

**Guidelines for the  
Development of  
Policies and Procedures  
for  
Managing  
Student Behaviors  
In Emergency  
Situations  
in Virginia Public Schools  
Focusing on Physical Restraint and Seclusion**

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**Prepared by the Virginia Department of Education,  
Office of Special Education and Student Services  
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## PREFACE

This document, *Guidelines for the Development of Policies and Procedures for Managing Student Behaviors in Emergency Situations*, is designed to provide assistance to school divisions<sup>1</sup> and public school programs in Virginia regarding the writing of policies and procedures for physical restraint and seclusion of students in emergency situations. This initiative, though spearheaded by the State Special Education Advisory Committee (SSEAC) in 2005, is pertinent to the management of all children's violent behavior in emergency situations in Virginia's public schools. Recent testimony before the U.S. Congressional Committee on Education and Labor has shed new light on this critical issue.<sup>2</sup> The guidelines are intended to provide helpful and easily accessible information for those divisions that are developing or reviewing their policies for managing student behaviors. These guidelines are informational and are not mandated. However, a school division may choose to use this information at its discretion in developing procedures that will help in situations involving the management of challenging student behaviors.<sup>3</sup>

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<sup>1</sup>The term "school division" as used herein refers to Virginia school divisions, charter schools, state operated programs, special education programs, and any alternative education setting under the auspices of a school division.

<sup>2</sup>The full text is available in the GAO document, GAO-09-719T, <http://www.gao.gov/new.items/d09719t.pdf>.

<sup>3</sup>The development or revision of local policies and procedures on physical restraint and seclusion should be reviewed with the school division's school board attorney.

## ACKNOWLEDGEMENTS

The Virginia Department of Education (VDOE) first issued these Guidelines in 2005 to assist school divisions in handling emergency situations involving the use of physical restraint and seclusion of children in Virginia's public schools. At that time, the VDOE expressed its appreciation to the SSEAC for its insight, collaboration, cooperation, and leadership in promoting the study on physical restraint and seclusion. Appendix E identifies the membership of the SSEAC's sub-committee in 2005 that assisted in the completion of the Guidelines. The VDOE also acknowledged the administration and staff with VDOE and special educators in school divisions who assisted with the project through research, policy analysis, program coordination, support, and editing. This acknowledgement was also extended to VDOE's administrative support staff and consultants who assisted in ensuring timely and efficient development of the Guidelines.

The VDOE expresses its appreciation again to the members of the SSEAC for supporting the reissuance of these Guidelines, and to the VDOE staff and consultants who assisted in updating this document.

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[http://www.doe.virginia.gov/support/student\\_conduct/guidelines\\_managing\\_behaviors\\_emergency.pdf](http://www.doe.virginia.gov/support/student_conduct/guidelines_managing_behaviors_emergency.pdf)

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## PHILOSOPHY

Each child is valued as a contributor in the education process and schools must ensure that children are treated with respect and dignity and that the learning environment is safe for all students and staff. When there is a need to manage aggressive or violent behavior of students in emergency situations, there must be a balance between maintaining an effective and safe learning environment for children and school staff and safeguarding the rights and protections of students. Each school division should have policies and procedures to address behaviors that may disrupt the education process.

A school division should ensure that any behavior management techniques used are appropriate. **Where possible, less restrictive measures should be used initially and no intervention should remove a student from the learning environment for unreasonable or unnecessary periods.** When the behaviors have been addressed, returning the student to the learning environment is paramount.

## BACKGROUND

The purpose of these guidelines for policy and procedure development is to provide information to school divisions that will help them ensure that each student participating in a Virginia public education program is educated in a safe environment. Also, local policies should ensure that when behaviors need special intervention, students are free from the unreasonable use of physical restraint and seclusion. **Physical restraint and seclusion should only be used in emergency situations, when other less intrusive alternatives have failed.** Corporal punishment and abusive techniques are not authorized, permitted or condoned in Virginia's public schools. Corporal punishment is expressly prohibited by the *Code of Virginia*, §22.1-279.1.<sup>4</sup>

Seclusion and restraint 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. Concern exists that these procedures are prone to misapplication and abuse, placing students at equal or more risk than their problem behavior when one or more of the following situations occur:

1. Seclusion and restraint procedures are inappropriately selected and implemented as “treatment” or “behavioral intervention,” rather than as a safety procedure.
2. Seclusion and restraint are inappropriately used for behaviors that do not place the student or others at risk of harm or injury (e.g., noncompliance, threats, disruption).
3. Students, peers, and/or staff may be physically hurt or injured during attempts to conduct seclusion and restraint procedures.
4. Risk of injury and harm is increased because seclusion and restraint are implemented by staff who are not adequately trained.
5. Use of seclusion and restraint may inadvertently result in reinforcement or strengthening of the problem behavior.

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<sup>4</sup>See terminology section of this document. Also, see the full text of the definition of corporal punishment in Appendix D relative to public schools. Also, see the regulations of Behavioral Health and Developmental Services at 12VAC35-105 relative to prohibited actions that include corporal punishment, deprivation of appropriate services, and application of aversive stimuli, and 12VAC105-20 for related definitions.

6. Seclusion and restraint are implemented independent of comprehensive, function-based behavioral intervention plans.<sup>5</sup>

School divisions must ensure that any action taken does not violate constitutional protections, especially in terms of an individual's due process rights, and that policies contain assurances of students' rights. All federal and state statutes, and any implementing regulations, must be considered when setting forth requirements for using physical restraint and seclusion. Virginia's public schools are guided by the *Code of Virginia* relative to discipline in Section 22.1-276 et seq. and by regulations set forth by the Board of Education in 8VAC20-81-10 relative to students with disabilities. Neither the statutes nor the regulations authorize the use of any abusive techniques or interventions with students in Virginia's public schools. Relevant statutes and regulations are provided in Appendix D.

Several Virginia school divisions have already addressed the legal requirements and ramifications of using procedures to manage student behavior and have written policies, local regulations, and best practice documents. However, a survey conducted in January 2004, by the Virginia Department of Education, in collaboration with the State Special Education Advisory Committee (SSEAC), suggested a need for assistance in writing policies and procedures on physical restraint and seclusion.<sup>6</sup> More recently, the VDOE issued two reports, April 2009 and July 2009, to the SSEAC and special education administrators on the use of physical restraint and seclusion in Virginia's public schools. The reports included a survey of Virginia's school divisions as to whether each division had policies and procedures on the use of restraint and seclusion, and if training is provided to administrators and staff on the subject.<sup>7</sup> The data from these reports and concern that a number of school divisions lack policies and training programs on the use of restraint and seclusion prompted the SSEAC to support the VDOE updating and reissuing the 2005 Guidelines.

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<sup>5</sup>See the full text of *Considerations for Seclusion and Restraint Use in School-wide Positive Behavior Supports*, Horner, R., & Sugai, G. Available at:

[http://www.pbis.org/common/pbisresources/publications/Seclusion\\_Restraint\\_inBehaviorSupport.pdf](http://www.pbis.org/common/pbisresources/publications/Seclusion_Restraint_inBehaviorSupport.pdf)

<sup>6</sup>This survey focused specifically on whether or not the divisions had policies and procedures regarding the use of physical restraint and seclusion, the frequency and prevalence of the use of these interventions, and the training in behavioral techniques provided to personnel.

<sup>7</sup>See the full text of the Reports, Virginia Department of Education, April 2009 and July 8, 2009, in Appendices F and G.

## RELEVANT TERMINOLOGY

For the purposes of this document, the following terms and definitions are provided. These terms and definitions may be useful in reviewing, developing, or revising local school division policies and procedures for managing student behaviors. Where available, definitions are cited from existing laws, regulations, and technical assistance resources. Accordingly, the majority of the definitions in this section are cited in the glossary section of a Virginia Department of Education technical assistance resource document entitled *Discipline of Students with Disabilities*.

**“Abused or neglected child”** means any child less than 18 years of age whose parents or other person responsible for his care creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon such child a physical or mental injury by other than accidental means, or creates a substantial risk of death, disfigurement, or impairment of bodily or mental functions...; or whose parent or other person responsible for his care neglects or refuses to provide care necessary for his health...; or whose parents or other person responsible for his care abandons such child; or whose parents or other person responsible for his care commits or allows to be committed any act of sexual exploitation or any sexual act upon a child in violation of the law; or who is without parental care or guardianship caused by the unreasonable absence or the mental or physical incapacity of the child's parent or guardian, legal custodian or other person standing in loco parentis. (See §63.2-100 of the *Code of Virginia* for the full text of the definition of the term "abused or neglected child.")

**“Aversive intervention”** means any action used to punish a student or to eliminate, reduce, or discourage the problem behavior by use of any of the following, many of which are prohibited by the *Code of Virginia*:

1. Noxious odors and tastes;
2. Water and other mists or sprays;
3. Blasts of air;
4. Corporal punishment as defined in Section 22.1-279 of the *Code of Virginia*;
5. Verbal and mental abuse;
6. Placement of a student alone in a room, where the door is locked or held shut and the student is prevented from leaving the room;

7. Forced exercise where

- a. the student's behavior is related to his/her disability;
- b. the exercise would have a harmful effect on the student's health, or
- c. the student's disability prevents participation in activities; and

8. Deprivation of necessities, including

- a. food or liquid at a time when it is customarily served;
- b. medication, or
- c. use of restroom.

**“Behavioral Intervention Plan (BIP)”** means a plan that utilizes positive behavioral interventions and supports to address behaviors that interfere with the learning of a student, the learning of others, or require disciplinary action. A Behavioral Intervention Plan is the product of a Functional Behavioral Assessment (see definition of Functional Behavioral Assessment).

**“Business day”** means Monday through Friday, 12 months of the year, exclusive of federal and state holidays (unless holidays are specifically included in the designation of business days).

**“Calendar day”** means consecutive days, inclusive of Saturdays, Sundays, and officially designated holidays at the school division level. Whenever any period of time expires on Saturday, Sunday, or school holiday, the period of time for taking such action is extended to the next day, that is not Saturday, Sunday, or school holiday.

**“Corporal punishment”** means the infliction of, or causing the infliction of, physical pain on a student as a means of discipline. (A full definition can be found in Appendix D.)

**“Emergency”** means a situation that requires a person(s) to take immediate action to avoid harm, injury, or death to a student or to others.

**“Exclusion”** means the removal of a student to a supervised area for a limited period of time during which the student has an opportunity to regain self-control and is not receiving instruction including special education, related services, or support.

**“Functional Behavioral Assessment (FBA)”** means the systematic process of gathering information to guide the development of a positive, effective, and efficient behavioral intervention plan for a problem behavior. The process includes:

1. a description of the problem behavior;
2. the identification of environmental and other factors and settings that contribute to or predict the occurrence, nonoccurrence, and maintenance of the behavior over time; and
3. the determination of the underlying cause or functions of a student's behavior that impede the learning of the student with a disability or the learning of the student's peers.

A Functional Behavioral Assessment may include a review of existing data or new testing or evaluation as determined by the IEP team.

**“General curriculum”** means the curriculum adopted by a school division, schools within the school division, or where applicable the Virginia Department of Education, for all students from preschool through secondary school. The term relates to the content of the curriculum and not to the setting in which it is taught. It includes career and technical education. Courses in the general curriculum maintain their curriculum integrity even when provided to students with disabilities.

**“Long-term removal”** means suspension of a student with a disability to an alternative setting for more than 10 consecutive school days in a school year; or, when the student is subjected to a series of removals that constitute a pattern because they cumulate to more than 10 school days in a school year.

**“Physical restraint”** means the use of any physical method of restricting an individual’s freedom of movement, physical activity, or to prevent a student from moving his/her body to engage in a behavior that places him/her or others at risk of physical harm. Physical restraint does not include:

1. briefly holding a student in order to calm or comfort the student; or
2. holding a student's hand or arm to escort the student safely from one area to another.

**“Removal”** means excluding the student from the place where current educational services are provided.

**“School day”** means any day, including a partial day, in which students are in attendance at school for instructional purposes. The term has the same meaning for all students in school, including students with and without disabilities.

**“Seclusion”** means the confinement of a student alone in a room from which the student is physically prevented from leaving.

**“Short-term removal”** means suspending a student with a disability to an alternative setting for 10 school days or less in a school year. It also applies to removals when the cumulative amount is 10 school days, but not consecutive, and does not constitute a pattern or change of placement.

**“Time-out”** means assisting a student to regain control by removing the student from his immediate environment to a different, open location until the student is calm or the problem behavior has subsided.

## LOCAL POLICY ANALYSIS AND DEVELOPMENT PROCESS

Each school division should begin the policy analysis process by examining all existing local policies that govern behavioral management techniques. In some instances, a division may have policies in place to address the policy content discussed herein. However, some divisions may desire to revise or extend their policies.<sup>8</sup> A policy review process will allow the division to update information and clarify matters as necessary.

**While policy review and development at the local level is based on local discretion, input from stakeholders may be useful.** As a method of gaining input, the division could convene a stakeholders' committee to discuss the management of student behavior.<sup>9</sup> This committee may provide information, and help design and review procedures for the implementation of the policy requirements. Its composition could include, but not be limited to:

- Parents
- Student representatives
- Special education directors
- Crisis intervention staff
- School safety/resource officers
- Central office administrators, including discipline coordinators
- Building principals
- Regular and special education teachers
- Psychologists
- Social workers
- Guidance counselors

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<sup>8</sup>The results from the survey conducted by the VDOE regarding the extent to which divisions had policies that addressed physical restraint and seclusion indicated that several divisions were without such policies.

<sup>9</sup>This stakeholders committee would be strictly for the purpose of reviewing [not developing] division policy and assisting by communicating to appropriate administrators any issues that would impact the use of physical restraint and seclusion. This committee is different from the review committee that would receive and investigate complaints and incident reports when the policy is actually implemented.

In analyzing local policies and procedures, a school division could consider some of the issues that arise through frequently asked questions, such as the following:

1. What if the usual behavioral/discipline measures do not seem effective?
2. What if the behaviors of a few students interfere with the entire learning process and the classroom procedures?
3. What if extremely inappropriate behaviors are exhibited?
4. What if a student exhibits behavior that endangers himself/herself or others?
5. How does an administrator, teacher, or support person address these matters?
6. How does a teacher or other staff intervene?
7. When and how does a teacher or staff person learn how to intervene?
8. What are the legal limits and parameters of interventions?
9. What policy sections are relevant to certain behaviors?
10. If a new or revised policy is necessary, what is the process for development?
11. How long would it take for a school board to review or revise its policy on physical restraint and/or seclusion?

## LOCAL DIVISION POLICIES AND PROCEDURES<sup>10</sup>

School divisions should have written policies and procedures that include, but are not limited to:

1. Methods for preventing student violence, self-injurious behavior, and suicide, including de-escalation of potentially dangerous behavior occurring among groups of students or with an individual student;
2. Methods for identifying child abuse and/or neglect and the reporting requirements for such occurrences;
3. A policy clearly stating that corporal punishment and abusive techniques and interventions are not authorized, permitted, or condoned in Virginia's public schools;
4. A policy stating that corporal punishment is prohibited by state law, as well as the identification of the consequences prescribed by law;
5. A policy regarding physical restraint provides:
  - a. a determination of the behavior management program adopted by the school division and advising parents and students of the program;<sup>11</sup>
  - b. a description and explanation of the school division's or program's criteria for the use of physical restraint;
  - c. a statement that the use of physical restraint is allowed only in emergency situations;
  - d. the conditions under which physical restraint is allowed;<sup>12</sup>
  - e. training and certification requirements;
  - f. incident reporting requirements;

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<sup>10</sup>See Appendix C for a sample format for a policy. This sample format is not considered a model to be duplicated without considering the particular needs of the school division. It is not intended to supplant or replace any existing policy, but rather to provide a structure for divisions that will be developing new or revised policies.

<sup>11</sup>No particular behavior management program is recommended or endorsed by the Virginia Department of Education. The selection of a behavior management program is a school division decision.

<sup>12</sup>Examples of severe behavior requiring interventions are provided for training purposes, in various behavior management programs.

- a. follow-up procedures after each incident;
  - b. a procedure for receiving and investigating complaints regarding the use of physical restraint; and
  - c. a statement of how and when the parents will be informed of each occurrence of physical restraint.
6. A policy regarding the use of seclusion that provides:
- a. a description and explanation of the school division's or program's criteria for the use of seclusion;
  - b. a statement that the use of seclusion is allowed only in emergency situations;
  - c. the conditions under which seclusion is allowed;<sup>13</sup>
  - d. training requirements;
  - e. room and monitoring requirements;
  - f. incident reporting requirements;
  - g. follow-up procedures after each incident;
  - h. a procedure for receiving and investigating complaints regarding the use of seclusion; and
  - i. a statement of how and when the parents will be informed of each occurrence of seclusion.
7. A policy identifying corrective measures to be followed when a review reveals improper implementation procedures;
8. A policy statement assuring the provision of students' rights.

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<sup>13</sup>Examples of severe behavior requiring interventions are provided for training purposes, in various behavior management programs.

## **POLICY ADOPTION**

If a stakeholders' committee is proposing an addition to or a change in a policy, the committee should be aware of the local policy adoption process, the timelines needed to complete all phases of the adoption process, and the steps involved.

## **TRAINING AND STAFF DEVELOPMENT**

Each principal or program administrator should determine a time and method to ensure that all staff, personnel, parents, and students are familiar with the school division's policies and procedures regarding the use of behavior management techniques, physical restraint, and seclusion in emergency situations.

The school division should ensure that everyone concerned has information on these interventions and should decide who needs to receive specific training. Training should occur within the first month of each school year for all staff and, for employees hired after the school year begins, within one month of their employment. Periodic in-service training should be scheduled to update information and to give staff an opportunity to practice and enhance skills. Attendance at each training should be documented.

At a minimum, training should include information on the following:

1. the identification and implementation of the behavior management program(s) adopted by the school division;
2. procedures to be followed when informing students and parents of the adopted program and the implementation procedures;
3. the local policies on the use of behavior management techniques, physical restraint, and seclusion;
4. interventions and alternatives that may preclude the need for physical restraint and seclusion (e.g., de-escalation of problematic behavior);
5. procedures to be followed when physical restraint or seclusion is necessary;
6. related safety considerations, including information regarding the increased risk of injury to a student when physical restraint is implemented or a student is secluded;

7. administering physical restraint and implementing seclusion procedures in accordance with established medical or psychological limitations and when applicable, as specified in a student's Behavioral Intervention Plan (BIP);
8. identification of staff who have received training and are certified to administer procedures in the use of physical restraint and seclusion; and
9. procedures to be followed when documenting and reporting incidents of physical restraint or seclusion to parents and school administration.

According to the Virginia Department of Education Supplemental Report dated July 8, 2009 (see Appendix G), 61.4 percent of school divisions in Virginia provide training on the use of restraints and seclusion, while 38.6 percent do not. As a result, school divisions are strongly encouraged to develop policies and procedures regarding the amount of training that identified staff will need to administer physical restraint and seclusion effectively and safely, while also protecting and respecting the dignity and rights of the individual student involved.

The training should include, but not be limited to:

1. specific instruction to meet licensure/certification requirements of individual behavior management programs;
2. strategies and techniques for de-escalation;
3. clearly identifiable conditions under which physical restraint and seclusion are allowed;
4. procedures to be followed when physical restraint and seclusion are implemented;
5. opportunities to practice through simulations, prior to actual use;
6. demonstrations of proficiency in administering physical restraint and implementing seclusion procedures;
7. instruction on the effects of physical restraint and seclusion on the student involved, monitoring for physical signs of distress, and procedures for obtaining medical assistance;
8. instruction regarding incident documentation and reporting requirements, and the procedures for investigating injuries and complaints; and
9. annual and periodic in-service training scheduled to update, practice, and enhance skills.

## **POLICY IMPLEMENTATION AND MONITORING**

When a policy has been drafted and approved, whether existing, revised, or new, that policy is implemented through the division's procedures and any related methods for monitoring the use of those procedures.<sup>14</sup> Essential to this process are:

1. ensuring that proper documentation exists;
2. ensuring that reporting requirements are in place and are properly used;
3. ensuring training of building and program staff on the policies and procedures;
4. investigating incidents; and
5. resolving complaints.

### **Documentation**

In the documentation process, each incident report would require at a minimum:<sup>15</sup>

1. the circumstances under which physical restraint or seclusion occurred;
2. a description of the incident, including the date, time, location of incident, persons involved partially and fully, and other relevant details;
3. a justification statement setting forth why physical restraint, seclusion, or other behavioral interventions were necessary;
4. a substantial explanation why less intrusive interventions were deemed inappropriate or inadequate; and<sup>16</sup>
5. a comprehensive list of persons who must be informed or notified of the incident.

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<sup>14</sup>The school division should consult the school board attorney for a review of its implementation and monitoring procedures.

<sup>15</sup>Multiple behavioral interventions should not be merged into a single report.

<sup>16</sup>See Appendices A and B for sample reporting forms that include the required elements of an incident report.

## **Reporting Requirements**

In the reporting process the procedures would include at a minimum:

1. the procedures for informing school/program administration;
2. the procedures for informing parents; and
3. the procedures for transmitting the report to a review committee where a determination would be made on whether the school division's policies and procedures have been followed.

## **Investigation of Injuries and Complaints**

School divisions should develop policies and procedures that detail the process by which injuries and/or complaints are investigated and reported to local authorities, if required by law. The policies and procedures should address injuries and complaints filed by all parties, including educational professionals, parents, and students. It is essential that all injuries, incidents, accidents, or other related activities be fully documented at the time they occur. In any complaint process, it is essential that all parties involved be identified, the time of actions be recorded fully, the events and behaviors preceding the incident be investigated, and any other relevant data or evidence be documented. Copies of documentation of incidents should be maintained in the appropriate records and provided to the school and the central administration as set forth in division policy or as otherwise required by the school division or by law. School administration should ensure that any incidents with special reporting requirements are promptly reported and appropriately documented.

## ADDITIONAL RESOURCES

Congressional Research Service (2009, May 21). *The Use of Seclusion and Restraint in Public Schools: The Legal Issues* [Online] Available at: <http://www.spannj.org>

Council for Children with Behavioral Disorders (2009, May 17). *CCBD's Position Summary on the Use of Physical Restraint Procedures in School Settings and CCBD's Position Summary on the Use of Seclusion in School Settings* [Online] Available at: <http://www.ccc.sped.org>

Duncan, Arne. (2009, July 31). U.S. Secretary of Education's letter on the use of restraint and seclusion [Online] Available at: <http://www.ed.gov/policy/elsec/guid/secletter/090731.html>

National Association of State Mental Health Program Directors National Technical Assistance Center (2005, October 31). *A Snapshot of Six Core Strategies for the Reduction of S/R* [Online] Available at: <http://www.hogg.utexas.edu>

National Disabilities Rights Network (2009, January). *Schools is Not Supposed to Hurt: Investigative Report on Abusive Restraint and Seclusion in Schools* [Online] Available at: <http://www.napas.org>

**APPENDIX A**

**SAMPLE FORM – Emergency Use of Physical Restraint**

<b>Report of Incident</b>	
<i>Submit to a designated administrator within 24 hours of the occurrence of the incident. Multiple incidents cannot be merged into a single report.</i>	
<b>Student Name</b>	
<b>Grade</b>	<b>Date of Birth</b>
<b>School</b>	<b>Date of Report</b>
<b>Person Completing Form</b>	<b>Position</b>

**Physical Restraint was used: (Check all boxes that apply)**

after less intrusive interventions had failed. List interventions attempted: \_\_\_\_\_

after less intrusive interventions were deemed inappropriate or inadequate. This decision is substantiated by the following explanation: \_\_\_\_\_

in an emergency situation:

an emergency situation existed that necessitated the use of physical restraint due to immediate threat of harm to:  self  others

physical restraint was used only for the time period that was necessary to contain the behavior of the student so that the student no longer posed an immediate threat of causing physical injury to self or others

physical restraint was implemented in accordance with all school division and/or program policies and procedures regarding the use of physical restraint

**APPENDIX A (Continued)**

- the force used in the application of physical restraint did not exceed the force that was reasonable and necessary under the circumstance precipitating the use of physical restraint**

**Date of Incident:** \_\_\_\_\_

**Location of Incident:** \_\_\_\_\_

**Time physical restraint began:** \_\_\_\_\_ **Time physical restraint ended:** \_\_\_\_\_

**Name(s) of person(s) involved:** \_\_\_\_\_

**Detailed Description of Incident:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**School/Program Administrator notified. Date** \_\_\_\_\_ **Time** \_\_\_\_\_

**Parent/Guardian notified. Date** \_\_\_\_\_ **Time** \_\_\_\_\_

**Date and Document All Follow-up Actions** \_\_\_\_\_

\_\_\_\_\_

**Copy to Student File**  
**Copy to Parent/Guardian**  
**Copy to Review Committee**

**APPENDIX B**

**SAMPLE FORM – Emergency Use of Seclusion**

<b>Report of Incident</b>	
<i>Submit to a designated administrator within 24 hours of the occurrence of the incident. Multiple incidents cannot be merged into a single report.</i>	
<b>Student Name</b>	
<b>Grade</b>	<b>Date of Birth</b>
<b>School</b>	<b>Date of Report</b>
<b>Person Completing Form</b>	<b>Position</b>

**Seclusion was used: (Check all boxes that apply)**

after less intrusive interventions had failed. List interventions attempted: \_\_\_\_\_

\_\_\_\_\_

after less intrusive interventions were deemed inappropriate or inadequate. This decision is substantiated by the following explanation: \_\_\_\_\_

\_\_\_\_\_

in an emergency situation:

an emergency situation existed that necessitated the use of seclusion due to immediate threat of harm to:  self  others

seclusion was used only for the time period that was necessary to contain the behavior of the student so that the student no longer posed an immediate threat of causing physical injury to self or others

seclusion was implemented in accordance with all school division and/or program policies and procedures regarding the use of seclusion

**APPENDIX B (Continued)**

- the force used in the application of seclusion did not exceed the force that was reasonable and necessary under the circumstance precipitating the use of seclusion**

**Date of Incident:** \_\_\_\_\_

**Location of Incident:** \_\_\_\_\_

**Location and Description of Seclusion Environment:** \_\_\_\_\_

\_\_\_\_\_

**Time seclusion began:** \_\_\_\_\_ **Time seclusion ended:** \_\_\_\_\_

**Name(s) of person(s) involved:** \_\_\_\_\_

\_\_\_\_\_

**Detailed Description of Incident:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Detailed Description of Behavior in Seclusion:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**School/Program Administrator notified. Date** \_\_\_\_\_ **Time** \_\_\_\_\_

**Parent/Guardian notified. Date** \_\_\_\_\_ **Time** \_\_\_\_\_

**Date and Document All Follow-up Actions** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Copy to Student File**  
**Copy to Parent/Guardian**  
**Copy to Review Committee**

## APPENDIX C

### Positive Policy<sup>1</sup> for the Management of Student Behaviors in Emergency Situations

Positive County Public Schools

Positive County, Virginia

#### **Policy Number 11111**

Date of Adoption by Positive School Board – Month, Day, and Year

Effective Date for Implementation – Month, Day, and Year

#### **Statement of Philosophy**

The Positive County public schools believe that every child is valued as a contributor in the education process and school staff must ensure that children are treated with dignity, respect, and special care. When there is a need to manage aggressive and violent student behaviors in emergency situations in the school setting, there must be a balance between ensuring practices that maintain an effective learning environment and those procedures that safeguard the rights and protections of students and staff. This balance should be reflected in policies that include processes and procedures ensuring that when behaviors need special intervention, students are free from the unreasonable use of physical restraint, seclusion, and any other intervention methods that may not be the least restrictive intervention. The use of abusive interventions are not authorized, permitted, or condoned in the public schools of Virginia and the Positive County public schools. Corporal punishment is expressly prohibited by law.

#### **Purpose**

The purpose of this policy is to provide information to all persons working with children within the Positive County public schools on how violent and aggressive student behaviors in emergency situations are to be managed. The policy addresses the division's philosophy, expectations, and procedures for the systematic management of the full range of student behaviors. Also, the policy will focus on the processes to occur when extreme behaviors are presented, and the procedures staff must follow to ensure that incidents are properly documented, recorded, and reported to appropriate school officials and parents.

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<sup>1</sup> This policy will outline all the policy statements and procedures developed by Positive County public schools for managing student behaviors in emergency situations in the school division. Input to the policy development could be sought from representatives of parents, special education director, crisis intervention staff, school safety officers, discipline coordinators, central office administrators, building principals, student representatives, regular and special education teachers, and relevant support staff such as school nurses, social workers, psychologists, etc.

## APPENDIX C (Continued)

### Policy Content and Procedures for Managing Behavior<sup>2</sup>

Procedures for managing behavior in Positive County public schools will be written, training will be provided, and policy implementation will be monitored regarding:

1. the prevention of student violence, self-injurious behavior, and suicide;
  2. the prohibition of certain behavioral interventions in Positive County's public schools; and
  3. the use and applicability of physical restraint.
- An example of a policy statement regarding physical restraint could be:

The use of physical restraint in managing severe student behavior is prohibited for all personnel employed by the school division or program or any other person working in the school division or program unless:

1. there is an emergency situation and physical restraint is necessary to protect the student or another person, after other less intrusive interventions have been attempted and failed to manage that particular behavior and there is a substantial explanation for why other interventions were deemed inadequate or inappropriate;
  2. a Behavioral Intervention Plan (BIP) exists that states physical restraint may be used;
  3. the student's parents have provided informed and voluntary consent in writing for the use of physical restraint;
  4. the physical restraint is used only for a period of time that is necessary to contain the behavior of the student, so that the student no longer poses an immediate threat of causing physical injury to himself; and
  5. the use of force in the application of physical restraint does not exceed the force that is reasonable and necessary under the circumstances that precipitated the use of the physical restraint.
- An example of a policy statement regarding the use and applicability of seclusion could be:

The use of seclusion in managing severe student behavior is prohibited for all personnel employed by the school division or program or any other person working in the school division or program unless:

1. there is an emergency situation and seclusion is necessary to protect a student or another person, after other less intrusive interventions have been attempted and failed to manage that particular behavior, and there is a substantial explanation for why other interventions were deemed inadequate or inappropriate;

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<sup>2</sup>This sample policy gives content headings. Each school division should develop the content for each of these headings, to reflect the individual needs of the school division. The school division can consult the *Guidelines for the Development of Policies and Procedures for Managing Student Behaviors in Emergency Situations* developed by the Virginia Department of Education for content for the policy.

**APPENDIX C (Continued)**

2. members of the school staff are trained in behavior management programming;
  3. a Behavioral Intervention Plan (BIP) exists that states seclusion may be used;
  4. the student's parents have provided informed and voluntary consent in writing for the use of seclusion;
  5. the seclusion is used only for a period of time that is necessary to contain the behavior of the student so that the student no longer poses an immediate threat of causing physical injury to himself or others; and
  6. the use of force in the application of seclusion does not exceed the force that is reasonable and necessary under the circumstances that precipitated the use of the seclusion.
- Policy statements should be developed to include the following:
    1. The use and applicability of other behavioral interventions,
    2. The specific training and staff development to be provided to Positive County public schools' faculty and staff on the use and applicability of this policy and its content (Policy 11111),
    3. The documentation and reporting requirements of this policy,
    4. The investigation of injuries and complaints,
    5. The use of the incident forms adopted by Positive County public schools, and
    6. The safety and protection of the student during school emergencies and during the implementation of physical restraint and seclusion procedures.

**Methods and Procedures for Policy Implementation**

Each principal of a school or school facility will ensure that the faculty and staff have been fully trained in the requirements of this policy. This policy statement will be made readily accessible in each school building for immediate review should incidents arise requiring the management of violent and aggressive student behaviors in emergency situations.

Each principal will maintain a record of all incidents when this policy has been implemented and will make a report to the school board as requested.<sup>3</sup>

Presented to the Positive School Board on \_\_\_\_\_

Reviewed by the Positive School Board on \_\_\_\_\_

Adopted by the Positive School Board on \_\_\_\_\_

Effective/Implementation Date \_\_\_\_\_

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<sup>3</sup>The reporting requirements on the implementation and/or use of the policy should be considered by the committee developing the school division's local policy and should be incorporated if deemed appropriate or helpful.

## APPENDIX D

### Statutes, Regulations, and Technical Assistance Documents Relative to Physical Restraint and Seclusion in Virginia's Public Schools

These references are provided as resource materials which may be helpful in reviewing, revising, and writing policies and procedures on physical restraint and seclusion. They delineate the responsibilities and limitations of some of the many agencies that provide services to Virginia's children.

- Section 22.1-279 of the *Code of Virginia*. Corporal punishment prohibited.

A. No teacher, principal or other person employed by a school board or employed in a school operated by the Commonwealth shall subject a student to corporal punishment. This prohibition of corporal punishment shall not be deemed to prevent (i) the use of incidental, minor or reasonable physical contact or other actions designed to maintain order and control; (ii) the use of reasonable and necessary force to quell a disturbance or remove a student from the scene of a disturbance which threatens physical injury to persons or damage to property; (iii) the use of reasonable and necessary force to prevent a student from inflicting physical harm on himself; (iv) the use of reasonable and necessary force for self-defense or the defense of others; or (v) the use of reasonable and necessary force to obtain possession of weapons or other dangerous objects or controlled substances or paraphernalia which are upon the person of the student or within his control.

B. In determining whether a person was acting within the exceptions provided in this section, due deference shall be given to reasonable judgments at the time of the event which were made by a teacher, principal, or other person employed by a school board or employed in a school operated by the Commonwealth.

C. For the purposes of this section, "corporal punishment" means the infliction of, or causing the infliction of, physical pain on a student as a means of discipline. This definition shall not include physical pain, injury or discomfort caused by the use of incidental, minor or reasonable physical contact or other actions designed to maintain order and control as permitted in subdivision (i) of subsection A of this section or the use of reasonable and necessary force as permitted by subdivisions (ii), (iii), and (v) of subsection A of this section, or the participation in practice or competition in an interscholastic sport, or participation in physical education or an extracurricular activity.

- The Individuals with Disabilities Education Act and its reauthorized provisions (34 CFR 300).
- Title 22.1 of the *Code of Virginia*.

## APPENDIX D (Continued)

- Section 22.1-291.3 of the *Code of Virginia* for Notice of Duty to Report Child Abuse or Neglect.

Each public school board and each administrator of every private or parochial school shall post, in each of their schools, a notice, pursuant to §63.2-1509, that: (i) any teacher or other person employed in a public or private school who has reason to suspect that a child is an abused or neglected child, including any child who may be abandoned, is required to report such suspected cases of child abuse or neglect to local or state social services agencies or the person in charge of the relevant school or his designee; and (ii) all persons required to report cases of suspected child abuse or neglect are immune from civil or criminal liability or administrative penalty or sanction on account of such reports unless such person has acted in bad faith or with malicious purpose. The notice shall also include the Virginia Department of Social Services' toll-free child abuse and neglect hotline.

- Title 37.1 of the *Code of Virginia*. Institutions for the Mentally Ill; Mental Health Generally.
- Section 63.2.100 of the *Code of Virginia* for definitions of abused and neglected child.
- 12 VAC 35-105-820 delineates prohibited actions and among them are:
  - corporal punishment;
  - deprivations of opportunities for bathing or access to toilet facilities;
  - applications of aversive stimuli; and
  - deprivation of drinking water or food.
- 12 VAC 35-105 is entitled *Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation and Substance Abuse Services*. This is a regulation of the Department of Behavioral Health and Developmental Services, the regulatory agency and administrative authority for facilities providing mental health services, provides the definitions that apply to that agency.
- 12 VAC 35-115 is entitled *Rights of Individuals Receiving Services from Providers of Mental Health, Mental Retardation and Substance Abuse Services*.

## **APPENDIX E**

### **2005 State Special Education Advisory Committee (SSEAC)**

#### **Subcommittee on Physical Restraint & Seclusion**

- Dr. J. David Martin, Division Superintendent, Fauquier County Public Schools Warrenton, Co-chair of the Sub-Committee on Physical Restraint & Seclusion
- Dr. Kevin Sutherland, Assistant Professor, Virginia Commonwealth University, Richmond, Co-chair of the Sub-Committee on Physical Restraint & Seclusion
- Ms Heidi Lawyer, Parent, Virginia Board for People with Disabilities, Richmond
- Mrs. Shirley G. Ricks, Director, Children and Family Services, DMHMRSAS
- Mr. J. Stan Boren, Principal, Saratoga School, Springfield
- Ms. Karen Tompkins, Grafton School, Richmond
- Ms. Cindy Mills, The Barry Robinson Center, Norfolk
- Dr. Michael M. Behrmann, Kellar Professor of Special Education, George Mason University
- Reverend Charles Swadley, Ex-Officio
- Irene Walker-Bolton, Specialist, Office of Special Education and Student Services, Liaison to the Subcommittee

## APPENDIX F



COMMONWEALTH OF VIRGINIA

**Department of Education**

**Division of Special Education and Student Services**

*Office of Dispute Resolution & Administrative Services*

April 2009

### **REPORT**

TO: Special Education Directors Council

State Special Education Advisory Committee

FR: Judy Douglas and ODR/AS Staff

RE: Review of Implementation of VDOE's "Guidelines for the Development of Policies and Procedures for Managing Student Behaviors in Emergency Situations in Virginia Public Schools: Focusing on Physical Restraint and Seclusion", November 2005 (Guidance Document)

### **BACKGROUND**

In November 2005, the Virginia Department of Education (VDOE) published the above referenced Guidance Document relative to the use of physical restraint and seclusion. This initiative was spearheaded by the SSEAC in an effort to assist Virginia's school divisions in developing local policies and procedures for physical restraint and seclusion of students in emergency situations. Through public comments in 2008 and at its January 2009 meeting, the SSEAC heard concerns from parents and advocates asserting that school personnel were mismanaging the use of physical restraint and seclusion, and that a number of Virginia's school divisions lacked local policies, procedures, regulations, or protocols on this subject, or were not relying on Virginia's Guidance Document.

## APPENDIX F (Continued)

This issue gained national coverage through the media (including “Dr. Phil”) when a Georgia 13-year old boy with disabilities committed suicide after being secluded multiple times. The Georgia Superior Court issued its decision in this case on January 2, 2009, finding the school division not liable for the student’s death. The case, however, triggered considerable national debate over the need for laws regarding restraint and seclusion.

In January 2009, the National Disability Rights Network (NDRN) issued its investigative report on abusive restraint and seclusion in schools, “School Is Not Supposed To Hurt”.<sup>1</sup> NDRN found that 41% of states have no laws, policies, or guidelines concerning restraint or seclusion; almost 90% of states allow prone restraints<sup>2</sup>; and, 45% require or recommend that school administrators notify parents of restraint/seclusion use. Virginia’s responses are noted as follows:

### Virginia Response

Has statewide restrictions on restraint or seclusion	Restraint or seclusion restricted to ensure immediate physical safety of student or others	Prone Restraint banned	Automatic notice after restraint or seclusion	School staff training
Guidelines	No*	No	Parent (recommended in the Guidelines)	Yes (recommended in the Guidelines)

\*Virginia guidelines state that physical restraint and seclusion should only be used in “emergency situations”, but do not define that term. (NDR Report, p. 45)

The report also examines the risks of using restraint or seclusion; presents case summaries that chronicle the harm of such practices;<sup>3</sup> reviews best practices of positive behavioral support programs; and details recommendations for public policy. The report states that NDRN staff are in

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<sup>1</sup> The report is available at: [www.NDRN.org](http://www.NDRN.org)

<sup>2</sup> 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. “The Lethal Hazard of Prone Restraint: Positional Asphyxiation, published by Protection and Advocacy, Inc. (2002), p. 3.

Web page: <http://www.pai-ca.org/pubs/701801.pdf>

<sup>3</sup> Note p. 26 of a Virginia incident.

## APPENDIX F (Continued)

the process of meeting with Secretary of Education Duncan and Congressional members with their recommendations, including insertion of language in the reauthorizations of the IDEA, NCLB, and Substance Abuse and Mental Health Administration to ban prone restraints, ban the use of seclusion, and permit the use of restraints by trained individuals only for immediate endangerment situations.<sup>4</sup>

Against this backdrop, at its January 2009 meeting, the SSEAC asked VDOE to determine whether local school divisions had adopted local policies or procedures implementing VDOE's guidance document on physical restraint and seclusion. As a part of this inquiry, VDOE was asked to ascertain the rationale of the school divisions that had not adopted such policies. Staff in VDOE's Office of Dispute Resolution and Administrative Services (ODR/AS) developed its report to present to the SSEAC at its April 23-24 meeting, as well as to the Special Education Directors Council at the Council's April 21 meeting.

### SURVEY

ODR/AS staff contacted each Virginia public school division. The following chart reflects the responses.

- **LEAs that have adopted a written policy, procedure, regulation, protocol, or VDOE's Guidance Document: 38**

On restraint and seclusion:   **34**

Campbell	Hampton	Norfolk	Spotsylvania
Chesapeake	Harrisonburg	Norton	Stafford
Chesterfield	Henrico	Orange	Sussex
Covington	Lynchburg	Pittsylvania	Westmoreland
Fairfax City	Madison	Prince George	Williamsburg-James City
Fairfax County	Manassas Park	Rappahannock	Wise
Fauquier	Mathews	Roanoke City	York
Frederick	Montgomery	Scott	
Grayson	New Kent	Southampton	

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<sup>4</sup> The NDRN Report does not include a definition of "endangerment situations". Their policy recommendations, however, include provision for the use of restraint "...when the immediate physical safety of the student, staff, or others is clearly required." (NDRN Report, pp. 38, 39, 40, 41)

**APPENDIX F (Continued)**

On restraint only: 4

Augusta\*\* Culpepper Salem Staunton

- **LEAs that have no written policy, procedure, regulation, protocol, or are not using VDOE Guidance Document: 96**

Of the 96 school divisions, **20** LEAs are in the process of adopting a policy, procedure, regulation, or protocol:

Albemarle	Goochland*	Prince William
Alexandria	Greene	Rockingham
Arlington*	Louisa	Tazewell*
Bedford City*	King and Queen	Virginia Beach
Bedford County*	Newport News*	Washington
Bristol*	Portsmouth	
Caroline	Roanoke City (restraint only)	
Floyd (restraint only)* **		

**76** school divisions have no plans at this time to develop/adopt a local policy, procedure, regulation, protocol, or use VDOE’s Guidance Document.

Accomack	Charlottesville	Gloucester*	Martinsville	Richmond Co
Alleghany	Clarke	Greensville	Mecklenburg*	Rockbridge*
Amelia	Colonial Beach	Halifax*	Middlesex	Russell**
Amherst*	Colonial Heights	Hanover*	Nelson*	Shenandoah*
Appomattox	Craig**	Henry	Northampton	Smyth
Bath	Cumberland	Highland	Northumberland	Suffolk
Bland	Danville**	Hopewell	Nottaway	Surry
Botetourt*	Dickenson	Isle of Wight*	Page	Warren
Brunswick	Dinwiddie	King George	Patrick**	Waynesboro*
Buchanan**	Essex	King William*	Petersburg	West Point
Buckingham	Falls Church	Lancaster	Poquoson	Winchester
Buckingham	Fluvanna	Lee	Powhatan*	Wythe*
Buena Vista	Franklin City	Lexington	Prince Edward	
Carroll	Franklin County*	Loudoun* **	Pulaski	
Charles City	Fredericksburg	Lunenburg*	Radford* **	
Charlotte	Galax* **	Manassas City*	Richmond City	

## APPENDIX F (Continued)

- The school divisions identified with a single asterisk (\*) stated that they rely on the protocols as found in training programs contracted by the LEAs for responding to restraint issues but have no written policy, regulation, or other standard documenting their reliance on these protocols. Examples of the training programs:
  - ✓ MANDT
  - ✓ Non-Violent Conflict Intervention (NCI)
  - ✓ Crisis Prevention Institute (CPI)
  - ✓ Applied Crisis Training (ACT)
  - ✓ Handle with Care
  - ✓ Managing Aggressive Training
- The school divisions identified with a double asterisk (\*\*) reported that the division does not permit restraint and/or seclusion but has no written policy, regulation, or other standard describing this prohibition.

## II. **Rationale for not adopting a policy, procedure, regulation, or protocol, or using VDOE's Guidance Document:**

- Several school divisions rely solely on the Virginia School Board Association's Policy Service, and nothing has been forthcoming from VSBA in the form of a policy on this issue.
- Several school divisions said that their school board attorney or the VSBA advised them not to establish a policy, regulation, etc... on this issue.
- Several LEAs said that their superintendent and school administrators see no need for it; determined that such policy is unnecessary.
- Two LEAs said that the issue is too difficult to regulate.
- Two school divisions said that if a student needs the level of intervention involving restraint and/or seclusion, then the LEA would consider that the student needs a private placement.

## APPENDIX F (Continued)

### III. Response from the Legal Community

ODR/AS staff contacted 5 school board attorneys and the VSBA regarding their reluctance to support their clients adopting a written policy, procedure, etc... or relying on VDOE's Guidance Document. Their responses include the following comments.

- It is not possible to put everything that should occur in a situation involving restraint and/or seclusion in a local policy, procedure, regulation, or protocol.
- If the LEA adopts a policy, regulation, etc... on restraint and seclusion, the LEA is giving a potential plaintiff a standard against which the LEA's action can be judged. The LEA's failure to follow its own protocol arguably is negligence.
  - ✓ Several of the school board attorneys amplified this comment to further say that preserving the school division's immunity defense is critical as part of the attorney's advising their clients on matters that potentially may be litigated. For example, a school division could be held liable for establishing a policy that causes constitutional deprivations when that policy is used by someone who is reckless or deliberately indifferent to the consequences. When that happens, one has a difficult time arguing that one is immune from the consequences. The charge could be that the person did not follow the policy and therefore, was negligent in his/her actions. On the other hand, if there is no "policy", then the school division could argue that the school individual used his/her own discretion based on the circumstances at the point restraint was used with the student, and therefore, the person was not negligent in his/her use of the restraint.
- School divisions are better served in this instance having training programs that include well-established protocols for managing student behaviors in emergency situations.

### IV. Review of Case Law and SEA Systems

#### VDOE Dispute Resolution Systems

- VDOE had one due process hearing on this subject initiated this year. The case was resolved before hearing and the parent withdrew the request for the hearing. A search of previous due process decisions over a 10-year period disclosed that this issue has not been the subject of other due process cases.
- VDOE has had one complaint in the last 10 years. In that case, the LEA was found in compliance with the FAPE regulations and safety. The record supported that the child's aide had been trained and certified in MANDT restraint techniques and had specialized

## APPENDIX F (Continued)

training in behavior management. VDOE determined that the school division had acted reasonably in responding to protect the student and others in using restraint techniques, notified the child's parents immediately thereafter, and did not compromise the child's FAPE entitlement.

### Case Law

Our search could not find any case law on point, and nothing remotely related in the Fourth Circuit. The only directly applicable case is the Georgia Superior Court decision referenced earlier. Training of school personnel on the use of physical restraint appears to be the critical factor in these situations, demonstrating the school division's commitment to protecting the safety of all students and school personnel.

### SEA Practices

As noted earlier, the NDRN Report includes its survey of SEAs on this subject. ODR/AS searched other SEAs to determine if they had initiated any special projects involving the use of restraint and seclusion and children with disabilities.

Wisconsin DOE reported on its specialized initiative that involves a comprehensive, standardized program for all school employees (including bus drivers, kitchen staff, and maintenance people) in simple, safe seclusion and restraint procedures. According to Wisconsin DOE, such standardization provides consistency among the school divisions in the application of the use of restraint and seclusion and most importantly, ensures that the appropriateness of the children's IEPs is not compromised. To date, the training has been provided in more than 300 Wisconsin schools. The course is "available and open to all online as an easy-to-teach multimedia presentation." The Web site is: <http://www.specialed.us/S&R/S&R-index.html>

Our search could find no other SEA that has initiated or is planning initiatives on this subject.

## APPENDIX G



COMMONWEALTH OF VIRGINIA  
**Department of Education**  
**Division of Special Education and Student Services**  
*Office of Dispute Resolution & Administrative Services*

July 8, 2009

### SUPPLEMENTAL REPORT

TO: Special Education Directors Council  
Special Education Administrators  
State Special Education Advisory Committee (SSEAC)

FR: Judy Douglas, Director, and ODR/AS Staff

RE: Physical Restraint and Seclusion in Virginia's Public Schools

Since the SSEAC and Special Education Directors Council meetings in April 2009, the use of restraint and seclusion has been the subject of national meetings and reports, including a congressional hearing. As a follow up to the previous report provided in April, ODR/AS was asked to provide a summary of information on selected meetings and reports.<sup>1</sup> In addition, Virginia school divisions were contacted to compile a listing of those school divisions that do and do not provide training on the use of restraint and seclusion. Included in this follow-up report are summaries of national meetings recently held, major reports that have been issued, and the data from a survey of local school divisions related to training on the use of restraint and seclusion.

#### **I. National Meetings** Congressional Hearing

The Committee on Education and Labor convened a full committee hearing on May 19, 2009. The committee reviewed a report from the Government Accountability Office (summarized in this document), entitled *Seclusions and Restraints: Selected Cases of Death and Abuse at Public and*

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<sup>1</sup> Following the April Special Education Directors Council meeting, a number of special education administrators requested that a copy of VDOE's Supplemental Report on this subject be mailed directly to them.

## APPENDIX G (Continued)

*and Private Schools and Treatment Centers*, and heard testimonies from two mothers of victims, two assistant superintendents from local school divisions, and a university professor. The hearing included a great deal of interaction among the committee members and those testifying. While no recommendations resulted from the meeting, the committee indicated that some action is needed to address the issues. A video of the hearing and copies of the testimony are available at: <http://edlabor.house.gov/hearings/2009/05/examining-the-abusive-and-dead.shtml>

### White House Meeting

On May 25, 2009, approximately 40 representatives of education and disability groups were invited to meet at the White House with Kareem Dale, special assistant to the president for disability policy, to discuss issues related to the use of restraint and seclusion in schools. The White House press office reported that the meeting resulted in general agreement that action is needed to address these issues. The press office further reported that the meeting was very productive, but offered no specific information on the issues or potential outcomes.

### Council for Exceptional Children (CEC) Briefing

CEC, in collaboration with its Division, the Council for Children with Behavioral Disorders (CCBD), held a congressional briefing entitled "Enhancing School Safety: Appropriate Use of Restraint & Seclusion Procedures" on June 8, 2009. Clemson University Assistant Professor Joe Ryan, Ph.D., was an invited speaker. Dr. Ryan, who is also a CCBD Board Member, presented CCBD's positions on the use of physical restraints and seclusion in school settings and spoke about the use of positive behavioral supports. Reports related to these positions are summarized in this report.

## **II. Major Reports Issued**

- Congressional Research Service (May 21, 2009). *The Use of Seclusion and Restraint in Public Schools: The Legal Issues* [On-line]. Available at: [http://www.nsba.org/cosa2/clips/docs/seclusion\\_and\\_restraint.pdf](http://www.nsba.org/cosa2/clips/docs/seclusion_and_restraint.pdf)

In response to congressional interest on the topic, the CRS developed this report as a review of legal issues related to the seclusion and restraint in public schools. Among the key points made:

- The applicability of the fourth amendment (which prohibits the government from subjecting individuals to “unreasonable search and seizures”) and the fourteenth amendment (which prohibits the government from depriving an individual of his liberty without the due process of the law) has been used to argue against the use of restraint and

## APPENDIX G (Continued)

seclusion. The courts, however, have applied a reasonableness standard to the use of restraint and seclusion.

- Neither restraint nor seclusion is specifically mentioned in IDEA, but the IEP team must consider the use of positive behavioral supports and other strategies to address behavior.
- The U.S. Supreme Court has not expressly addressed the use of restraint and seclusion but in *Honig v Doe* (1988), the Supreme Court indicated that educators may utilize “normal procedures” which may include the use of study carrels, timeouts, detention, or the restriction of privileges.”

- Council for Children with Behavioral Disorders (May 17, 2009). *CCBD’s Position Summary on the Use of Physical Restraint & Seclusion Procedures in School Settings* [On-line]. Available at: <http://www.ccbd.net/documents/22-6%20May2009.pdf>

This position paper provides some basic information, but specifically details recommendations regarding the use of physical restraint in schools. Each recommendation is elaborated. Among the recommendations are:

- Physical restraints should rarely be used.
- Restraints should be conducted by those who are trained in the use of restraint procedures.
- Restraints to control behavior should be used only under certain emergency situations.
- Physical restraint should be used only by a team and never conducted without at least one additional staff member present and in line of sight.
- Prone restraints should never be used.
- Restraint procedures are not teaching procedures and should not be used as a punishment or to force compliance.
- The use of restraint should always be documented immediately and placed in the student’s record and provided to the parent.

## APPENDIX G (Continued)

This position paper provides some basic information, but most specifically details and discusses recommendations regarding the use of seclusion in schools. Among the recommendations are:

- Seclusion should be used only rarely in schools.
  - Staff who use seclusion procedures must have training in conflict prevention, the crisis cycle and interventions at each stage, possible effects of seclusion, first aid and CPR.
  - Seclusion should never be used as a punishment, to force compliance, or as a substitute for appropriate educational support.
  - Seclusion to control behavior should be used only under specific emergency circumstances which are described in the report.
  - The use of seclusion should be documented after each use with a copy placed in the student's file and provided to the parent.
  - A staff de-briefing should occur after every use of seclusion.
  - Any student in seclusion must be continuously observed by an adult both visually and aurally for the entire period of the seclusion.
- National Association of State Mental Health Program Directors National Technical Assistance Center (October 31, 2005). *A Snapshot of Six Core Strategies for the Reduction of S/R* [Online]. Available at: [http://www.hogg.utexas.edu/PDF/Six%20Core%20Strat\\_Snapshot.pdf](http://www.hogg.utexas.edu/PDF/Six%20Core%20Strat_Snapshot.pdf)

Listed and discussed in this document are the following strategies to reduce the use of seclusion and restraint:

- Leadership toward organizational change
- Use of data to inform practice
- Workforce development
- Use of seclusion and restraint tools
- Consumer roles in inpatient settings
- Debriefing techniques

## APPENDIX G (Continued)

- National Disability Rights Network (2009, January). *School is Not Supposed to Hurt: Investigative Report on Abuse and Restraint in Schools* [On-line]. Available at <http://www.napas.org/sr/SR-Report.pdf>

ODR/AS' April 2009 report provided a brief summary of this document. The Network addresses the problems associated with the use of restraint and seclusion, what the Network identified as inadequate legal protections and oversight, and provides snapshots of cases that resulted in harm to children. Suggested and discussed are a number of actions including outreach and training, education advocacy, investigations and monitoring, and state legislation. Generally recommended is the use of positive behavioral support programs that are proactive, comprehensive, and data driven. There are also specific recommendations included for the Obama administration, Congress, state legislatures, and Boards of Education. Common among these recommendations are:

- Ban the use of seclusion in schools.
  - Ban the use of prone restraints or any other restraint than can suffocate an individual in schools.
  - Ban the use of 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.
  - Require the use of evidence-based positive behavioral supports and other best practices.
- United States Government Accountability Office (May 22, 2009). *Seclusions and Restraints: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers* [On-line]. Available at <http://www.gao.gov/new.items/d09719t.pdf>

This report was developed as the result of a request from the Committee on Education and Labor after learning about cases that resulted in the injury or death of students who had been restrained. Specifically, this report provides: an overview of federal and state laws related to the use of restraints and seclusions; examples of cases where it was alleged that children were harmed or died as the result of the use of restraint or seclusion in public and private schools; and, a number of more in-depth case studies. The appendix lists the laws in each state related to the use of restraint and seclusion in public and private schools.

In several places in its report, the GAO includes Virginia as one of the states having regulations governing restraint and seclusion. However, the report's focus is on public

## APPENDIX G (Continued)

schools and private schools. Virginia's private special education schools and residential facilities are governed by regulations that include provisions related to the use of restraint and seclusion; however, Virginia has no similar regulations for its public schools. The GAO Report is misleading as to Virginia being included in those states having regulations specific to restraint and seclusion. It is not until the reader views the report's appendix containing the various states' laws that the reader understands that Virginia law relative to restraint and seclusion pertains only to private special education schools.

### III. Training Results for Virginia LEAs

Polling results indicated that 81 LEAs (61.4%) provide training on the use of restraint and seclusion, and 51 LEAs (38.6%) do not. Following are lists of those schools divisions that provide training and those that do not.

Some respondents volunteered the following reasons for not providing training:

- The LEA does not have students that require the use of restraint/seclusion.
- Students who may need either restraint or seclusion are placed in private placements.
- Some LEAs provided training in the past, but no longer do.
- The LEA relies on School Resource Officers for any restraint needed.

A variety of training programs are used ranging from locally developed programs to formal, proprietary training. The most frequently cited programs were the Mandt System and training provided by the Crisis Prevention Institute. Other programs cited included Handle with Care, TOVA (Therapeutic Options of Virginia), Managing Aggressive Children, Non-Violent Conflict Intervention (NCI); and Applied Crisis Training (ACT).

**APPENDIX G (Continued)**

**LEAs that provide training to staff on the use of restraint and seclusion: 81**

Accomack	Dinwiddie	Loudoun*	Roanoke City
Albemarle	Fairfax	Louisa	Rockingham
Alexandria	Falls Church	Lunenburg	Salem
Amherst*	Fauquier	Lynchburg	Scott
Appomattox	Floyd*	Madison	Shenandoah
Arlington*	Fluvanna	Manassas	Smyth
Augusta	Franklin County*	Mathews	Spotsylvania
Bath	Frederick	Mecklenburg*	Stafford
Bedford*	Galax	Nelson*	Staunton
Botetourt	Giles	New Kent	Sussex
Bristol	Gloucester	Newport News	Tazewell
Buena Vista	Goochland	Norfolk*	Virginia Beach
Campbell	Greene	Norton	Warren
Caroline	Halifax	Nottoway	Westmoreland
Carroll	Hampton	Orange*	Williamsburg/JCC
Charlottesville	Hanover	Page	Wise
Chesapeake	Harrisonburg	Poquoson*	Wythe
Chesterfield	Henry	Prince William	York*
Covington	Hopewell	Pulaski	
Culpeper	Isle of Wight	Radford*	
Danville	King William*	Richmond City	

\* The school divisions identified with a single asterisk (\*) were not contacted for this report since they had indicated in the April survey that they provide training.

**APPENDIX G (Continued)**

**• LEAs that do not provide training to staff on the use of restraint and seclusion: 51**

Alleghany	Dickenson	Manassas Park	Rappahannock
Amelia	Essex	Martinsville	Richmond County
Bland	Franklin City	Middlesex	Roanoke County
Brunswick	Fredericksburg	Montgomery	Rockbridge
Buchanan	Grayson	Northampton	Russell
Buckingham	Greensville	Northumberland	Southampton
Charles City	Henrico	Patrick	Suffolk
Charlotte	Highland	Petersburg	Surry
Clarke	King and Queen	Pittsylvania	Washington
Colonial Beach	King George	Portsmouth	Waynesboro
Colonial Heights	Lancaster	Powhatan	West Point
Craig	Lee	Prince Edward	Winchester
Cumberland	Lexington	Prince George	

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