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# AT RISK WITH ONLY GUIDANCE FOR PROTECTION

*Restraint and Seclusion Policy for Nebraska Students*

2014

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## OVERVIEW

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The use of restraint and seclusion in U.S. schools has garnered much attention in recent years. Allegations of severe injury and death of students resulting from the use of restraints and seclusion in schools have been documented in several national studies, and other media reports are widespread. Before the House Committee on Education and Labor, Dr. Reece Peterson of the University of Nebraska-Lincoln testified that the use of restraint/seclusion is substantial in schools nationwide.<sup>1</sup> A 2009 Governmental Accountability Office investigation reports that thousands of public and private school children were restrained or secluded during the 2007-2008 school year, with Texas and California reporting especially significant numbers:

*“Specifically, Texas and California, two states that together contain more than 20 percent of the nation’s children, collect self-reported information from school officials on the use of these methods. Texas public school officials stated they restrained 4,202 students 18,741 times during the September 2007 through June 2008 academic year. During the same time period, California officials reported 14,354 instances of students’ being subjected to restraint, seclusion or other undefined ‘emergency interventions’ in public and private schools.”<sup>2</sup>*

The use of restraint and seclusion presents significant risks to the health and safety of students, especially when performed by staff who are not adequately trained in restraint/seclusion prevention techniques or appropriate use. The Governmental Accountability Office has reported that “restraint or seclusion can be dangerous to individuals in treatment settings because restraining them can involve physical struggling, pressure on the chest, or other interruptions in breathing”, and “children are subjected to restraint or seclusion at higher rates than adults and also are at greater risk of injury.”<sup>3</sup> The 2009 Governmental Accountability Office investigation found hundreds of cases of alleged abuse and death related to the use of restraint and seclusion on school children during the past two decades. Examples listed in the investigation report’s summary page include:

- A 7-year-old purportedly dying after being held face-down for hours by school staff.
- 5-year-old students allegedly being tied to chairs with bungee cords and duct tape by their teacher and suffering broken arms and bloody noses.

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<sup>1</sup> Testimony of Reece L. Peterson U. S. Senate Committee on Education and Labor, May 19, 2009, page 3, available at: <http://archives.republicans.edlabor.house.gov/Media/file/111th/hearings/fc/051909/peterson.doc>

<sup>2</sup> Governmental Accountability Office, GAO-09-719T, “Seclusions And Restraints: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers” (May 19, 2009) , available at: <http://www.gao.gov/new.items/d09719t.pdf>

<sup>3</sup> Governmental Accountability Office, 1999, GAO/HEHS-99-176, “Improper Restraint or Seclusion Procedures Places People at Risk”, available at <http://www.gao.gov/archive/1999/he99176.pdf>

- A 13-year-old reportedly hanging himself in a seclusion room after prolonged confinement.
- A 12-year-old girl allegedly had her arm fractured by a special education teacher who put her in a “therapeutic hold”, described as being similar to a “bear hug” or hold a student’s arms behind [his or her] back.
- Children with disabilities as young as 6 years old were allegedly placed in strangleholds, restrained for extended periods of time, confined to dark rooms, prevented from using the restroom causing them to urinate on themselves, and tethered to ropes in one public school district.

The Governmental Accountability Office 2009 investigation reported that children were restrained as a disciplinary measure—even when the student’s behavior appeared not to be aggressive:<sup>4</sup>

***The use of seclusion and restraint on persons with mental health and/or addictive disorders has resulted in deaths and serious physical injury and psychological trauma.... Children have been noted at especially high risk for death and serious injury.***

--Substance Abuse and Mental Health Services Administration, SAMHSA National Action Plan on Seclusion and Restraint, Revised and Adopted May 2003

- Teachers restrained a 4-year-old with cerebral palsy in a device that resembled a miniature electric chair because she was reportedly being “uncooperative”.
- An Individualized Education Plan for a 9-year-old with learning disabilities specified that placement in a timeout room could be used to correct inappropriate behavior, but only as a last resort. However, teachers confined this child to a small, dirty room 75 times over the course of 6 months for offenses such as whistling, slouching, and hand waving.

Teachers restrained students without prior parental consent or ignored explicit parental instructions not to use restraint/seclusion:<sup>5</sup>

- Parents in another case gave a teacher explicit instructions to stop restraining their 7-year-old child and secluding her for prolonged periods of time. Despite these instructions, the restraints and seclusions continued.

<sup>4</sup> See note 2 at p. 8

<sup>5</sup> See note 2, at p.8

- A residential day school implemented a behavior plan, without parental consent, that included confining an 11-year-old autistic child to his room for extended periods of time, restricting his food, and using physical restraints. The child was diagnosed with post-traumatic stress disorder as a result of this treatment.

The National Disability Rights Network has identified incidents where students were subjected to restraint and/or seclusion and have been physically injured, been traumatized, or died as a consequence.<sup>6</sup>

- **Michigan:** A 15-year-old boy with autism died while being physically restrained at school by four school employees who pinned him down for 60-70 minutes on his stomach, with his hands held behind his back and his shoulders and legs held down. He became non-responsive after 45 minutes but the restraint continued and he eventually stopped breathing. He was the second child in Michigan to die from the use of restraint.
- **Texas:** A 14-year-old middle school student was killed when his teacher held him down, ignoring his plea “I can’t breathe, I can’t breathe.” Knowing that the student, with a mental illness and other disabilities, was sensitive to food issues because he had been denied food when he was younger, the teacher sought to punish the student for his aggressive behavior by refusing him lunch. When the student tried to leave the classroom to go to the lunchroom the use of deadly restraint by the teacher ensued.
- **Wisconsin:** A 7-year-old girl was suffocated and killed at a mental health day treatment facility when several adult staff pinned her to the floor in a prone

*As the examples in the “Chronicles of Harm” section in this report show, school children have been subjected to many horrific instances of restraint or seclusion. They have been:*

- *Strapped down to their chairs, even wheelchairs;*
- *Pinned on the floor by several adults (sometimes for hours at a time);*
- *Grabbed and dragged into rooms;*
- *Held in arm locks;*
- *Handcuffed;*
- *Placed in coffin-like boxes and cells;*
- *Locked in closets; and*
- *Subjected to other physically and psychologically traumatizing acts of violence by school personnel and others.*

--National Disability Rights Network, “School is not Supposed to Hurt” (2009), p. 6

<sup>6</sup> National Disability Rights Network, “School is not Supposed to Hurt” 2009 and 2010 editions, available at <http://www.ndrn.org/en/issues/abuse-and-neglect/restraint-and-seclusion.html>. In particular, see the “Chronicles of Harm” section of the 2009 report, pp. 13-26, where these incidents and others are detailed.

restraint. This child, who was diagnosed with an emotional disturbance and Attention Deficit Hyperactivity Disorder, died because she was blowing bubbles in her milk and did not follow the time-out rules regarding movement.

- **Colorado:** Children were physically placed in a “time-out” room and were not allowed to use the restroom, if needed. This forced students to sit in their own urine if they were unable to “hold” themselves.
- **Iowa:** A young girl with a seizure disorder and developmental disabilities was isolated for several hours at a time at her school in a so-called “ticket booth” which had exposed wiring, baseboard heating and a lock on the door. Claw marks were visible on the door as a result of the girl attempting to get out. The school staff considered these claw marks “damage by the student.” Traumatized by the seclusion, this child now has a fear of closed doors and the dark.
- **Arkansas:** A 9-year old girl with developmental disabilities was suspended from school because she refused to go into a small wooden box in the corner of the classroom. The isolation box was completely enclosed with slide and turn locks on both the top and bottom of the door.
- **Iowa:** An 8-year-old girl who is autistic was confined alone for three hours in a storage area under a staircase at her school. The girl urinated on herself before she was allowed to get out. Her misdeed was failing to finish an assignment.
- **Oklahoma:** A mother was stunned to discover that her 5-year-old with autism was regularly physically restrained by school staff. In one instance the child did not want to sit on a rug as instructed, so the aide restrained the child flat on the floor, pinning down his shoulders with the weight of her body while he screamed. On a separate occasion, the mother observed her child being physically restrained by the same classroom aide and a teacher because her son wanted to get a book. Despite the parent objecting to the use of physical restraint, when she visited the school again she witnessed her upset child face down on the floor with the speech teacher holding him down with both hands.

Children with disabilities are at particular risk of being restrained and/or secluded. The Governmental Accountability Office reported that most of the hundreds of allegations they identified related to children with disabilities and 90% of the closed cases involved children with disabilities or a history of “troubled” behavior (children in these cases were diagnosed with autism or other conditions, including post-traumatic stress disorder and attention deficit hyperactivity disorder).<sup>7</sup>

*“Since these reports are often the result of parent complaints or media reports, we do not know how many times these procedures are inappropriately employed with students. Yet there does appear to be a substantial number of these situations, and they appear to be scattered across the United States.”*

--Dr. Reece Peterson, Testimony before the House Committee on Education and Labor, 2009, p. 3

Data indicates that students with disabilities are also disproportionately subject to restraint and/or seclusion. A

recent U.S. Department of Education study reports a disproportionate use of restraints on children with disabilities—while students with disabilities represented 12% of students in their study sample, they represented nearly 70% of students who were physically restrained in school.<sup>8</sup>

However, as the Governmental Accountability Office points out in 2009 there is little reliable data collection regarding the use of restraint and/or seclusion on American students: “Although GAO continues to receive new allegations from parents and advocacy groups, GAO could not find a single Web site, federal agency, or other entity that collects information on the use of these methods or the extent of their alleged abuse”.<sup>9</sup> Dr. Peterson has testified that most of the reports of restraint/seclusion incidences result from complaints from parents or media reports.<sup>10</sup>

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<sup>7</sup> Ibid, p. 7

<sup>8</sup> U.S. Department of Education, 2012, “The Transformed Civil Rights Data Collection”, available at: <http://www2.ed.gov/about/offices/list/ocr/docs/crdc-2012-data-summary.pdf>

<sup>9</sup> See note 2 at summary page.

<sup>10</sup> See note 1 at p. 3

## PATCHWORK STATE LEGISLATION

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There are no federal laws which govern the use of restraint and seclusion in U.S. schools. Legislation has been introduced in Congress to create federal oversight regarding restraint and seclusion in schools, but neither bill has been passed.<sup>11</sup>

Consequently, states are left to regulate the use of restraint and seclusion. Jessica Butler in her January 2014 report, “How Safe is the Schoolhouse? An Analysis of State Seclusion and Restraint Laws and Policies”, describes the current situation regarding the use of restraint and seclusion on students as “a patchwork of state laws, regulations, nonbinding guidelines, and even utter silence covering the country.

*It is also known that sentinel events (e.g., deaths and injuries) from restraint and seclusion occur in a number of settings which currently have no national guidelines, such as schools and juvenile justice facilities.*

--Substance Abuse and Mental Health Services Administration, SAMHSA National Action Plan on Seclusion and Restraint, Revised and Adopted May 2003

[http://www.samhsa.gov/seclusion/sr\\_handout.aspx](http://www.samhsa.gov/seclusion/sr_handout.aspx)

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Congressional bills have been introduced by Congressman George Miller and Senator Tom Harkin. Currently, however, the issue has been left to the states to manage.”<sup>12</sup> The result is an uneven and confusing array of protections that still give wide latitude to school staff in responding to student behavior, as Butler describes:

*“Even the states with safeguards offer varying protections. Some states have certain safeguards, but not others. Some protect more against restraint than seclusion or vice versa, allowing the staff’s choice of procedure to determine the degree of protection. The form of these protections varies. Some states have statutes; others have regulations; and some have both. In many states, regulations are more easily changed than statutes....”<sup>13</sup>*

She points to these examples:

- There are 32 states with laws requiring schools to provide some meaningful protections against both restraint and seclusion for children with disabilities.<sup>14</sup>

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<sup>11</sup> See “Keeping All Students Safe Act, H.R. 1381” (2011) and “Keeping All Students Safe Act, S. 2020” (2011)

<sup>12</sup> See Jessica Butler (2014), “How Safe Is the Schoolhouse? ? An Analysis of State Seclusion and Restraint Laws and Policies” available at: [www.autcom.org/pdf/HowSafeSchoolhouse.pdf](http://www.autcom.org/pdf/HowSafeSchoolhouse.pdf)., executive summary.

<sup>13</sup> Ibid, p. 8

<sup>14</sup> Ibid, p. 8

- Alabama, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana (2013), Iowa, Kansas (2013), Kentucky (2013), Louisiana, , Maine, Maryland, Massachusetts, Minnesota, Montana, Nevada,, New Hampshire, New York, North Carolina, Ohio (2013), Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, Washington, West Virginia, Wisconsin, and Wyoming.
- As of January 12, 2014, only 19 states by law protected all children equally from both restraint and seclusion: Alabama, Colorado, Georgia, Illinois, Indiana (2013), Iowa, Kansas (2013), Kentucky (2013), Massachusetts, Maryland, Maine, North Carolina, Ohio (2013), Oregon, Rhode Island, Vermont, West Virginia, Wisconsin, and Wyoming.<sup>15</sup>
- As of January 12, 2014, 10 states had voluntary guidelines or policies that impose no mandatory legal obligation. They are merely suggestive. They include guidance approved by the State Board of Education; memoranda authored by/for the State Department of Education or Director of Special Education; and model principles and factors schools might consider. In most of these states, students lack separate mandatory legal protection, other than the handful of weak protections described above. Nonetheless, these guidelines represent a State’s opinion that seclusion and restraint are dangerous techniques and that their use should be sharply restricted. They are useful as advocacy documents but do not represent actual protections for children.<sup>16</sup>
  - Of these, 3 policies apply to students with disabilities, Alaska (2013), Oklahoma, and Utah. New Mexico’s seclusion principles applies to all children; its restraint principles, to children with disabilities.
  - Another 6 apply to all children: Michigan, Missouri, Nebraska, South Carolina, Virginia, and Washington, D.C.
  - In 2013, Alaska finalized its draft nonbinding guidance, and Kentucky, Kansas, Indiana, and Ohio replaced theirs with mandatory protective statutes or regulations. Indiana also replaced its old guidance with a statute that provides some mandatory meaningful protections and refers other issues to a commission which will write regulations and a model plan.
- There are 5 states which lack both laws and voluntary principles.<sup>17</sup>
  - Idaho, Mississippi, North Dakota, New Jersey, and South Dakota.

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<sup>15</sup> See “How Safe Is the Schoolhouse? An Analysis of State Seclusion and Restraint Laws and Policies”, p. 7

<sup>16</sup> *Ibid*, p. 10

<sup>17</sup> *Ibid*, p. 11



- Of the 51 states [includes District of Columbia as a “state”], 14 by law limit restraint of all children to threats of physical harm; 18 restrict restraint of children with disabilities in this way. Accordingly, 37 states permit restraint of all children when absolutely no one is in danger (32 states, for children with disabilities).<sup>18</sup>
- Restraints that impede breathing and threaten life are forbidden by law in only 21 states for all children; 28 states, for children with disabilities. These laws may be phrased as prohibiting life-threatening restraints, restraints that impair breathing, or prone restraints. Prone restraint specifically is forbidden in 10 states for all children; 11, for children with disabilities.<sup>19</sup>
- Mechanical restraints include chairs and other devices that children are locked into; duct tape, bungee cords, ties, and rope used to restrain children; and other devices. Only 15 states ban mechanical restraint for all children; 19 for students with disabilities. Only 15 states ban dangerous chemical restraints for all children.<sup>20</sup>
- 38 states permit seclusion of all children without requiring staff to continuously watch them; 28 [for] students with disabilities.<sup>21</sup>
- Only 17 states by law require that less intrusive methods either fail or be deemed ineffective before seclusion/restraint are used on all children; 23, children with disabilities. Only 15 states by law require restraint and/or seclusion to cease for all children when the emergency ends; 20 [states] for children with disabilities.<sup>22</sup>
- In 20 states, schools must by law notify all parents of both restraint and seclusion; in 32 [states] parents of students with disabilities. This means that 31 states lack laws requiring that parents of all children be informed of both restraint and seclusion; 19 [states] lack them for children with disabilities.<sup>23</sup>
  - But only 12 states by law require schools to take steps to notify parents of all children on the same day or by the next day of both procedures; 21 [states for] parents of children with disabilities. Still, the vast majority of states favor notification in 1 day or less, either in their laws or recommended policies.

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<sup>18</sup> See “How Safe is the Schoolhouse? An Analysis of State Seclusion and Restraint Laws and Policies”, January, 2014, p. 12

<sup>19</sup> Ibid, p. 2

<sup>20</sup> Ibid, p. 2

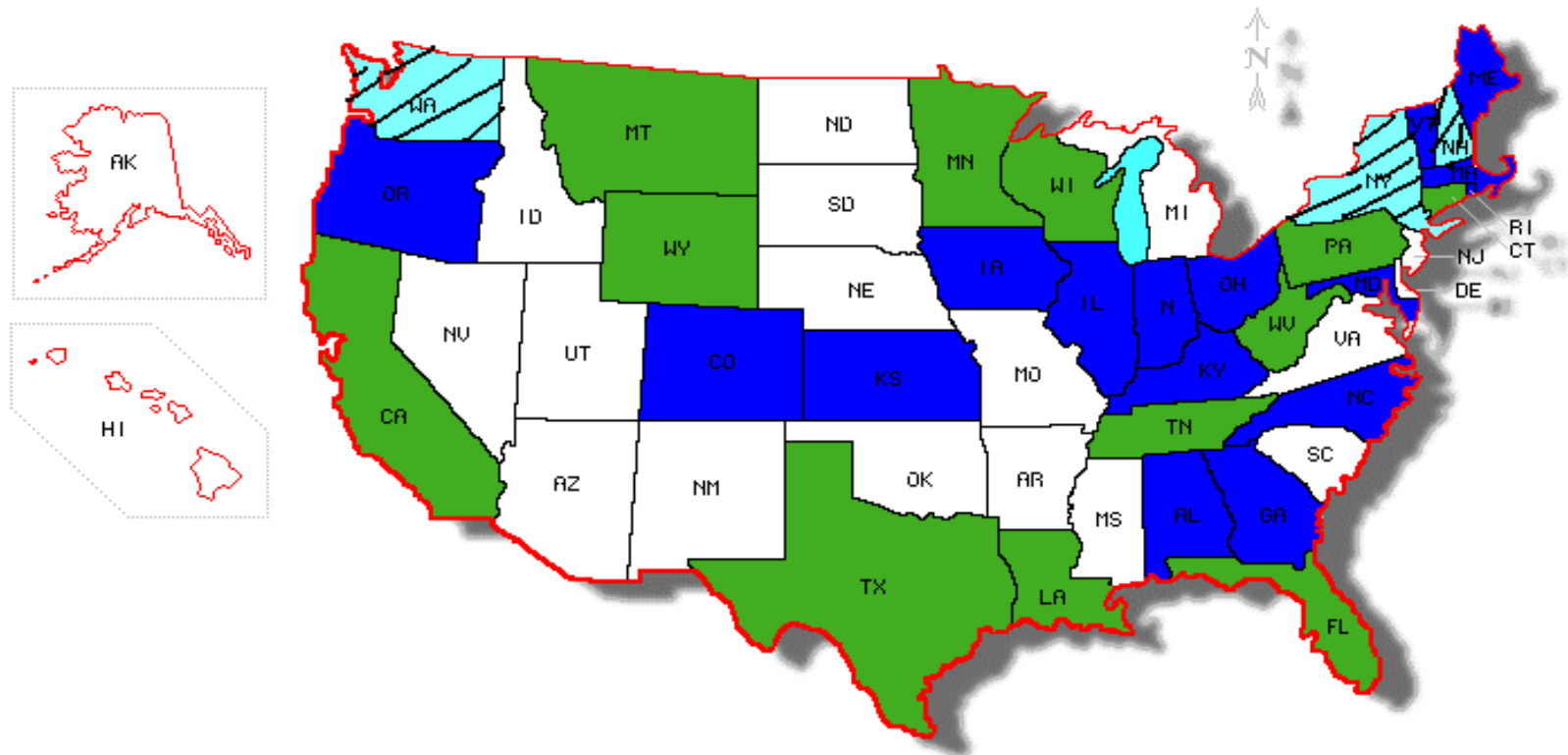
<sup>21</sup> Ibid, p. 2

<sup>22</sup> Ibid, p. 2

<sup>23</sup> Ibid, p. 2

## States with Meaningful Protections by Law from Both Restraint and Seclusion for Children with Disabilities

(Jan. 12, 2014)



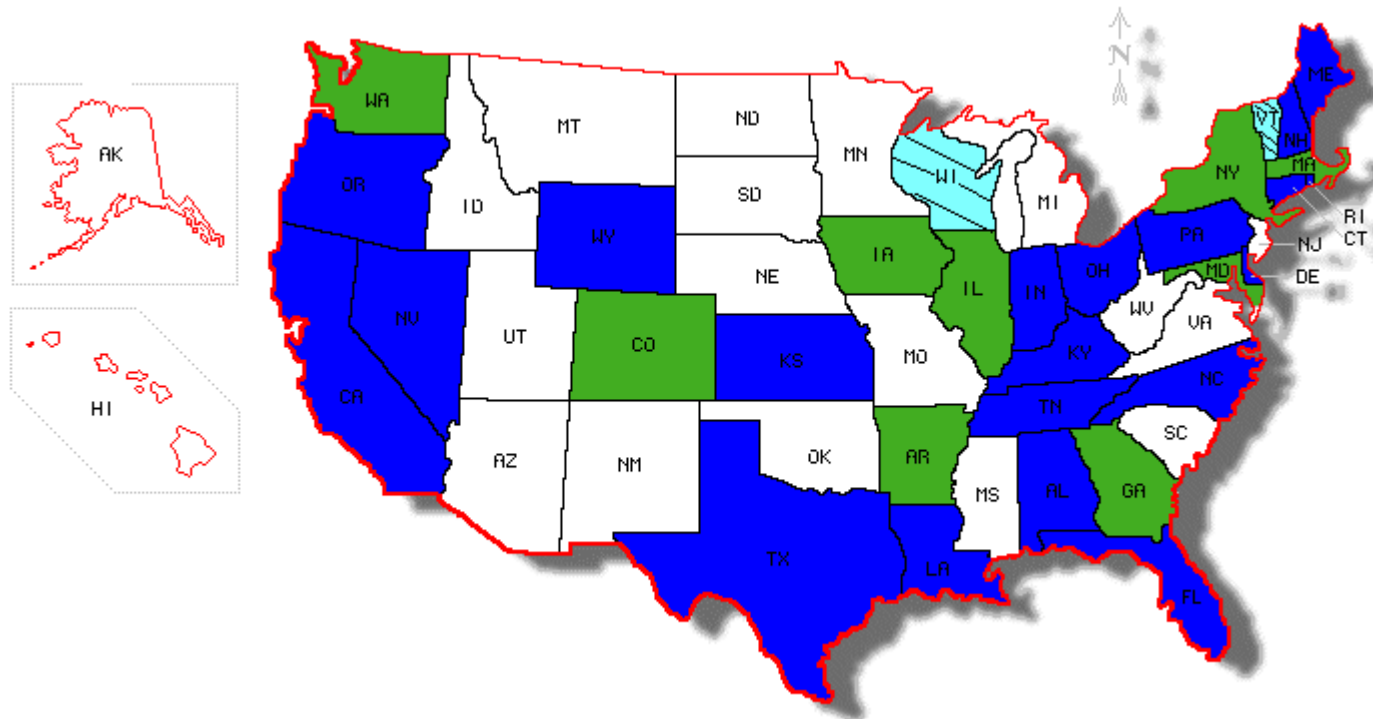
**Blue (dark):** States with meaningful protections in law for all children from both restraint and seclusion

**Green (medium):** States with meaningful protections in law for children with disabilities only from both restraint and seclusion

**Cyan (light/slashes):** State has mixed scheme, with some protections for all children, other protections only for children with disabilities

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## States Requiring Data Collection and Reporting at State, LEA, or School Level By Law.



For states requiring reporting to the LEA or requiring records to be kept at the LEA level when restraint/seclusion are used, a national data or state-level data collection simply requires additional steps to report that information to others. It may require the use of computerized forms, but software programs can be easily designed and used.

**Blue (dark):** Law requires collecting and reporting data to State Education Agency. PA requires collection of data but it is only shown to SEA during monitoring visits.

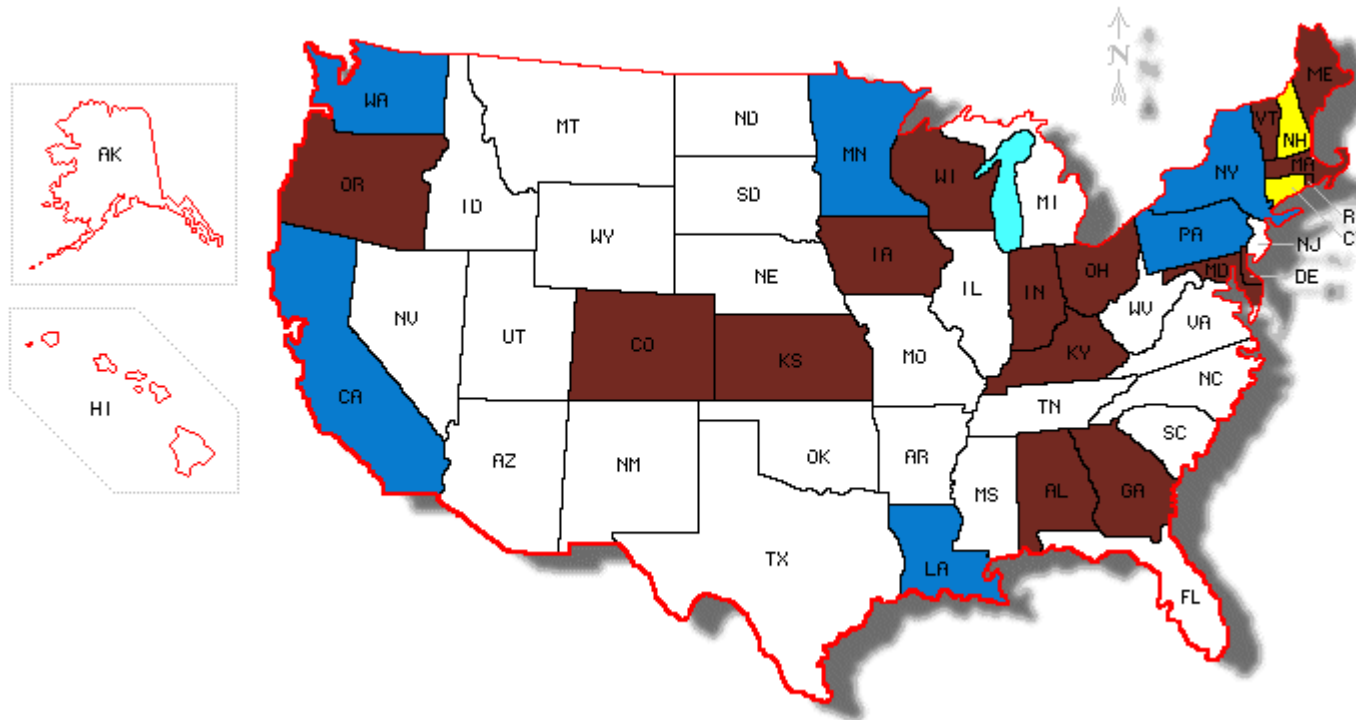
**Cyan (lightest):** Law requires collecting and reporting data to Local Education Agency (School District).

**Green (medium):** Law requires collecting and reporting data at the school level. © Jessica Butler 2014 (jessica@jnba.net).



## .Restraint & Seclusion Cannot be Used if Less Restrictive Interventions Would Resolve the Issue (Jan. 12, 2014)

(i.e., state requires less restrictive interventions to fail or be deemed ineffective first)



**Brown (Dark):** By law, less restrictive methods must fail or be deemed ineffective before S/R are used (all children)

**Blue (Medium):** By law, less restrictive methods must fail/be deemed ineffective before S/R are used (children w/disabilities only).

**Yellow (Lightest):** CT and NH require less restrictive methods to fail or be deemed ineffective before restraint is used. But seclusion can be used even if less restrictive methods have not failed or been deemed ineffective.

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## NEBRASKA POLICY

The Nebraska Department of Education rules and regulations require that school districts have a policy on the use of restraint and seclusion in order to be accredited.<sup>24</sup> Nevertheless, Nebraska is one of the states without state laws or regulations governing the use of restraints and seclusion in Nebraska schools. Rather, district policies are created through non-binding guidelines issued by the Nebraska Department of Education advising districts what issues to cover in such a policy and providing two templates to use when writing the policy. There are other state statutes and regulations regulating corporal punishment and student discipline, but not restraint and seclusion specifically.<sup>25</sup>

*“At the present time, Nebraska does not have any statutes, regulations, or state policies regarding restraint or seclusion. Nebraska has legislation that prohibits corporal punishment in public schools (Nebraska Revised Stat. 79-295). Nebraska statutory law permits administrative and teaching personnel to take actions reasonably necessary to aid the student, further school purposes, or prevent interference with the educational process (Neb. Rev. State. 78-258). This statute has been interpreted by the Nebraska Supreme Court to permit the use of physical contract short of corporal punishment to the degree necessary to preserve order and control the school environment. In addition, Nebraska has a statute related to school discipline (Nebraska Student Discipline Act, Nebraska Rev. Stat. 79-267), but this statute does not address physical restraint or seclusion. “*

-- Reece Peterson (2010), “Developing School Policies and Procedures for Physical Restraint and Seclusion in Nebraska Schools”, p. 12

Consequently, there is little uniformity in the regulation of restraint and seclusion in Nebraska schools since each school district develops its own policy on restraint and seclusion. Moreover, the policy guidance document developed by the state Board of Education provides two different templates for school districts to use for guidance: one

<sup>24</sup> Nebraska Department of Education, “RULE 10: Regulations and Procedures for the Accreditation of Schools”, Title 92, Nebraska Administrative Code, Chapter 10: “011.01E Each school system has a seclusion and restraints policy approved by the school board or local governing body.”, p. 28, available at [http://www.education.ne.gov/Legal/webrulespdf/RULE10\\_PLEDGE\\_2012.pdf](http://www.education.ne.gov/Legal/webrulespdf/RULE10_PLEDGE_2012.pdf), p. 28

<sup>25</sup> See Reece Peterson (2010), “Developing School Policies and Procedures for Physical Restraint and Seclusion in Nebraska Schools”, p. 12 [http://www.education.ne.gov/documents/Restraint-Seclusion\\_final\\_guidance\\_document\\_6-22-10.pdf](http://www.education.ne.gov/documents/Restraint-Seclusion_final_guidance_document_6-22-10.pdf)

is highly detailed (like the Lincoln and Grand Island policies above), and the other is less detailed. The Nebraska Department of Education guidance document addresses a variety of issues that are fundamental to a safe and effective restraint/seclusion policy (e.g., stronger criteria for use of restraint/seclusion, requirements for staff and student debriefing, parental notification as soon as possible—ideally before the end of that school day, documentation). However, the guidance document is just that—guidance—and does not create or impose a binding or enforceable requirement that Nebraska school districts adopt a policy on the use of restraint and/or seclusion.

*“Results indicate that schools with lower socioeconomic status and located in states that did not prohibit corporal punishment or regulate the use of reported restraints in the schools experienced more reported restraint events.”*

-- Lucy Barnard-Brak et al (2014), “Factors Associated with the Use of Restraints in the Public Schools”, *Education and Treatment of Children*, Vol. 37, No. 3, p. 461

- The Lincoln Public Schools has adopted a policy that is multiple pages long and outlines in detail protocols and issues such as prohibitions on the use of restraint and seclusion when a known medical or psychological condition “contraindicates its use”. The policy also establishes standards for conditions of release, requires notification of parents, and mandates staff training on use of restraint and seclusion (including restricting staff who can employ physical restraints to those who have undergone systematic training—prevention, safety, identifying medical stress).<sup>26</sup> Using restraint as a form of punishment is also forbidden. Lincoln Public Schools’ policy also accommodates those students who communicate non-verbally: “If physical restraint is imposed upon a student whose primary mode of communication is sign language or an augmentative mode, the student shall be permitted to have his or her hands free of restraint for brief periods unless staff determines that such freedom appears likely to result in harm to the student or others.”<sup>27</sup>
- The Grand Island Public Schools’ policy is also extensively detailed and precludes the incorporation of seclusion in a student’s Individualized Education Plan or Behavior Intervention Plan. The policy also states that “Physical restraint and seclusion should be used only as a last resort when necessary to protect the safety of a student or others, and never for punishment”, and

<sup>26</sup> See Lincoln Public Schools Policy and Regulation Manual at <http://docshare2.lps.org/docshare/dsweb/Get/Document-770062/5000%20-%20Students.pdf>, policy 5506

<sup>27</sup> Ibid, p. 3

“Physical restraint is appropriate only when a student is displaying physical behavior that presents substantial imminent risk of injury to the student or others, and the student is demonstrating the intent and the ability to cause injury within a matter of seconds or minutes.”<sup>28</sup> The Grand Island policy also clarifies the types of restraint to be used and requires parental notification as soon as possible when restraints/seclusion are used.

- The Bellevue Public School Board policy on restraint and seclusion is much more general. The policy states: “The use of physical restraint and/or seclusion of students by school personnel should be used only as a last resort to maintain safety in emergency situations when there is substantial risk of imminent bodily injury to the student and/or others. Any staff member may physically restrain and/or seclude a student without advance notice to the building administrator when it is necessary for the protection of others or for self- defense. The Superintendent shall develop procedures for staff to follow in the implementation of this policy.”<sup>29</sup>

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<sup>28</sup> Grand Island Public Schools policy on restraint/seclusion, available at <http://www.gips.org/about-gips/policies/section-8000-students/8451-physical-restraint-and-seclusion.html>

<sup>29</sup> Bellevue Public Schools policy on staff use of restraint/seclusion, available at [http://bellevuene.fesdev.org/vimages/shared/vnews/stories/50a50390760f3/Staff\\_Use\\_of\\_Seclusion\\_and\\_Restraint\\_504P.pdf](http://bellevuene.fesdev.org/vimages/shared/vnews/stories/50a50390760f3/Staff_Use_of_Seclusion_and_Restraint_504P.pdf)



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## RECOMMENDATIONS

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Nebraska's students deserve more protection from the use of restraint and/or seclusion than merely unenforceable advice from the state Department of Education that schools develop their own policies. State directives on the use of restraint and/or seclusion in schools has created a patchwork of widely varied district policies and state regulations or statutes that often do not address the use of restraint and/or seclusion directly.

Nebraska needs to join the ranks of the many states that have taken legislative action on reducing and/or eliminating the use of restraint and/or seclusion in schools. As a starting point, potential legislation should consider, but not be limited to, the following recommendations:

*The General Accounting Office and the HHS Office of Inspector General both have noted the paucity of known data related to the use of these practices. Research has revealed that the use of seclusion and restraint varies dramatically from facility to facility with a wide range of facility and staff knowledge on how to prevent and avoid such use. While a growing number of stakeholders have developed guidelines on seclusion and restraint, the quality of such have yet to be determined and their widespread application has yet to be documented. There has been widespread agreement that training and technical assistance is a priority need.*

--Substance Abuse and Mental Health Services Administration, SAMHSA National Action Plan on Seclusion and Restraint, Revised and Adopted May 2003, available at [http://www.samhsa.gov/seclusion/sr\\_handout.aspx](http://www.samhsa.gov/seclusion/sr_handout.aspx)

### **1. Definitions and stringent conditions for the use and type of restraint and/or seclusion**

- a. The various kinds of restraint (e.g., mechanical, physical, chemical) and seclusion should be clearly identified and each carefully defined, as the definitions are critical to understanding what is and is not a restraint or what is seclusion. Chemical restraint must be included in the definition of restraint.
- b. The definitions should clearly and specifically restrict restraint as an intervention to be used only in emergencies where there is a risk to the student's or another individual's safety. Such emergencies should be defined as narrowly as possible.

- c. Certain inherently dangerous, inhumane, or unnecessary kinds of restraint should be specifically banned—for example, prone restraints or any other technique that obstructs a student’s airway.
- d. “As needed” use of restraint/seclusion should be rejected.

## **2. Trauma-informed assessment**

- a. Determine whether the student has been a victim of or been exposed to trauma (for example violence, physical/sexual/emotional abuse).

## **3. Monitoring, Assessment, and Comfort**

- a. Student safety and health should be observed on a continuing basis including regular periodic assessment for medical problems, for release from restraint/seclusion, and for student comfort (e.g., bathroom break).

## **4. Staff Training**

- a. School staff should be made aware of the health risks posed by the use of restraint and seclusion. School staff should be trained in alternatives to, and ways to reduce/eliminate the use of, restraint/seclusion.

## **5. Transparency, data collection and reporting**

Transparency and data collection are critical to preventing and reducing the incidents of restraint and seclusion: “In 2010, Florida passed a data collection and sunshine law. The data reporting and publication caused one of Florida’s largest Florida school district to end seclusion and to cut its restraint use by two-thirds.”<sup>30</sup> Relying on school districts to develop their own policies on restraint and seclusion may work to keep policymakers and parents in the dark regarding the use of these practices.

- a. Nebraska’s Department of Education should require that school districts submit data to the Department regarding the use of seclusion/restraint. Examples of data to be collected include but are not limited to:
  - i. The number of serious injuries sustained by students and staff as a result of takedowns or any form of behavioral control by any facility staff, or while students are in seclusion or restraints.
  - ii. The number of incidents of seclusion or restraints, and the type of restraint(s) used.
  - iii. The duration of time spent per incident in seclusion or restraint.

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<sup>30</sup> See “How Safe Is the Schoolhouse? An Analysis of State Seclusion and Restraint Laws and Policies”, The Autism National Committee, p. 45

- b. Parental notification of the seclusion or restraint use, duration, type, student response, and any health complications (to either staff or student) due to the use of seclusion or restraints should be done for every instance and within the day that seclusion or restraint was used.

The U.S. Department of Education has produced a list of fifteen principles for states, school districts, schools, parents, and other stakeholders to consider when drafting restraint or seclusion policies. The principles stress that:

*"...every effort should be made to prevent the need for the use of restraint and seclusion and that any behavioral intervention must be consistent with the child's rights to be treated with dignity and to be free from abuse. The principles make clear that restraint or seclusion should never be used except in situations where a child's behavior poses imminent danger of serious physical harm to self or others, and restraint and seclusion should be avoided to the greatest extent possible without endangering the safety of students and staff. The goal in presenting these principles is to help ensure that all schools and learning environments are safe for all children and adults."*<sup>31</sup>

The Fifteen Principles are as follows:<sup>32</sup>

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

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<sup>31</sup> U.S. Department of Education, 2012, "Restraint and Seclusion: Resource Document", available at <http://www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf>, p. iii

<sup>32</sup> Ibid, p. 12-23.

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.
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.

In addition to chronicling the serious risk posed to students by the use of restraint and seclusion in U.S. schools, as well as the systemic levers that are used to justify the continued use of restraint and seclusion in U.S. schools, the United States Senate Health, Education, Labor, and Pensions Committee presents several recommendations regarding the use of restraint and seclusion in American schools:<sup>33</sup>

- In order to better understand the frequency, duration and intensity of the use of restraints and seclusion in schools, a nationwide requirement to collect incident events should be in place and reported at the local, state and federal levels annually. This dataset should be able to be disaggregated to the district and school level in order to provide school leaders with the ability to analyze the data and use it to track the impact of training, policies and interventions to reduce the incidents of seclusion and restraints. The dataset should also be able to link to student academic outcome data at the district and school levels in order to be able to determine the impact of incidents of seclusion and restraints on academic achievement.
- Through the use of federal title II funds, IDEA funds, and local and state funds, programs to implement systems of positive behavioral interventions and supports should be implemented school and district-wide. All teachers and school personnel should be trained on the use of techniques that do not rely on seclusion or restraints to reduce challenging behaviors in emergency situations. Finally, all schools should have a team of personnel trained to be able to respond to emergency situations. The systemic, school- and district-wide implementation of positive behavioral supports and interventions should be required in each school setting.
- The use of restraints must be limited to emergency situations only, when there is a threat of serious harm to the student or others and school personnel who are trained in the use of such restraints should be the only school personnel to implement allowable restraints in emergency situations.
- The unsupervised and unmonitored seclusion should be discontinued and all seclusion facilities should be removed from schools.
- All schools must inform a child's parents when restraints or seclusion are used with their children. Notification must take place within 24 hours of the use of the restraint or seclusion, and include information about the type of seclusion and/or

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<sup>33</sup> United States Senate Health, Education, Labor, And Pensions Committee, Majority Committee Staff Report, February 12, 2014, "Dangerous Use of Seclusion and Restraints in Schools Remains Widespread and Difficult to Remedy: A Review of Ten Cases", p. 33, available at: <http://www.help.senate.gov/imo/media/doc/Seclusion%20and%20Restraints%20Final%20Report.pdf>

restraint that took place, the circumstances that lead to the use of seclusion and/or restraint, and the duration of their use.

- Because the use of seclusion should be discontinued and because the use of restraints should only occur during emergencies, and because both have been shown to have no educational benefit, prohibit the inclusion of seclusion and restraints as an educational or therapeutic component of a student's individualized education plan (IEP).
- Because of the lack of ability of families to have an impact on the use of seclusion and restraints practices with their own children, sometimes based on provisions of special education law, the Individuals with Disabilities Education Act should be amended to allow families to file civil actions in court before exhausting their IDEA remedies.

Daniel Stewart has developed an additional set of eleven principles and a model law derived from his research of the literature on restraint and seclusion use in schools and practical experience of school administrators:<sup>34</sup>

- **Principle 1.** Schools must establish a common language, message, culture, or policy.
- **Principle 2.** Most, if not all, children are able to reduce their challenging or dangerous behavior.
- **Principle 3.** Restraint and seclusion use implicates moral and ethical considerations.
- **Principle 4.** There are some types of aversive practices (actions that result in pain, using intense stimuli, etc.) and some types of restraint and seclusion practices (such as prone restraint or locked seclusion) that should be prohibited.
- **Principle 5.** If restraint and seclusion must occur, they must be done with the safety and dignity of students and staff in mind.
- **Principle 6.** Restraint and seclusion should only be used in schools at the most restrictive/intrusive end of a continuum of interventions to prevent harm to a person.
- **Principle 7.** Restraint and seclusion should not be used for punishment, discipline, or as a substitute for lack of staffing, planning, or services.
- **Principle 8.** If restraint and seclusion occurs, the school must take steps to prevent or reduce future use of restraint or seclusion. (These steps typically include monitoring a student, recording data about the incident, involving parents, reviewing data, reviewing and revising any existing plan to address unwanted behavior, determining the need for additional evaluation information, debriefing

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<sup>34</sup> Daniel Stewart (2011), "How do the States Regulate Restraint and Seclusion in Public Schools? A Survey Of The Strengths and Weaknesses in State Laws", *34 Hamline Law Review* 531

with staff and/or the student, and discussing potential changes to the school environment.)

- **Principle 9.** Restraint and seclusion use must be documented, reported to others, and reviewed on a broader (not just a case-by-case analysis of use of restraint and seclusion with regards to an individual student) level.
- **Principle 10.** Schools must have adequately trained staff who know when and how to appropriately use restraint and seclusion.
- **Principle 11.** Prevention efforts on a school-wide basis (such as [positive behavioral interventions and supports] or other evidence-based system) are critical to ensure the appropriate use of restraint and seclusion.

## Appendix 1

### Reports of Restraint/Seclusion Use

Governmental Accountability Office, "Seclusions And Restraints: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers" (May 19, 2009), GAO-09-719T, available at: <http://www.gao.gov/new.items/d09719t.pdf>

National Disability Rights Network, 2010, "School is Not Supposed to Hurt: Investigative Report on Abusive Restraint and Seclusion in Schools", available at: <http://www.ndrn.org/images/Documents/Resources/Publications/Reports/School-is-Not-Supposed-to-Hurt-NDRN.pdf>

National Disability Rights Network, 2009, "School is Not Supposed to Hurt: Investigative Report on Abusive Restraint and Seclusion in Schools", available at: <http://www.ndrn.org/images/Documents/Resources/Publications/Reports/SR-Report2009.pdf>

United States Senate, "Dangerous Use of Seclusion and Restraints in Schools Remains Widespread and Difficult to Remedy: A Review of Ten Cases", Majority Committee Staff Report, Health, Education, Labor, and Pensions Committee, 2014, available at: <http://www.help.senate.gov/imo/media/doc/Seclusion%20and%20Restraints%20Final%20Report.pdf>

Heather Vogell, "Violent and Legal: The Shocking Ways School Kids are Being Pinned Down, Isolated Against Their Will", *Pro Publica*, June 19, 2014, available at: <http://www.propublica.org/article/schools-restraints-seclusions>

Barnard-Brak, L. et al (2014), "Factors Associated with the Use of Restraints in the Public Schools", *Education and Treatment of Children*, v. 37, no. 3, pp. 461-476

Westling, D et al (2010), "Use of Restraints, Seclusion, and Aversive Procedures on Students with Disabilities", *Research and Practice for Persons with Severe Disabilities*, v. 35, no. 3-4, pp. 116-127



## Appendix 2

### Legislation and District Policies

Jessica Butler (2014), "How Safe Is the Schoolhouse? An Analysis of State Seclusion and Restraint Laws and Policies", The Autism National Committee, available at: [www.autcom.org/pdf/HowSafeSchoolhouse.pdf](http://www.autcom.org/pdf/HowSafeSchoolhouse.pdf).

Lincoln Public Schools, "Policy on the Use of Restraints and Seclusion", Policy and Regulation Manual 2012, available at <http://docshare2.lps.org/docshare/dsweb/Get/Document-770062/5000%20-%20Students.pdf>

Grand Island Public Schools, "Policy 8451 - Physical Restraint and Seclusion", Policy Manual 2012, available at: <http://www.gips.org/about-gips/policies/section-8000-students/8451-physical-restraint-and-seclusion.html>

Bellevue Public Schools, "Staff Use of Seclusion and Restraint", Board Policies 2011, available at: [http://bellevuene.fesdev.org/vimages/shared/vnews/stories/50a50390760f3/Staff\\_Use\\_of\\_Seclusion\\_and\\_Restraint\\_504P.pdf](http://bellevuene.fesdev.org/vimages/shared/vnews/stories/50a50390760f3/Staff_Use_of_Seclusion_and_Restraint_504P.pdf)

Reece Peterson, 2010, "Developing School Policies & Procedures for Physical Restraint and Seclusion in Nebraska Schools", available at: [http://www.education.ne.gov/documents/Restraint-Seclusion\\_final\\_guidance\\_document\\_6-22-10.pdf](http://www.education.ne.gov/documents/Restraint-Seclusion_final_guidance_document_6-22-10.pdf)

U.S. Department of Education (2010), "Summary Table of Seclusion and Restraint Statutes, Regulations, Policies and Guidance, by State and Territories", available at <http://www2.ed.gov/policy/seclusion/seclusion-state-summary.html>

Ohio Department of Education (2013), "Restraint and Seclusion Model Policy and Procedures", October, available at <http://education.ohio.gov/getattachment/Topics/Other-Resources/School-Safety/Building-Better-Learning-Environments/Policy-Positive-Behavior-Interventions-and-Support/Model-policy-Restraint-and-Seclusion.doc.aspx>

Georgia Department of Education (2012), "Guidance for State Board of Education Rule 160-5-1-.35 Seclusion and Restraint for All Students", available at <https://www.gadoe.org/External-Affairs-and-Policy/Policy/Documents/Guidance%20Seclusion%20and%20Restraint.pdf>

State of Connecticut, "CHAPTER 814e\* Physical Restraint, Medication and Seclusion of Persons Receiving Care, Education or Supervision in a School, Institution or Facility", available at [http://www.cga.ct.gov/2013/pub/chap\\_814e.htm](http://www.cga.ct.gov/2013/pub/chap_814e.htm)

Fairfax County Public Schools, (2012), "Guidelines on the Use of Physical Restraint and Seclusion for Students with Disabilities Receiving Special Education Services", available at <http://www.fcps.edu/dss/sei/bis/PhysicalRestraintSeclusion.pdf>

## Appendix 3

### Further Resources

U.S. Department of Education, 2012, "Restraint and Seclusion: Resource Document", available at <http://www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf>

LeBel J., Nunno MA, Mohr WK, O'Halloran R., (2012). "Restraint and Seclusion Use in U.S. School Settings: Recommendations from Allied Treatment Disciplines", *American Journal of Orthopsychiatry*, January, 82(1), pp. 75-86.