

## Unrestrained Danger: Seclusion and Restraint in Virginia Public Schools August 2014

Teachers and staff in Virginia public schools may physically restrain their students and place them in a seclusion room, and there are no regulations or rules to limit these practices or protect the students.<sup>1</sup> Furthermore, school personnel can do these things without even informing parents that their child was restrained or secluded. Each public school district is free to determine if these techniques will be used to control students, how they will be implemented and whether parents are notified. Students with disabilities are disproportionately subjected to restraints and seclusion<sup>2</sup> and those who attend private day schools for students with disabilities are protected by regulations on the use of restraints and seclusion while those in public schools are not.

In September 2009, the Virginia Department of Education's (VDOE) Office of Special Education and Student Services revised its "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" (VDOE Guidelines). However, these Guidelines do not require school divisions to adopt policies or procedures on the use of restraints and seclusion.



The disAbility Law Center of Virginia (dLCV) examined 128 school divisions' policies and procedures on restraints and seclusion, or the lack thereof, and analyzed their content and consistency across the state. The results of the analysis show that the policies and procedures that do exist vary considerably, with few offering clear or strict guidance on the use of restraints and seclusion. See detailed analysis, *Seclusion and Restraint in Virginia's Public Schools: Investigative Study of Policies and Procedures to Protect Students*, at [www.dlcV.org](http://www.dlcV.org). Due to the wide variability, and in some cases non-existence of policies or procedures, students in Virginia's public schools face insufficient and inconsistent protection from dangerous and unnecessary restraint and seclusion practices.

Public schools are entrusted to educate all children in a safe and positive manner. The staggering weight of evidence-based practices and social research demonstrates that the use of restraints and seclusion is dangerous, counter-therapeutic, and traumatizing. It is especially concerning when restraints and seclusion are used on students who use alternative means of communication

<sup>1</sup> For example, a recent investigation by the U.S. Department of Education's Office for Civil Rights found that in one school for students with emotional disabilities, staff used seclusion or restraint over 200 times in one school year. [https://www.justice4all.org/wp-content/uploads/2014/08/PWCPS\\_OCR\\_Letter.pdf](https://www.justice4all.org/wp-content/uploads/2014/08/PWCPS_OCR_Letter.pdf)

<sup>2</sup> See, for example, U.S. Department of Education, Office of Civil Rights' Civil Rights Data Collection, "Data Snapshot: School Discipline" released on March 14, 2014. Available at <http://www2.ed.gov/about/offices/list/ocr/docs/crdc-discipline-snapshot.pdf>

(communication devices and sign language, for instance) or who are nonverbal and do not have adequate access to communication tools or development of such skills, or on students who have other contraindications such as medical issues or previous trauma. Prone restraint is one of the most lethal practices, as the student is placed face down and is physically prevented from moving from the position.<sup>3</sup> See *Figure 1*. However, with no regulations in place, schools are free to use prone restraints and other dangerous restraint techniques without any approved training, procedures or reporting requirements.

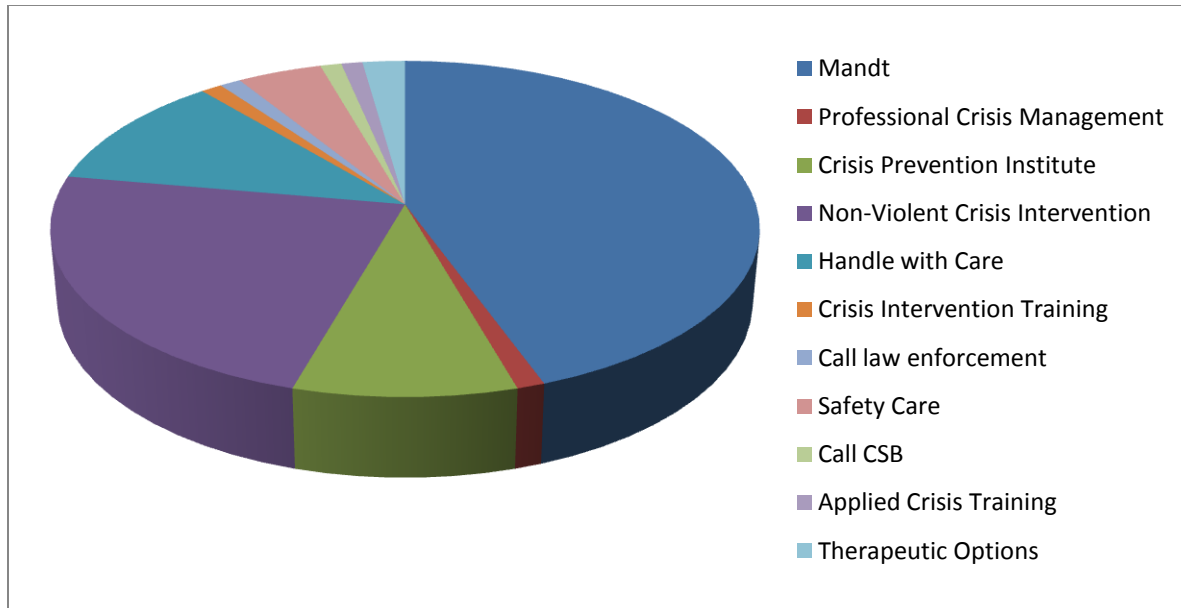
Prone Hold: The child's arms and legs are held by at least two adults while child lies on his/her front in a face-down or face-to-the-side position.



*Figure 1: Prone Restraint*

## Summary of Findings

Of the schools analyzed, 82 school divisions have adopted, either in whole or in part, the Virginia School Boards Association (VSBA)<sup>4</sup> policy regarding seclusion and restraint. This policy does not even meet the minimum standards set forth in the VDOE Guidelines. For example, it allows a student to be secluded or restrained when the only risk is destruction of property instead of confining use to situations where there is an immediate risk of substantial physical injury. Other problems include a period of 15 school days before the school must notify parents of incidents and the lack of a complaint mechanism for improper use of restraint and seclusion. Finally, there is no emphasis on using positive behavior supports or strategies.



*Figure 2: Intervention Identified*

<sup>3</sup> National Disability Rights Network, “School is Not Supposed to Hurt” (“NDRN Report”) (2009), available at <http://ndrn.org/images/Documents/Resources/Publications/Reports/SR-Report2009.pdf>.

<sup>4</sup> A voluntary and nonpartisan organization of school boards

In addition to the non-existence or variability of policies among the schools, there are also many different behavior intervention techniques or training programs used to train school staff and implement restraints such as the Mandt System, Handle with Care, Crisis Prevention Institute, and Crisis Intervention Training. *See Figure 2.* These programs vary in their inclusion and emphasis on nonphysical crisis intervention techniques and the types of restraints taught and used.

One of the most disturbing findings is that 32 school divisions have adopted no policies or guidelines governing the use of seclusion or restraint. Of those school divisions, 13 divisions stated that they also have no policies or forms pertaining to behavior intervention, training, oversight, documentation, or parental notification. These schools did not say that they don't use seclusion and restraint; they just have no guidelines on its use, no specific training protocol, no plan for notifying parents of their use and no way to document incidents.



The review of documents and statements of the schools which do have policies, procedures, guidelines, or handbooks show that there is no consistency among the school divisions. A few school divisions had fairly comprehensive policies and procedures in place outlining best practices, positive behavior supports, strict and narrow criteria for use of restraints or seclusion, training, documentation, and parental notification.

Interestingly, several school divisions that adopted VBSA's policy actually went beyond them and adopted more restrictive criteria for the use of restraints or seclusion in their procedures or guidelines. Many schools only had policies but no procedures to address or establish important elements such as training, documentation and parental notification. Most school divisions lack a system or process for the compilation, tracking, and analysis of the use of restraints and seclusion. The absence of such data collection is problematic as school divisions cannot analyze the efficacy of their policies, procedures, training or intervention program; without this analysis, schools cannot effectively work toward the reduction and ultimate elimination of these dangerous practices.

## **Recommendations**

In light of the results of this investigation, dLCV recommends that the Virginia Department of Education (VDOE) create regulations strictly governing the use of restraints and seclusion for students in public schools. Specifically, VDOE should adopt regulations applicable to all public schools that at the very least:

1. Define and adopt policies for the use of seclusion and restraints which are evidence-based, focused on positive behavioral supports, data-driven, trauma-informed, and person-centered;
2. Define and limit the use of restraint and seclusion as a last resort when there is an immediate and significant risk of physical injury and only when less restrictive interventions have failed;
3. Prohibit the most dangerous practices, including mechanical restraints and prone restraints;
4. Prohibit the inclusion of restraints, seclusion, or other aversive measures as part of any behavioral plan, or a student's Individual Education Plan or 504 Plan;

5. To the extent that seclusion is allowed, require explicit time limits and basic comfort and safety measures;
6. Require development of a strict training program for school staff to be certified on proactive behavior management strategies, crisis de-escalation, and non-injurious crisis intervention;
7. Require nursing assessments during and after each incident of restraint and seclusion;
8. Require documentation and reporting of all incidents of restraint or seclusion; and
9. Require school divisions:
  - a. to provide parental notification within 24 hours of each incident of restraint and seclusion, regardless of whether or not the student was injured;
  - b. to develop a systemic approach to monitor the use of restraints and seclusion with a goal of eliminating their use;
  - c. to develop a systemic approach to receive and investigate complaints regarding restraints and seclusion; and
  - d. to collect and make public data on the use of restraints and seclusion on a periodic basis.

These are not new recommendations. Many investigative reports and anecdotal stories have shown that concerns have increased exponentially regarding the application of restraints and seclusion in the last few years, both at state and national levels. For example, the Government Accountability Office released its written testimony, “Seclusion and Restraints: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers” on May 19, 2009.<sup>5</sup> Also, the National Disability Rights Network has released three reports starting in 2009: “School is Not Supposed to Hurt”, with follow-up reports in 2010 and 2012.<sup>6</sup> Several other protection and advocacy organizations have released investigative findings involving the dangerous use of restraints and seclusion. Finally, Jessica Butler of the Autism National Committee updated her comprehensive report “How Safe Is The Schoolhouse? A Summary and Analysis of State Restraint and Seclusion Laws and Policies” in January 2014.<sup>7</sup>

Given the overwhelming weight of evidence of the dangerousness of these practices and the attention focused on them nationwide, we urge Virginia’s Department of Education to act now to protect some of our most vulnerable citizens.

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<sup>5</sup> Government Accountability Office, “Seclusion and Restraints: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers,” No. GAO-09-19(T), [www.gao.gov/new.items/d09719t.pdf](http://www.gao.gov/new.items/d09719t.pdf).

<sup>6</sup> Available at <http://ndrn.org/en/media/publications.html>.

<sup>7</sup> Butler, J. (January 2014) “How Safe is the Schoolhouse? An Analysis of State Seclusion and Restraint Laws and Policies,” at page 1, available at <http://autcom.org/pdf/HowSafeSchoolhouse.pdf>.