



**Seclusion and Restraint in Virginia's Public Schools:
Investigative Study of Policies and Procedures to Protect Students
August 2014**

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I. Executive Summary

No student should experience physical and psychological trauma and loss of education due to restraints and seclusion at school. Students with disabilities are disproportionately restrained and secluded.¹ In the Commonwealth of Virginia's hospitals and private day schools for children and adolescents with disabilities, the use of restraints and seclusion are regulated. However, the Commonwealth of Virginia does not have any statutes or regulations governing the use of restraints and seclusion in its public schools. In September 2009, the Virginia Department of Education's 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"). VDOE Guidelines apply to all children in public schools. Since VDOE Guidelines do not mandate the school divisions to adopt a policy regulating the use of restraints and seclusion, disAbility Law Center of Virginia (dLCV) set out to examine whether there are policies and procedures that are being implemented throughout the Commonwealth of Virginia and to determine their efficacy and consistency. dLCV analyzed one-hundred twenty-eight (128) school divisions' policies and procedures related to restraints and seclusion. dLCV did not conduct on-site inspections or interviews with the school divisions. The results of the analysis show that the policies and procedures varied considerably, with few offering clear or strict guidance on the use of restraints and seclusion. Due to the wide variability, and in some cases, non-existence of policies or procedures, students in Virginia's public schools face insufficient protection from dangerous and unnecessary restraint and seclusion practices.

II. Restraints and Seclusion are a State and National Concern

Designated as the Commonwealth of Virginia's protection and advocacy organization, disAbility Law Center of Virginia (dLCV) was established on October 1, 2013 as an independent, private nonprofit agency responsible for protecting and advancing legal, human, and civil rights of persons with disabilities; combating and preventing abuse, neglect, and discrimination; and promoting independence, choice, and self-determination by persons with disabilities.²

One of dLCV's major areas of work is advocating for children with disabilities to maintain their rights under federal and state law to receive an appropriate education and to be free from abuse and neglect. dLCV is concerned that the Commonwealth of Virginia lacks appropriate protections regarding restraints and seclusion for students with disabilities in its public schools. Public schools are entrusted to educate all children in a safe and positive manner. Children with disabilities are particularly vulnerable. In some cases, they are unable to verbalize or otherwise convey instances of abuse, including inappropriate or excessive restraints or seclusion, threatening their safety and well-being. dLCV draws from our professional and legal experience in addressing the challenges and issues

¹ 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> ("The CDRC reveals that students with disabilities are subject to physical and mechanical restraint and seclusion at rates that far exceed that of other students, and black students with disabilities are subject to mechanical restraints at even higher rates than other students with disabilities," page 9).

² dLCV's predecessor was known as the Virginia Office for Protection and Advocacy (VOPA).

involving children and adolescents with disabilities, evidence-based best practices, national and state investigative reports, and various local, state, and federal statutes and regulations.

While various federal and other state laws define restraint more or less narrowly, for the purpose of this report, a restraint is defined as holding a student to keep him or her from moving his or her arms, legs, body, or head freely. This restraint is accomplished physically or mechanically. Mechanical restraints include any object or device such as a tape, vest, harness, or positioning chair that is used to prevent a student from moving or accessing a part of his or her body and which cannot easily be removed. Seclusion is generally defined as involuntary confining a student to a room, locked or unlocked, or preventing him or her from leaving an area. Seclusion is not the same thing as a timeout where a student is removed to another part of the classroom, can hear and see classroom activity, and can leave the area if desired.

The staggering weight of evidence-based practices and social research demonstrates that the use of restraints and seclusion is dangerous, counter-therapeutic, and re-traumatizing for those individuals who have experienced trauma. It is especially concerning when restraints and seclusion are used on students who use alternative means of communication (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 (e.g., asthma) or previous trauma (e.g., sexual and physical). There is also research that suggests the use of restraints and seclusion is never appropriate and that they represent a treatment failure. For instance, prone restraints have been shown to “constitute an event that appears to a child very much like an instance of physical or even sexual abuse.”³ Prone restraint is also one of the most lethal school practices, as the student is placed face down and is physically prevented from moving from the position.⁴ A student is at risk of “dying from positional asphyxiation if the child has an insufficient intake of oxygen as a result of body position” or from a disturbance in the heart’s rhythm due to insufficient oxygen in the blood known as a cardiac arrhythmia.⁵ Prone restraint has caused a multitude of physical injuries: cerebral and cerebellar oxygen deprivation (hypoxia and anoxia), lacerations, abrasions, contusions or bruising, dehydration, blunt trauma to the head, broken neck, and dislocation of shoulder and other joints.⁶ The use of prone restraint or any restraint method that causes injury, impedes breathing or communication, and threatens life should be prohibited.

Furthermore, 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, 2009.⁷ Also, the National Disability Rights Network released three reports: “School is Not Supposed to Hurt” (2009), “School is Not Supposed to Hurt: Update on Progress in 2009 to Prevent and Reduce Restraint and Seclusion in Schools” (January 2010), and “School is Not Supposed to Hurt: The U.S. Department of Education Must Do More to Protect School Children from Restraint and Seclusion” (March 2012).⁸ Several protection and

³ Mohr, W.K. (2006). Reflecting on Tragedy: A Commentary on Deaths of Children in Restraints. *Child Abuse and Neglect*, Vol. 30, Iss. 12, 1329-1331.

⁴ 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>.

⁵ Jeffrey P. Miller, *Physical Education: Amending the Individuals with Disabilities Education Act to Restrict Restraint and Seclusion in Public and Private Schools*, 49 Fam. Ct. Rev. 400, 405 (2011).

⁶ NDRN Report, *supra* at 13-14.

⁷ 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), <http://www.gao.gov/new.items/d09719t.pdf>.

⁸ Available at <http://ndrn.org/en/media/publications.html>.

advocacy organizations have released investigative findings or policy analysis involving the dangerous use of restraints and seclusion. For instance, Disability Rights California released a comprehensive findings report, “Restraint & Seclusion in California Schools: A Failing Grade” in June 2007.⁹ Many of these reports describe case studies involving deaths and injuries of children with disabilities attributable to school staff’s use of restraints and seclusion. Many uncovered the disturbing fact that restraints and seclusion were often misused as a disciplinary measure or as a behavior intervention, or to force a student to stay on task.

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. The report states that “19 states have laws providing meaningful protections against restraint and seclusion for all children; 32, for children with disabilities. This means that 32 states lack such laws for all children; 19, lack them for children with disabilities. Even these states offer varying protections, with important safeguards present in some states and missing in others. 3 states have laws protecting in some significant way against one procedure but not the other.”¹⁰ The report also addresses that some states, including the Commonwealth of Virginia, have non-binding guidelines, but no statutes or regulations.

The federal Individuals with Disabilities Education Improvement Act of 2004 (“IDEA”) afford certain protections to students with disabilities eligible for special education and related services. While the IDEA and Commonwealth of Virginia’s corresponding regulations encourage the use of positive behavior interventions, strategies, and support, neither unequivocally ban the use of restraints and seclusion.¹¹

Given the dangerousness of restraints and seclusion and the patchwork of some states having statutes and regulations of varying protections and applicability, there have been several federal attempts to pass legislation to regulate the use of these interventions. Mostly recently, Senator Tom Harkin (D-IA) introduced “Keeping All Students Safe Act” (S. 2036) on February 24, 2014.¹² This bill would establish federal minimum standards to limit the use of restraint and seclusion in schools. It is similar to the house bill “Keeping All Students Safe Act” (HR 1893) introduced by Rep. George Miller (D-CA) on May 8, 2013.¹³

III. Regulating Restraints and Seclusion in the Commonwealth of Virginia

The Commonwealth of Virginia does not have any statutes or regulations governing the use of restraints and seclusion in its public schools. However, the Virginia Administrative Code outlines regulations for behavior management programs for Private Day Schools for Students with Disabilities.¹⁴ If a private school for students with disabilities adopts a behavior management program, it must secure voluntary, informed, and revocable consent from parents or legal guardians and bans the use of mechanical restraints.¹⁵ In 2013, the Virginia Department of Education (VDOE) issued proposed revised regulations which would repeal the current regulations. The proposed regulations further

⁹ Available at <http://www.disabilityrightsca.org/pubs/702301.pdf>

¹⁰ 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>.

¹¹ 34 CFR Part 304; 8VAC20-81 *et seq.*

¹² <http://beta.congress.gov/bill/113th-congress/senate-bill/2036>.

¹³ <http://beta.congress.gov/bill/113th-congress/house-bill/1893>.

¹⁴ 8VAC20-670 *et seq.*

¹⁵ 8VAC20-670-130.

regulate behavior management programs, including banning prone, mechanical, and chemical restraints.¹⁶ They are currently under review by the Virginia Office of the Attorney General.¹⁷

The Commonwealth of Virginia also has a statutory ban against corporal punishment.¹⁸ See Appendix A. A number of school divisions included or referenced their policies banning corporal punishment, but this sort of policy does not address the issue of how they handle restraints and seclusion. Typically, their policy is a restatement of the statute, which mentions neither restraints nor seclusion.

In September 2009, the Virginia Department of Education's 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") that applies to all children in public schools.¹⁹ VDOE encouraged school divisions to adopt its guidelines or develop policy regarding physical restraints and seclusion. The following are salient points of the VDOE Guidelines:

1. Physical restraint is defined as "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:
 - a. Briefly holding a student in order to calm or comfort the student; or
 - b. Holding a student's hand or arm to escort the student safely from one area to another."
2. Seclusion is defined as "the confinement of a student alone in a room from which the student is physically prevented from leaving."
3. 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."
4. Physical restraint and seclusion "should only be used in emergency situations, when less intrusive alternatives have failed" and "there is a substantial explanation for why other interventions were deemed inadequate or inappropriate."
5. Physical restraints and seclusion can be a part of a student's behavior intervention plan with the parents or legal guardians' voluntary and written informed consent.
6. Recommendation that school divisions develop policies and procedures for:
 - a. "A determination of the behavior management program adopted by the school division and advising parents and students of the program;"
 - b. The criteria for use and applicability of physical restraints and seclusion, especially room and monitoring requirements for seclusion;
 - c. Staff training and certification requirements;
 - d. Documentation requirements for the incidents of physical restraints or seclusion;
 - e. Parental notification;
 - f. Administrative review to correct improper interventions;
 - g. Complaint process for parents and students; and
 - h. "A policy statement assuring the provision of students' rights."
7. Mechanical restraint is neither defined nor discussed.

Many school divisions use the Virginia State Boards Association's Policy Service. In August 2010, the Virginia State Boards Association (VSBA), a voluntary and nonpartisan organization of school

¹⁶ See <http://register.dls.virginia.gov/details.aspx?id=3212>.

¹⁷ See <http://townhall.virginia.gov/L/ViewChapter.cfm?chapterid=2599>

¹⁸ Code of Virginia § 22.1-279.1.

¹⁹ Available at www.doe.virginia.gov/support/student_conduct/guidelines_managing_behaviors_emergency.pdf.

boards, adopted a policy regarding restraints and seclusion: “Restraint and Seclusion of Students” (File: JM).²⁰ The school divisions that have adopted this policy have referenced it as the “JM Policy” or “Policy JM.” See Appendix B for a sample JM Policy provided by a school division.

VSBA’s JM Policy raises several concerns. It does not meet the minimum standards summarized in the VDOE Guidelines. For instance, the use of physical and mechanical restraints and seclusion can be implemented in a variety of situations, including in situations involving only the risk of property destruction. Therefore, it is overly broad and is not limited to situations where there is an immediate risk of substantial physical injury and only when less restrictive nonphysical interventions have failed. It does not consider restraints to be restraints if they are included in a student’s Individual Education Plan, Section 504 Plan, or behavior intervention plan. There is no emphasis on using positive behavior supports or strategies. It allows school divisions to notify parents within 15 school days of a restraint incident or a physical injury occurring in the seclusion room. Parents may not know that their child was restrained or injured in seclusion for nearly three (3) weeks. The policy does not discuss training except it notes that these interventions “may only be used by a staff member who has been trained in the proper use of the technique applied or device utilized.”²¹ There is no complaint mechanism for parents or students to use if they feel that a restraint or seclusion was improperly implemented.

IV. dLCV’s Findings

In December 2013, disAbility Law Center of Virginia (dLCV) sent Freedom of Information Act (FOIA) requests to all 133 public school divisions in the Commonwealth of Virginia.²² Specifically, dLCV requested:

- All records that set forth, clarify, define, or otherwise contain or refer to your school division’s behavior management procedures, policies, regulations, or protocols, including the use of seclusion, time-outs, physical removals, restraints (e.g., physical, mechanical, and chemical), and aversive techniques in your school division.
- All records that set forth, clarify, define, or otherwise contain or refer to your school division’s behavior management procedures, policies, regulations, or protocols outlining staff training, oversight, parental notification, enforcement, and implementation of seclusion, time-outs, physical removals, restraints (e.g., physical, mechanical, and chemical), and aversive techniques.
- All records that set forth, clarify, define, or otherwise contain or refer to your school division’s system or process for the compilation, tracking, and analysis regarding the use of seclusion, time-outs, physical removals, restraints (e.g., physical, mechanical, and chemical), and aversive techniques.
- All records that set forth, clarify, define, or otherwise contain or refer to your school division’s use, if any, of school resource officers in behavior management.

By March 2014, 128 (one-hundred twenty-eight) school divisions responded to dLCV’s request, a 96.2% response rate. One (1) school division initially requested additional time to respond, but it did

²⁰ Available at <http://ebookbrowse.net/may-2012-policy-manual-full-2-docx-d440974843> (retrieved on November 23, 2013).

²¹ See Appendix B.

²² dLCV did not send FOIA requests to the regional special education programs.

not respond to further contact from dLCV. Four (4) did not respond to either the initial request or to dLCV's follow-up in January 2014. Whether the school divisions did or did not adopt policies and procedures, the results show that there is a lack of consistency among the school divisions in policies and procedures, training, documentation, and parental notification.

Many school divisions included or referenced student code of conduct handbooks, policies on prohibition of corporal punishment, teacher's ability to remove students from the classroom, and suspension and expulsion of students with disabilities. A small number of school divisions provided copies of their policies, training materials, and blank forms for functional behavior assessments and behavior intervention plans. For this report, dLCV specifically assessed the school divisions' responses regarding restraints and seclusion.

Many school divisions listed the approved behavior intervention techniques or training programs they use to train and implement restraints.²³ Several of the programs do not permit use of prone restraint. For example, for those who reported that they use Mandt, several of their guidelines explicitly restrict the use of restraints to certain situations and do not teach certain restraints or techniques such as prone restraint, as Mandt removed the use of floor restraints from its training.²⁴ However, Handle with Care includes several techniques such as the "Primary Restraint Technique" (PRT) in the "neutral" position (a form of prone restraint), a "Four-Person Team Restraint," and Take-Down.²⁵

dLCV reviewed the submitted or referenced policies and procedures on restraints and seclusion, information on behavior intervention techniques or training programs the school divisions use to implement restraints and seclusion, policies or protocols regarding documentation and parental notification, and their process for the compilation, tracking, and analysis regarding the use of restraints and seclusion. Some school divisions provided a sample incident report used to document the use of restraints (primarily physical restraints), seclusion, or both. dLCV divided its findings into four categories: 1) School Divisions That Adopted VSBA's JM Policy; 2) School Divisions That Have Non-VSBA Policies or Guidelines; 3) School Divisions That Have Not Adopted Policies or Procedures; and 4) Other.

A. School Divisions That Adopted VSBA's JM Policy

Seventy-five (75) school divisions adopted, either in whole or in part, the Virginia State Boards Association (VSBA) JM Policy.

1. Two (2) school divisions reported more than one training program to manage behaviors. One uses Mandt and Handle with Care; however, neither its policies nor procedures explained in what circumstances each is applied. Another school division reported using Crisis Prevention Institute (CPI) for students on the Autism Spectrum Disorder while using CPI's Nonviolent Crisis Intervention (NCI) training program for other students. Both require annual training, documentation if restraints or seclusion or used, and parental notification.
2. Twenty-one (21) school divisions reported the use of Mandt. Three (3) school divisions noted that training is done and provided general forms not specific to restraints or seclusion; no other records were provided. One (1) school division noted training frequency and had no

²³ Examples include Mandt System, Handle with Care, Crisis Prevention Institute, and Crisis Intervention Training.

²⁴ Available at <http://www.mandtsystem.com/resources/faqs/>. Its FAQ also stated, "We can tell you that none of our techniques utilize hyper-extension of joints, trigger points, pressure point or pain, techniques which keep a person off balance, forcing a person against a wall or into a chair, or forcing a person to the floor (i.e., take down techniques)."

²⁵ Available at <http://handlewithcare.com/trainings/physical-intervention>.

other records, but stated that it reviews Applied Behavior Analysis methodologies multiple times per month at individual schools. One (1) school division shared that it conducts annual training, but no other records were provided. Two (2) school divisions provided no information about training or other records except a form documenting the use of restraint or seclusion. Eleven (11) school divisions indicated frequency of training and included an incident form for physical restraint or seclusion (with one specifically noting that it is to be filled out only if a student sustains an injury during seclusion), but no other records or information was provided. One (1) school division included information about frequency of training and a form, as well as a copy of its PowerPoint Presentation training handout. One (1) school division included its guidelines which noted training frequency, a sample documentation form and its policy that a nurse must see the student after each incident. The remaining school division did not note the frequency of training, but provided a copy of its guidelines and forms, including a debriefing form. The guidelines state that physical restraints should not generally exceed more than three (3) minutes or seclusion for more than 30 (thirty) minutes.

3. Seven (7) school divisions adopted Handle with Care. Three (3) school divisions did not provide any additional records except to indicate how often training is provided. One (1) school division included a documentation form and noted that it abbreviates the training program – no prone or supine restraints are taught; no other records were provided. Another school division noted that it provides a manual to each staff member trained, and it conducts the training annually and as needed. It included documentation forms for both physical restraint and seclusion incidents. It reports these incidents to the Office of Civil Rights at the U.S. Department of Education for its Civil Rights Data Collection.²⁶ The remaining two (2) included documentation forms and indicated that training is conducted annually; otherwise, no other records were provided.
4. Five (5) reported using Crisis Prevention Institute (CPI). One (1) school division provided no records except a general discipline form and noted that its training is done annually. Another provided no other records regarding restraints and seclusion; training is conducted yearly. One (1) school division reported that individual schools are responsible for establishing the training and included a physical restraint documentation form where one has to list which restraint position was used. This school division also maintains a yearly central record on the number of restraints and seclusion incidents. The last two (2) provided specific forms and indicated that training is done annually; one of the school divisions only provided a seclusion room log sheet. No other records were provided.
5. Eleven (11) reported specifically using CPI's specialized Nonviolent Crisis Intervention (NCI) training program. One (1) school division did not provide any other records. Three (3) school divisions provided general documentation forms; of the three, only two (2) indicated how often training is provided. No other records were provided. One (1) school division included its guidelines and indicated that staff receives 12-hour trainings. One (1) school division does not practice seclusion and its physical restraint form indicates that staff must

²⁶ U.S. Department of Education's Office of Civil Rights requires school districts nationwide to collect and report data on the use of restraints and seclusion, among other types of data, for all students at the school and district level for its Civil Rights Data Collection ("CRDC"). CRDC is a biennial survey. Note that not all school districts are required to participate in the CRDC. Rather, OCR selects a representative sample of school districts. See generally <http://ocrdata.ed.gov>. The most recent CRDC report was released on March 21, 2014 to reflect 2011-2012 school year data. A "snapshot" of school discipline is available at <http://www2.ed.gov/about/offices/list/ocr/docs/crdc-discipline-snapshot.pdf>.

list what positions were used and whether the staff were certified to implement the interventions. It also stated that training is done several times per year and a nurse must assess the student if he or she has been in a restraint for a specified period of time. Its policy also specifies protocols for those who communicate via sign language or an augmentative communication device, stating that hands-free restraint must be attempted first. One (1) school division included a sample documentation form for restraints, but no other records were provided. Two (2) school divisions indicated that training is provided annually and included a sample form for restraint and seclusion incidents. One (1) school division included a documentation form and shared that initial training is provided with a refresher every two years. Lastly, a school division reported that its Special Education office handles the annual training and oversight. It included a physical restraint documentation form.

6. One (1) school division uses Applied Crisis Training and has a training manual that outlines the different restraint techniques including “basket hold” and “sitting restraint”. The protocol in the manual requires physical monitoring during restraint and lists contraindications such as medical issues, deafness, and intellectual disabilities for its use. The manual also states that restraints can be traumatizing and that debriefing is part of the process. The school division included documentation forms that closely follow VSBA’s JM Policy.
7. Two (2) school divisions adopted Therapeutic Options. One (1) school division reported that a staff member provides the training on an annual basis, but it does not have a policy that addresses this training. It also shared that no formal documentation is done, but agreed that it should be considered to be a part of its policy. The other school division indicated that training is conducted several times a year and provided separate documentation forms for restraints and seclusion.
8. Twenty-five (25) school divisions did not report the type of behavior management or intervention they use when implementing restraints or seclusion. Four (4) school divisions included documentation forms for restraints or seclusion, but did not include other records or information about policies or frequency of training, for instance. Four (4) school divisions provided general discipline forms not specific to restraints or seclusions and no other records. Two (2) shared that it did not have any records or forms, but did report to the Civil Rights Data Collection. The remaining fifteen (15) did not have other records except for their respective restraint and seclusion policy.
9. One (1) school division reported that it will use Mandt starting February or March 2014. There were no other records except for a sample copy of an incident report that was not specific to restraints or seclusion.

B. School Divisions That Have Non-VSBA Policies or Guidelines

Twelve (12) school divisions referenced or submitted a copy of their policies and procedures governing the use of restraints or seclusion. Two (2) have not adopted a specific restraint policy; instead, they follow VDOE’s Guidelines.

1. Four (4) school divisions use Mandt. One school division’s guidelines explicitly apply to all students and emphasize the use of Positive Behavior Interventions and Supports (PBIS). They also expressly ban the use of prone or supine restraints, restraints against a wall or chair, and other restraints that restrict breathing. It also outlines training and oversight requirements, specific applicability of restraints and seclusions, and documentation and parental notification procedures and forms. Another school division’s policy did not outline

training, documentation, or notification specifications, but noted that it was up to each principal to implement them. The third school division has a restraint policy with a documentation form; the form indicates that parental notification is given, but it is unclear as to the timeframe. It has no policies or procedures on training or oversight. The last school division's policies ban the use of prone restraint and training is provided annually with periodic in-service reminders. The policies and procedures, as well as a parental permission form for use of restraints, indicate that if a student is restrained for a certain number of minutes or a certain number of times, then he or she is to be sent home.

2. One (1) school division adopted both Mandt and Professional Crisis Management. However, its policies and procedures did not specify in what circumstances each was applied. Its training and oversight appeared comprehensive and it provided sample documentation forms. Parents are to be notified verbally within 24 hours of the restraint or seclusion incident.
3. One (1) school division reported using CPI. Its guidelines outline training requirements and frequency, and documentation and parental notification requirements and forms. It also outlines limitations of restraints and seclusion, particularly the length of these interventions. Prone and mechanical restraints are explicitly banned. Rather, only a police officer can implement a prone restraint, but he or she must take immediate steps to end the restraint.
4. Four (4) school divisions use CPI's NCI. One school division reported that there are no formal policies for the training or oversight, but training is done annually. A sample incident report was included with a carbon copy to be provided to parents; however, it is not clear how soon the parents must be notified. Another school division stated that there are no training or oversight policies or forms because they do not use restraints or seclusion; instead, its policies focus on using PBIS. The third school division shared a copy of the sample incident report, but indicated that it does not have policies on restraints and that it does not use either restraints or seclusion. It follows VDOE's PBIS program. The fourth reported that it has no restraint policy and it provided dLCV a sample form for general discipline incidents.
5. One (1) school division did not report on which approved restraint techniques it uses and did not provide any information about its training or oversight. According to the policies and procedures on its website, parents are notified within 24 hours with a copy of the incident report mailed to them within 48 hours.
6. One (1) school division stated it will use Handle with Care and will develop the training manual and forms if funding is provided.
7. One (1) school division uses Crisis Intervention Training. Training is provided several times a year. A report of all incidents of seclusion and restraint must be submitted electronically. It did not provide a sample incident report and it is unclear when or how parents are notified, except that its policy references a meeting with parents within 5 (five) school days under certain circumstances.
8. One (1) school division calls the police if restraints are to be used. It is unknown what approved restraint techniques that the police use. While the school employees are not trained to implement physical interventions except for holding to calm or comfort a student or for escorting a student to safety, its policies and procedures state that no special training is required for the use of seclusion. These policies and procedures reference

documentation, parental notification protocols, and emphasize the use of behavior support plans to address behaviors.

C. School Divisions That Have Not Adopted Policies or Procedures

Thirty-two (32) school divisions have adopted no policies or guidelines governing the use of seclusion or restraint. Of those 32 school divisions, thirteen (13) school divisions stated that no policies were established governing the use of restraint and seclusion or there are no records pertaining to behavior intervention or training program, training, oversight, documentation, and parental notification. Two (2) school divisions reported that their respective school boards are considering adopting VSBA's JM Policy. One (1) division reported that it calls its local Community Services Board (CBS) for behavior management. While these school divisions have not adopted policies or procedures involving seclusion or restraint, they reported the following:

1. Twelve (12) school divisions use Mandt. One (1) school division that is considering adopting VSBA's JM Policy provided incident forms for both restraints and seclusion, with parental notification to occur within 24 hours, and it provides Mandt training three times per year. Four (4) school divisions indicated that training is provided, but no other records existed. Three (3) school divisions provided training and included general discipline forms; no other records existed. One (1) school division did not provide training or oversight records, but stated that its division does not have a seclusion room and provided a sample incident report for use of physical restraints. One (1) school division reported that training has yet to be updated and uses a general reporting mechanism and reports its numbers to the Civil Rights Data Collection. The remaining school division did not provide any records, stating that it uses Mandt.
2. One (1) reported the use of CPI and training occurs annually. There were no other records.
3. Two (2) school divisions use NCI. One (1) school division reported that it trains only its security personnel to implement the restraints, with no other records provided. The other school division takes a PBIS-approach. However, it provided a handbook specific to two schools for students with disabilities that references restraint usage. Restraints can be implemented under certain conditions (e.g., cannot restrain for property damage unless it will result in bodily harm). Their intake process includes trauma history and safety assessments.
4. One (1) school division uses Safety Care, and its documentation forms are part of the Safety Care manual. Parents are to be notified within the same day of a restraint or seclusion incident.
5. Two (2) school divisions reported using Handle with Care. Both school divisions did not have other records regarding the use of restraints and seclusion, except one provided a general discipline form not specific to restraints or seclusion.
6. One (1) school division reported that if its school board adopts VSBA's JM Policy, it will either use CPI or Handle with Care. It provided a sample documentation form for restraint incident, but it was unclear if there will be a specific timeframe that a parent would be notified of the restraint incident. No other records were provided about restraints or seclusion.
7. The school division that calls its local CSB reported that the CSB uses CPI for individuals with mental illness and Mandt for individuals with intellectual disabilities. The CSB handles the training and oversight in accordance to the Department of Behavioral Health and Developmental Services' regulations.

D. Other

Seven (7) divisions initially reported there were no policies regulating the use of restraint or seclusion. After their submission, subsequent website search for their respective and referenced school board policies showed that four (4) did in fact have policies. All adopted VSBA's JM Policy. Two (2) school divisions adopted the VSBA's JM Policy shortly after their FOIA submission to dLCV. Lastly, several advocacy organizations informed dLCV that one school division, who currently does not have any restraint or seclusion policy, is considering adopting VSBA's JM Policy.

1. One (1) school division uses NCI. It has mandated training for paraprofessionals; teachers and principals can opt to be trained. It also shared that it reports its restraint and seclusion numbers to the Civil Rights Data Collection.
2. One (1) school division uses Mandt. Its documentation form is for restraint only and appears to align with VSBA's JM Policy requirements.
3. Two (2) school divisions use CPI's NCI. One school division conducts training throughout the year, and the second school division stated that it conducts trainings, but no further information was provided. Since they follow VSBA's JM Policy, dLCV assumes that it follows at least its documentation and parental notification requirements.
4. One (1) school division provided other behavior-related policies (e.g., teacher removal). Another provided a form used to document physical restraint. No approved behavior intervention techniques or programs were indicated.
5. The one (1) school division that is considering adopting VSBA's JM Policy has three (3) employees trained to use Safety Care. No other policies or procedures were provided regarding training, oversight, documentation, or parental notification.

E. Comparing dLCV's FOIA Results to VDOE's 2009 Survey Results

In 2009, the Virginia Department of Education (VDOE) surveyed the school divisions, asking if they had a "written policy, procedure, regulation, protocol, or are not using VDOE Guidance Document." As part of its 2009 "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"), VDOE highlighted the survey results in its Appendix F.

Appendix F outlined thirty-eight (38) school divisions that adopted a written policy, procedure, regulation, protocol, or VDOE's Guidance for restraint and seclusion and four (4) school divisions that adopted written policies or procedures on restraints only. However, based on the FOIA responses to dLCV, seventeen (17) subsequently adopted VSBA's JM Policy. Nine (9) stated that no policies or procedures existed. And, one is unknown since dLCV never received a response.

Appendix F also listed twenty (20) school divisions that were in the process of adopting a policy, procedure, regulation, or protocols.²⁷ Eight (8) school divisions have then since adopted VSBA's JM Policy. Five (5) school divisions reported no policies or procedures. Three (3) school divisions developed their own policies and procedures. Two (2) school divisions are unknown as they did not respond to dLCV's requests. The remaining school division initially reported no policies and procedures, but a subsequent search showed that it has adopted VSBA's JM Policy.

²⁷ dLCV only counts nineteen (19), as Bedford County and Bedford City were not counted separately.

Lastly, Appendix F outlined the remaining 96 (ninety-six) school divisions that had no plans to adopt or develop any policies or procedures. Many of them did report relying on behavior intervention or training programs instead. Based on the FOIA responses to dLCV, forty-nine (49) school divisions adopted VSBA's JM Policy, sixteen (16) had no policies or procedure, four (4) had developed their own policies and procedures, and two (2) were unknown as they did not respond to dLCV's requests. Four (4) initially reported no policies and procedures, but a subsequent search showed that they did in fact have policies, with 2 (two) having adopted VSBA's JM policy shortly after their FOIA submission to dLCV. The remaining school division is considering adopting VSBA's JM Policy.

F. Use of School Resource Officers

dLCV wanted to determine to what extent the school divisions use school resource officers in implementing restraints or seclusion. The Code of Virginia defines "school resource officer" as "a certified law-enforcement officer hired by the local law-enforcement agency to provide law-enforcement and security services to Virginia public elementary and secondary schools."²⁸

Sixty-eight (68) school divisions reported that they used school resource officers; most provided a copy of a memorandum of understanding with their respective local police or sheriff department. Several school divisions explicitly stated that they do not use school resource officers. In several of the policies or memorandum of understanding, it is clear that the use of school resource officers can be used to assist with the restraint and seclusion interventions. However, dLCV currently does not have sufficient information to draw any conclusions regarding the extent or use of school resource officers in restraint or seclusion interventions.

G. Conclusion and Recommendations

The review of various policies, procedures, guidelines, and 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 VSBA's JM Policy took further measures to adopt more restrictive criteria for the use of restraints or seclusion in their procedures or guidelines. Many only had policies, but no procedures to address or establish training or documentation. Some reported or included policies, but provided no indication of what approved behavior intervention techniques or program they used.

Also concerning is the lack of most school divisions' system or process for the compilation, tracking, and analysis of the use of restraints and seclusion. A few school divisions' documentation forms indicate that they are forwarded to its central office or its respective special education office. Only one (1) school division reported that it collects data on the annual use of restraints or seclusion, but did not specify what is done with that data. The lack of such data collection is problematic because the school divisions cannot then effectively analyze the efficacy of its respective policies, procedures, training or intervention program. Without this data, the frequency, length, and severity of restraints and seclusion are and will continue to be unknown.

Given the wide variability of existing policies, few procedures, and lack of legal safeguards, and coupled with the fact that some school divisions use dangerous interventions such as prone restraints, dLCV recommends that the Virginia Department of Education (VDOE) create regulations strictly governing the use of restraints and seclusion for students in public schools. dLCV recognizes that a student's self-injurious or aggressive behavior can be difficult to manage and that safety measures are needed to protect the student, other students, and staff. However, it is crucial to mandate a program of

²⁸ Code of Virginia § 9.1-101.

positive behavior supports, driven by data and evidence-based practices, to support every student, including those with challenging behaviors. Specifically, VDOE should adopt regulations applicable to all public schools. The regulations should, at the very least:

1. Define and adopt evidence-based positive behavioral interventions;
2. Require school divisions to adopt systemic programs to insert evidence-based practices and data-driven decisions, including incorporating trauma-informed approaches;
3. Require school divisions to develop person-centered behavioral plans with both the student and his or her parents, based on professional assessments that include a discussion of contraindications (e.g., medical issues or trauma history);
4. Define and limit the use of restraint and seclusion as a last resort to those situations where there is an immediate and significant risk of substantial physical injury to self or others and only when less restrictive nonphysical interventions have failed; such interventions should be discontinued as soon as imminent danger of serious physical harm to self or others has dissipated;
5. Ban the use of restraint and seclusion to protect against harm to property;
6. Prohibit the use of any restraint method that prevents a student from speaking, signing, or communicating, impedes breathing, obstructs a staff member's view of the student's face, places pressure on the student's head, neck, or torso (including straddling), and threatens the student's safety and life. Prohibited practices include take-down maneuvers, prone and supine restraints, wall or chair restraints, and basket-holds;
7. Ban mechanical restraints;
8. Prohibit the inclusion of restraints, seclusion, or other aversive stimuli or measures as part of any behavioral plan, or a student's Individual Education Plan or 504 Plan;
9. Ban the use of restraint or seclusion for students with known contraindications (e.g., medical issues and trauma history).
10. Implement the following requirements for seclusion:
 - a. Explicit time limits with a requirement that it end when the immediate risk of physical harm to self or others has subsided;
 - b. Seclusion space must be unlocked, appropriately lighted, ventilated, and appropriately heated or cooled. It must be free from objects or fixtures with which a student could inflict self-harm;
 - c. School staff must have adequate auditory and visual view of the student in seclusion at all times;
 - d. School staff must allow the student reasonable access for care of bodily needs; and
 - e. School staff must explain to the student the behavior that led to seclusion and provide instructions on the behavior required to return to the learning environment;
11. Require development of a strict training program for school staff to be certified on proactive behavior management strategies, crisis de-escalation, non-injurious crisis intervention, symptoms of distress and positional asphyxia, functional behavior assessments, and the development and implementation of positive behavior intervention plans for identified students. The training program must include a written examination and physical demonstration of proficiency in the described skills and competencies on a periodic basis;
12. Require continuous auditory and visual monitoring throughout the restraints;
13. Require nursing assessments during and after each incident of restraint and seclusion;
14. Require school divisions to provide parental notification within 24 hours of each incident of restraint and seclusion, regardless of whether or not the student was injured;
15. Require specific documentation, for any incident of restraint or seclusion, with or without injury, to include:
 - a. A description of failed less intrusive interventions or a substantial explanation as to why they were deemed inappropriate;

- b. The precipitating event that preceded the behavior that prompted the use of restraint or seclusion;
 - c. The behavior that prompted the use of restraint or seclusion;
 - d. The names and signatures of the staff members who observed or witnessed the behavior that prompted the use of restraint or seclusion;
 - e. The names and signatures of the staff members who implemented and monitored the use of restraint or seclusion;
 - f. The type of restraint;
 - g. The length of time in restraint or in seclusion;
 - h. The description of the student's behavior during and after the restraint or seclusion;
 - i. Description of the nursing assessments;
 - j. Time and means of parental notification;
 - k. Description and outcome of debriefing with the student and his or her parents; and
 - l. The name and signature of responsible administrator informed.
16. Require school divisions to develop a systemic approach to monitor the use of restraints and seclusion;
17. Require school divisions to develop a systemic approach to receive and investigate complaints regarding restraints and seclusion; and
18. With an established and uniform reporting system, require school divisions to collect and make public data on the use of restraints and seclusion on a periodic basis.

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.

Appendix A

§ 22.1-279.1. 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), (iv), and (v) of subsection A of this section, or by participation in practice or competition in an interscholastic sport, or participation in physical education or an extracurricular activity.



Appendix B

Book	Accomack County Public Schools Policy Manual
Section	J - Student
Title	RESTRAINT AND SECLUSION OF STUDENTS
Number	JM
Status	Active
Legal	<u>Code of Virginia, as amended, § 22.1-278</u> <u>Code of Virginia, as amended, § 22.1-279.1</u>
Adopted	October 5, 2010

File: JM

Physical and mechanical restraint and seclusion may only be used consistent with this policy.

As used in this policy,

"physical restraint" means the use of physical force to restrict the free movement of all or a part of a student's body. Excluded from this definition is the use of procedures the use of which is documented in the student's Individualized Education Plan (IEP), Section 504 plan, or behavior intervention plan;

"mechanical restraint" means the use of any device or material attached to a student's body that restricts freedom of movement or normal access to any portion of the student's body and that the student cannot easily remove. Excluded from this definition is the use of devices or materials the use of which is documented in the student's Individualized Education Plan (IEP), Section 504 plan, or behavior intervention plan;

"seclusion" means the confinement of a student alone in a separate enclosed space, in a manner that prevents the student from leaving. Seclusion is permitted in accordance with a student's IEP, Section 504, or behavior intervention plan, or to prevent injury to the student or others. When a student is placed in seclusion, he or she will be monitored by a staff member in close proximity. It is preferable that the staff member can see or observe student. A student placed in seclusion will be released from seclusion upon cessation of the behaviors that led to the seclusion; after a reasonable period of time in the seclusion setting during which it is determined that the seclusion will not be effective; or in accordance with the student's IEP, Section 504 plan, or behavior intervention plan. The space used for seclusion must be appropriately lighted, ventilated, and heated or cooled, and free from objects that unreasonably expose the student or others to harm.

Physical restraint, mechanical restraint, and seclusion may only be used by a staff member who has been trained in the proper use of the technique applied or device utilized and should only be used in the following circumstances:

- as needed to protect an individual from his or her own actions;
- as needed to protect others from injury by the restrained person;
- as needed to quell a disturbance;
- as needed to gain possession of weapons or other dangerous objects on the person or within the control of a student;
- as needed for self-defense;
- as needed to escort a student safely from one area to another;
- as reasonably needed to prevent imminent destruction to school or another person's property;
- when using seat belts or other safety restraints to secure a student during transportation;
- to direct the movement or actions of a student to avoid the undue or deliberate disruption of the learning environment;
- as authorized by the Code of Virginia, or
- as authorized by a student's IEP, Section 504 plan or behavior intervention plan.

Nothing in this policy is intended to limit the application of VA Code § 22.1-279.1 which provides generally that:

No teacher, principal or other person employed by the school board shall subject a student to corporal punishment. This prohibition of corporal punishment shall not be deemed to prevent

- the use of incidental, minor or reasonable physical contact or other actions designed to maintain order and control;
- 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;
- the use of reasonable and necessary force to prevent a student from inflicting physical harm on himself;
- the use of reasonable and necessary force for self-defense or the defense of others;
- 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;
- physical pain, injury or discomfort caused by participation in practice or competition in an interscholastic sport; or
- participation in physical education or an extracurricular activity.

Documentation and Notice to Parents

A parent or guardian will be notified in writing within a reasonable period of time, not to exceed 15 school days, after any use of

- physical restraint; or
- seclusion resulting in observed physical injury to the student.

The staff member who utilizes restraint or seclusion will be responsible for making a record of information regarding its use including the date, time, duration, precipitating behavior, outcome and other pertinent observations. Documentation is not required when using mechanical devices that are authorized and utilized for the student's safety or physical support such as bus harnesses, lap belts, rifton chairs and similar devices. This policy does not permit the use of a restraining device to limit a student's mobility when that device is not ordinarily used with the student.

Adopted: October 5, 2010

Legal Refs.: Code of Virginia, 1950, as amended, § [22.1-78](#), [22.1-279.1](#).

Cross Refs.: [IGBA](#) Programs for Students with Disabilities
[JFC](#) Student Conduct
[JFC-R](#) Standards of Student Conduct
[JGA](#) Corporal Punishment
[JGDA](#) Disciplining Students with Disabilities
JGDB Discipline of Students with Disabilities for Infliction of Serious Bodily Injury

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ACCOMACK COUNTY SCHOOLS

Appendix C - Policies By School Divisions

1. School Divisions that never responded to our inquiries

Arlington (*never responded to our follow-up), Buchanan, Dickenson, Portsmouth, Southampton

2. School Divisions that adopted Virginia State Board Association (VSBA) Language, either in whole or in part:

Accomack, Alleghany, Amherst, Appomattox, Bath, Bedford, Bland, Botetourt, Brunswick, Buckingham, Buena Vista, Caroline, Carroll, Charles City, Charlotte, Clarke, Colonial Heights, Covington City, Culpepper, Cumberland, Essex, Floyd, Fluvanna, Franklin City, Franklin County, Frederick, Fredericksburg, Galax City, Giles, Gloucester, Goochland, Grayson, Greene, Greensville, Halifax, Henrico, Hopewell, Isle of Wight, King George, King William, Lancaster, Lee, Lexington City, Lunenburg, Madison, Manassas City, Manassas Park City, Middlesex, Nelson, New Kent, Northampton, Northumberland, Norton City, Patrick, Petersburg City, Prince Edward, Prince George, Roanoke City, Roanoke County, Rockingham, Salem City, Scott, Shenandoah, Smyth, Spotsylvania, Staunton City, Tazewell, Warren, Waynesboro, West Point, Westmoreland, Winchester, Wise, Wythe, York

3. School Divisions that adopted policies (* = Adopted VDOE's guidelines or Positive Behavior Interventions and Supports (PBIS))

Alexandria, Augusta, Campbell, Chesterfield, Fairfax County, Falls Church, Fauquier, Hampton* (but no restraint policy), Loudoun, Montgomery, Newport News, Prince William, Suffolk, Williamsburg-James* (but no restraint policy)

4. School Divisions that adopted no policies (* = reported being considered; ~ = no division-wide policy, but may have a specific-school one)

Albemarle, Amelia, Bristol~, Charlottesville, Chesapeake, City of Fairfax, Colonial Beach, Craig*, Danville, Dinwiddie, Hanover, Harrisonburg, Highland, Louisa, Lynchburg City, Mecklenburg, Norfolk, Nottoway, Orange*, Pittsylvania, Poquoson City, Pulaski, Radford, Rappahannock, Richmond~, Rockbridge, Russell, Stafford, Surry, Sussex, Virginia Beach City, Washington

5. School Divisions that reported no policies, but subsequent search turned up policies (*), consideration of policy from other sources (^), or adoption after FOIA submission (~)

Henry*, King & Queen*, Martinsville City~, Mathews*, Page*, Powhatan^, Richmond County~