



NCCD

Nebraska Consortium for Citizens with Disabilities

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

The Nebraska Consortium for Citizens with Disabilities is a statewide organization of disability advocacy organizations. NCCD is interested in informing policy makers on issues of importance to people with disabilities and has undertaken the task of researching them.

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.¹

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. 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.²

A 2014 U.S. Department of Education Civil Rights Data Summary reports on the heightened risk for Special Ed, "Students with disabilities (served by IDEA) represent 12% of the student population [of U.S. schools], but 58% of those placed in seclusion or involuntary confinement." Nebraska students served by IDEA represent 15% of the total enrollment but 77% of those who were physically restrained.³

¹ "School Is Not Supposed to Hurt." *Education*, National Disability Rights Network, 2009, www.ndrn.org/issues/education/.

² Kutz, Gregory D. *SECLUSIONS AND RESTRAINTS Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers*. United States Government Accountability Office, 19 May 2009, www.gao.gov/new.items/d09719t.pdf.

³ "Civil Rights Data Collection: Data Snapshot (School Discipline)." *US Department of Education Office of Civil Rights*, 2014, ocrdata.ed.gov/Downloads/CRDC-School-Discipline-Snapshot.pdf.

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. Three states, including Nebraska, provide no more than “limited, weak protections.”⁴ As such, Nebraska is one of the few 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 about what they might want to include in their restraint/seclusion policies.

In fact, “corporal punishment” may be the only thing prohibited by state law. Corporal punishment is “reasonably understood to be the infliction of bodily pain as a penalty for disapproved behavior. The use of corporal punishment by a teacher, in violation of this section, may subject the teacher to discipline for unprofessional conduct.”⁵

This does not appear to be working. In November 2017 in a Crisis Prevention Institute Podcast, Dr. Reece Peterson, professor emeritus in Nebraska’s Department of Special Education and Communication Disorders, stated,

I think permitting teachers to lay their hands on kids poses an inappropriate model for kids, because what it suggests is that problem behaviors can be dealt with, with force.... And I just think that that is inappropriate. I can see where teachers feel they want that because of their frustration with not being able to effectively serve the kids that they're asked to serve. But again, I really think that the solution is to provide better preventative services. Positive Behavior Interventions and Supports, for example, in schools, has a track record of reducing the kinds of behavior problems. Whereas corporal punishment or physical intervention not only doesn't have any evidence to support its effectiveness, but it has a potential to actually damage and destroy relationships with kids. So, I think we need to move away from those kinds of solutions.⁶

A 2016 Report to the Health, Education, Labor, and Pensions Committee found, “There is no evidence that physically restraining or putting children in unsupervised seclusion in the K-12 school system

⁴ Butler, Jessica. *How Safe Is the Schoolhouse? An Analysis of State Seclusion and Restraint Laws and Policies*. Autism National Committee, 2017, www.autcom.org/pdf/HowSafeSchoolhouse.pdf.

⁵ “NEBRASKA LEGISLATURE.” *Nebraska Legislature*, nebraskalegislature.gov/laws/statutes.php?statute=79-295.

⁶ “Unrestrained - Episode 46, Reece Peterson.” *Crisis Prevention Institute*, 2017, www.crisisprevention.com/Blog/November-2017/Unrestrained-Episode-46-Reece-Peterson.

provides any educational or therapeutic benefit to a child. In fact, use of either seclusion or restraints in non-emergency situations poses significant physical and psychological danger to students.”⁷

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.”⁸

Students may show challenging behaviors that result in their being restrained or secluded. It should reasonably lead schools to decide to evaluate them to see if they have a disability and would benefit from special education supports, services, or other aids in order to receive FAPE (free and appropriate public education.)

Where the school determines that not all of the student’s educational needs are being met, the school must (1) determine the extent to which additional or different interventions or supports and services, including positive behavioral interventions and supports and other behavioral strategies, may be needed; (2) determine if current interventions and supports are being properly implemented; (3) ensure that any needed changes are made promptly; and (4) remedy any denial of FAPE that resulted from the school’s prior use of restraint or seclusion.⁹

The use of restraint and/or seclusion has been shown to be ineffective in dealing with challenging behavior. This is more likely an expression of the need for Special Education services and supports. As such, it could result in the denial of a student’s right to FAPE. How are we then to proceed?

Nebraska’s guidance is in the regulations governing certification procedures. Title 92 of the Nebraska Administrative Code 011.01E requires that “each school system has a seclusion and restraints policy approved by the school board or local governing body.”¹⁰ In 2010, the Nebraska Department of Education contracted with Dr. Reece Peterson for technical assistance in developing school policies which outlines components and provides some sample policies.¹¹ However, there is little uniformity in

⁷ Majority Committee Staff Report. (2014). Dangerous use of seclusion and restraints in schools remains widespread and difficult to remedy: A review of ten cases. Retrieved from <http://www.help.senate.gov/imo/media/doc/Seclusion%20and%20Restraints%20Final%20Report.pdf>

⁸ *CEC’s Policy on Physical Restraint and Seclusion Procedures in School Settings*. Council for Exceptional Children, Sept. 2009, www.cec.sped.org/~media/Files/Policy/CEC%20Professional%20Policies%20and%20Positions/restraint%20and%20seclusion.pdf.

⁹ *Fact Sheet: Restraint and Seclusion of Students with Disabilities*. U. S. Department of Education Office of Civil Rights, 2016, www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-201612-504-restraint-seclusion-ps.pdf.

¹⁰ *Regulations and Procedures for the Accreditation of Schools*, Nebraska Department of Education, 2015, cdn.education.ne.gov/wp-content/uploads/2017/10/CLEANRULE10_2015LD.pdf.

¹¹ Peterson, R. (2010). *Developing School Policies & Procedures for Physical Restraint and Seclusion in Nebraska Schools. A Technical Assistance Document*. Lincoln, NE: Nebraska Department of Education.

the regulation of restraint and seclusion in Nebraska schools since each school district develops its own policy on restraint and seclusion. The US Department of Education also described a framework of fifteen principles they believe schools should consider when developing and implementing policies and procedures related to restraints and seclusion.¹² Both recommend training for school personnel on ways to work with students and prevent the use of restraints and seclusion.

The Fifteen Principles:

1. Every effort should be made to prevent the need for the use of restraint and for the use of seclusion.
2. Schools should never use mechanical restraints to restrict a child's freedom of movement, and schools should never use a drug or medication to control behavior or restrict freedom of movement (except as authorized by a licensed physician or other qualified health professional).
3. Physical restraint or seclusion should not be used except in situations where the child's behavior poses imminent danger of serious physical harm to self or others and other interventions are ineffective and should be discontinued as soon as imminent danger of serious physical harm to self or others has dissipated.
4. Policies restricting the use of restraint and seclusion should apply to all children, not just children with disabilities.
5. Any behavioral intervention must be consistent with the child's rights to be treated with dignity and to be free from abuse.
6. Restraint or seclusion should never be used as punishment or discipline (e.g., placing in seclusion for out-of-seat behavior), as a means of coercion or retaliation, or as a convenience.
7. Restraint or seclusion should never be used in a manner that restricts a child's breathing or harms the child.
8. The use of restraint or seclusion, particularly when there is repeated use for an individual child, multiple uses within the same classroom, or multiple uses by the same individual, should trigger a review and, if appropriate, revision of strategies currently in place to address dangerous behavior; if positive behavioral strategies are not in place, staff should consider developing them.
9. Behavioral strategies to address dangerous behavior that results in the use of restraint or seclusion should address the underlying cause or purpose of the dangerous behavior.
10. Teachers and other personnel should be trained regularly on the appropriate use of effective alternatives to physical restraint and seclusion, such as positive behavioral interventions and

¹² U.S. Department of Education, *Restraint and Seclusion: Resource Document*, Washington, D.C., 2012.

supports and, only for cases involving imminent danger of serious physical harm, on the safe use of physical restraint and seclusion.

11. Every instance in which restraint or seclusion is used should be carefully and continuously and visually monitored to ensure the appropriateness of its use and safety of the child, other children, teachers, and other personnel.
12. Parents should be informed of the policies on restraint and seclusion at their child's school or other educational setting, as well as applicable Federal, State, or local laws.
13. Parents should be notified as soon as possible following each instance in which restraint or seclusion is used with their child.
14. Policies regarding the use of restraint and seclusion should be reviewed regularly and updated as appropriate.
15. Policies regarding the use of restraint and seclusion should provide that each incident involving the use of restraint or seclusion should be documented in writing and provide for the collection of specific data that would enable teachers, staff, and other personnel to understand and implement the preceding principles.

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.