have the need for seclusion and restraint at any given time, so mandatory training of their staff would be impractical.

The second reason that we cannot support this bill is the inadequate appropriations of \$500,000, and because it would be coming out of the foundation aid stabilization fund.

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According to a survey NDCEL administered with 68 districts reporting we extrapolated the following, please keep in mind that the sums are approximate:

Statewide cost to train teachers per day - \$4.5 – \$5.5 million

Statewide cost to train paraprofessionals per day - \$850,000

Statewide cost to train classified staff per day - \$950,000

Currently 65% of our schools have had to add additional professional development over and above the state paid 2 days. 100% of the districts reported that there 2 paid days are currently full. Those who have been unable to schedule more cite that difficulty affording to pay for the additional PD has prohibited them from scheduling more. NDCEL cannot support mandatory training that would not be fully funded. These funds would come out of the foundation aid stabilization fund. The foundation aid stabilization fund was not initiated to provide funds for statewide professional development training. This fund was established to help schools remain solvent during years of statewide financial deficits.

Another question that we have about Senate Bill 2275 is the intention. Is the intention to keep the issue of seclusion and restraint a local matter or to make it a state matter? While it maybe unintentional, the way Senate Bill 2275 is crafted it appears to be a legislative mandate disguised as local control. The language in the bill says to local school boards, make sure you develop a seclusion and restraint policy, and make sure it says exactly this... There are a lot of the policy: must include, must prohibit, must support, etc. It is requiring local school boards to rewrite legislatively mandated language, and then rubber stamping this language as “local policy”. Any legislation that requires another governing body to own locally the specific language and outcomes that others desire is not local control.

For these reasons, we respectfully request that you vote in favor of local control and bring a Do Not Pass vote to the Senate floor.

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**Written Testimony on Senate Bill No. 2275**

**Presented to the Senate Education Committee**

**Rob Lech, Superintendent, Jamestown Public School District #1**

**February 7, 2017**

Good morning Chairman Schaible and members of the Senate Education Committee.

For the record, my name is Rob Lech and I serve as the superintendent for the Jamestown Public Schools. I am providing written testimony in opposition to Senate Bill 2275.

Safety for all students is a high priority for every school district in North Dakota. I respect very much those advocates that want, like I do, to ensure that students know they are safe in our school buildings. Restraint and seclusion practices are utilized only when comprehensive de-escalation strategies have been ineffective and it is determined to be absolutely necessary for the safety of the student and the other students in the school. In my experiences, it must always include a partnership and clear communication with parents. This is not a responsibility that schools take lightly. There are many hours of certification/recertification, training, meetings, documentation, and review that go into this process to ensure that safety for all remains the first priority.

While some may suggest that the necessity of this bill is representative of the fact that there are school districts in North Dakota that do not have a Restraint and Seclusion policy, I would contend that policy adoption is more related to circumstance. It is my opinion that school districts that do not already have this in place likely have not yet had a student that would meet the criteria to consider a Behavioral Intervention Plan (BIP) that includes the potential for restraint and seclusion. Like many ND districts, Jamestown has a policy similar to

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24 what has been recommended through the North Dakota School Board Association. The  
25 Jamestown Public School District adopted this policy on May, 20, 2013 and it has been working  
26 very well. I have included a copy of the JPS policy as an addendum to this written testimony.

27 To provide context to the discussion for SB 2275, I am providing an example of the  
28 processes used at Jamestown Public Schools to determine if restraint and seclusion methods  
29 should be considered. This includes when they would be utilized, the role of the parent in this  
30 decision and practice, and how the use of restraint and seclusion is currently monitored at the  
31 school district level. It is important to note that this would be a very similar, if not identical,  
32 process in other schools.

33 At the point at which behavior of a student inhibits his or her own learning or the  
34 learning of others, the team will develop a Behavior Intervention Plan (BIP) that will focus on  
35 positive behavioral interventions to address behavior. One component of the BIP is to consider  
36 if there is a need to consider a crisis plan. If it is determined that the behaviors involve  
37 imminent danger of serious physical harm to self or another person, restraint and seclusion  
38 may be considered. If so, the parent is consulted and consent is obtained. In cases where a  
39 reset room is utilized, the parent is shown that room prior to providing consent.

40 Parents are notified if/when restraint and seclusion is utilized. Rigid recording  
41 requirements are in place. Documentation of all restraint and seclusion measures are required.  
42 Reporting begins with the staff member most directly involved. This report is then given to the  
43 building principal, who completes additional components of the form. All reporting forms are  
44 kept, data is compiled and a report is submitted to the district's Restraint and Seclusion  
45 Committee.

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46 Given this current level of monitoring and accountability that is already taking place in  
47 my district, as well as many other districts, the requirements to provide reporting to legislative  
48 management through the Department of Public Instruction, and through the State Longitudinal  
49 Data System seems onerous and unnecessary.

50 I also have concern with the fiscal note associated with Senate Bill 2275. Section 2 of  
51 the bill outlines that \$500,000 be appropriated to the Department of Public Instruction for the  
52 training of school district personnel. The selection of methods and trainings should not be at  
53 the sole discretion of the Department of Public Instruction. If one entity determines what is  
54 being trained, who is conducting the training, and when and how it will be done, the local  
55 district loses its voice in its own policies. These are decisions that are best made at the local  
56 level with local stakeholders.

57 I ask that you continue to support school districts as they use local control to best meet  
58 the needs of all students through a Do Not Pass recommendation on Senate Bill 2275. I would  
59 be open to questions and may be reached through email at [Robert.Lech@k12.nd.us](mailto:Robert.Lech@k12.nd.us) or through  
60 phone at (701) 252-1950.

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## RESTRAINT OR SECLUSION POLICY

(Adopted 5-20-2013)

Restraint and seclusion shall be implemented in a nondiscriminatory manner. Interventions authorized by this policy may be applied to any student enrolled in the Jamestown Public Schools so long as such interventions are implemented in compliance with this policy.

### 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.
- Chemical restraint is medication used to control behavior or restrict freedom of movement that is not a standard treatment for the student's medical or psychological condition.
- *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 Jamestown Public Schools. Mechanical restraints do not include devices used by trained school personnel or by a student him/herself for approved therapeutic or safety purposes for which devices were designed and, if applicable, prescribed.
- *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 to de-escalate dangerous behavior. This definition excludes physical prompts and physically escorting a student so long as the physical prompt/escort does not render a student immobile.
- *Behavioral intervention strategies* shall not be construed to mean a name-brand method of identifying and assessing students potentially in need of a behavioral intervention plan. Under this policy, it is defined as methods used to identify students who exhibited past incidents of dangerous behavior or exhibit the potential to engage in such behavior in the future. Superintendent shall determine the appropriate scope and method of conducting a needs assessment for implementation of behavioral intervention strategies under this policy and should document completion of this assessment.
- *Seclusion* is placing a student in a room or limited space alone to de-escalate dangerous behavior\_ except for the presence of a staff monitor who shall monitor the student directly in the space or immediately outside it. This definition excludes timeouts, disciplinary sanctions designed to penalize students by separating them from the student population (such as, but not limited to, detention and in-school suspension), and alternative placement (which is often used to separate the student from the student population for safety reasons).

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- *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.

**Behavioral Intervention Strategies**

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

1. Conduct a school-wide search of students in need of behavioral intervention strategies because of past incident(s) of dangerous behavior or the potential to engage in such behavior in the future; and
2. Train staff on identifying the need for behavioral intervention strategies and on implementing these interventions once established; and
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; and
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, if necessary, should be addressed in the IEP or 504 Plan.

**Prohibitions**

The Jamestown 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 except when necessary, temporary measure (e.g., to evacuate a classroom, restrain a secluded student who is exhibiting self-destructive behavior)
2. Using restraint or seclusion to discipline a student
3. Using restraint or seclusion as a behavioral intervention when:
  - a. Behavior does not pose an immediate risk of harm or has not resulted in harm to the student or others
4. Using mechanical restraints

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5. Using chemical restraints
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 dangerous behavior has subsided.

**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.
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 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 or education specialist such as, but not limited to, a therapist, an individual certified in special education, 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.

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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.

Student engagement in unforeseen dangerous behavior shall be reviewed 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 unavailable in an situation necessitating use of restraint or seclusion as defined by this policy, 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 any 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.

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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 as 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. 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 behavioral intervention strategies and staff development
6. Whether policy continues to protect students and staff
7. Whether policy is still aligned with any applicable law

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Hello Chairman Schaible and members of the Senate education committee. For the record my name is Ben Schafer, I am the superintendent of the K-12 school in Ray, North Dakota where we serve 300 students. I'm here today to testify in opposition to Senate Bill 2275.

It seems like deja vu but I am once again in front of an education committee at the capitol pleading for you to think about how another unfunded mandate will affect each and every school in North Dakota.

Our school currently has three professional development days and in that time it is very difficult to get all of the necessary training in already. Adding another mandate for seclusion and restraint training would make it next to impossible. Additionally, it is difficult to get the best trainers as many of us start school on the same days that have the same professional development days. While we try to pool resources through our REAs, it is not always possible to get eight schools in the same place at the same time and with current legislation REAs may no longer exist.

Legislators need to begin to evolve their way of thinking in the same way teachers in the classroom have had to evolve. We emphasize to our teachers when thinking about how to teach and what to teach that it is all important but we cannot teach it all. I plead for you and your colleagues to begin thinking the same way as our legislators, it is all important but we cannot do it all. Again, I ask that in a state that believes in local control we allow our local people to control professional development. I do not think there are egregious oversights in most cases. In Ray we have had CPI (Crisis Prevention Institute) trainings in the past. We have also had suicide trainings, mental health trainings, bullying prevention education, mandated reporter training, curriculum training, standards training, technology training, data usage, safety, and general housekeeping that simply needs to be done during professional development days. To this point one of the biggest complaints I've had about training for new teachers is at the end of it they still don't know where the closest bathroom to their room is (no accidents yet - fingers crossed). We have simply gotten so busy that there isn't time for things like that.

To add more days at this point is to add more cost. Just as the legislature is trying to cut their costs we are working at doing the same thing in my district and so are many other superintendents. The last thing we need is an unfunded mandate that will eat up more of the dollars we simply don't have allocated for the coming biennium. I urge you to allow our schools to do what they do best, and that is educate, whether that be adults or children. Please trust us as we want our schools to be as successful as possible at being a safe, effective, innovative, place for every student. I certainly believe that is and will remain the goal...no mandates necessary.

Thank you for your time I will now stand for any questions.