

LEFT WITH ONLY GUIDANCE  
FOR PROTECTION:  
THE NEED FOR STRENGTHENED POLICIES TO  
REDUCE RESTRAINT AND SECLUSION USE IN  
NEBRASKA SCHOOLS

Policy Brief on Restraint and Seclusion By  
Nebraska Consortium for Citizens with Disabilities

Allegations of severe injury and death of students resulting from the use of restraints and seclusion in schools have been documented nationwide. Before the House Committee on Education and Labor, Dr. Reece Peterson of the University of Nebraska-Lincoln testified that the use of restraint/seclusion is substantial in schools nationwide<sup>1</sup>: “Since these reports are often the result of parent complaints or media reports, we do not know how many times these procedures are inappropriately employed with students. Yet there does appear to be a substantial number of these situations, and they appear to be scattered across the United States.”

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

The 2009 National Disability Rights Network identified various methods schools used to restrain or seclude students as well as incidents where students were subjected to restraint and/or seclusion and have been physically injured, been traumatized, or died as a consequence<sup>2</sup>.

- Methods included:
- 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.

The 2009 Governmental Accountability Office investigation also found hundreds of cases of alleged abuse and death related to the use of restraint and seclusion on school children<sup>3</sup>.

The Governmental Accountability Office 2009 investigation reported that children were restrained as a disciplinary measure (even when the student's behavior appeared not to be aggressive) and teachers restrained students without prior parental consent or ignored explicit parental instructions not to use restraint/seclusion.

Children with disabilities are at heightened risk of being restrained and/or secluded. The Governmental Accountability Office reported that most of the hundreds of allegations they identified related to children with disabilities and 90% of the closed cases involved children with disabilities or a history of "troubled" behavior (children in these cases were diagnosed with autism or other conditions, including post-traumatic stress disorder and attention deficit hyperactivity disorder).<sup>4</sup>

A recent U.S. Department of Education Civil Rights Data Summary reports a disproportionate use of restraints on children with disabilities. "Students with disabilities (served by IDEA) represent 12% of the student population, but 58% of those placed in seclusion or involuntary confinement, and 75% of those physically restrained at school to immobilize them or reduce their ability to move freely."<sup>5</sup>

There are no federal laws which govern the use of restraint and seclusion in U.S. schools. Consequently, states are left to regulate the use of restraint and seclusion.

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<sup>2</sup> National Disability Rights Network, (2009), "School is not Supposed to Hurt", p. 6, available at <http://www.ndrn.org/en/issues/abuse-and-neglect/restraint-and-seclusion.html>. In particular, see the "Chronicles of Harm" section of the 2009 report, pp. 13-26, where these incidents and others are detailed. <sup>3</sup>See also United States Senate, "Dangerous Use of Seclusion and Restraints in Schools Remains Widespread and Difficult to Remedy: A Review of Ten Cases", Majority Committee Staff Report, Health, Education, Labor, and Pensions Committee, 2014, available at: <http://www.help.senate.gov/imo/media/doc/Seclusion%20and%20Restraints%20Final%20Report.pdf>

<sup>4</sup> Governmental Accountability Office, GAO-09-719T, "Seclusions And Restraints: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers" (May 19, 2009) , available at: <http://www.gao.gov/new.items/d09719t.pdf>

<sup>5</sup>ibid, p. 7

U.S. Department of Education, Office for Civil Rights, Civil Rights Data Collection, 2011-12, 2012, available at: <http://ocrdata.ed.gov/DataSummary>

Nebraska is one of the states without state laws or regulations governing the use of restraints and seclusion in schools. Rather than having binding, specific content requirements, the Nebraska Department of Education offers schools non-binding guidance to schools about what they might want to include in their restraint/seclusion policies.

Consequently, there is little uniformity in the regulation of restraint and seclusion in Nebraska schools since each school district develops its own policy on restraint and seclusion. As Dr.

Pederson explains: “At the present time, Nebraska does not have any statutes, regulations, or state policies regarding restraint or seclusion.... Nebraska has a statute related to school discipline...but this statute does not address physical restraint or seclusion.” <sup>7</sup>

Given the inherent risk to a student’s safety when restraints or seclusion are used and the lack of regulation of the use of these aversive techniques, Consortium members believe that Nebraska has an obligation to enact stronger protections for students (and school faculty and staff who perform the restraint/seclusion) than what is currently in place.

At a minimum, Consortium members believe there must be state action toward creating some level of uniformity in the content of school district policies statewide. School policies should include reporting requirements (to both parents/guardians and to the Nebraska Department of Education) by schools when restraint and/or seclusion are used, emphasize prevention and de-escalation, increase staff training techniques in prevention and de-escalation.

The Council for Exceptional Children concurs: “Guidelines or technical assistance documents are generally not adequate to regulate the use of these procedures, since abuses continue to occur in states or provinces where guidelines are in place and these guidelines have few mechanisms for providing oversight or correction of abuses. Policy is needed in the form of legislation or regulation.”<sup>8</sup>

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<sup>6</sup>Nebraska Department of Education, “RULE 10: Regulations and Procedures for the Accreditation of Schools”, Title 92, Nebraska Administrative Code, Chapter 10: “011.01E Each school system has a seclusion and restraints policy approved by the school board or local governing body.”, p. 28, available at [http://www.education.ne.gov/Legal/webrulespdf/RULE10\\_PLEDGE\\_2012.pdf](http://www.education.ne.gov/Legal/webrulespdf/RULE10_PLEDGE_2012.pdf)

<sup>7</sup>Reece Peterson (2010), “Developing School Policies and Procedures for Physical Restraint and Seclusion in Nebraska Schools”, p. 12, available at [http://www.education.ne.gov/documents/Restraint-Seclusion\\_fnal\\_guidance\\_document\\_6-22-10.pdf](http://www.education.ne.gov/documents/Restraint-Seclusion_fnal_guidance_document_6-22-10.pdf)

<sup>8</sup>Council for Exceptional Children, 2009, “CEC’s Policy on Physical Restraint and Seclusion Procedures in School Settings”, p. 2, available at <https://www.cec.sped.org/~media/Files/Policy/CEC%20Professional%20Policies%20and%20Positions/restraint%20and%20seclusion.pdf>