

VIRGINIA COALITION FOR STUDENTS WITH DISABILITIES
COMMENTS TO THE VIRGINIA COMMISSION ON YOUTH:
RESTRAINT & SECLUSION (January 2015)

Restraint and Isolated Seclusion are dangerous practices that injure, traumatize, and even kill children in school. The Virginia Coalition for Students with Disabilities (VCSWD) asks the Commission on Youth to adopt Draft Recommendation B1, legislation requiring the Board of Education to promulgate regulations on the use of seclusion and restraint in Virginia's public schools consistent with the U.S. Department of Education's 15 Principles on Seclusion & Restraint and Virginia's 2009 DOE Guidelines, as stated in the September 16, 2014 Legislative Study Draft Recommendations. We are unable to support Recommendation 3 because it includes no standards. It does not limit restraint and seclusion to emergencies threatening physical danger; it does not require 24 hour parental notice. Indeed, it contains absolutely no criteria limiting the use of restraint and seclusion. It would enable schools to adopt the Virginia School Board Association (VSBA) policy or even less. It is an overly-permissive policy with many exceptions that allow unrestricted use of restraint and seclusion. Moreover, under the VSBA policy, parents are only required to be notified if their child is injured, and schools may take up to 15 days to inform parents. This is not safe. It is not enough for school divisions to simply have a policy on restraint and seclusion. Rather, the policies need to implement the 15 principles.

By enacting legislation in accord with Option 1 and the 2009 Guidelines and the U.S. Department of Education's 15 Principles, Virginia can shift schools toward preventing problematic behavior through evidence-based positive behavioral interventions and supports, and keep students and staff safe. In many cases, the use of positive supports and interventions greatly diminishes and even eliminates the need to use restraint and seclusion. The VCSWD urges you to do so. The principles articulated in the U.S. Department of Education's 15 Principles are also echoed in the two Congressional Keeping All Students Safe bills, S. 2036 and H.R. 1893 (www.congress.gov).

**I. RESTRAINT AND SECLUSION ARE DANGEROUS
AND SHOULD ONLY BE USED IN EMERGENCIES THREATENING PHYSICAL DANGER**

Restraint and seclusion threaten the safety of Virginia school children. In Southeastern Virginia, a 10 year old child with disabilities was secluded several times in a locked dimly-lit cinderblock seclusion room. On the final occurrence, his hand and foot bones were broken when multiple staff forced him into the locked room, according to media reports.¹ A 7 year old in Central Virginia was locked in storage closet again and again, begging his parents not to send him to

¹ J. Shapiro, "National Data Confirms Cases of Restraint and Seclusion in Public Schools," *National Public Radio*, June 19, 2014, <http://is.gd/nprSRJun14>; H. Vogell, "Violent and Legal: The Shocking Ways School Kids are Being Pinned Down, Isolated Against Their Will," *ProPublica.Org*, June 19, 2014, <http://is.gd/propubSRJune2014>

school. His parents were never informed.² Prince William County schools were recently found to have repeatedly restrained and secluded children under "one-size-fits-all" behavior management policies that took them away from the learning environment and denied them a free appropriate public education. Parental notification was inconsistent and inadequate, compounding the problem.³

A 14 year old Texas boy was killed in prone restraint. After his teacher delayed his lunch, he tried to get food. The 230 pound teacher put him in a prone restraint, suffocating him. Although he said that he could not breathe, he was told that if he could talk, he could breathe. He died in restraint. The teacher later moved to a Northern Virginia school district, where she was teaching until the Government Accountability Office conducted its national investigation and notified the district.⁴

A 2009 Government Accountability Office (GAO) report found that 20 students died in restraint in school. Among the reports the GAO collected were a young child who died after she was held face down by staff; kindergarten children who were duct-taped to chairs and who suffered broken arms and bloody noses; a 4 year old who was bruised and suffered traumatic stress disorder after she was restrained in a miniature electric chair by straps. Most of the reports involved children with disabilities.⁵ Other children have died and been injured in seclusion confinement, including a Georgia teen who committed suicide while school staff sat outside the door of his isolation room.⁶ The Council for Exceptional Children's Council for Children with Behavioral Disorders has described the "wide variety of injuries and deaths [that] have occurred while students are in seclusion environments including suicide, electrocution, and self injury due to cutting, pounding, and head banging" and the "widespread" use of restraint in educational and other environments.⁷

Nationally, over 110,000 students were subjected to these dangerous practices in 2011-12, according to the U.S. Department of Education's Office of Civil Rights.⁸ Many Virginia districts reported zero incidents to OCR, which can indicate that no data was collected.⁹ For example,

² "Father Claims School Leaders Locked Son In Closet Nine Times," *CBS6 (WTVR)*, Mar. 28, 2014, <http://is.gd/cbs6seclu>

³ D. St. George, "Prince William Schools Restrain, Seclude Disabled Kids Frequently, Inquiry Finds," *Washington Post*, Aug. 6, 2014, <http://is.gd/PrinWmSecluRestWP>

⁴ "Examining the Abusive and Deadly Use of Seclusion and Restraint in Schools," *Hearings before the House Comm. on Education and Labor*, 111th Congress, 2009, p. 42-52, <http://is.gd/HouseRepExamining> .

⁵ United States Government Accountability Office, *Seclusions And Restraints, Selected Cases Of Death And Abuse At Public And Private Schools And Treatment Centers*, 2009, p. 5-8, <http://is.gd/GAOSR09> .

⁶ A. Judd, "Death Highlights Lack of Regulation at Psycho-Educational Schools," *Atlanta J. Constitution*, July 27, 2009.

⁷ Council for Children with Behavioral Disorders, "Position Summary on the Use of Physical Restraint Procedures in School Settings," *34 Behavioral Disorders*, 223, 224 (2009); Council for Children with Behavioral Disorders, "Position Summary on the Use of Seclusion in School Settings," *34 Behavioral Disorders* 235, 236 (2009).

⁸ U.S. Department of Education Office for Civil Rights, *Civil Rights Data Collection: Data Snapshot (School Discipline)*, March 21, 2014, p. 9-10, <http://www2.ed.gov/about/offices/list/ocr/docs/crdc-discipline-snapshot.pdf>

⁹ J. Shapiro, NPR, June 19, 2014.

Prince William reported zero incidents, although the investigation of its practices above demonstrated that the practices were used. The Office of Civil Rights instructed Prince William to accurately report its data.¹⁰ Among the Virginia Districts reporting zero were Henrico, Chesterfield County, Richmond City and County, Norfolk, Hampton City, Virginia Beach, Alexandria, Fairfax, and Prince William.¹¹ No data is separately collected by the Commonwealth, unlike in other states.

In the national U.S. Department of Education's collection, over 70,000 students were subjected to physical restraint; over 37,000, to isolated confinement; and over 4,000 students with disabilities, to mechanical restraint. Students with disabilities comprised 12 percent of all students but 75 percent of those physically restrained and 58 percent of those secluded. African-American children comprised 19 percent of students with disabilities, but 36 percent of those mechanically restrained.¹²

II. THE COMMISSION SHOULD RECOMMEND LEGISLATION REQUIRING REGULATIONS BASED ON THE U.S. DEPARTMENT OF EDUCATION'S 15 PRINCIPLES AND THE RESOURCE DOCUMENT OF WHICH THEY ARE A PART

In 2012, after studying the issues, the U.S. Department of Education issued *Restraint and Seclusion: Resource Document*. It articulates 15 principles to protect students and staff from harm. VCSWD urges the Commission to recommend adoption of these principles in legislation (Commission on Youth Recommendation B1).

We have grouped together related principles below to concisely explain their importance.

[1] Every effort should be made to prevent the need for the use of restraint and for the use of seclusion. [9] Behavioral strategies to address dangerous behavior that results in the use of restraint or seclusion should address the underlying cause or purpose of the dangerous behavior. [10] Teachers and other personnel should be trained regularly on the appropriate use of effective alternatives to physical restraint and seclusion, such as positive behavioral interventions and supports and, only for cases involving imminent danger of serious physical harm, on the safe use of physical restraint and seclusion.

Virginia should adopt legislation implementing these principles. Similar principles are part of the nonbinding 2009 *Virginia Guidelines for Managing Student Behaviors In Emergency Situations*.¹³ But the VSBA policy has excluded these important principles, focusing not on preventing restraint and seclusion, but on permitting them. Option B3. (no standards) should be rejected because it could ultimately lead to school districts adopting the VSBA policy.

¹⁰ https://www.justice4all.org/wp-content/uploads/2014/08/PWCPS_OCR_Letter.pdf

¹¹ U.S. Dept. of Education, Civil Rights Data Collection, <http://ocrdata.ed.gov/>

¹² U.S. Dept. of Educ., Data Snapshot, above.

¹³ See *Virginia Guidelines for Managing Student Behaviors in Emergency Situations*, 2009.

Restraint and seclusion are dangerous. In addition to deaths, children suffered broken limbs, bloody noses, bruises, and post-traumatic stress syndrome because of restraint and seclusion.¹⁴ Restraint and seclusion disrupt learning and the school environment. They place school staff at risk of harm.¹⁵ It is for this reason that restraint and seclusion (if used at all) should be limited to emergencies threatening serious physical harm. Instead, too often, they are used for behaviors that don't threaten anyone with physical danger. This is dangerous, harmful, and wrong.

Unlike harmful restraint/seclusion, less restrictive measures that do not impose harm can resolve challenging behaviors and virtually eliminate the need for dangerous and dehumanizing restraint and seclusion. Virginia has long promoted the view that positive behavioral intervention plans with evidence-based behavioral accommodations, supports, and interventions create a positive learning environment which improves both academic and social outcomes for students.¹⁶

Indeed, research shows that behaviors that could result in restraint are "quite predictable," and can be avoided when staff perform functional behavioral assessments, identify triggers and use such well-supported practices as conflict management, de-escalation, and evidence-based positive behavioral accommodations and supports. These reduce problematic and disruptive behaviors, increase academic achievement scores, and improve school climate and morale – all at significant savings in financial costs as well as the psychological wear-and tear on all involved."¹⁷ The majority of states with meaningful restraint and seclusion protections require that less-restrictive measures be used or deemed ineffective before using dangerous restraint/seclusion.¹⁸

¹⁴ GAO Report p. 1, 8, 10-12; J. Butler, *How Safe Is the Schoolhouse? An Analysis of State Seclusion and Restraint Laws and Policies*, published by Autism National Committee, Jan. 2014, sources cited at pp. 12-13, 17-18 <http://www.autcom.org/pdf/HowSafeSchoolhouse.pdf>.

¹⁵ H.R. REP. NO. 111-417, PREVENTING HARMFUL RESTRAINT AND SECLUSION IN SCHOOLS ACT 11, 14, 2009

¹⁶ See these VDOE resources:

http://www.doe.virginia.gov/instruction/response_intervention/training/institute/2012/lamm_nickel_yanek/pbis_with_families_and_community.pdf (defining school-wide positive behavioral supports as "A framework for establishing the social culture and behavioral supports needed for a school to be an effective learning environment (academic and behavior) for all students.");

http://www.doe.virginia.gov/instruction/response_intervention/training/cohort/2011/nov/positive_behavior_support.pdf (defining positive behavioral supports as "PBS is the application of evidence-based strategies and systems to assist schools to decrease problem behavior, increase academic performance, increase safety and establish positive school cultures.) Addressing problem behavior is a team effort. *Functional Behavioral Assessment, Behavioral Intervention Plans, And Positive Intervention And Supports: An Essential Part Of Effective Schoolwide Discipline In Virginia* p. 3-4 (VDOE 2005-06).

¹⁷ "Beyond Seclusion and Restraint: Creating Positive Learning Environments for All Students," *Hearings Before The Senate Comm. On Health, Education, Labor, And Pensions*, 112th Congress, 2012 (testimony of Daniel Crimmins, Ph.D., Director, Center for Leadership in Disability, Georgia State University) <http://www.help.senate.gov/imo/media/doc/Crimmins.pdf>

¹⁸ J. Butler, *How Safe Is the Schoolhouse? An Analysis of State Seclusion and Restraint Laws and Policies*, Jan. 2014.

For example, for over 20 years, the Montgomery Public Schools in Virginia have not needed to use restraint/seclusion except in very rare emergencies. School personnel use “easily accessible, evidence-based” positive interventions. These have reduced crisis-level behaviors by 78 percent and targeted problem behaviors by 81 percent. In 2012, 86 percent of the district's students with individual positive behavioral support plans made "very significant" behavioral advances. "Aside from the typical scrapes that occur between children in any public school setting, students with PBS plans injured no adults or children." ¹⁹

The Virginia Treatment Center for Children implemented a positive behavioral support program. In 2004, it began work to eliminate use of seclusion using a Collaborative Problem Solving model. By implementing the model, in 2009, the center became seclusion and restraint free. Its workman compensation claims dropped dramatically from \$530,000 to \$15,000.²⁰ If a hospital program can have such success, so can a school.

The Centennial School in Pennsylvania, which serves children in 35 school districts with behavior-related needs, has cut the use of restraint from well over 1,000 occurrences per year to less than ten through the use of positive supports. The seclusion rooms were turned into a school store and supply closet. Suspension, police involvement, and emergency hospitalization levels were high prior when restraint and seclusion were frequently used. But in 2012 with its new program, the school employed 29 percent fewer personnel, no longer needing extra staff to manage restraint and seclusion, and reduced suspension by 88 percent; truancy, by 50 percent. ²¹

In some schools, restraint and seclusion are repeatedly used, indicating that they are not used as a last resort to prevent physical danger, but as a default technique. For example, the Southeastern Cooperative Educational Programs in Virginia reported 1,301 incidents of physical restraint for 239 students and 2,427 incidents of seclusion for 312 students. There are only 612 students in the program, so half or more were subjected to these techniques.²² A survey of families and individuals nationally reported that in many instances where restraint and seclusion were used, the students did not have individually-developed positive behavioral intervention plans to proactively address their behavior.²³

¹⁹ “Beyond Seclusion and Restraint,” *U.S. Senate Hearings 2012* (testimony of Cyndi Pitonyak, Coordinator Positive Behavior Interventions and Supports, Montgomery County Public Schools) <http://www.help.senate.gov/imo/media/doc/Pitonyak1.pdf>

²⁰ Statement of Dr. Aradhana Bela Sood, Senior Professor, Child Mental Health Policy Professor, Psychiatry and Pediatrics, VCUHS, *Statement for Commission on Youth Seclusion and Restraints in Schools*, 2014.

²¹ “Beyond Seclusion and Restraint,” *U.S. Senate Hearings (2012)* (testimony of Michael George, Director, Centennial School of Lehigh University) <http://www.help.senate.gov/imo/media/doc/George.pdf>

²² See U.S. Dept. of Educ., Civil Rights Data Collection, <http://ocrdata.ed.gov/> it is impossible to ascertain whether the same children subjected to restraint were subjected to seclusion, hence the conclusion half or more were subjected to the techniques.

²³ D. Westling, B. Trader, C. Smith, D. Marshall, “Use of Restraints, Seclusion, & Aversive Procs. on Students with Disabilities,” *Research & Practice for Persons with Severe Disabilities*, 2010.

The evidence indicates that restraint and seclusion do not effectively calm or teach students. They have the complete opposite effect instead, causing anxiety and fear, and reducing the ability to learn.²⁴

Training for school staff is also vital. A number of the deaths and injuries described in the GAO report involved poorly trained or untrained staff.²⁵ But training alone is insufficient, according to a pilot study of a public K-12 day school for students with disabilities. Training in crisis intervention techniques and conflict de-escalation cut seclusion use by more than one-third (39.4 percent) and physical restraint use by 17.6 percent. But even after being trained to use seclusion as a last resort, staff used isolated seclusion more frequently than less restrictive measures, such as time out in the classroom. And while staff were trained to use seclusion/restraint for physical aggression, they continued to frequently use them for nonviolent behaviors, such as leaving an assigned area (33% of seclusion incidents, 19%, restraint) and noncompliance (32% seclusion, 48% restraint). By contrast, seclusion and restraint were used for physical aggression less than 4 percent of the time even after this training.²⁶

Some have questioned requirements that restraint only be performed by trained staff. The need for training is to ensure that both staff and student are protected. There is evidence in other states that untrained staff have forced children into danger. In Ohio, untrained school employees used life-threatening prone restraint--which was banned by Executive Order years ago—and seclusion rooms to punish students for being noncompliant or disrespectful, according to a 2012 Ohio Legal Rights Service investigation.²⁷ In Massachusetts, an untrained teacher allegedly strapped a preschooler into a therapy chair for being rambunctious, and then secluded alone in a closed, darkened closet as he cried --until another teacher (who had training) rescued him.²⁸ Disability Rights California documented several children who were wrongfully restrained and secluded by untrained staff, including a 6 year old dragged down a hall by his wrists by an untrained aide.²⁹

All staff should receive appropriate training. Nonetheless, in the event of a rare and clearly unavoidable emergency when trained school personnel trained are not immediately available due to the unforeseeable nature of the emergency, untrained staff could intervene and use physical restraint. This type of language, in both Congressional bills, would enable school staff to restrain students in a fight where other students are at risk of significant injury, even if they are untrained. It is also important for all staff to know the limits of the law and school policy, to

²⁴ W. K. Mohr & J.A. Anderson, "Faulty Assumptions Associated With the Use of Restraints With Children," 14 *Journal of Child and Adolescent Psychiatric Nursing* 141, 141-51, July-Sept. 2001.

²⁵ See *H.R. Rep. No. 111-41*, p. 18.

²⁶ Ryan, J.B., Peterson, R.L., Tetreault, G. & Van der Hagen, E., "Reducing Seclusion Timeout And Restraint Procedures With At-Risk Youth," *Journal of At-Risk Issues*, 2007, 13(1), p.7-12.

²⁷ M. Bloom and J.S. Richards, "Probe: Kids Wrongly Put in Seclusion," *State Impact Ohio & Columbus Dispatch*, Sept. 28. 2012.

²⁸ J. Vaznis, "Restraining Of Students Questioned, Some Wonder Whether Schools Cross The Line," *Boston Globe*, May 4, 2009.

²⁹ Disability Rights California, *Restraint & Seclusion in Calif. Schools: A Failing Grade*, June 2007.

know how restraint can kill and injure, and to be trained in first aid and identifying medical distress. Some states use a two-level model, in which all staff receive basic training and then others receive more intensive training.

[12] Parents should be informed of the policies on restraint and seclusion at their child’s school or other educational setting, as well as applicable Federal, State, or local laws. [13] Parents should be notified as soon as possible following each instance in which restraint or seclusion is used with their child. The U.S. Department of Education’s Principles Document further recommends notification within 24 hours.

Because this parental notification is so vital, we address it up here. Prompt parental notification--either same day or within 24 hours--is essential. This enables parents to watch for concussions, hidden injuries, and psychiatric trauma, and to seek appropriate medical care. Notification also enables parents to work with staff to prevent further incidents and to ensure appropriate positive behavioral supports and de-escalation methods are in place, as they can share information about the child at home and school. A Powhatan, Virginia seven year old was repeatedly secluded and his parents were never told. “We never knew about it. We never knew why, until one night, my son begged us not to go back to school,” said his father.³⁰ The majority of states by statute, regulation, or policies support notification within 1 calendar day or less, showing broad support for this kind of concept. By law or regulation, 20 states require parents of all children be informed of restraint and seclusion; 32, children with disabilities.³¹ The VSBA policy of allowing 15 days is a dangerous one, and inconsistent with the U.S. Department of Education document and the majority of states with policies. Parents should also be informed every year of their school’s policies and procedures, as well as applicable state and federal law. This increases parental awareness, enables parents to be informed partners, and helps parents and schools work together as one community.

[2] Schools should never use mechanical restraints to restrict a child’s freedom of movement, and schools should never use a drug or medication to control behavior or restrict freedom of movement (except as authorized by a licensed physician or other qualified health professional.)

Mechanical restraints include duct tape, straps, bungee cords, and ropes used to tie children to furniture or to tie body parts together; chairs and furniture that children are locked into; devices that restrain arms, legs, torsos and other body parts; weighted materials; and similar mechanisms. They are hazardous, as the GAO and numerous organizations have found. Special therapy chairs intended to help children with certain physical disabilities sit have been misused as restraints because children can effectively be locked in with belts and trays. Children have been left in mechanical restraints for long periods of time or placed in locked seclusion rooms, exacerbating the danger. A nonverbal second grader with autism in Alabama was restrained in a chair alone in a bathroom because she was screaming. She flipped the chair over on herself

³⁰ *Father Claims School Leaders Locked Son In Closet Nine Times*, CBS6, Mar. 28, 2014, <http://is.gd/cbs6seclu>

³¹ J. Butler, *How Safe Is the Schoolhouse? An Analysis of State Seclusion and Restraint Laws and Policies*, p. 38-39.

and was hanging by the restraints. She also urinated on herself. A child with Down syndrome in Indiana came home with her feet duct-taped so tightly together that she could hardly walk.³² The dangers of chemical restraint have been known since they were documented by the Hartford Courant in 1998. The vast majority of states that have taken action since the GAO report and first Congressional hearings and bill have banned mechanical and chemical restraints.³³ Virtually all laws restricting mechanical restraint include exceptions for devices used for therapeutic or safety purposes for which they were designed, such as devices that improve mobility, as do the Congressional bills. The issue is with mechanical restraints that don't serve such purposes.

[3] Physical restraint or seclusion should not be used except in situations where the child's behavior poses imminent danger of serious physical harm to self or others and other interventions are ineffective and should be discontinued as soon as imminent danger of serious physical harm to self or others has dissipated.

Given the serious dangers posed by restraint and seclusion described above, they should only be used in emergencies threatening serious physical harm. This principle is explained in the U.S. Department of Education document, and echoed in the 2009 Virginia nonbinding guidance. Almost all of the states that have adopted a restraint/seclusion statute or regulation since 2009 (the GAO report and introduction of the first Congressional bill) have limited restraint and seclusion to situations threatening physical danger--if they have not banned seclusion entirely.³⁴ One of the largest insurance reinsurers (underwriters) in America, Munich Reinsurance, has specifically recommended that restraint and seclusion be used only in emergencies threatening physical danger.³⁵ Indeed, seclusion--confinement alone in a room, cell, or space one cannot exit--is so dangerous that it should be banned entirely.

But the VSBA policy would allow the use of restraint and seclusion to quell a disturbance and to direct a child's movements to prevent disruption (e.g. disruptive behavior, such as tantrums or getting out of one's seat), destruction of property, to escort a child, or as authorized by a child's IEP, Section 504 plan, or behavioral intervention plan. This is highly inappropriate. As research demonstrates, schools should use positive behavioral support programs and techniques for these nondangerous behaviors. Children should not be subjected to dangerous and harsh restraint and seclusion for behavior that may be a manifestation of their disability and that harms no one, even if it seems disruptive (for example, tantrums, being unable to sit still, talking too much, not standing in line or jumping up and down, hand flapping, not being able to listen to and follow instructions, etc.) Experts agree that the practices should not be used for

³² Alabama Disabilities Advoc. Program, *Seclusion and Restraint in Alabama Schools*, June 2009; Jill Disis and Bill McCleery, *Advocates: Laws Needed to Protect Special-Needs Students After Girl's Feet Duct-Taped*, Indianapolis Star, Feb. 6, 2013.

³³ J. Butler, *How Safe Is the Schoolhouse?* p. 49-50.

³⁴ J. Butler, *How Safe Is the Schoolhouse?* p.49-50.

³⁵ <http://www.munichreamerica.com/mram/en/publications-expertise/research-spotlight/schools/index.html>

property destruction either, unless it threatens physical danger.³⁶ The Prince William investigation found that the district used restraint and seclusion as a “one-size fits all” response to disruptive behavior despite evidence they didn’t work. The child who provided the complaint had substantial mental health issues. Rather than provide the needed services, the staff responded to minor infractions, like refusing to follow directions, with full physical restraint.³⁷

The VSBA policy would allow restraint and seclusion to be used for any reason at all as long as in the child’s IEP, 504 plan, or other educational planning document. This endangers Virginia’s students for two reasons. First, it could subject students to restraint and seclusion for any reason at all simply because the practices are included in the child’s IEP. Restraint and seclusion should only be responses to physical danger, as even the American Association of School Administrators has admitted.³⁸ Second, restraint and seclusion are not educational techniques and are not appropriate for an IEP. Cyndi Pitonyak of Montgomery County, Virginia public schools testified to Congress, “Restraint and seclusion may be necessary tools in the immediate urgency of an emergency situation when the alternative is serious injury, but restraint and seclusion are not teaching tools. They do not prevent crisis behavior and they do not teach positive alternatives.”³⁹ Indeed, “The vast majority of professionals agree that these techniques are not effective means of changing student behavior and are of no therapeutic or educational use. In fact, seclusion and restraint can escalate a child’s arousal, deepen negative behavior patterns, and undermine the child’s trust and capacity for learning.”⁴⁰

There are some who have argued that parents should be able to consent to the use of restraint and seclusion. This is never appropriate. The child is the one who suffers the resulting injury, psychological trauma, and in some cases, death. The child’s right to be safe and uninjured must be protected. Moreover, parents often report that they did not understand what they consented to, and that they did not expect the school to use these techniques to the extent they did.

³⁶ Instead, these practices may only be used when the threat of property destruction is violent and could result in substantial physical harm to an individual (for example, someone throwing heavy objects when others are nearby, endangering them). Reece L. Peterson (Professor, University Of Nebraska), *Developing School Policies & Procedures For Physical Restraint And Seclusion In Nebraska Schools, A Technical Assistance Document*, Nebraska Dept. of Educ. 2010, p.20; http://www.education.ne.gov/documents/Restraint-Seclusion_final_guidance_document_6-22-10.pdf . Dr. Peterson is a nationally-known expert on restraint and seclusion, who has been asked to testify before Congress on these issues.

³⁷ H. Vogell, “Cracking Down on the Use of Restraints in Schools,” *ProPublica*, Aug. 11, 2014, <http://is.gd/2Vapropub> .

³⁸ J. Shapiro, *National Data Confirms Cases of Restraint and Seclusion in Public Schools*, National Public Radio, June 19, 2014, <http://is.gd/nprSRJun14> ; H. Vogell, *Violent and Legal: The Shocking Ways School Kids are Being Pinned Down, Isolated Against Their Will*, ProPublica.Org, June 19, 2014, <http://is.gd/propubSRJune2014>

³⁹ Beyond Seclusion and Restraint, *U.S. Senate Hearings* (2012) (testimony of Cyndi Pitonyak, Coordinator Positive Behavior Interventions and Supports, Montgomery County, Virginia Public Schools) <http://www.help.senate.gov/imo/media/doc/Pitonyak1.pdf>

⁴⁰ Beyond Seclusion and Restraint, *U.S. Senate Hearings* (2012) (testimony of Daniel Crimmins, Ph.D., Director, Center for Leadership in Disability, Georgia State University) <http://www.help.senate.gov/imo/media/doc/Crimmins.pdf>.

Restraint and seclusion should end when the emergency ends, as the U.S. Department of Education principle states. The VSBA policy would allow seclusion to continue until the behavior leading to restraint/seclusion ends or for a “reasonable period of time” or for the time period in the child’s IEP. Without the threat of an emergency, there is no need to use these dangerous practices. Instead, children have allegedly been ordered to sit totally still for several minutes, show a happy face, stand in a corner, or do other tasks to end restraint and seclusion.⁴¹ Children with autism, intellectual disabilities, and other disabilities may threaten no one but be unable to follow the commands or do these tasks under pressure or when upset. Such requirements have no relation to safety.

[4] Policies restricting the use of restraint and seclusion should apply to all children, not just children with disabilities.

All children deserve to be protected from restraint and seclusion, regardless of whether they have a disability. While the greatest impact has been upon children with disabilities, the U.S. Department of Education data indicates that 25 percent of students restrained and 42 percent of those secluded do not have disabilities.⁴² The vast majority of states adopting laws or regulations since the 2009 GAO report and Congressional hearings apply their laws to all children.⁴³

[5] Any behavioral intervention must be consistent with the child’s rights to be treated with dignity and to be free from abuse. [6] Restraint or seclusion should never be used as punishment or discipline (e.g., placing in seclusion for out-of-seat behavior), as a means of coercion or retaliation, or as a convenience.

Every child should be respected and be free of abuse. As the American Association on Intellectual and Developmental Disabilities (AAIDD) has explained, “Eliminating inhumane aversive procedures is a reflection of a growing concern for reducing actions by professionals and others that compromise the lives of persons with an intellectual or developmental disability and their families. Positive behavior support not only should reduce problem behaviors that pose functional barriers to successful life, but also enhance those behaviors that lead to self-determination, independence, productivity, and lifelong learning.”⁴⁴ Moreover, dangerous and restrictive restraint and seclusion are not appropriate for punishment, discipline, staff convenience, or the like. Restraint has been used for failing to do schoolwork, being unable to pay attention due to disability issues, pushing items off desks, throwing a tantrum while doing a

⁴¹ Stephen Davis and Bryan Polcyn, *Mom Says School Put Her Autistic Son “In a Box,”* FOX6Now (Milwaukee), May 15, 2012; Robert Tomsho, *When Discipline Starts a Fight*, WALL ST. J., July 9, 2007; UNSAFE IN THE SCHOOLHOUSE, Appendix.

⁴² U.S. Department of Education Office for Civil Rights, *Civil Rights Data Collection: Data Snapshot (School Discipline)*, March 21, 2014, p.9-10.

⁴³ J. Butler, *How Safe Is the Schoolhouse? An Analysis of State Seclusion and Restraint Laws and Policies* 49-50 (Autism National Committee, 2014).

⁴⁴ AAIDD *Position Statement*, July 12, 2012, http://www.aamr.org/content_169.cfm?navID=55;

puzzle, taking off shoes, staff convenience, punishment, and the like.⁴⁵

[7] Restraint or seclusion should never be used in a manner that restricts a child’s breathing or harms the child.

Prone restraint and other restraints that impede breathing or are otherwise life threatening are inherently dangerous and should be forbidden. The Government Accountability Office (GAO) documented the deaths of 20 students from restraint, four of whom said that they could not breathe. One young Texas teenager with a disability died when his teacher put him in prone restraint. A trauma survivor who had been deprived of food, he tried to leave to get food after she had delayed his meal. The teacher put him in prone restraint and he died from suffocation. She later went on to teach in Northern Virginia, until the GAO contacted the county prior to the House hearings.⁴⁶ A child in prone restraint is pinned in a prone, face-down position. Prone restraint causes suffocation. It compresses the child’s ribs so the chest cavity cannot expand, and pushes the abdominal organs up so they restrict the diaphragm and reduce the room for lung expansion.⁴⁷ Increasingly, states that adopt laws are including provisions banning restraints that impair breathing and prone restraint in the public schools. A number of states also forbid restraints or seclusion that are medically or psychologically contraindicated for a child, such as trauma survivors; children with syndromes that make them prone to injury, etc.⁴⁸ Children with a variety of disabilities often have health conditions that put them at greater risk of injury. Finally, if Virginia permits seclusion, seclusion rooms must comply with the state fire and building codes. Fire codes prohibit rooms people cannot exit because of the inherent danger in using them. Rooms should also be safe, and adequately heated, cooled, ventilated, and lit. Children should have access to the bathroom and to food and water.

[8] The use of restraint or seclusion, particularly when there is repeated use for an individual child, multiple uses within the same classroom, or multiple uses by the same individual, should trigger a review and, if appropriate, revision of strategies currently in place to address dangerous behavior; if positive behavioral strategies are not in place, staff should consider developing them.

As the U.S. Department of Education makes clear, children who are subjected to restraint and seclusion repeatedly need better programming and better, more appropriate supports, including a Functional Behavioral Analysis and comprehensive evidence based positive

⁴⁵ See GAO Report at 22-25; NDRN, *School Is Not Supposed to Hurt* (2009) (throughout document); Jeffrey Meitrodt, “Disabled Students Face Dangerous Discipline in Minnesota,” *Minneapolis Star Tribune*, Apr. 28, 2013; J. Butler, *Unsafe in the Schoolhouse: Abuse of Children with Disabilities* (COPAA 2009); Sandra Chapman, “13 Investigates: Duct Tape Incident Prompts Call for Change in State Law,” *WTHR* (Indiana), Feb. 7, 2013; Zac Taylor, “Mason Principal Sued Over Alleged Abuse,” *Charleston Gazette*, Apr. 13, 2012.

⁴⁶ UNITED STATES GOVERNMENT ACCOUNTABILITY OFFICE, SECLUSIONS AND RESTRAINTS, SELECTED CASES OF DEATH AND ABUSE AT PUBLIC AND PRIVATE SCHOOLS AND TREATMENT CENTERS 1, 8, 10-12 (2009); *Examining the Abusive and Deadly Use of Seclusion and Restraint in Schools*, Hearings before the House Comm. on Education and Labor, 111th Congress (2009), p. 42-52.

⁴⁷ DISABILITY RIGHTS CALIFORNIA, THE LETHAL HAZARD OF PRONE RESTRAINT: POSITIONAL ASPHYXIATION 17-18 (2002).

⁴⁸ J. Butler, *How Safe is the Schoolhouse*.

behavioral support plan. The same is true if restraint and seclusion are used over and over again in the same classroom. This tends to indicate that restraint and seclusion have become default practices, rather than last resorts to protect against physical harm. According to expert Senate testimony, behaviors that could result in restraint are "quite predictable," and can be avoided when staff perform functional behavioral assessments, identify triggers and use such well-supported practices as conflict management, de-escalation, and evidence-based positive behavioral accommodations and supports. These reduce problematic and disruptive behaviors, increase academic achievement scores, and improve school climate and morale – all at significant savings in financial costs as well as the psychological wear and tear on all involved."⁴⁹

[11] Every instance in which restraint or seclusion is used should be carefully and continuously and visually monitored to ensure the appropriateness of its use and safety of the child, other children, teachers, and other personnel.

In Georgia, a young teen killed himself in a seclusion room, while staff sat outside “monitoring” him.⁵⁰ A few years later, an Indiana student attempted suicide in a seclusion room where he was not observed, the National Disability Rights Network alleged.⁵¹ Other students secluded unobserved in closets, bathrooms, and other rooms and spaces have been killed, injured, and traumatized. Because seclusion is so dangerous, it should be banned. But if children are placed in seclusion, they must be continually watched. It is not sufficient to be down the hall listening, checking in occasionally, or outside looking away. The VSBA policy wrongly allows this kind of haphazard “proximity” monitoring, stating that being able to watch the child in seclusion is only preferable. Monitoring without watching the student continually is too dangerous. Protection from unobserved seclusion exists in 13 states for all children; 23 for children with disabilities—either because they ban seclusion or require continuous visual monitoring.⁵²

[15] Policies regarding the use of restraint and seclusion should provide that each incident involving the use of restraint or seclusion should be documented in writing and provide for the collection of specific data that would enable teachers, staff, and other personnel to understand and implement the preceding principles.

Incident reporting and data collection are critically important. Data collection and reporting performs a vital sunshine function and leads to better informed decision-making. It enables administrators to analyze trends within the school to ensure restraints and seclusion are used very rarely and to examine ways in which positive programs can be fully implemented. Data collection will ensure that schools follow the requirements of the regulation and provide important sunshine. Florida required data collection of its public schools in 2010 and the Orlando area school district virtually eliminated seclusion and cut its restraint use by nearly 2/3.

⁴⁹ *Beyond Seclusion and Restraint, Senate Hearings (2012)* (testimony of Daniel Crimmins, Ph.D., Director, Center for Leadership in Disability, Georgia State University) <http://www.help.senate.gov/imo/media/doc/Crimmins.pdf>

⁵⁰ Alan Judd, “Death Highlights Lack of Regulation at Psycho-Educational Schools,” *Atlanta J. Constitution*, July 27, 2009.

⁵¹ National Disability Rights Network, *School Is Not Supposed to Hurt*, 2012, p.11.

⁵² Butler, *How Safe Is the Schoolhouse? An Analysis of State Seclusion and Restraint Laws*.

Pasco, Florida schools directly attributed their actions to prevent restraint and seclusion use to the new data collection. “New state reporting requirements forced the district to count how many times teachers were restraining or secluding children. The numbers shocked local educators, prompting them to act.” The district “thought there were no other choices before;” after data collection, it moved to implement a preventative program.⁵³ State data collection requirements are important. Ohio districts provided very little data in response to the OCR survey for 2011-12, with only 35 districts identifying any use of restraint or seclusion.⁵⁴ But after an Ohio state law requiring data collection was implemented, more than 1/3 of districts reported incidents of restraint and seclusion in 2013, amounting to 2,000 students being restrained and 900, secluded.⁵⁵

[14] Policies regarding the use of restraint and seclusion should be reviewed regularly and updated as appropriate.

School districts should regularly review their restraint and seclusion policies. What was appropriate years ago may not be today.

III. Important Issues Outside the 15 Principles

A. Definitions

The HB1106 Study Plan adopted on 5/7/14 defined terms as follows: “Seclusion and restraints refer to safety procedures in which a student is isolated from others (seclusion) or physically held (restraint) in response to serious problem behavior that places the student or others at risk of injury or harm.” The definition is overbroad. It would result in no regulation of students being restrained or secluded for discipline, punishment, tantrums, educational disruptions, destruction of property or other reasons. Students should not be restrained or secluded for these reasons, but the proper way to address this is to first define restraint and seclusion to cover all incidents, and then restrict use of restraint and seclusion to threats of serious physical harm. Otherwise, restraint and seclusion for other reasons simply is permitted and unregulated. This does not appear to be the goal that the legislature was seeking in creating the study.

Rather, any legislation or law should follow the model used in the Congressional bills and in other states: restraint and seclusion are defined without regard to their purpose, but then their use is forbidden except in emergencies threatening a risk of injury or harm. Under the U.S. Senate bill, S.2036, physical restraint is defined as “a personal restriction that immobilizes or reduces the ability of an individual to move the individual's arms, legs, body, or head freely. Such term does not include a physical escort, mechanical restraint, or chemical restraint.” Seclusion is defined as “the isolation of a student in a room, enclosure, or space that is locked;

⁵³ J. Solocheck, “Pasco Schools Aim to End Use of Seclusion Rooms,” *Tampa Bay Times*, Aug. 31, 2014, <http://www.tampabay.com/news/education/k12/pasco-schools-aim-to-end-use-of-seclusion-rooms/2195588>

⁵⁴ U.S. Dept. of Education, Civil Rights Data Collection, <http://ocrdata.ed.gov/>

⁵⁵ J.S. Richards, “Use of Seclusion, Restraint in Ohio Schools Quantified,” *Columbus Dispatch*, Oct.8, 2014, <http://is.gd/oGEk33>

or unlocked and the student is prevented from leaving; and does not include a time out.” These terms are defined in this way in numerous states.

B. Private School Regulations

Finally, we urge adoption of the Private School Regulations, 8VAC20-671-10 et seq., as noted in the Commission’s proposed recommendations. These regulations have been thoroughly vetted, after thorough public comment. These regulations are important to protect children in private schools.

IV. Conclusion

Parents deserve to put their children on the school bus and have them return home safe. Students deserve to come home from school safe. Virginia needs a state law to protect all students from dangerous restraint and seclusion. Implementing the 15 Principles as a framework for Virginia’s law through regulations will shift schools toward preventing problematic behavior through the use of de-escalation techniques, conflict management and evidence-based positive behavioral interventions and supports. Staff will better understand students’ needs and safely address the source of challenging behaviors. Restraint and seclusion should be limited to emergencies threatening serious physical danger. Parents must be informed the same day or within 24 hours. The most dangerous restraints, including those that impede breathing and mechanical and chemical restraints, must be banned. If seclusion is used, rooms must be safe, comply with state fire and safety codes, and students must be watched at all times. Data must be collected and shared to enhance public oversight. School staff must be adequately trained. We urge the Commission to adopt recommendation B.1. legislation requiring the Board of Education to promulgate regulations on the use of seclusion and restraint in Virginia’s public schools consistent with the U.S. Department of Education’s 15 Principles on Seclusion & Restraint and Virginia’s 2009 DOE Guidelines.

The Virginia Coalition for Students with Disabilities thanks the Commission for its work and thoughtfulness about preventing restraint and seclusion in Virginia’s schools.