

January 2009



**Wisconsin girl, age 7, killed while physically restrained and secluded.**

# School is Not Supposed to Hurt:

**Investigative Report on Abusive Restraint and Seclusion in Schools**

NATIONAL  
**DISABILITY RIGHTS**  
NETWORK  
Protection & Advocacy for Individuals with Disabilities







January, 2009

RE: Restraint or Seclusion in Schools

Whenever we open a newspaper, turn on the television, or go on the Internet these days, we hear about another child dying or being injured in school while being restrained or secluded. Some may think these are isolated incidents, but, when Protection and Advocacy (P&A) agencies across this country report that school children have been killed, confined, tied up, pinned down, and battered, this is clearly more than an isolated issue - it is one of national concern.

P&As have been advocating for students and their families on education issues for over thirty years, a period of unprecedented change and opportunity for children with disabilities as fewer and fewer are relegated to institutions or special facilities. After years of struggle by parents and advocates, the educational rights of children with disabilities was, at least by law, firmly established in 1978 with implementation of the Education for the Handicapped Act (EHA), the precursor to the Individuals with Disabilities Education Act (IDEA). This promise of a free, appropriate, and public education has expanded the opportunities for full inclusion of students with disabilities. Yet today, many parents still face major challenges in obtaining full access to the education system their children are entitled to.

Unfortunately, a disturbing trend is emerging that threatens to deny these students the full and safe inclusion in the education system so vital to their success as adults in our society. This epidemic is not a failure of the principles of IDEA, it is not the failure of parents, and it is certainly not a failure of students with disabilities. It is a failure of the education system – federal, state, and local – to address the needs of students with disabilities.

This report identifies the abusive use of restraint or seclusion nationwide by school administrators, teachers, and auxiliary personnel, which has resulted in injury and trauma and, in far too many cases, death to children with disabilities. Furthermore, because there is no mandated system in place to report or collect data on these abuses, this report is clearly just the tip of the iceberg.

Swift action to ban the use of prone restraint and seclusion in schools, and increased teacher training will eliminate unintentional tragedies. It is the hope of the National Disability Rights Network that calling attention to this pervasive problem will spur action on the local, state, and national levels to address this crisis immediately.

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## **P&A/CAP Network**

Since it was established by the United States Congress in the mid-seventies, the Protection and Advocacy (P&A) system has been protecting the rights of children and adults with disabilities and their families. The scope of the P&A/CAP network has been expanded over the past three decades to ensure that individuals with all types of disabilities have access to their human and civil rights. Collectively, the P&A/CAP network is the largest provider of legally based advocacy services to people with disabilities in the United States. See Appendix 3 for links to the individuals agencies in the network.

## **National Disability Rights Network**

The National Disability Rights Network (NDRN) is the nonprofit membership organization for the federally mandated P&A and CAP programs. Through training and technical assistance, legal support, and legislative advocacy, NDRN strives to create a society in which children and adults with disabilities are afforded equality of opportunity and are able to fully participate by exercising choice and self-determination. For more information, go to [www.ndrn.org](http://www.ndrn.org).

## **EXECUTIVE SUMMARY**

The past thirty years has been a period of unprecedented change and opportunity for children with disabilities as fewer and fewer are relegated to institutions or special facilities. School doors that used to be closed are now opening. Today, students are being educated in their own neighborhood schools with their siblings, friends, and peers. Students with disabilities are living at home and becoming fully integrated members of, and participants in, the community.

Along with the realization that access to a free, quality education is the key to the uniquely American promise of equal opportunity for all, as a society we also recognize that schools should be safe havens for teaching and learning, free from violence. Our children should be protected. As reported by the National Center for Education Statistics, “school violence can make students fearful and affect their readiness and ability to learn, and concerns about vulnerability to attacks detract from a positive school environment... victimization at school can have lasting effects.”<sup>1</sup>

Yet, as we abhor school violence, P&As report that children with disabilities are being victimized in our nation’s schools at the hands of the professionals who are entrusted to keep them safe. The restraint or seclusion of children, and the physical and emotional harm which these practices cause, should frighten every parent in America, not only parents of children with disabilities.

This report is divided into two sections. The first identifies the problems attributed to restraint or seclusion. It includes a “Chronicle of Harm” detailing treatment of children of all ages and in every corner of the nation – urban, suburban, and rural, in wealthy and poor school districts, as well as in private schools. It outlines the problems associated with the use of restraint or seclusion, and details the proven risks to children associated with the use of these aversive techniques. Contributing factors are identified, such as the lack of appropriate training for teachers and other school

<sup>1</sup> *Indicators of School Crime and Safety: 2007*, National Center for Education Statistics (NCES) and the Bureau of Justice Statistics (BJS),

<http://nces.ed.gov/programs/crimeindicators/crimeindicators2007/intro.asp>

personnel in the use of positive behavioral supports which address children's behavioral and other issues in a humane and effective way.

The second section of this report proposes solutions to the use of restraint or seclusion by highlighting the best practices in education and the use of positive behavioral supports. Included is a catalogue of advocacy activities that have been undertaken by P&As to protect children with disabilities. These activities range from educating parents, students, and school personnel, to investigating and litigating when abuses are demonstrated, to working for strong state and federal laws to protect these vulnerable children.

Our examination of the current patchwork of laws, regulations, and guidelines is outlined. The findings show that forty-one percent (41%) have no laws, policies, or guidelines concerning restraint or seclusion use in schools; almost ninety percent (90%) still allow prone restraints, and only forty-five percent (45%) require or recommend that schools automatically notify parents or guardians of restraint/seclusion use. Finally, the report proposes recommendations for immediate actions that must be taken by the new Obama Administration, the United States Congress, states and territories, and local schools – if we are to protect our nation's children.

Even in today's tumultuous world, all families should be able to expect that their children are safe in their neighborhood schools -- not tied to desks, locked in storage closets, shoved in large dark boxes, or pinned down by adults two and three times their size. However, P&A programs across the country have reported the use of these shocking and dangerous practices.



**Colorado school where children were secluded**

NDRN cannot ignore the challenges faced regularly by schools with children with some very complex behaviors. NDRN also recognizes that, despite an unfortunate lack of training, often insufficient staffing levels, and very discriminatory attitudes by some school personnel, schools want to do what is best for all their students.

Children whose lives are disrupted or who do not feel safe learn less effectively than those who feel secure. Unfortunately, more than three decades after the passage of the EHA, many schools are ill-prepared to teach children with disabilities, resulting in the abuse and neglect of children with disabilities and the inappropriate use of restraint or seclusion. *School should not have to hurt – but it does.*

This is a call to action by NDRN to protect children with disabilities from victimization at school. The report defines the problem and identifies barriers and inadequate protections. It also highlights best practices and proposes recommendations for action at the federal, state, and local levels to end the abusive use of restraint or seclusion.

## DEFINITIONS

In 2000, Congress enacted the Children’s Health Act, which defined the terms “restraint,” and “seclusion” for facilities receiving Medicaid and other types of federal funding. The Centers for Medicare and Medicaid Services (CMS) further clarified these definitions when it issued its Conditions for Participation to Hospitals in December of 2006. For the purposes of this report, we will use the CMS definitions, since they reflect the most current federal thinking on restraint or seclusion:

**A restraint is--**

(A) Any manual method, physical or mechanical device, material, or equipment that immobilizes or reduces the ability of [an individual]<sup>2</sup> to move his or her arms, legs, body, or head freely; or

(B) A drug or medication when it is used as a restriction to manage the [individual’s] behavior or restrict the [individual’s] freedom of movement and is not a standard treatment or dosage for the [individual’s] condition.

(C) A restraint does not include devices, such as orthopedically prescribed devices, surgical dressings or bandages, protective helmets, or other methods that involve the physical holding of [an individual] for the purpose of conducting routine physical examinations or tests, or to protect the [individual] from falling out of bed, or to permit the [individual] to participate in activities without the risk of physical harm (this does not include a physical escort).<sup>3</sup>

**Seclusion is –**

The involuntary confinement of [an individual] alone in a room or area from which the [individual] is physically prevented from leaving. Seclusion may only be used for the management of violent or self-destructive behavior.<sup>4</sup>

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<sup>2</sup> The CMS conditions of participation use the term “patient.” For the purposes of this report, the more generic term “individual” has been substituted for “patient.”

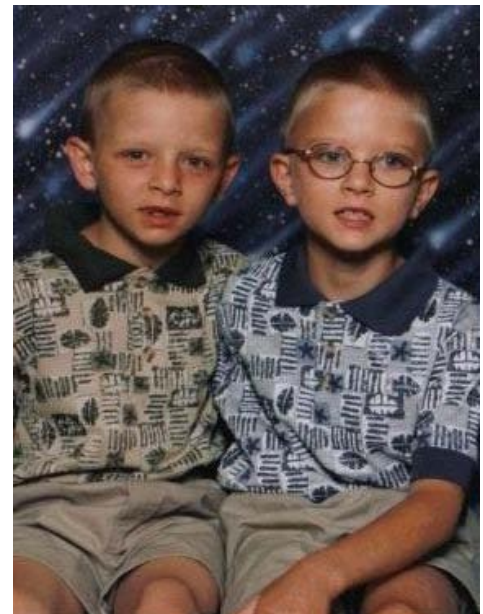
<sup>3</sup> 42 C.F.R. § 482.13(e)(1)(i). Note that CMS does not define the term “physical escort,” but it is defined in the Children’s Health Act as “the temporary touching or holding of the hand, wrist, arm, shoulder or back for the purpose of inducing a resident who is acting out to walk to a safe location.” 42 U.S.C. § 290ii(d)(2) and 290jj(d)(2). Under the Children’s Health Act, physical escorts are not considered to be a type of physical restraint. *Id.* The examples in this report do not include physical escorts, but much more extreme ways of forcing children into seclusion rooms, e.g. dragging, carrying, pushing, etc.

<sup>4</sup> 42 C.F.R. § 482.13(e)(1)(ii). Note that the Children’s Health Act of 2000 defines “seclusion” as “any behavior control technique involving locked isolation,” 42 U.S.C. 290ii(d)(2) and 290jj(d)(4), but CMS has recognized that individuals can be forcibly confined in a room or area without the room being locked. In this report, we will use the term seclusion to mean both locked and unlocked rooms or areas where an individual is forcibly confined. The terms “seclusion” and “time-out” have erroneously been used to mean the same thing. While seclusion is the forcible confinement to a room

“Seclusion” and “time-out” are not the same. Behaviorists originally defined “time-out” to mean “a behavior reduction procedure or form of punishment in which students who display a predefined inappropriate behavior are suspended for a short period of time from access to all opportunities to receive positive social reinforcement.”<sup>5</sup> Over the years, however, educators have used the term “time-out” to describe a variety of interventions aimed at calming a student down, removing a student from the group, and engaging a student in problem solving or self reflection. Time-out can include placing a student in an area of the classroom where the student can observe classroom instruction, but cannot participate. It can also involve requiring the student to go to a separate designated area where the student cannot visually observe or hear what is happening in the classroom, but from which the student is not physically prevented from leaving, e.g. facing the wall, sitting with their head on their desk, standing in the hallway, or going to the principal’s office.

For the purposes of this report, however, seclusion is placing a student alone in a room or area and preventing the student from leaving that area. 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.



**Connecticut children retraumatized when secluded**

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or area from which the person is physically prevented from leaving, “time-out” is a “behavior management technique that is part of an approved treatment program and may involve the separation of the individual from the group, in a non-locked setting, for the purpose of calming.” 42 U.S.C. § 290ii(d)(4) and 290jj(d)(5).

<sup>5</sup> J.B.Ryan, R. Peterson, and M. Rozalski, STATE POLICIES CONCERNING THE USE OF SECLUSION TIMEOUT IN SCHOOLS, Education and Treatment of Children, West Virginia University Press, University of West Virginia (Nov, 1, 2007) [http://www.accessmylibrary.com/coms2/summary\\_0286-33536962\\_ITM](http://www.accessmylibrary.com/coms2/summary_0286-33536962_ITM)

## THE PROBLEM

### Risks of Restraint or Seclusion

From government studies to private sector and non-profit studies, many have recognized the inherent risks associated with the use of restraint or seclusion over the years. Below are examples of the findings those studies have arrived at.

Government findings:

- The **President's New Freedom Commission on Mental Health** states that the use of restraint or seclusion creates significant risks for adults and children, including serious injury or death, retraumatization of people with a history of trauma, loss of dignity, and other psychological harm. As such, the commission recommends that restraint or seclusion use be reduced and that agencies view high rates of restraint or seclusion use as evidence of treatment failure.<sup>6</sup>
- The **Center for Mental Health Services, Substance Abuse and Mental Health Services Administration** of the United States Department of Health and Human Services has issued a report regarding restraint or seclusion, stating that:

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. In 1998, the Harvard Center for Risk Analysis estimated deaths due to such practices at 150 per annum across the nation. Children have been noted at especially high risk for death and serious injury. Individuals with addictive or co-occurring mental health and addictive disorders also appear to be at risk due, in part, to the possibility of increased agitation... It is also known that sentinel events (e.g., deaths and injuries) from restraint or seclusion occur in a number of settings which currently have no national guidelines, such as schools...<sup>7</sup>

- The **Government 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." Furthermore, "children are subjected to restraint or seclusion at higher rates than adults and also are at greater risk of injury."<sup>8</sup>

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<sup>6</sup> President's New Freedom Commission on Mental Health (2003) Achieving the promise: Transforming mental health care in America (DHHS Pub. No. SMA-03-3831) Rockville, MD: U.S. Department of Health and Human Services.

<sup>7</sup> 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)

<sup>8</sup> GAO/HEHS-99-176, Improper Restraint or Seclusion Procedures Places People at Risk (Sept. 1999)  
<http://www.gao.gov/archive/1999/he99176.pdf>

National accreditation and membership organization findings:

- The **Joint Commission on Accreditation of Healthcare Organizations** has stated that the “use of restraint or seclusion poses an inherent risk to the physical safety and psychological well being of the [individual being restrained] and the staff.”<sup>9</sup> “Restraint has the potential to produce serious consequences, such as physical or psychological harm, loss of dignity, violation of a patient’s rights, and even death.”<sup>10</sup>
- The **Alliance to Prevent Restraint, Aversive Interventions and Seclusion (APRAIS)** has stated that “Aversives, restraints, and seclusion can cause emotional, psychological, and/or physical damage as well as death.”<sup>11</sup>
- The **American Psychological Association, American Psychiatric Nurses Association and National Association of Psychiatric Health Systems** have recognized that “restraint or seclusion have potential for injury — both of patients and of staff” and “[t]hey also have the potential for abuse, if used improperly.”<sup>12</sup>
- The **National Association of State Mental Health Program Directors** has stated that:

The use of seclusion and restraint creates significant risks for people with psychiatric disabilities. These risks include serious injury or death, retraumatization of people who have a history of trauma, and loss of dignity and other psychological harm. In light of these potential serious consequences, seclusion and restraint should be used only when there exists an imminent risk of danger to the individual or others and no other safe and effective intervention is possible.”<sup>13</sup>

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<sup>9</sup> 2006-07 Standards for Behavioral Health Care, Joint Commission on Accreditation of Healthcare Organizations (“Joint Commission”).

<sup>10</sup> 2006 Hospital Accreditation Standards, Joint Commission.

<sup>11</sup> In the Name of Treatment, Alliance to Prevent Restraint, Aversive Interventions and Seclusion (2005). [http://www.tash.org/dev/tashcms/ewebeditpro5/upload/In\\_the\\_Name\\_of\\_Treatmentfinal.pdf](http://www.tash.org/dev/tashcms/ewebeditpro5/upload/In_the_Name_of_Treatmentfinal.pdf). Members of APRAIS are listed on the APRAIS website at <http://aprais.tash.org/MemberOrganizations.htm>.

<sup>12</sup> American Psychiatric Association, American Psychiatric Nurses Association, and National Association of Psychiatric Health Systems, Learning from each other: Success stories and ideas for reducing restraint/seclusion in behavioral health, p. 3. <http://www.naphs.org/rscampaign/Learning.pdf>

<sup>13</sup> National Association of State Mental Health Program Directors (NASMHPD), [Seclusion and Restraint Position Statement as Revised by NASMHPD Forensic Division and Accepted by NASMHPD Membership \(7/15/07\)](#) [http://www.nasmhpd.org/general\\_files/position\\_statement/S&R%20position%20statement.Forensic%20Div.%20prop.%20approved%20by%20NASMHPD.07.07.final.pdf](http://www.nasmhpd.org/general_files/position_statement/S&R%20position%20statement.Forensic%20Div.%20prop.%20approved%20by%20NASMHPD.07.07.final.pdf)

- The **National Education Association** has issued guidelines that discuss restraint or seclusion of “violent” students, stating that physical restraint should be used with a student only when there is an imminent risk either of harm to a person or property damage.”<sup>14</sup>

Education researchers have also raised concerns about the use of restraint or seclusion. For example, Wanda Mohr has stated that “[l]ethal consequences proximal to [the] use [of restraint or seclusion]” raise the issue to a life-and-death matter that demands attention from professionals.”<sup>15</sup> In an article entitled “State policies concerning the use of seclusion time-out in schools,” Ryan, Peterson and Rozalski stated:

Parents, community members and professionals have had concerns about the length of time that students are in time-out, as well as the supervision and safety of students in exclusionary or seclusionary time-out settings.<sup>16</sup>

In its report on restraint and seclusion in California schools, the California P&A summarized the psychological harm that can result from restraint or seclusion:

Beyond physical injuries or death, behavioral restraint or seclusion can also severely traumatize individuals and result in lasting adverse psychological effects. The risk of trauma is greater with individuals with a history of abuse. Individuals who have been restrained and secluded describe these events as punitive and aversive, leaving lingering psychological scars. Children and adolescents restrained during a psychiatric hospitalization report recurrent nightmares, intrusive thoughts, avoidance behaviors, enhanced startle response, and mistrust of mental health professionals resulting from the incidents, even years after the event. Restraint or seclusion may evoke feelings of guilt, humiliation, embarrassment, hopelessness, powerlessness, fear, and panic. Restraint or seclusion compromise an individual’s ability to trust and engage with others, and create a violent and coercive environment that undermines forming trusting relationships and, by extension to the education setting, learning.<sup>17</sup>

Staff can also be harmed when individuals are forcibly restrained or secluded. To our knowledge, there have been no studies showing harm to staff in the school setting, but

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<sup>14</sup> National Education Association, Dealing with Violent Behavior, neatoday (February 2008) <http://www.nea.org/neatoday/0802/violentbehavior.html>.

<sup>15</sup> W.K. Mohr, and T. Petti “Adverse Effects Associated with Physical Restraint” 48 Can J Psychiatry 5 (June 2003).

<sup>16</sup> See footnote 5 for citation to article entitled “STATE POLICIES CONCERNING THE USE OF SECLUSION TIMEOUT IN SCHOOLS.”

<sup>17</sup> [Restraint & Seclusion in California Schools: A Failing Grade \(htm\)](http://www.disabilityrightsca.org/pubs/702301.htm) or [pdf](http://www.disabilityrightsca.org/pubs/702301.pdf), Disability Rights California (June 2007) <http://www.disabilityrightsca.org/pubs/702301.htm> (Internal citations omitted)

in other settings, reductions in the use of restraint or seclusion of residents have resulted in fewer work-related injuries for staff.<sup>18</sup>

## **INADEQUATE LEGAL PROTECTIONS AND OVERSIGHT**

### **Patchwork of Inadequate Statewide Laws**

Despite the widely recognized risks of restraint and seclusion use, policy makers have been slow to institute protections and oversight. In response to highly publicized deaths and injuries and the tireless efforts of families and advocates, some states<sup>19</sup> and territories have enacted laws, issued regulations and developed policies and guidelines in recent years. Other states and territories still have no protections or oversight, which results in a patchwork of inconsistent policies – or no policies at all -- across local school districts. For example, in a study commissioned by the Indiana P&A, the Indiana Institute on Disability and Community at the University of Indiana, a University Center for Excellence in Developmental Disabilities, found that only slightly more than half of the school districts in Indiana had physical restraint policies and virtually none had policies regarding seclusion or the use of positive behavior supports.<sup>20</sup> The researchers concluded that there appears to be a general tendency to deal with behavior problems with punitive, reactive approaches, rather than the proactive approaches found in positive behavior support programs.”<sup>21</sup>

NDRN examined all state laws, policies and guidelines.<sup>22</sup> The chart in Appendix 1 shows that, of the 56 states and territories in the United States:

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<sup>18</sup> Forster, P.L., Cavness, C., & Phelps, M.A. Staff training decreases use of seclusion and restraint in an acute psychiatric hospital. *Archives of Psychiatric Nursing*, 13, 269-271)(18.8% reduction in staff injuries)

<sup>19</sup> Including the District of Columbia

<sup>20</sup> V. Pappas, J. Chait, and M. Norris, TIME-OUT, SECLUSION AND RESTRAINT IN INDIANA SCHOOLS, Indiana Institute on Disability and Community, Indiana University, p. 10 (March 2008)  
[http://www.in.gov/ipas/files/S\\_R\\_Final\\_Report\\_Full\\_IPAS\\_2-C.pdf](http://www.in.gov/ipas/files/S_R_Final_Report_Full_IPAS_2-C.pdf)

<sup>21</sup> *Id.* at 11.

<sup>22</sup> Other researchers have also analyzed whether states have state-wide restraint and seclusion laws. See, J.B.Ryan, R. Peterson, and M. Rozalski, STATE POLICIES CONCERNING THE USE OF SECLUSION TIMEOUT IN SCHOOLS, Education and Treatment of Children, West Virginia University Press, University of West Virginia (Nov, 1, 2007)  
[http://www.accessmylibrary.com/coms2/summary\\_0286-33536962\\_ITM](http://www.accessmylibrary.com/coms2/summary_0286-33536962_ITM); J.B. Ryan, K. Robbins, R. Peterson, and M. Rozalski REVIEW OF STATE POLICIES CONCERNING THE USE OF PHYSICAL RESTRAINT PROCEDURES IN SCHOOLS (unpublished manuscript accepted for publication)(contact [Jbryan@clemons.edu](mailto:Jbryan@clemons.edu))

- Forty-one percent (41%) have no laws, policies or guidelines concerning restraint or seclusion use in schools;<sup>23</sup>
- Almost ninety percent (90%) still allow prone restraints;<sup>24</sup>
- Only forty-five percent (45%) require or recommend that schools automatically notify parents or guardians of restraint/seclusion use.<sup>25</sup>

## **LACK OF EXPLICIT FEDERAL REQUIREMENTS**

### **The Individuals with Disabilities Education Act**

EHA was adopted by Congress to provide public education to children with disabilities in 1975, at a time when the educational system did not embrace disabilities. As clarified by Congress in 2004, the intent of the law is to provide a Free and Appropriate Public Education to students with disabilities that will prepare and equip them to further their educations, live independently, and participate in the workforce. It is hard to imagine that anyone would consider the abuses disclosed in this report as “appropriate” to the needs of the student. Unfortunately, IDEA does not contain any explicit prohibition on the use of restraint or seclusion.

Each student who is receiving special education services is entitled to an Individualized Education Program (IEP). This plan is to be developed by the family, the child when possible, and school personnel. It is designed as a road map for the child’s educational program. It describes present levels of performance, annual goals and short term objectives, the nature and duration of services and supports, a system for monitoring the plan, and measurements of success.

One of the greatest shortcomings of IDEA is the improper implementation of the Functional Behavioral Assessment (FBA). The FBA is referred to explicitly in the discipline provisions of IDEA (i.e., after a student has gotten into significant trouble in school). The benefit of a good FBA is that staff will know what the antecedents of inappropriate behaviors are, which enables staff to minimize their occurrence. However, because the FBA is frequently carried out after conflict occurs, it undermines the proactive nature of the IEP. It is clear that an FBA should be performed before a student faces school disciplinary procedures. Assessing a student's behavior as part of

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<sup>23</sup> Alabama, Alaska, American Samoa, Arizona, California, District of Columbia, Georgia, Guam, Idaho, Indiana, Louisiana, Mississippi, Missouri, Nebraska, New Jersey, the Northern Mariana Islands, Ohio, Oklahoma, South Carolina, South Dakota, the Virgin Islands, West Virginia, and Wyoming.

<sup>24</sup> The only states that ban prone restraint are Colorado, Connecticut, Florida, Iowa, Michigan and Pennsylvania.

<sup>25</sup> Colorado, Connecticut, Florida, Hawaii, Iowa, Illinois, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Hampshire, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont and Virginia.

his or her initial evaluation needs to be a priority of IDEA.

The Office of Special Education Programs (OSEP) in the United States Department of Education oversees the implementation of IDEA. OSEP has funded two technical assistance projects - one focused specifically on positive behavioral interventions and supports and the other focused on developing collaboration between federal, state, and local educational entities of best practices, including behavioral supports. Because of its emphasis on positive behavioral intervention and supports, you would expect OSEP to be supportive of alternatives and against the violent and abusive practice of restraint or seclusion. However, in response to a query about the use of mechanical restraints in schools, OSEP recently wrote that:

*While IDEA emphasizes the use of positive behavioral interventions and supports to address behavior that impedes learning, IDEA does not flatly prohibit the use of mechanical restraints or other aversive behavioral techniques for children with disabilities.* <sup>26</sup>

OSEP has done little, if anything, over the past 33 years to protect children with disabilities from the use of restraint or seclusion. The most unfortunate outcome of OSEP's lack of focus on this abusive practice is that it continues to be a life-altering or life-ending practice plaguing students with disabilities.

### **The Children's Health Act**

Although the Children's Health Act of 2000 protects children from abusive restraint and seclusion practices in facilities receiving Medicaid and other federal funding, such as hospitals, residential treatment centers and residential group homes, it does not explicitly protect children from such practices in schools. Federal lawmakers instituted protections and oversight in residential facilities only after the Hartford Courant printed an extensive exposé on the deaths of children while being restrained and secluded in the above settings. In a 50-state survey, the Courant confirmed 142 deaths during or shortly after restraint or seclusion in residential facilities the 1990s. The survey focused on mental health and developmental disabilities facilities and group homes nationwide. The Courant also reported that as many as ten times the 142 reported deaths occurred, but a lack of reporting of injuries or deaths made the exact number impossible to report.

The critical question today is:

**If Congress enacted laws to protect children in residential settings, why are there no federal laws protecting children in our nation's schools?**

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<sup>26</sup> Letter to Anonymous, 50 IDELR 228 (OSEP, March 17, 2008).

Perhaps this report, which chronicles the injuries suffered by children who have been secluded or restrained – or even worse – the deaths of children because of these practices, will finally wake up federal policymakers and agency administrators the way the Hartford Courant was able to in the late 1990’s.

## **A CHRONICLE OF HARM: CASE SUMMARIES**

The haunting evidence of physical and psychological harm suffered by children due to abusive use of restraint or seclusion in our schools can be found across the nation.

Many children are secluded, battered and bound – rather than safe and sound – in our schools. Below are examples from across the country of these shameful practices and their harm to children. P&As were either directly involved in these cases or drew public attention to these cases in their systemic efforts to stop these inhumane practices.

For more information about these abuses and how P&As responded to prevent future abuses, contact the P&A in that state or territory directly using the contact information in Appendix 3 to this report.

### **A. Actions Resulting in Death**

One of the most lethal school practices is prone restraint. Sudden fatal cardiac arrhythmia or respiratory arrest causing decreased oxygen delivery at a time of increased oxygen demand can occur through prone restraint.<sup>27</sup> Studies and organizations, including the Joint Commission on Accreditation of Healthcare Organizations, have concluded that prone restraint *may predispose a patient to suffocation*.<sup>28</sup> In 2002 the California P&A issued a report, “The Lethal Hazard of Prone Restraint: Positional Asphyxiation.”<sup>29</sup> The P&A’s expert, a board certified forensic pathologist, concluded that the prone restraint position was a significant contributing factor in the demise of the restrained individual.<sup>30</sup>

In instances of prone restraint that were not lethal, they have still caused a multitude of physical injuries, including, but not limited to, cerebral and cerebellar oxygen deprivation (hypoxia and anoxia), lacerations, abrasions, injury to muscles, contusions or bruising, overheating, dehydration, exhaustion, blunt trauma to the head, broken neck, wrist and

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<sup>27</sup> The Lethal Hazard of Prone Restraint: Positional Asphyxiation, published by Protection and Advocacy, Inc. (2002) at p. 3. <http://www.pai-ca.org/pubs/701801.pdf>

<sup>28</sup> Joint Commission on Accreditation of Healthcare Organizations, Preventing Restraint Deaths. Sentinel Event Alert, 8. (Nov. 18, 1998)

<sup>29</sup> Supra note 27

<sup>30</sup> Supra note 27

leg compression, dislocation of shoulder and other joints, hyperextension or hyperflexion of the arms, exacerbation of existing respiratory problems, decreased respiratory efficiency, decrease in circulation to extremities, deep vein thrombosis, pulmonary embolism, and cardiac and/or respiratory arrest.<sup>31</sup> Because of the dangers posed by prone restraint, NDRN demands that prone restraint be banned. Below are instances of deaths resulting from restraint or seclusion:

### **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 seven 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 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.



**Wisconsin girl, age 7, killed when restrained and secluded**

### **Georgia**

- A thirteen year old hanged himself in a small concrete-walled, locked seclusion room, using a cord provided by a teacher to hold up his pants. This

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<sup>31</sup> [Restraint & Seclusion in California Schools: A Failing Grade \(htm\)](#) or [\(pdf\)](#), Disability Rights California (June 2007) <http://www.disabilityrightscalifornia.org/pubs/702301.htm> (Internal citations omitted)

eighth-grader had pleaded with his teachers that he could not stand being locked within the small seclusion room for hours at a time. The boy had threatened suicide in school a few weeks before his death.

## **B. Confinement and Isolation**

Confining and isolating children can cause a myriad of negative emotional reactions, including “feelings of anger, anxiety, boredom, confusion, embarrassment, depression, humiliation, abandonment, loneliness, sadness, loss of dignity, powerlessness, helplessness, despair, and delusion.”<sup>32</sup> The improper use of seclusions may lead to feelings that one is “bad” and “sick” and needs to be locked up. In one study, children who were secluded were asked to draw pictures of people being secluded. The pictures they drew did not convey the concept of children gaining self-control while in seclusion, but rather conveyed punishment, with children crying and pleading for help.<sup>33</sup> The children's descriptions of seclusion also include feeling fear and abandonment. The experience is escalated for children who have been victims of prior violence or abuse.<sup>34</sup>

Below are some dangerous and disturbing incidents of seclusion that P&As have investigated:

### **Alabama**

- A nine year old fourth grader with Attention Deficit Hyperactivity Disorder and depressive disorder was held in a supply closet in a remote area of his school library with no supervision for extended periods of time.

### **Arizona**

- A child with autism was segregated and isolated from his peers at a desk in the hall of the school's basement.

### **Arkansas**

- A nine 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.

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<sup>32</sup> A Review of the Literature on Restraints and Seclusion with Children and Youth: Toward the Development of a Perspective in Practice by David M. Day, Ph.D., C.Psych. for The Intersectoral/Interministerial Steering Committee on Behaviour Management Interventions for Children and Youth in Residential and Hospital Settings (2000) at 26. <http://rccp.cornell.edu/pdfs/Day.pdf>

<sup>33</sup> Finke, Linda M, The Use of Seclusion is Not Evidence-Based practice, Journal of Child and Adolescent Psychiatric Nursing, (Oct-Dec 2001) [http://findarticles.com/p/articles/mi\\_qa3892/is\\_200110/ai\\_n8993463](http://findarticles.com/p/articles/mi_qa3892/is_200110/ai_n8993463)

<sup>34</sup> Day, supra.at 26.

## **California**

- Investigating complaints about the use of excessive and inappropriate restraint and seclusion the P&A found a padded seclusion room built into the special day classroom at one public middle school. To prevent students from leaving the room, classroom personnel held the door shut. Students were placed in the seclusion room daily, at times all day, for not completing work assignments, like writing 50 sentences apologizing for rule infractions. One 12 year old boy nearly had his arm broken by the teacher who forcibly restrained him to get him into the seclusion room. For weeks, the sole ceiling light was burned out, leaving the secluded student alone for hours in the dark.
- An eight year old with attention deficit disorder was routinely locked in a school seclusion room. The seclusion room was approximately eight feet square and had minimal furnishings and no carpeting. The boy would throw himself against the walls and attempt to scale the walls to get out of the room. The room had been built on the recommendation of the school's consulting behavioral specialist.
- An eleven year old child with physical disabilities was barricaded in a hallway between two classrooms at school. The window into the hallway from the child's classroom was entirely obstructed with paper. The teacher would slide a classroom table in front of the door to prevent the child's exit.

## **Colorado**

- The P&A launched over thirteen investigations of restraint or seclusion in the state. At one elementary school the P&A found that at least five students with disabilities were subjected to abusive seclusion on multiple occasions.
- 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.
- One student attempted to strangle herself with her clothing on two separate occasions within a two week period after she was put in the time-out room. The school continued to isolate the student another eight times.
- A student with multiple disabilities, including self-injurious behavior, was held down by school staff or locked in a "time-out" room where he would severely injure himself and was left to sit in his own blood. The child's experience made him terrified to go to school and his parents were forced to transfer him to an in-patient care institution.
- Food was denied to students in "time-out" and some were forced to wait until the end of the day to eat.

## Connecticut

- When a high school student with autism became frustrated and allegedly struck an untrained aide, the aide pinned him to the floor, leaving him bruised and shaken. Following that incident, the school developed a behavior plan which his parents were told included a provision for him to calm down in a “safe place”. However the parents were not told that the “safe place” was a hastily converted closet into which school personnel would routinely put the boy and hold him in isolation, sometimes for extended periods, while he cried and pounded on the door, begging to be let out.



**CT teenager injured from being restrained and secluded.**

- An elementary school student with significant emotional problems was routinely confined in a small seclusion booth in his school. He had been removed from his original family home by child welfare authorities when they found, among other things, that he was being literally locked in a closet for days on end. The school’s practice replicated the trauma of that confinement. This went on for months before his grandmother, who had assumed guardianship, learned of it. The school called her after the boy had tried to run away from school. Evidently, administrators thought that his running away was worthy of a telephone call to the guardian, but that routinely holding the child in a confined space was not.

## Florida

- A second grader who has bipolar, obsessive compulsive disorder, oppositional defiant disorder, seizures, and heart problems, was placed in eight open door seclusion time-outs and two closed door seclusion time-outs during the first four weeks of school. The family had just moved from another state where such time-out rooms were not used. The child’s prior school instead used a “feelings corner” when she became frustrated or needed to calm down. The child’s behavior got worse, not better as a result of the interventions in Florida and the child was traumatized by the closed door time-outs and would not tolerate any closed doors. The justifications were rarely documented but when available were inappropriate. To escape the inappropriate seclusion, the family moved to another county.

## Illinois

- Despite a treating physician’s medical opinion opposing the use of restraint or seclusion, a fourth grader with severe mental illness spent portions of almost every school day isolated in the school basement in a “time-out” room with the staff holding the door shut. He was also physically restrained by school staff.

## 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.
- A first grade boy with autism was removed for almost three hours to a vacant room in his elementary school. The child eventually urinated on himself because he was not allowed out of the room until he “showed compliance by folding towels and sitting on the floor.” Still upset by the event, the boy told his mom that he was in the room a very long time so he just pretended that they were hypnotizing him. When his mother asked him if he would like to hold his favorite toy, he said “no...I just want you to hold me.”
- An eight 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.

## Kansas

- Secluded in an isolated room alone, an eight year old second grader with Down Syndrome and Attention Deficit Hyperactive Disorder was not allowed out of isolation during the entire school day. Sometimes his desk, chair, and all his school supplies were removed and the boy was forced to eat and work on the floor where he was periodically observed by teachers from outside the room.
- A child with Cerebral Palsy, which affects his ability to use expressive language effectively, was placed in a “room” as seclusion on different occasions. The school called it “in-school suspension,” however; it was really just seclusion by another name. What is more troubling is that this room to seclude and isolate the child was actually a restroom. He had to even eat his meals in this restroom. He went in and was there the entire day, or was in there for the remainder of the day and because of this demeaning and negative intervention this would often lead to an incident.



Classroom seclusion room,  
Kansas

### **Kentucky**

- A nine year old with autism was placed in a closet with a small window on seventy-eight occasions when he did not comply with the teacher's directions.

### **Massachusetts**

- A six year old boy with autism was physically removed from the classroom and isolated in a small closet after fidgeting and engaging in self-stimulating behavior during circle time. While in isolation, the child severely cut his hand on a glass door pane and had to be transported to a hospital. Both the physical and emotional pain of the experience caused extreme distress for the child.

### **New Mexico**

- A high school student with spina bifida and behavioral issues was isolated alone in an empty classroom because he soils himself when under stress-often a symptom of spina bifida itself.

### **New Jersey**

- A school turned a closet adjacent to the school heating, venting, and air conditioning equipment into a seclusion room to specifically isolate students with disabilities.

### **Montana**

- A seventh grader with autism and substantial self-injurious behavior bit his teacher and was subsequently secluded in the school bathroom with the light off. When the teacher returned to the bathroom with the principal, the boy had bitten his hand so deeply that there was blood on the walls and on him. He was so traumatized by the incident that he would cry and bite himself when he traveled near the school, to which he never returned.

### **Oklahoma**

- A girl in elementary school who had a history of being victimized by abuse and neglect and involvement with the foster care system was routinely removed from her classroom to a school seclusion room. Retraumatized by the use of a seclusion room the child described the room as one in which she "cannot breathe."
- A high school student with autism was placed in a corner of the classroom inside a so-called "cottage" constructed of plastic pipe and mesh. A rope-like belt was harnessed around this student's waist to walk him around the school.
- At one school, children diagnosed with serious mental illness were routinely placed in small, stand alone buildings a distance from the main school

building. These students were physically picked up and carried down the hall by several school staff to the seclusion rooms.

### **Tennessee**

- In an elementary school, students were held in stark plywood seclusion boxes measuring 4 ft. x 3 ½ ft. and extending almost to the ceiling of the classroom. A square covered with glass was carved out at the top of the box and gravity locks were on the door. School administrators reported that similar boxes were in use at four other schools.

### **Wisconsin**

- Three elementary school students were forcibly isolated in a locked closet for hours at a time for nearly three years. Alone, unsupervised, and without access to a lavatory, these students frequently urinated or defecated in the room.
- A young girl with Down Syndrome and autism was routinely placed in seclusion for hours at a time because she did not follow classroom instructions.

### **Wyoming**

- A twelve year old boy at a rural elementary school was repeatedly dragged into a locked seclusion room for his failure to make eye contact with the teacher, complete math assignments within the allotted time, or promptly respond to questions. The child sustained bruises and was left in locked seclusion for hours at a time on multiple occasions.

## **C. Tied Up, Pinned Down, and Battered**

### **Alabama**

- An eight year old boy with autism in the second grade was physically restrained by school staff to manage behavior issues.

### **Alaska**

- Students in special education classes were restrained in their seats using therapeutic postural support devices.

### **Arizona**

- A five year old boy with autism was repeatedly physically restrained despite his mother's repeated demands that such restraint be stopped.



**Bruising from restraint in Tennessee**

### **Arkansas**

- Fearful and resisting her removal to the “blue padded room,” an eight year old girl with autism was tied down into a wheelchair by a vice principal who proceeded to wheel the child down the hall and isolate the screaming, terrified little girl in the seclusion room.

### **California**

- In a rural school district in California, a ten year old non-verbal boy with multiple disabilities was tied to his wheelchair and left on the school van in the parking lot for hours on two separate days. His wrists were tied to the arms of his wheelchair with components removed from the safety vest used during transport on the van. His legs were bound together at the ankles with a nylon Velcro strap. On an unscheduled visit to the school, his mother was outraged when she found him unsupervised, alone, bound to his wheelchair on the van.
- A child in kindergarten was physically restrained by his teacher. The teacher repeatedly restrained children by pulling their arms around the back of a chair and holding their wrists together.
- The P&A has recently opened a new case for investigation following the report of a classroom aide dragging a nine year old child with Down Syndrome across the play yard. The student sustained significant skin abrasions to his lower back and upper buttocks requiring medical care. The school reportedly fired the aide but has no record of the restraint incident or how the student sustained the injuries.

### **Connecticut**

- A young child with autism was confined in a special chair used for adaptive positioning of children with physical disabilities. While ostensibly intended to assist him to focus on group activities, observers indicated that it was being used inappropriately as a consequence for not attending to instructions, and that while in the chair, the child received no instruction and was left out of class activities.

### **Delaware**

- A ten year old boy with emotional disturbance was sent to a seclusion room and later physically restrained when he allegedly tried to kick his teacher. The boy suffers trauma due to a history of abuse that makes him unable to tolerate adults touching him. His act was in response to his teacher touching his shoulder.

### **District of Columbia**

- School staff broke the arm of a student when they physically restrained him to place him in seclusion. The restraint would have been preventable with an

appropriate positive behavioral plan in place and use of more effective de-escalation techniques by staff.

### **Florida**

- When a twelve year old girl with autism repeated names of movies, shoved papers off her desk or waved her arms and kicked her legs toward approaching teachers, they responded by grabbing the eighty pound girl, forcing her to the ground and holding her there. This happened forty-four times during the 2006-07 school year. She was held once for an hour, and, on average, twenty-two minutes at a time. At least one incident left her back badly bruised.
- When a seven year old girl, diagnosed with autism and bipolar disorder had her head pushed to the floor, the parents discovered several other frequent inappropriate uses of restraint and seclusion. The county where they live leaves it to individual schools to write their own policies on restraint or seclusion use.
- A school employee used excessive force on a student attending a school for children with disabilities and broke his arm during a restraint. His arm was pulled back until he heard a popping noise. When the employee finally let him up, he asked twice to go to the nurse's office, but was not allowed to leave his desk.
- A behavior tech broke the arm of a boy who has bipolar disorder and autism, while attempting to restrain him. The boy suffered a "spiral fracture to the upper right arm," according to emergency room staff. He was taken to his after school program by a bus aide who told police he cried the entire ride. But she said she "didn't take (the boy) seriously because he behaves this way all the time." His after school program discovered a red swollen arm and abrasions on his face. A teacher not involved in the incident told police she found the boy alone in the classroom, laying on the floor crying.

### **Hawaii**

- Discovering bruises on her daughter's hips, a mother contacted the school where they admitted that the seven year old girl with developmental disabilities and deafness was frequently tied to her chair, her hearing device removed by school personnel, because she would not stay in her seat. The bruises were caused by the strap used to tie the girl down.
- A six year old boy with autism complained that he was afraid of his teachers and of being "put into a cage." His parents also noticed bruising on their son's body. The parents discovered their son was physically restrained in a "time-out" room on several occasions without their knowledge and school personnel admitted to physically restraining the boy when he was in "time-out."

### **Illinois**

- A mother strenuously objected to her three year old son being routinely restrained in a positional support chair. Her son, who has severe autism and is non-verbal, was restrained by straps in the chair or by utilizing the tray to restrict his movements. After reaching agreement with the school that the positional support chair would only be used for its therapeutic purpose, the parent was dismayed to observe her three year old restrained in the chair again, unattended, and with no school activities being provided to him.
- A six year old boy with autism was physically restrained by school personnel in a “time-out” room on several occasions causing significant emotional and physical trauma. The child became afraid of his teachers and expressed fear of attending school and of being “put into a cage.” He also sustained multiple bruises on his body.

### **Kansas**

- A three year old boy with autism didn't know the rules of sitting during certain times in a publicly funded preschool. After two days the teacher, and the staff decided that he was too much to keep up with, so they put him in a chair intended to provide postural support children to children who are physically disabled. He remained in the chair for varying amounts of time. Often he sat while the other children were playing or doing group activities. All he could do was sit beside the wall and watch. He could not get up because he was strapped in this stiff wooden chair.
- A school resource officer handcuffed a child to the radiator until his mother arrived because he allegedly would not stop fidgeting.

### **Kentucky**

- A six year old boy diagnosed with bipolar disorder was forced to sit in a partitioned area of his classroom. When behavior issues erupted in the classroom three school personnel, all males, came into the classroom and physically dragged the child out of the school and into a van. He was taken to his therapist's office so that she could see how “bad” he was.
- A nine year old boy diagnosed with a separation anxiety disorder was subjected to restraint daily over a two week period.

### **Maine**

- A child with Post Traumatic Stress Disorder related to earlier child abuse was placed in a prone restraint by the school principal. This incident re-ignited behaviors such as night terrors which the child's family had earlier successfully contained.

### **Maryland**

- The P&A was contacted by parents to investigate the use of positional support chairs and lap belts to restrict the movement of children when the chair was not needed for therapeutic positioning purposes.

### **New Mexico**

- A child with severe intellectual disabilities and multiple other disabilities was routinely restrained while on the school bus and during the school day.
- A child with autism and severe behavioral issues was physically restrained by a school staff member who sat on the child.

### **New York**

- A twelve year old boy with Asperger's Syndrome, was afraid to go to school because he thought the school was trying to kill him. His father discovered he was being held down on the floor by teachers to "calm him down" when he became confrontational. On at least one occasion, adults held the boy prone for 20 minutes until he stopped struggling. He is now undergoing therapy due to the psychological harm caused by the use of physical restraints.

### **North Carolina**

- Children with mental illness were being taped to chairs and locked in closets by teachers.
- Students at one middle school were subjected to abusive restraint or seclusion including:
  - The use of handcuffs;
  - Excessive physical restraint resulting in bruising; and
  - The use of a seclusion room, dubbed the "WWF Room," where students were encouraged to wrestle one another and teaching assistants to release aggression.
- Fearing that similar restraints would be used on them, a student at this same middle school developed migraine headaches and panic attacks from the trauma of witnessing the use of handcuffs and physical restraints on other students.
- In testimony before the state legislature in 2005, parents recounted how their children diagnosed with mental illness were restrained in their chairs with tape and locked in closets by school personnel.

### **Oklahoma**

- An elementary school student was physically restrained on the floor by his teacher. The teacher folded the child's legs back over his chest, and then sat on him, placing her entire body weight on the child.
- A mother was stunned to discover that her five 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.

### **Oregon**

- An eleven year old boy weighing sixty-five pounds was shot by police with a 50,000-volt taser gun at a special education classroom in public school after the boy locked himself inside a classroom following a behavioral outburst. The school had no plan to deal with the child's behavior and was unprepared to share with the police any strategies to de-escalate the situation.

### **Pennsylvania**

- For over two years a young boy, now eight years old, was kept strapped to a positional support chair for two to three hours every day by his teacher. A tray and three straps were placed across the boy's chest, waist and legs to keep him from moving. He received no instruction while restrained. This abusive restraint caused the child to significantly regress in his functional capabilities and lose the speech he once possessed.
- At least six students with autism were abused by a teacher, who hit and pinched them, pulled their hair, and restrained the children in a special chair with bungee cords and duct tape. The teacher was convicted on charges of recklessly endangering students.

### **Rhode Island**

- Over the past two years, between 500 and 1,000 reports of restraint or seclusion have been submitted to the state department of education.

### **South Carolina**

- An eleven year old boy with emotional disabilities and Asperger's Syndrome was frequently subjected to face-down prone restraint. During one such incident his chin was split open.

### Texas

- A seven year old boy with mental illness was restrained at least seventy-five times during the school year and endured isolation from his peers on a regular basis as punishment. The little boy was so impacted by the ongoing restraints and seclusion that he was afraid to go to school.

### Virginia

- A boy attempting to run away from school was repeatedly thrown to the floor by a school staff member. When the child complained that he could not breathe he was told, "You're talking so you're breathing."

### Wisconsin

- A three year old child diagnosed with autism was tied into a positional support chair even though the chair was not needed for therapeutic positioning purposes.
- A high school student's elbow was broken when his teacher put him in an "arm bar" hold that the teacher learned in the Marines.



**Wisconsin boy, age 3,  
tied up and traumatized**

### Wyoming

- A parent was shocked to arrive at her child's elementary school and find five adults restraining her screaming and crying child in a facedown prone restraint position on the seclusion room floor. The child sustained multiple rug burns and bruises including finger marks around his neck. The abusive restraint was triggered by the child's refusal to run in his physical education class.

These stories should shock you. They are stark and unsettling, and unfortunately taking place in our nation's schools. Children with disabilities are being hurt physically and emotionally, and in some cases even killed, in our nation's schools – where the protection of all children should be the highest priority. The use of restraints or seclusion to punish children with disabilities can be found in schools large and small, rich and poor, and in urban, rural, and suburban areas. The aversive procedures can be found in classrooms where students with disabilities are segregated or in classes with their non-disabled peers.

Fortunately, the children and families described above and the many others out there have a voice and an advocate through the P&A system. Pursuing a range of legally-based advocacy activities, P&A programs have been involved in each of the cases described above. The P&As have been there to stop the harm to children and to relieve the anguish of parents, develop remedies that allow school staff to receive better training and an understanding of the needs of children with disabilities. This work leads to an understanding of ways to support them in school that protect the safety and dignity of both children and staff.

## THE SOLUTION

### P&As Take Action to Stop the Harm

Nationwide, P&As have discovered that schools are restraining students in non-emergency situations, failing to develop positive behavioral supports to avoid such emergencies, failing to involve parents in the development of plans, and trying to get parents to sign Individual Education Plans that would allow schools to seclude or restrain children without first meaningfully informing them of the extent to which the school intends to use these interventions or the physical and psychological harm that can result. Many parents have told P&As that they didn't know what they were signing onto and were then horrified to learn that their children were being locked in rooms, sat upon and tied down.<sup>35</sup>

NDRN and P&As have taken a multi-faceted approach to respond to the increasing number of restraint or seclusion abuses occurring in our nation's classrooms.

### Outreach and Training

The **Wisconsin P&A** has formed a coalition to work on the inappropriate restraint or seclusion of children in all types of settings, including schools. Members of the coalition include Wisconsin Facets (the parent resource center), Wisconsin Family Ties, and Disability Rights Wisconsin. Among other things, the coalition has developed surveys to collect family stories and to raise awareness of the dangers of restraint or seclusion. The survey can be found on the Wisconsin Department of Public Instruction (WDPI) Web site at [dpi.wi.gov](http://dpi.wi.gov). As a result of this survey, the P&A received more requests for help from parents whose children had been restrained or secluded.

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<sup>35</sup> For example, see Colorado Public Report of an Investigation into the Improper Use of Restraint or seclusion of Students with Disabilities at Will Rogers Elementary School (March 9, 2007) [http://www.ndrn.org/issues/an/rs/Colorado\\_public\\_investigation\\_report\\_022807.pdf](http://www.ndrn.org/issues/an/rs/Colorado_public_investigation_report_022807.pdf).

## Surveys

- Surveys widely distributed to collect "stories"
- Spanish option
- Confidentiality
- Surveys revised
- Raised awareness
- Increased requests for help

**Seclusion and/or Restraint Information Form**  
Sponsored by Disability Rights Wisconsin (DRW)  
Wisconsin Family Assistance Center for Education, Training, Support (FACTS)  
and Wisconsin Family Trust (WFT)

Please call Sarah Meers at DRW if you need help completing this form: 800-921-8778. (Add more pages if needed.) Favor de llamar DRW si Ud. necesita ayuda llenando esta forma: 1-800-921-8778. Un intérprete de español está disponible.

**GENERAL INFORMATION**

Child's Name \_\_\_\_\_ Date of Birth \_\_\_\_\_

Child's disabilities, if any: \_\_\_\_\_

Child's Address: \_\_\_\_\_

Parent(s) Guardian(s) Name(s): \_\_\_\_\_

Relationship to Child: \_\_\_\_\_

Address (if different from Child): \_\_\_\_\_

Phone (Home) \_\_\_\_\_ (Cell) \_\_\_\_\_ (Alternate) \_\_\_\_\_

Email \_\_\_\_\_ I prefer to be reached by: Home Cell Alt Email Any/All

Do you have pictures of the seclusion/restraint situation?  Yes  No

**RELEASE OF INFORMATION**

Are you willing to release the pictures for use in this campaign?  Yes  No

Are you willing to speak out about your experience with seclusion/restraint?  Yes  No

**\*\*In your decision how we use the information you provide on this form, please check one option:**

I agree to allow all of this information to be used publicly.

I agree to allow only the following information to be used publicly:

\_\_\_\_\_

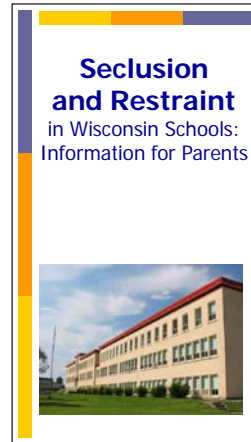
\_\_\_\_\_

No, I do not want any of the information I have provided to be released publicly; the information provided is to remain confidential.

The Wisconsin P&A has also developed an information *booklet* for families.<sup>36</sup>

## Awareness Brochure

- What do Seclusion & Restraint mean?
- Are there laws about S/R in WI schools?
- What do WDPI Guidelines state that school districts should do?
- WDPI Guidelines for Seclusion
- WDPI Guidelines for Restraint
- Who is affected by S/R practices?
- Resources for more information



The **Maine P&A** is currently developing a statewide parent information campaign to inform parents that they have the right to:

- 1) Refuse inclusion of restraint or seclusion in the IEP and/or
- 2) If restraint or seclusion is to be used on a child in school, to insist that it occur solely according to a written plan and included in the child's IEP.

<sup>36</sup> For a copy of the booklet, go to [dpi.wi.gov](http://dpi.wi.gov)

The **New Jersey P&A** trained parents in the proper treatment and potential maltreatment of students with disabilities in school at a special education parent-teacher association meeting. During that meeting, the P&A showed parents pictures of a seclusion room in their New Jersey school, which was the size of a closet. One of the parents was a reporter who then published a story about the seclusion room. As a result of these activities, the school stopped secluding students.

The **Pennsylvania P&A's** Children's Team staff presented "Restraints: A Parent and Professional Perspective" at multiple trainings and outreach events. This included a statewide Department of Public Welfare Alternatives to Coercive Techniques Initiative Kickoff, a teleconference training for the Office of Mental Retardation, a Pennsylvania Special Education Advisory Panel meeting, and the annual Pennsylvania Department of Education conference.

The **Indiana P&A** commissioned the University of Indiana's University Center for Excellence in Developmental Disabilities to prepare a literature review of time-out, restraint, and seclusion in Indiana schools. This report includes recommendations for best practices, a statewide commitment to positive behavioral support programs, and guidance and standards for implementation of their recommendations.<sup>37</sup>

## Education Advocacy

The Baltimore City Public School System recently banned the use of prone restraint in its programs for students with emotional disabilities, effective June 2, 2008. This measure was taken after the **Maryland P&A**, representing a 7 year old child who was repeatedly subjected to prone restraint, raised concerns about the inherent danger and potential deadliness of prone restraint. The Maryland P&A also convinced the Baltimore County Public Schools to issue a directive that positional support chairs may only be used for the supportive purpose intended by the manufacturer and not to restrain children. The school system agreed to train all staff and related service providers about the proper use of these chairs and to provide the P&A, upon request, with the names of all students placed in these chairs at a particular school where a child had been injured.

A 9 year old boy, who was diagnosed with Reactive Attachment Disorder and a learning disability, was regularly placed by the school in seclusion, during which time his behavior would escalate further due to a fear of small spaces and previous abuse. His IEP team ultimately placed him on homebound services. With the assistance of the **North Carolina P&A**, he was returned to school in an appropriate setting and with supportive services in his IEP and behavior plan. He has done well

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<sup>37</sup> For a copy of the publication, go to V. Pappas, J. Chair, and M. Norris [Time-Out, Seclusion, and Restraint in Indiana Schools Literature Review](http://www.in.gov/ipas/files/SR_Lit_Review_Final_AA.pdf), Indiana Institute on Disability and Community, Indiana University (March 2008) [http://www.in.gov/ipas/files/SR\\_Lit\\_Review\\_Final\\_AA.pdf](http://www.in.gov/ipas/files/SR_Lit_Review_Final_AA.pdf)

in his new classroom, and has been able to process through his behaviors with the classroom staff. He has not been placed in seclusion since the P&A became involved in his case.

In 2007 and 2008, the **Minnesota P&A** successfully represented 15-20 students and their families to stop abusive restraint or seclusion practices by obtaining the involvement of independent evaluators, conducting functional behavioral assessments, revising the student's IEP and behavior plan, and clearly defining when and why restraint and seclusion could be used. The P&A was also involved in state rulemaking and legislative efforts to reduce the use of inappropriate restraint and seclusion.

The **Pennsylvania P&A** provided advocacy support for a young boy with autism who had been restrained at school for hours per day in a positional support chair, unbeknownst to his parent. This case was assumed by private counsel and ultimately ended in a settlement agreement.

In addition to trying to resolve issues through negotiation, the **Ohio P&A** has represented students in due process hearings pursuant to IDEA. The P&A has brought in experts to assist schools in developing appropriate behavior plans and has attempted to get ongoing training for school staff. The most success has been achieved when the P&A has tracked the child through the whole process and provided continuous advocacy. The biggest indicator of success is making sure the plan includes alternatives to behavior, strategies for addressing skill deficits, and data collection with information provided regularly to parents so they can promptly address problematic behaviors before they get out of hand.

## **Investigations/Monitoring**

Congress gave P&As the authority to investigate incidents of abuse and neglect of individuals if incidents are reported to the P&A or if the P&A determines, based on its experience and training regarding similar incidents, that there is probable cause to believe an incident occurred.<sup>38</sup> P&As also have the authority to monitor facilities for compliance with health and safety issues. The United States Departments of Education and Health and Human Services have interpreted this authority to extend to P&A investigations of schools.<sup>39</sup> These investigations have resulted in states, territories, and local school districts implementing laws and policies to ban certain practices and to protect students.

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<sup>38</sup> 42 U.S.C. § 15043(a)(2)(B); 42 U.S.C. § 10805(a)(1)(A); 45 C.F.R. § 1386.19; 42 C.F.R. 51.2.

<sup>39</sup> State of Connecticut Office of Protection and Advocacy v. Hartford Bd. of Education, 355 F. Supp. 2d 649(D. Conn. 2005), *aff'd*, 464 F.3d 229 (2nd Cir. 2006)(DOE/HHS amicus brief)

## Tennessee P&A's Investigation Forces 12 Schools to Remove Seclusion Boxes

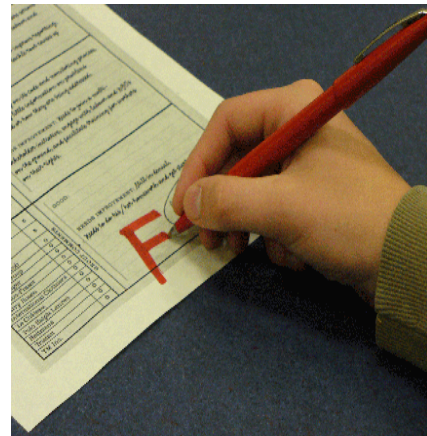
In March 2007, the **Tennessee P&A** received a report from a parent in a Sumner County elementary school that their child was being put in a 4' by 3 ½' plywood box (on right). The P&A investigated and got the Sumner County School District to remove boxes throughout the school district (12 schools total). Since then, the school district has followed the P&A's recommendations to create appropriate calming areas and has allowed the P&A to continue to monitor the schools.



Tennessee seclusion door

## California P&A Gives Schools a Failing Grade

To both reinforce compliance with existing laws and challenge schools and the education system to come into line with other settings, the **California P&A** conducted in-depth investigations into allegations of abusive restraint or seclusion practices involving seven students in six schools. These investigations revealed both the failure of school personnel to comply with existing regulations and the failure of current law to sufficiently regulate the use of these dangerous practices.



California schools receive a failing grade

As a result of the P&A's action, schools highlighted in the report reformed their restraint and seclusion practices, following the recommendations of the P&A. In one case, after the P&A involved the fire marshal, the school tore down the seclusion room. In other cases, the doors to the seclusion rooms were removed. In several cases, special education school personnel received training in behavioral intervention and district approved restraint techniques. The report can be downloaded from the organization's website: <http://www.disabilityrightsca.org/pubs/702301.htm> or <http://www.disabilityrightsca.org/pubs/702301.pdf>. This report formed the basis of legislation addressing restraint and seclusion of all students in California schools. The bill was vetoed by the Governor.

## Colorado P&A Stops Restraint or Seclusion of Students

The **Colorado P&A** conducted 13 investigations in response to complaints about abusive restraint or seclusion practices in schools. Ten of these investigations have resulted in formal reports with findings and recommendations.

Every investigation initiated by the Colorado P&A has been successful in ending the restraint or seclusion practices for the individual student or students, as well as ending such practices school or district-wide. The P&A still is engaged in follow-up and is monitoring activities to ensure ongoing compliance.

### **District of Columbia P&A Investigates Restraint-Related Injury**

The **District of Columbia P&A** is investigating an incident in which school staff broke the arm of a student who was placed in a private school. The P&A discovered that the private school does not have policies to guide staff on the use of seclusion or restraint. In addition, the seclusion and restraint did not occur as part of a larger comprehensive behavior plan focusing on positive behavioral supports and school staff did not provide interventions to de-escalate the student before using seclusion and restraint. Finally, the school did not consider or create a behavior plan after the incident to prevent recurrence of the behavior, which led to the seclusion and restraint.

The District of Columbia P&A is also monitoring the implementation of pilot programs in eight elementary and eight middle schools to improve the quality of instruction students receive. In the elementary schools, the School-wide Application Model (SAM) of inclusion is being implemented. In the middle schools, private providers have been contracted to bring more mental health and behavioral supports to students in the school.

### **North Carolina P&A Monitors Use of Seclusion Rooms**

The **North Carolina P&A** is monitoring the use of seclusion rooms and restraints in an effort to prevent their misuse and abuse as a form of punishment or for staff convenience as these practices can cause physical injury, emotional trauma, and even death. The P&A sent a survey to each school district in North Carolina to determine policies and practices regarding seclusion and restraint statewide. Based upon a review of the survey responses received, the P&A will pursue follow-up investigations in suspect school districts and determine their compliance with state statutes and State Fire Marshal Code.

Related to this initiative, the P&A also met with representatives of the National Association for the Advancement of Colored People (NAACP) regarding the seclusion in an old locker room bathroom of a student diagnosed with post-traumatic stress disorder. The P&A is providing technical assistance for NAACP in an effort to successfully resolve this individual case. The P&A also plans to work collaboratively with NAACP to promote awareness among parents about the legal use of seclusions and restraint in schools as a safety measure of last resort in situations involving imminent risk of physical harm to the student or others.

## **Ohio P&A Investigates Restraint and Seclusion in Schools**

During 2008, the **Ohio P&A** conducted two investigations involving the use of restraints in public schools serving children receiving special education services. In the first case, the P&A investigated an allegation of a student being placed in a Humane Body Wrap (mechanical restraint) and transported to a concrete block room in the lower level of the school building. The P&A's investigation confirmed that the room and mechanical restraints were used to control students with challenging behaviors. In addition, school staff did not have training on the use of the restraints nor had they received instruction on positive behavioral interventions. The local children services board also investigated and substantiated an allegation of neglect over the use of mechanical restraints at the school. The school has since discontinued the use of the room, discontinued the mechanical restraints and staff has been trained in the use of positive behavioral supports.

In the second case, the P&A investigated a complaint alleging the use of inappropriate behavioral interventions in a self-contained classroom. The P&A was able to determine that teachers documented the use of emergency behavioral interventions but the school could not produce written policies, or guidelines related to the use of emergency behavioral interventions (i.e., seclusion, time out, physical or mechanical restraints).

In both cases, the P&A requested that the Ohio Department of Education (ODE) take steps to address the lack of administrative rules, guidelines or standards for the use of restraint and seclusion in Ohio public schools. ODE responded that, with the recent appointment of a new Superintendent of Public Instruction, ODE would explore various avenues for providing guidance to schools and districts. The P&A is currently drafting comments to the new Superintendent outlining the need for behavior/discipline standards in Ohio's public schools.

## **Legislative Work**

As indicated earlier in this report, there is only a patchwork of state and local laws and regulations addressing restraint or seclusion. Many states and territories do not have any statewide laws, policies, or even guidelines to protect children from abusive restraint or seclusion practices. Because statewide restraint or seclusion protections are needed in conjunction with training of positive behavioral supports, many P&As have been working with their state legislatures and departments of education to establish such protections and programs.

The following P&As worked in coalition with other stake-holders to get protections and programs in place:

- The **Connecticut P&A** held a community hearing on the use of restraint or seclusion in school. The P&A successfully worked in conjunction with families, advocacy groups, and other stakeholders to pass new laws limiting the use of restraint or seclusion in schools.<sup>40</sup>
- One of the top five educating policymaker priorities of the **Florida P&A** is to change state laws regarding restraint and seclusion in schools. The P&A has been working very closely with the Florida Families against Restraint and Seclusion and the Florida Developmental Disabilities Council. At the request of a state Senator, the P&A submitted comments to improve the bill, H.B. 1139/S.B. 2028 to address the unmet safety and rights protection needs of children with disabilities in Florida schools. The P&A's comments were largely based on existing protections in Florida law for adults in licensed facilities and contracted programs and guidance on manual physical restraint written by the special education bureau staff at the Florida Department of Education in June 2008. The recommended language:
  1. Requires that manual physical restraint be employed only to protect the student or others from imminent and significant threat to physical safety of the student or others;
  2. Prohibits the most dangerous procedures (e.g. prone restraint) and mechanical restraint;
  3. Guarantees parental notification about school procedures and each and every time restraint is used on their child at school;
  4. Prohibits forced seclusion; and
  5. Outlines other needed changes such as in training and monitoring activities.
- The **Michigan P&A**, along with students, families, and advocates, successfully got the Michigan Department of Education to establish policies on the use of restraint or seclusion use in schools.<sup>41</sup>
- In conjunction with other advocates for students with disabilities, the **Pennsylvania P&A** organized a statewide coalition to strengthen student protections in state special education regulations regarding restraint or seclusion use. The revised state regulations became effective on July 1, 2008. Highlights include a ban on prone restraints; mandated reporting of restraint use to the Secretary of Education and to parents; a requirement to convene an IEP meeting subsequent to restraint use unless waived in writing by the parent; a continuing

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<sup>40</sup> The P&A has continued to do legislative work with respect to regulations implementing the new statute. For a copy of the law, go to: <http://www.cga.ct.gov/2007/ACT/PA/2007PA-00147-R00SB-00977-PA.htm>

<sup>41</sup> Supporting Student Behavior: Standards for the Emergency Use of Seclusion and Restraint, adopted by the Michigan State Board of Education (Dec. 12, 2006).

prohibition of aversive techniques; an emphasis on positive behavior in both individual student programs and school special education plans; a requirement that positive behavior support plans be based on a Functional Behavior Assessment; and a requirement to update the Functional Behavior Assessment and behavior plan for students with disabilities when those students are referred to law enforcement by school personnel.<sup>42</sup>

- The **Tennessee P&A** helped draft new legislation to establish protections regarding restraint or seclusion use in schools.
- The **Texas P&A** and other statewide advocates were successful in getting state laws passed to protect all children from abusive restraint or seclusion use, including school children.
- The Vermont Coalition of Disability Rights, for whom the **Vermont P&A** was legal counsel, succeeded in enacting legislation to protect children with respect to the use of "restrictive behavioral interventions," (the Safe Schools Act<sup>43</sup>). The disability coalition worked in conjunction with members of the Vermont Education Coalition -- a group made up chiefly of primary education administrators.

## Conclusion

The P&A network has undertaken the daunting task of protecting the rights, dignity, well being, and ultimately the lives of children with disabilities. However, until general discriminatory attitudes towards children with disabilities change, until states and territories, school systems and school employees are better trained and educated, and until the federal government faces its role in protecting these children, the battle will go on. That is why it is important for readers of this report to realize the importance of ending these deadly practices. Many lose sight of the fact that this could be happening to their children – for many students, school is a very dangerous place.

## BEST PRACTICES:

### Positive Behavioral Support Programs

IDEA recommends that students with behavioral challenges receive a system of positive behavioral interventions and supports. A report documenting the success of positive behavioral interventions and supports in the Alabama public schools defined it this way:

Positive behavioral interventions and supports is a research-based method for

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<sup>42</sup> The law can be found at [http://www.pabulletin.com/secure/data/vol38/38-26/38\\_26\\_p2.pdf](http://www.pabulletin.com/secure/data/vol38/38-26/38_26_p2.pdf). After opening the link, the relevant section can be found at 14.133.

<sup>43</sup> The Vermont law can be found at [www.leg.state.vt.us/DOCS/2000/ACTS/ACT113.HTM](http://www.leg.state.vt.us/DOCS/2000/ACTS/ACT113.HTM) . Sections 12, 15, and 18 are the most relevant sections.

improving student behavior and creating a safe and productive school climate. The practice of positive behavioral interventions and supports is:

- **Proactive:** All students are taught the critical social skills needed for success. Positive behavioral interventions and supports enable schools to set clear expectations for behavior, acknowledge and reward appropriate behavior, and implement a consistent continuum of consequences for problem behavior. Students with serious or chronic behavior problems receive behavior assessments to determine the causes of their behavior, and these assessments help staff develop individualized interventions and specialized behavior supports.
- **Comprehensive:** Positive behavioral interventions and supports is employed throughout the entire school, including the cafeteria, the buses, and the hallways. All school personnel are trained in positive behavioral interventions and supports and are continually supported in implementing it.
- **Data-driven:** Schools rely on data, tracked most easily in the form of office referrals, to both develop and modify their positive behavioral interventions and supports approach (e.g. “When/where do most office referrals occur? Which teachers are referring the most students? Which students are most often referred?”). Positive behavioral interventions and supports teams use this data to design specific interventions to head off problem behavior before it occurs and to confirm that those interventions were effective.<sup>44</sup>

The efficacy of positive behavioral interventions and supports has been well documented. The Anne Arundel County Public Schools in Maryland saved 644 days of instructional time and 848 days of administrative leave time by reducing office discipline referrals in the schools through implementing positive behavioral interventions and supports. The district also saw a “25% decrease in the number of students who were given more significant disciplinary sanctions such as extended suspensions and expulsions.”<sup>45</sup> In a similar study conducted by the Alabama Department of Education's positive behavioral interventions and supports initiative, they recognize that “the positive behavioral interventions and supports program has demonstrated that it can reduce unilateral removals, long-term suspensions, and office discipline referrals.”<sup>46</sup>

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<sup>44</sup> State Program Improvement Grants Program 84.323A, Alabama State Department of Education, Alabama State Improvement Grant Abstract (2004), at <http://www.alsig.org/newgrant.cfm> (last visited May 6, 2008). As quoted in *Effective Discipline for Student Success*, Southern Poverty Law Center, at [http://www.splcenter.org/images/dynamic/main/Effective\\_Discipline\\_ALA.pdf](http://www.splcenter.org/images/dynamic/main/Effective_Discipline_ALA.pdf).

<sup>45</sup> *Anne Arundel County School System Hosts First MSDE Regional POSITIVE BEHAVIORAL INTERVENTIONS AND SUPPORTS Training*, July 17, 2007. [http://www.aacps.org/html/press/postrelease/files/files458/POSITIVE BEHAVIORAL INTERVENTIONS AND SUPPORTSTraining07.pdf](http://www.aacps.org/html/press/postrelease/files/files458/POSITIVE_BEHAVIORAL_INTERVENTIONS_AND_SUPPORTSTraining07.pdf).

<sup>46</sup>Supra note 44

Finally, Indiana University's Ian Arthur summarized findings of positive behavioral interventions and supports below:

It should be noted that this approach has been shown to significantly reduce problem behaviors, disciplinary referrals, and suspensions (Lassen, Steele, & Sailor, 2006). Use of a positive behavioral interventions and supports framework has also been correlated with improved math and reading scores (Lassen, Steele, & Sailor, 2006; Luiselli, Putnam, handler, & Feinberg, 2005), and greater student perception of school safety (Metzler, Biglan, Rusby, & Sprague, 2001).<sup>47</sup>

The ability of positive behavioral interventions and supports to reduce disciplinary practices is particularly notable. Many postulate that schools fall back on restraint or seclusion when they do not know how to handle students with behavioral issues. However, there is evidence that positive behavioral interventions and supports can actually reduce the dangerous reliance on restraint or seclusion.

A 2006 article in the Journal of Disability Related Policy Studies reported the results of a study examining the effectiveness of an organizational and milieu intervention to reduce physical restraint in a multisite residential treatment center for children with significant behavioral needs. Results provide support for the effectiveness of these interventions for reducing the use of restraints. Overall, restraint rates were reduced by 59% using these interventions.<sup>48</sup> While the study was in a residential facility, the results can be assumed for other settings, such as schools.

Finally, a study conducted at the Centennial School of Lehigh University, an alternative day school for students with emotional and behavioral disorders, demonstrated that the use of positive behavioral interventions and supports can significantly reduce the use of restraint or seclusion in school for students with severe behavioral issues. Through the use of a system-wide implementation of positive behavioral interventions and supports, physical restraints were reduced from 1,000 to near zero over a four year period, and remained at that level to the time of the report in 2005. The use of seclusionary time-out was similarly reduced to near zero.<sup>49</sup>

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<sup>47</sup>Arthur, Ian, *Literature Review: Time-Out, Seclusion, and Restraint In Indiana Public Schools*, March 2008, p. 7. [http://www.in.gov/ipas/files/SR\\_Lit\\_Review\\_Final\\_AA.pdf](http://www.in.gov/ipas/files/SR_Lit_Review_Final_AA.pdf).

<sup>48</sup>Miller, Jeffery A., Daniel P. Hunt and Megan A. Georges, *Reduction of Physical Restraints in Residential Treatment Facilities*, Journal of Disability Related Policy Studies, Vol. 16, No. 4 (2006).

<sup>49</sup>Miller, D. N., George, M. P., & Fogt, J. B. (2005). *Establishing and sustaining research-based practices at Centennial School: A descriptive case study of systemic change*. *Psychology in the Schools*, 42 (5), 553-567.

## **PUBLIC POLICY RECOMMENDATIONS**

### **For the Obama Administration**

- 1) Propose and support the inclusion in any appropriate legislative vehicle, including, but not limited to, the Individuals with Disabilities Education Act (IDEA), No Child Left Behind (NCLB) and Substance Abuse and Mental Health Administration (SAMHSA) reauthorizations language to:
  - A) Ban the use of:
    - (i) Seclusion in schools.
    - (ii) Prone restraints, or any other restraint that can suffocate an individual, in schools.
    - (iii) All other types of restraint in schools except restraints as applied by trained individuals where the immediate physical safety of the student, staff, or others is clearly required.
  - B) Require the use of evidence based positive behavioral supports and other best practices.
- 2) Revise prior Department of Education guidance allowing the use of restraint or seclusion under federal education law to reflect best practices utilizing positive behavioral interventions and supports to reduce or eliminate the use of seclusion and restraints.
- 3) Require the Department of Education Office of Civil Rights to investigate abuse or neglect allegations and the use of restraint or seclusion by schools against children as possible violations of civil rights.
- 4) Direct the Secretary of Education and the Secretary of Health and Human Services to convene a national summit to devise plans to implement the bans on restraint and seclusion and to encourage the use of evidence based positive behavioral supports and other best practices.
- 5) Request increased federal funding for Protection and Advocacy programs to investigate allegations of abuse or neglect in schools.

## **For the Congress**

- 1) Enact legislation to :
  - B) ban the use of:
    - (i) Seclusion in schools.
    - (ii) Prone restraints, or any other restraint that can suffocate an individual, in schools.
    - (iii) All other types of restraint in schools except restraints as applied by trained individuals where the immediate physical safety of the student, staff, or others is clearly required.
  - C) Require the use of evidence based positive behavioral supports and other best practices.
  - D) Require prompt reporting of the use of restraint or seclusion on children to the parents/guardians, state boards of education, the local Protection and Advocacy system, and the United States Department of Education.
  - E) Require extensive training in the use of positive behavioral supports, crisis reduction and management, de-escalation techniques, and other best practices, in all teacher education programs, and as part of pre-service and in-service training for all teachers, para-professionals, and counselors.
  - F) Require extensive training in the use of positive behavioral supports, crisis reduction and management, de-escalation techniques, and other best practices for other individuals, including School Resource Officers, with contact with children in a school setting.
  - G) Strengthen background checks for school personnel and establish a national directory of individuals who have lost their licenses, been convicted of abuse or neglect in any setting, or been found to have committed abuse or neglect by the state agency investigating restraint or seclusion.
  - H) Require states to legislatively enact standards at least as strong as the federal requirements within two years.
  - I) Reaffirm legislatively and through implementing regulations existing P&A authority in schools to access schools, students, their records, and other individuals.
  - J) Increase funding for Protection and Advocacy programs to investigate abuse or neglect in schools.

- K) Establish a new P&A program in the Department of Education focused specifically on addressing the needs of children with disabilities in elementary and secondary schools.
- 2) Monitor the impact of these pieces of legislation through oversight hearings and other independent governmental entities.

### **For State Legislatures and Boards of Education**

- 1) Enact legislation and / or promulgate regulations to:
  - A) Ban the use of:
    - (i) Seclusion in schools.
    - (ii) Prone restraints, or any other restraint that can suffocate an individual, in schools.
    - (iii) All other types of restraint in schools except restraints as applied by trained individuals where the immediate physical safety of the student, staff, or others is clearly required.
  - B) Require the use of evidence based positive behavioral supports and other best practices.
  - C) Require prompt reporting of the use of restraint or seclusion on children to the parents/guardians, state boards of education, the local Protection and Advocacy system, and the United States Department of Education.
  - D) Require teacher, school administrator, counselor, and para-professional certification standards to require extensive education and training in the use of positive behavioral supports, crisis reduction and management, de-escalation techniques, and other best practices.
  - E) Require extensive training in the use of positive behavioral supports, crisis reduction and management, de-escalation techniques, and other best practices for other individuals, including School Resource Officers, with contact with children in a school setting.
  - F) Require background checks for school personnel and establish a statewide directory of individuals who have lost their licenses, been convicted of abuse or neglect in any setting, or been found to have committed abuse or neglect by the state agency investigating restraint or seclusion.

## **For Local School Districts**

- 1) Establish policies in their school district to:
  - A) Ban the use of:
    - (i) Seclusion in schools.
    - (ii) Prone restraints, or any other restraint that can suffocate an individual, in schools.
    - (iii) All other types of restraint in schools except restraints as applied by trained individuals where the immediate physical safety of the student, staff, or others is clearly required.
  - B) Require the use of evidence based positive behavioral supports and other best practices.
  - C) Implement reporting of the use of restraint or seclusion to parents/guardians, state boards of education, the local Protection and Advocacy system, and the United States Department of Education consistent with state and federal law.
  - D) Establish extensive training programs in the use of positive behavioral supports, crisis reduction and management, de-escalation techniques, and other best practices for all individuals, including School Resource Officers, with contact with children in a school setting.
  - E) Require background checks for school personnel and compare with databases for individuals who have lost their licenses, been convicted of abuse or neglect in any setting, or been found to have committed abuse or neglect by the state agency investigating restraint or seclusion.

## APPENDIX 1

### PROTECTIONS REGARDING SCHOOL RESTRAINT OR SECLUSION USE

NDRN tried to find and accurately describe the requirements concerning restraint and seclusion use in each jurisdiction and links to the law, policy or guideline in the endnotes to this chart by providing links to Westlaw and/or public websites. However, please check with your P&A to ensure that the chart accurately reflects current law in your state/territory. (See Appendix 3 for a link to each P&A's website).

Key: "R" means "restraint; "S" means "seclusion; "Reg" means "regulation" and "DOE" means "state department of education", "Guid" means "guidelines which are not law and which schools are not required to follow"

STATE, TERRITORY	STATEWIDE RESTRICTIONS ON RESTRAINT (R) OR SECLUSION (S)	RESTRAINT OR SECLUSION RESTRICTED TO ENSURE IMMEDIATE PHYSICAL SAFETY OF STUDENT OR OTHERS <sup>1</sup>	PRONE RESTRAINT BANNED	AUTOMATIC NOTICE AFTER RESTRAINT (R) OR SECLUSION (S)	SCHOOL STAFF TRAINING
AL	NONE	--	--	--	--
AK	NONE	--	--	--	--
AS	NONE	--	--	--	--
AZ	NONE	--	--	--	--
AR	Reg (S only) <sup>2</sup>	NO	NO	NO	YES
CA	NONE <sup>3</sup>	NO	NO <sup>4</sup>	NO <sup>5</sup>	NO
CO	Statute, Reg (R/S) <sup>6</sup>	YES	YES	Parent, DOE	Staff R/S – Restraint
CT	Statute, Guid (R/S) <sup>7</sup>	YES(R) NO (S)	YES	Parent	YES
DE	Reg (R/S for children with autism) <sup>8</sup>	NO	NO	NO	NO
DC	NONE	--	--	--	--
FL	Guid (R/S) <sup>9</sup>	YES	NO <sup>10</sup>	Parent	YES
GA	NONE	--	--	--	--

STATE, TERRITORY	STATEWIDE RESTRICTIONS ON RESTRAINT (R) OR SECLUSION (S)	RESTRAINT OR SECLUSION RESTRICTED TO ENSURE IMMEDIATE PHYSICAL SAFETY OF STUDENT OR OTHERS	PRONE RESTRAINT BANNED	AUTOMATIC NOTICE AFTER RESTRAINT (R) OR SECLUSION (S)	SCHOOL STAFF TRAINING
GUAM	NONE	--	--	--	--
HI	Statute (R), Guidance (S /R) <sup>11</sup>	NO	NO	Parent, DOE (R/S)	YES
IA	Reg (R/S) <sup>12</sup>	NO	YES	Parent	YES
ID	NONE	--	--	--	--
IL	Reg (R/S) <sup>13</sup>	YES	NO	Parent	YES
IN	NONE	--	--	--	--
KS	Guidelines (R/S) <sup>14</sup>	YES	NO	Parent (R/S) DOE (S only)	YES
KY	Guidelines (S) <sup>15</sup>	NO	NO	Parent (S only)	NO
LA	NONE	--	--	--	--
ME	Reg (R/S) <sup>16</sup>	YES (R) NO (S)	NO	Parent (R/S)	YES
MD	Reg (R/S) <sup>17</sup>	NO	NO	Parent (R only)	YES (R only)
MA	Statute & Reg <sup>18</sup> (R/S)	YES	NO	Parent, DOE	YES
MI	Policy: Standards (R/S) <sup>19</sup>	YES (S) NO (R)	YES	Parent, DOE (R/S)	YES
MN	Regs(R/S) <sup>20</sup>	YES	NO	Parent, DOE (R only)	YES
MS	NONE <sup>21</sup>	--	--	--	--
MO	NONE	--	--	--	--
MT	Statute, Regs (R/S) <sup>22</sup>	NO	NO	NO	NO
NE	NONE	--	--	--	--
NV	Statute (R/S) <sup>23</sup>	NO	NO	Parent	YES

STATE, TERRITORY	STATEWIDE RESTRICTIONS ON RESTRAINT (R) OR SECLUSION (S)	RESTRAINT OR SECLUSION RESTRICTED TO ENSURE IMMEDIATE PHYSICAL SAFETY OF STUDENT OR OTHERS	PRONE RESTRAINT BANNED	AUTOMATIC NOTICE AFTER RESTRAINT (R) OR SECLUSION (S)	SCHOOL STAFF TRAINING
NH	Guidelines (R only) <sup>24</sup>	YES	NO	Parent	YES
NJ	NONE <sup>25</sup>	--	--	--	--
NM	Guidelines (R) <sup>26</sup>	NO	NO <sup>27</sup>	Parent	YES
NY	Reg (R/S) <sup>28</sup>	NO	NO	Parent (R Only)	YES
NC	Statute (R/S) <sup>29</sup>	NO	NO	Parent (R/S)	YES
ND	Guidelines (R/S) <sup>30</sup>	YES (R only)	NO	NO	YES (R only)
Northern Mariana	NONE	--	--	--	--
OH	NONE <sup>31</sup>	NO	NO	NO	NO
OK	NONE	--	--	--	--
OR	Regs (R/S); Guideline (R) <sup>32</sup>	NO	NO	Parent (R&S)	YES
PA	Reg (R/S) <sup>33</sup>	YES	YES	Parent (R only)	YES
PR	Statute (R only)	NO	NO	NO	NO
RI	Reg (R/S) <sup>34</sup>	YES	NO <sup>35</sup>	Parent, DOE	YES
SC	NONE	--	--	--	--
SD	NONE	--	--	--	--
TN	Statute (R/S) <sup>36</sup>	NO	NO <sup>37</sup>	Parent	YES
TX	Reg (R/S) <sup>38</sup>	NO	NO	Parent, DOE (R only)	YES
UT	Statute (R only) <sup>39</sup> , Guid <sup>40</sup>	NO	NO	NO	NO
VT	Guidelines (R/S) <sup>41</sup>	NO	NO <sup>42</sup>	Parent (R/S)	YES

STATE, TERRITORY	STATEWIDE RESTRICTIONS ON RESTRAINT (R) OR SECLUSION (S)	RESTRAINT OR SECLUSION RESTRICTED TO ENSURE IMMEDIATE PHYSICAL SAFETY OF STUDENT OR OTHERS	PRONE RESTRAINT BANNED	AUTOMATIC NOTICE AFTER RESTRAINT (R) OR SECLUSION (S)	SCHOOL STAFF TRAINING
VI	NONE	--	--	--	--
VA	Guidelines (R/S) <sup>43</sup>	NO <sup>44</sup>	NO	Parent	YES
WA	Reg (R/S) <sup>45</sup>	YES (R) NO(S)	NO <sup>46</sup>	NO	NO
WV	NONE	--	--	--	--
WI	Guidelines (R/S) <sup>47</sup>	YES	NO	NO	YES
WY	NONE	--	--	--	--

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<sup>1</sup> “Yes” means that restraint or seclusion can only be imposed to ensure immediate physical safety of student or others. “No” means that restraint or seclusion are permitted for other purposes, e.g. property damage, maintaining order in the classroom, etc.

<sup>2</sup> **Arkansas** - Ark. Dept. of Ed Special Education and Related Services Reg. 20.00 *et seq.* Time-Out Seclusion Room  
[http://arksped.k12.ar.us/rules\\_regs\\_08/1.%20SPED%20PROCEDURAL%20REQUIREMENTS%20AND%20PROGRAM%20STANDARDS/20.00%20USE%20OF%20THE%20TIME-OUT%20SECLUSION%20ROOM.pdf](http://arksped.k12.ar.us/rules_regs_08/1.%20SPED%20PROCEDURAL%20REQUIREMENTS%20AND%20PROGRAM%20STANDARDS/20.00%20USE%20OF%20THE%20TIME-OUT%20SECLUSION%20ROOM.pdf)

<sup>3</sup> **California** - [CAL. EDU. CODE § 56520-56525](http://law.justia.com/california/codes/edc/56520-56525.html)  
<http://law.justia.com/california/codes/edc/56520-56525.html>;  
[5 Cal. Code of Regs § 3001](#)  
[5 Cal. Code of Regs § 3062](#)

NDRN has interpreted California as not having statewide laws restricting restraint or seclusion in schools because California does not use or define the terms “restraint” or “seclusion.” Instead, California uses the term “emergency interventions,” which are undefined, and permits their use only to “control unpredictable, spontaneous behavior which poses clear and present danger of serious physical harm to the individual or others and which cannot be immediately prevented by a response less restrictive than the temporary application of a technique used to contain behavior.” 5 Cal. Code § 3052(i). “Emergency interventions” do not include “locked seclusion,” “employment of a device or material or objects which simultaneously immobilize all four extremities” or “an amount of force that exceeds that which is reasonable and necessary under the circumstances.” 5 Cal.Code § 3052(i)(4).

<sup>4</sup> California allows the use of “prone containment” as an emergency intervention if staff are trained in such procedures. 5 Cal. Code. R. § 3052(i)(4)(B).

<sup>5</sup> NDRN has indicated that California does not require parental notice because parental notice is only required when emergency interventions are used to control “unpredictable, spontaneous behavior.” Therefore, if a child’s behavior is predictable in certain circumstances, no notice would currently be required under California law.

<sup>6</sup> **Colorado** - [C.R.S.A. § 26-20-101 et seq. Protection of Persons from Restraint](http://www2.michie.com/colorado/lpext.dll/Infobase4/44f9e/46a31?f=templates&fn=document-frame.htm&2.0)  
<http://www2.michie.com/colorado/lpext.dll/Infobase4/44f9e/46a31?f=templates&fn=document-frame.htm&2.0>

1 Colo. Code Regs. 301-45  
<http://www.cde.state.co.us/spedlaw/download/RestraintRules.pdf>

Guidelines for the Use of Non-Exclusionary and Exclusionary Time Out with youth 3-21 years old receiving public education services  
(<http://www.cde.state.co.us/spedlaw/download/TimeOutGuidelines.pdf>)

<sup>7</sup> **Connecticut** - [C.G.S.A. § 46a-150 et seq.](http://law.justia.com/connecticut/codes/title46a/chap814e.html)  
<http://law.justia.com/connecticut/codes/title46a/chap814e.html>.

<sup>8</sup> **Delaware** - [Code Del. Regs. 14 929](http://regulations.delaware.gov/AdminCode/title14/900/929.shtml#TopOfPage)  
<http://regulations.delaware.gov/AdminCode/title14/900/929.shtml#TopOfPage>

<sup>9</sup> **Florida** - Florida Department of Education, Use of Time Out in Special Education Programs: Guidelines for Time Out Procedures (Dec. 1992) <http://www.fldoe.org/ese/pdf/y1993-3.pdf>

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Florida Department of Education, Guidelines for the Use of Manual Physical Restraint in Special Education Programs (June 3, 2008)

<http://info.fldoe.org/docushare/dsweb/Get/Document-5016/k12-2008-67.pdf>

Division of State Fire Marshall Fire Safety Standards in Schools ((Nov. 26, 2006)

<https://www.flrules.org/gateway/ruleNo.asp?id=69A-58.0084>

<sup>10</sup> Florida Technical Assistance Paper: Guidelines for the Use of Manual Physical Restraint in Special Education Programs (June 3, 2008) “do not recommend that prone restraint be banned. Instead, the guidelines, which is not law and which school districts are not required to follow, simply make a reference to the Child Welfare League of America which identifies practices that should be prohibited, including “pressure or weight on the chest, lungs, sternum, diaphragm, back, or abdomen, causing chest compression” and “straddling or sitting on any part of the body, or any maneuver that places pressure, weight, or leverage on the neck or throat, on any artery, or on the back of the child’s head or neck, or that otherwise obstructs or restricts the circulation of blood or obstructs an airway.” p. 6

<sup>11</sup> **Hawaii** - [HRS § 703-309 Use of force by persons with special responsibility for care, discipline, or safety of others.](http://www.capitol.hawaii.gov/hrscurrent/Vol14_Ch0701-0853/HRS0703/HRS_0703-0309.HTM) [http://www.capitol.hawaii.gov/hrscurrent/Vol14\\_Ch0701-0853/HRS0703/HRS\\_0703-0309.HTM](http://www.capitol.hawaii.gov/hrscurrent/Vol14_Ch0701-0853/HRS0703/HRS_0703-0309.HTM)

[HRS 302A-1141 Punishment of Pupils Limited \(reasonable force statute\)](http://www.capitol.hawaii.gov/hrscurrent/Vol05_Ch0261-0319/HRS0302A/HRS_0302A-1141.HTM)

[http://www.capitol.hawaii.gov/hrscurrent/Vol05\\_Ch0261-0319/HRS0302A/HRS\\_0302A-1141.HTM](http://www.capitol.hawaii.gov/hrscurrent/Vol05_Ch0261-0319/HRS0302A/HRS_0302A-1141.HTM)

Hawaii Board of Education, Use of Force Policy (4/18/02)

<http://lilinode.k12.hi.us/STATE/BOE/POL1.NSF/0/7a48a8de86c79e030a256ba300643251?OpenDocument>

<sup>12</sup> **Iowa** - [IOWA ADMIN.CODE § § 281.103.1-103.7](http://www.legis.state.ia.us/aspx/ACODOCS/DOCS/281.103.pdf)

<http://www.legis.state.ia.us/aspx/ACODOCS/DOCS/281.103.pdf>

<sup>13</sup> **Illinois** - [Ill. Adm. Code, tit. 23, § 1.285](http://www.isbe.net/rules/archive/pdfs/onemark.pdf)

<http://www.isbe.net/rules/archive/pdfs/onemark.pdf>

<sup>14</sup> **Kansas** - Kansas State Department of Education, Seclusion and Restraint Guidelines; Guidance Document on Kansas Seclusion and Restraint Guidelines, and Special Education Seclusion Reporting 2008-09 <http://www.ksde.org/Default.aspx?tabid=3119>

<sup>15</sup> **Kentucky** - Kentucky Department of Education, Effective Use of Time Out

<http://www.ndrn.org/TASC/issues/an/rs/KY-%20Time%20Out%20Procedures.mht>

<sup>16</sup> **Maine** - [REGULATIONS GOVERNING TIMEOUT ROOMS, THERAPEUTIC RESTRAINTS AND AVERSIVES IN PUBLIC SCHOOLS AND APPROVED PRIVATE SCHOOLS \(April 27, 2002\)](http://www.maine.gov/sos/cec/rules/05/071/071c033.doc)

<http://www.maine.gov/sos/cec/rules/05/071/071c033.doc>

<sup>17</sup> **Maryland** - [Maryland Regulations: Student Behavior Interventions COMAR § 13A.08.04.04 et seq.](http://www.dsd.state.md.us/comar/13a/13a.08.04.05.htm)

<http://www.dsd.state.md.us/comar/13a/13a.08.04.05.htm>

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- <sup>18</sup> **Massachusetts** - [Mass.Gen. Laws ch 71, § 37G](#); 603 CMR 46.00  
<http://www.doe.mass.edu/lawsregs/603cmr46.html?section=all> (Note that the use of seclusion restraint is prohibited. 603 CMR 46.02(5).)
- <sup>19</sup> **Michigan** - Michigan State Board of Education, Supporting Student Behavior: Standards for the Emergency Use of Seclusion and Restraint (Dec. 12, 2006)  
[http://www.michigan.gov/documents/mde/Seclusion\\_and\\_Restraint\\_Standards\\_180715\\_7.pdf](http://www.michigan.gov/documents/mde/Seclusion_and_Restraint_Standards_180715_7.pdf)
- <sup>20</sup> **Minnesota** - [Minnesota Statutes: Minnesota Education Code § 121A. Student Rights, Responsibilities, and Behavior.](#)  
<http://cfl.state.mn.us/mdeprod/groups/Compliance/documents/Manual/002438.pdf>)
- <sup>21</sup> **Mississippi** - Mississippi does not have express restrictions regarding the use of restraint and seclusion in schools. The Mississippi Department of Education does have a School Safety Manual (rev. 2005), <http://www.mde.k12.ms.us/lead/osos/SchoolSafetyManual2005.pdf>.
- <sup>22</sup> **Montana** - [MONT. CODE ANN. 20-4-302](#); [Mont.Admin.R. 10.16.3346](#)  
<http://www.opi.mt.gov/pdf/arm/16chapter.pdf>
- <sup>23</sup> **Nevada** - [NEV.REV.STAT. § 388.521-5315](#) <http://www.leg.state.nv.us/NRS/NRS-388.html#NRS388Sec521> (Seclusion is prohibited. NRS §§ 388.5215 and 388.5265.)
- <sup>24</sup> **New Hampshire** - Guidance on Considering the Use of Physical Restraints in New Hampshire Schools Settings (Spring 2005) <http://www.lhanh.org/docs/nhdoePhysicalRestraintDocument%5B1%5D.pdf>
- <sup>25</sup> **New Jersey** - Pending legislation in the state legislature: “Matthew’s Law Limiting the Use of Restraints”. See, [http://www.tash.org/IRR/PBS/pbs\\_whitepaper.html](http://www.tash.org/IRR/PBS/pbs_whitepaper.html).
- <sup>26</sup> **New Mexico** - Letter from Dr. Veronica C. Garcia, USE OF PHYSICAL RESTRAINT AS A BEHAVIORAL INTERVENTION FOR STUDENTS WITH DISABILITIES (March 14, 2006)  
<http://www.ped.state.nm.us/seo/guide/Restraint.Policy.pdf#search=%22physical%20restraint%20policy%22>
- <sup>27</sup> Although the New Mexico guidelines do not ban prone restraint, they do state that “No form of physical restraint may be used that restricts a student from speaking or breathing.” *Id.* at p.4.
- <sup>28</sup> **New York - Final Regulations Relating to Behavioral Interventions including Aversive Interventions** - Effective January 31, 2007 (Summary:  
<http://www.vesid.nysed.gov/specialed/behavioral/januarysummary.htm>)  
[8 NY ADC §§ 19.5, 200.1 \(III\) and \(mmm\)](#) and [200.22.](#)
- <sup>29</sup> **North Carolina** - [N.C.G.S.A. § 115C-391.1](#)  
<http://www.ncleg.net/Sessions/2005/Bills/House/HTML/H1032v6.html>
- <sup>30</sup> **North Dakota** - Guidelines : Resources for Working with Children, Youth, and Young Adults with Emotional Disturbances in North Dakota, [http://www.dpi.state.nd.us/speced/guide/ED\\_doc3\\_7\\_07\\_1.pdf](http://www.dpi.state.nd.us/speced/guide/ED_doc3_7_07_1.pdf).
- <sup>31</sup> **Ohio** - Ohio has a corporal punishment statute that allows teachers, principals and administrators of schools, nonlicensed school employees and school bus drivers to use and apply such amount of force and restraint as is reasonable and necessary to quell a disturbance threatening physical injury to others,

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to obtain possession of weapons or other dangerous objects, and for the purpose of self-defense and protection of property. [OHIO ADMIN CODE § 3319.41](#). However, there are no regulations protecting students from abusive uses of restraint and seclusion.

<sup>32</sup> **Oregon** - [OAR 581-021-0061](#), [OAR 581-021-0062](#) Use of Physical Restraint and Seclusion

Oregon Department of Education, Program Operation Guideline: Physical Restraint (Feb 21, 2002)  
[http://www.ode.state.or.us/gradelevel/pre\\_k/eiecse/pdfs/physicalrestraint.pdf](http://www.ode.state.or.us/gradelevel/pre_k/eiecse/pdfs/physicalrestraint.pdf)

<sup>33</sup> **Pennsylvania** - [22 Pa. Adm. Code § 14.133](#)  
<http://www.pacode.com/secure/data/022/chapter14/s14.133.html> The administrative code prohibits “Locked rooms, locked boxes or other structures or spaces from which the student cannot readily exit.”

<sup>34</sup> **Rhode Island** - Rhode Island Board of Regents For Elementary and Secondary Education, Physical Restraint Regulations (Sept. 1, 2002) [R.I. Code R. 08 010 013](#)  
[http://www.rules.state.ri.us/rules/released/pdf/DESE/DESE\\_3826.pdf](http://www.rules.state.ri.us/rules/released/pdf/DESE/DESE_3826.pdf) (The use of seclusion restraint is prohibited in public education programs. *Id.* at § 3.20(b).

<sup>35</sup> Although the Rhode Island guidance does not ban prone restraint, it does require that restraint “be administered in such a way so as to prevent or minimize physical harm *Id.* at 7.3.

<sup>36</sup> **Tennessee** - [Special Education Isolation and Restraint Modernization and Positive Behavioral Supports Act](#) [Effective January 1, 2009] [TENN. CODE ANN. 49-10-1301 to1306](#)

<http://michie.lexisnexis.com/tennessee/lpext.dll?f=templates&fn=main-h.htm&cp=>

<sup>37</sup> Although prone restraint is not explicitly prohibited, the statute does prohibit “any form of life threatening restraint, including restraint that restricts the flow of air into a person’s lungs, whether by chest compression or any other means, to a student receiving special education services. TENN CODE ANN § 49-10-1305(d).

<sup>38</sup> **Texas** - [19 TX ADC § 89.1053](#), TEXAS ADMINISTRATIVE CODE TITLE 19. EDUCATION PART 2. TEXAS EDUCATION AGENCY CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING SPECIAL EDUCATION SERVICES DIVISION 2. CLARIFICATION OF PROVISIONS IN FEDERAL REGULATIONS AND STATE LAW

<http://www.tea.state.tx.us/rules/commissioner/adopted/0302/89-1049a-two.pdf>

<sup>39</sup> **Utah** - Use of Reasonable and Necessary Physical Restraint or Force, [UTAH ADMIN. CODE § 53a-11-805](#) (<http://le.utah.gov/~code/TITLE53A/htm/53A0C038.htm>)

<sup>40</sup> “Guid” that says: Utah State Office of Education, LEAST RESTRICTIVE BEHAVIORAL INTERVENTIONS – GUIDELINES (August 2008)  
[http://www.updc.org/abc/lrbi\\_resources/LRBI\\_Guidelines\\_8\\_08.pdf](http://www.updc.org/abc/lrbi_resources/LRBI_Guidelines_8_08.pdf)

<sup>41</sup> **Vermont** - Model Policy on Restrictive Behavioral Interventions

[http://www.state.vt.us/educ/new/pdfdoc/resources/model\\_restrictive\\_behavior.pdf](http://www.state.vt.us/educ/new/pdfdoc/resources/model_restrictive_behavior.pdf)

<sup>42</sup> Although the guidelines do not explicitly prohibit prone restraint, they state that “No physical restraint may be administered in such a way that the student is prevented from breathing or communicating or that cause the student unnecessary pain.” *Id.* at 5.5.

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<sup>43</sup> **Virginia** - Guidelines for the Development of Policies and Procedures for Managing Student Behaviors in Emergency Situations in Virginia Schools (Nov. 2005)  
<http://www.doe.virginia.gov/VDOE/sess/EmergBehaviorGd.pdf>

<sup>44</sup> The Virginia guidelines state that physical restraint and seclusion should only be used in “emergency situations,” but do not define that term.

<sup>45</sup> **Washington** - Washington Regulations, Washington State Education Regulations regarding Aversives,  
[WASH. ADMIN. CODE § 392-172A-03120 through -03130](http://www.wa.gov/WAC/default.aspx?cite=392-172)  
<http://apps.leg.wa.gov/WAC/default.aspx?cite=392-172>

Rules for the Provision of Special Education to Special Education Students (July 30, 2007)  
[http://www.k12.wa.us/SpecialEd/pubdocs/wac/WAC\\_392-172a.doc](http://www.k12.wa.us/SpecialEd/pubdocs/wac/WAC_392-172a.doc)

<sup>46</sup> Although the Washington regulations do not explicitly ban prone restraint, they state that “the restraint shall not interfere with the student’s breathing.” WASH. ADMIN. CODE § 392-172A-0130(3)©

<sup>47</sup> **Wisconsin** - Wisconsin Department of Public Instruction, WDPI Directives for the Appropriate Use of Seclusion and Physical Restraint in Special Education Programs (Sept 2005)  
<http://dpi.wi.gov/sped/doc/secrestrgd.doc>

## APPENDIX 2: Glossary

**ADA** -- The Americans with Disabilities Act was enacted into law in 1990 and is a broad-based law focused on the protection of the civil rights of individuals with disabilities. It is similar to the civil rights laws which protect people based on race, sex, national origin, or religion.

**BIP** – A Behavioral Intervention Plan is to be developed for a child based on a Functional Behavioral Assessment (FBA).

**CMS** – The Centers for Medicare and Medicaid Services is part of HHS and responsible for the administration of the Medicaid program and ensuring that entities (hospitals, institutions, individual providers, community settings, group homes, schools, etc.) which receive Medicaid funding comply with federal civil rights laws, such as Section 504.

<http://www.cms.hhs.gov/>

**DOE** – The United States Department of Education oversees the provision of special education services. <http://www.ed.gov>

**Due Process** – The due process provisions of IDEA are designed to provide the child/family with the legal right to appeal any decision regarding any portion of the special education process, i.e. evaluation, eligibility, the IEP, progress, concerns related to the child's safety and well being.

**FAPE** – Each child with a disability (age three through 21) is entitled to a Free, Appropriate, Public Education.

**FBA** -- The 2004 IDEA reauthorization included the requirement of a Functional Behavioral Assessment prior to the development of a Behavioral Intervention Plan (BIP) for students with disabilities who have behavioral challenges that impede functioning in the educational environment. An FBA is an evaluation using several methods to determine the causal and maintaining factors for a behavior that lead to the development of intervention strategies to meet the individualized and unique needs of the student.

**IDEA** – The Individuals with Disabilities Education Act (IDEA) was amended in 2004 by the Individuals with Disabilities Education Improvement Act (IDEIA). The law was first passed in 1975 and went into effect in 1978 as the Education of the Handicapped Act (EHA).

**IEP** - Individualized Education Program- an education plan designed to meet the specific needs of a child with a disability or disabilities. The plan is developed by a team that includes the family, the child if possible, and school personnel.

**HHS** – The United States Department of Health and Human Services oversees the implementation of the P&A programs which focus on the rights of individuals with developmental disabilities, mental illness, and traumatic brain injury. It also oversees the provision of the majority of federally funded health programs <http://www.hhs.gov/>

**LEA** – Local Educational Agency -- local school district.

**LRE** - Each child with a disability is entitled to be educated in the Least Restrictive Environment. This is a concept which is prevalent in disability law beyond education, i.e. a person is entitled to live in the least restrictive environment in the community.

**NDRN** – The National Disability Rights Network is the nonprofit membership organization for the federally mandated Protection and Advocacy (P&A) Systems and Client Assistance Programs (CAP) for individuals with disabilities. Through training and technical assistance, legal support, and legislative advocacy, NDRN strives to create a society in which people with disabilities are afforded equality of opportunity and are able to fully participate by exercising choice and self- determination. [www.ndrn.org](http://www.ndrn.org)

**OSEP** – The Office of Special Education Programs is directly responsible for the oversight of the implementation of special education laws. <http://www.ed.gov/about/offices/list/osers/osep/programs.html>

**OSERS** – The Office of Special Education and Rehabilitative Services is the headquarters in the United States Department of Education that is responsible for disability and special education services. <http://www.ed.gov/about/offices/list/osers/index.html>

**P&A/CAP Network** – The federally mandated Protection and Advocacy (P&A) programs and Client Assistance Program (CAP). Collectively, the P&A/CAP network is the largest provider of legally based advocacy services to people with disabilities in the United States. <http://www.ndrn.org/>

**Positive Behavioral Interventions and Supports** – Positive Behavioral Interventions and Supports are also called positive behavior supports (PBS) and is an approach to changing behavior that encourages positive behaviors rather than just punishing negative behaviors. Positive behaviors and supports are most effective when implemented school-wide, but may be used to support positive behavior in individual students.

**Positional Support Chair** – Positional support chairs are designed to offer additional support to children and adolescents when seated at home or in a classroom environment. They are intended to be therapeutic and not disciplinary.

## Prone Restraint is-

A physical restraint in which an adult holds a child's face on the floor while pressing down on the child's back. Sudden fatal cardiac arrhythmia or respiratory arrest due to a combination of factors causing decreased oxygen delivery at a time of increased oxygen demand can occur through prone restraint.<sup>1</sup>

**Protection and Advocacy System** -- There is a P&A program in every state and territory. There also is a P&A program in the District of Columbia and one in the Four Corners area of the American Southwest, which addresses the needs of Native Americans with disabilities. P&A programs provide services to people with all types of disabilities – intellectual, mental, sensory, physical, as well as focusing on the voting rights of people with disabilities and their access to assistive technology.  
<http://www.ndrn.org/>

## Restraint is--

(A) Any manual method, physical or mechanical device, material, or equipment that immobilizes or reduces the ability of [an individual]<sup>2</sup> to move his or her arms, legs, body, or head freely; or

(B) A drug or medication when it is used as a restriction to manage the [individual's] behavior or restrict the [individual's] freedom of movement and is not a standard treatment or dosage for the [individual's] condition.

(C) A restraint does not include devices, such as orthopedically prescribed devices, surgical dressings or bandages, protective helmets, or other methods that involve the physical holding of [an individual] for the purpose of conducting routine physical examinations or tests, or to protect the [individual] from falling out of bed, or to permit the [individual] to participate in activities without the risk of physical harm (this does not include a physical escort).<sup>3</sup>

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<sup>1</sup> The Lethal Hazard of Prone Restraint: Positional Asphyxiation, published by Protection and Advocacy, Inc. (2002) at p. 3.  
<http://www.pai-ca.org/pubs/701801.pdf>

<sup>2</sup> The CMS conditions of participation use the term "patient." For the purposes of this report, the more generic term "individual" has been substituted for "patient."

<sup>3</sup> 42 C.F.R. § 482.13(e)(1)(i). Note that CMS does not define the term "physical escort," but it is defined in the Children's Health Act as "the temporary touching or holding of the hand, wrist, arm, shoulder or back for the purpose of inducing a resident who is acting out to walk to a safe location." 42 U.S.C. § 290ii(d)(2) and 290jj(d)(2). Under the Children's Health Act, physical escorts are not considered to be a type of physical restraint. *Id.* The examples in this report do not include physical escorts, but much more extreme ways of forcing children into seclusion rooms, e.g. dragging, carrying, pushing, etc.

**SAMHSA** – The Substance Abuse and Mental Health Services Administration is part of HHS and is responsible for the administration of federal mental health and substance abuse programs, including the P&A program for individuals with mental illness. SAMHSA has responsibility for the oversight (along with CMS) of Residential Treatment Centers (RTC), hospitals and other settings which provide supports and services to children and adults with mental illness. <http://www.samhsa.gov/>

**Seclusion** is –

The involuntary confinement of [an individual] alone in a room or area from which the [individual] is physically prevented from leaving. Seclusion may only be used for the management of violent or self-destructive behavior.<sup>4</sup>

**Section 504** – This is the section of the Rehabilitation Act which established the basis for later disability civil rights protections. Section 504 states that "no qualified individual with a disability in the United States shall be excluded from, denied the benefits of, or be subjected to discrimination under" any program or activity that either receives Federal financial assistance or is conducted by any Executive agency or the United States Postal Service.

**SEA** – State Educational Agency.

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<sup>4</sup> 42 C.F.R. § 482.13(e)(1)(ii). Note that the Children’s Health Act of 2000 defines “seclusion” as “any behavior control technique involving locked isolation,” 42 U.S.C. 290ii(d)(2) and 290jj(d)(4), but CMS has recognized that individuals can be forcibly confined in a room or area without the room being locked. In this report, we will use the term seclusion to mean both locked and unlocked rooms or areas where an individual is forcibly confined. The terms “seclusion” and “time-out” have erroneously been used to mean the same thing. While seclusion is the forcible confinement to a room or area from which the person is physically prevented from leaving, “time-out” is a “behavior management technique that is part of an approved treatment program and may involve the separation of the individual from the group, in a non-locked setting, for the purpose of calming.” 42 U.S.C. § 290ii(d)(4) and 290jj(d)(5).

### Appendix 3: Contact Information for Protection and Advocacy Agencies

For information about reporting abuse and neglect, or to get more information about this report, contact [www.ndrn.org](http://www.ndrn.org), or the P&As:

Alabama

<http://www.adap.net>

Alaska

[www.dlcak.org](http://www.dlcak.org)

American Samoa

E-mail: [pt\\_tauanuu@yahoo.com](mailto:pt_tauanuu@yahoo.com)

Arizona

[www.azdisabilitylaw.org](http://www.azdisabilitylaw.org)

Arkansas

[www.arkdisabilityrights.org](http://www.arkdisabilityrights.org)

California

[www.disabilityrightsca.org](http://www.disabilityrightsca.org)

Colorado

[www.thelegalcenter.org](http://www.thelegalcenter.org)

Connecticut

[www.state.ct.us/opapd/](http://www.state.ct.us/opapd/)

Delaware

[www.declasi.org](http://www.declasi.org)

District of Columbia

[www.uls-dc.org](http://www.uls-dc.org)

Florida

[www.advocacycenter.org](http://www.advocacycenter.org)

Georgia

[www.thegao.org](http://www.thegao.org)

Guam

E-mail: [pna@guamlegalservices.com](mailto:pna@guamlegalservices.com)

Hawaii

[www.hawaiiidisabilityrights.org](http://www.hawaiiidisabilityrights.org)

Idaho

<http://users.moscow.com/co-ad>

Illinois

[www.equipforequality.org](http://www.equipforequality.org)

Indiana

[www.IN.gov/ipas](http://www.IN.gov/ipas)

Iowa

[www.ipna.net](http://www.ipna.net)

Kansas

[www.drckansas.org](http://www.drckansas.org)

Kentucky

[www.kypa.net](http://www.kypa.net)

Louisiana

[www.advocacyla.org](http://www.advocacyla.org)

Maine

[www.drcme.org](http://www.drcme.org)

Maryland

[www.mdclaw.org](http://www.mdclaw.org)

Massachusetts

[www.dlc-ma.org](http://www.dlc-ma.org)

Michigan

[www.mpas.org](http://www.mpas.org)

Minnesota

[www.mndlc.org](http://www.mndlc.org)

Mississippi

[www.mspas.com-ms](http://www.mspas.com-ms)

Missouri

[www.moadvocacy.org](http://www.moadvocacy.org)

Montana  
[www.disabilityrightsmt.org](http://www.disabilityrightsmt.org)

Native American  
[www.nativedisabilitylaw.org](http://www.nativedisabilitylaw.org)

Nebraska  
[www.nebraskaadvocacyservices.org](http://www.nebraskaadvocacyservices.org)

Nevada  
[www.ndalc.org](http://www.ndalc.org)

New Hampshire  
[www.drcnh.org](http://www.drcnh.org)

New Jersey  
[www.njpanda.org](http://www.njpanda.org)

New Mexico  
[www.nmpanda.org](http://www.nmpanda.org)

New York  
[www.cgcapd.state.ny.us](http://www.cgcapd.state.ny.us)

North Carolina  
[www.disabilityrightsncc.org](http://www.disabilityrightsncc.org)

North Dakota  
[www.ndpanda.org](http://www.ndpanda.org)

Northern Mariana Islands  
[www.NMPASI.com](http://www.NMPASI.com)

Ohio  
[www.state.oh.us/olrs/](http://www.state.oh.us/olrs/)

Oklahoma  
[www.oklahomadisabilitylaw.org](http://www.oklahomadisabilitylaw.org)

Oregon  
[www.disabilityrightsoregon.org](http://www.disabilityrightsoregon.org)

Pennsylvania  
[www.drnpa.org](http://www.drnpa.org)

Puerto Rico  
<http://www.oppi.gobierno.pr>

Rhode Island  
[www.ridlc.org](http://www.ridlc.org)

South Carolina  
[www.protectionandadvocacy-sc.org](http://www.protectionandadvocacy-sc.org)

South Dakota  
[www.sdadvocacy.com](http://www.sdadvocacy.com)

Tennessee  
[www.DLACTN.org](http://www.DLACTN.org)

Texas  
[www.advocacyinc.org](http://www.advocacyinc.org)

Utah  
[www.disabilitylawcenter.org](http://www.disabilitylawcenter.org)

Vermont  
[www.vtpa.org](http://www.vtpa.org)

Virgin Islands  
<http://drcvi.org>

Virginia  
[www.vopa.state.va.us](http://www.vopa.state.va.us)

Washington  
[www.disabilityrightswa.org](http://www.disabilityrightswa.org)

West Virginia  
[www.wvadvocates.org](http://www.wvadvocates.org)

Wisconsin  
[www.disabilityrightswi.org](http://www.disabilityrightswi.org)

Wyoming  
[www.wypanda.com](http://www.wypanda.com)





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