

# SCHOOL IS NOT SUPPOSED TO HURT

## *Update on Progress in 2009 to Prevent and Reduce Restraint and Seclusion in Schools*



# ONE YEAR AGO

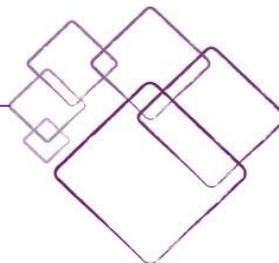
January 2009



**Wisconsin girl,  
age 7, killed  
while physically  
restrained and  
secluded.**

## School is Not Supposed to Hurt:

**Investigative Report on Abusive Restraint and Seclusion in Schools**



January 2010

RE: Update on Restraint and Seclusion in Schools

In these pages lies the culmination of a year of intense advocacy work, family support, and initial action of lawmakers to regulate restraint and seclusion in schools.

In January 2009, the National Disability Rights Network released a report entitled *School is Not Supposed to Hurt*. The report revealed that students in every region of the country were being injured, and even killed, by being abusively restrained and secluded at the hands of school staff. It uncovered that restraint and seclusion was often misused to force a student to stay on task or as a disciplinary measure, despite the consensus that restraint and seclusion are not therapeutic. There were no federal laws to prevent or reduce restraint or seclusion of school children when the initial report was released, and no federal action to point to at all. Almost half of the states had no laws or policies either, and existing state laws and policies varied greatly and were often inadequate.

The NDRN report, along with the dedicated efforts of families, advocates and others, triggered significant media attention and an immediate response from lawmakers. Over the past year, Congress requested a Government Accountability Office report on restraint and seclusion in schools, held a hearing and introduced legislation (HR 4247 and S. 2860). The White House has held meetings with disability and education groups, which then formed a working group to find common ground. The U.S. Secretary of Education applauded Congress' efforts and encouraged state school chiefs to develop laws and policies.

Numerous state coalitions and task forces were formed over the year, continuing the momentum the NDRN report garnered upon its release. Change on the state level has been slow, with few states either enacting or strengthening their laws this past year. That makes federal minimum requirements all the more necessary so that school children are protected from abusive restraint or seclusion practices regardless of where they live. The goals accomplished this year have been phenomenal, and the ball is rolling. With continued support from lawmakers and constant pressure from the grassroots, we look forward to a future where ***school no longer hurts***.

Curtis Decker, JD  
Executive Director

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## Executive Summary

In January 2009, the National Disability Rights Network issued a report called “School is Not Supposed to Hurt” which investigated the abusive use of restraint and seclusion in our nation’s schools. The report revealed that many children – even very young children – were being isolated, battered and bound, often without their parents’ permission and without notice.

The report demonstrated that current laws did not provide sufficient protection and oversight, despite the widely recognized risks of restraint and seclusion. In fact, federal and state laws were either non-existent or inconsistent.

The public and the media reacted to the stories of abuse in the NDRN report with horror. Reporters showed pictures of bruises and injuries. Television broadcasts revealed that school children were being thrown into dark, locked seclusion rooms.

The federal government responded immediately. Congress asked for an investigation and conducted a hearing. Families testified about how their children had been harmed and the need for minimum standards. The U.S. Department of Education proposed national data collection and asked the state school chiefs to review their policies. The White House held a meeting with national disability and education groups to discuss how school children could be protected. Since then, representatives of disability and education groups have met and found significant common ground for preventing and reducing the use of restraint and seclusion in schools.

Despite the uproar caused by the NDRN report and all of the activity on the federal level, states have been slow to respond. Over the last year only two states (Minnesota and Missouri) and six departments of education (Maine, Maryland, Nevada, Pennsylvania and Tennessee) have enacted or improved their laws to prevent and reduce the use of restraint and seclusion in schools. As of January 2010, the number of states

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## DEFINITIONS:

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*These definitions are taken from the Children’s Health Act of 2000, 42 U.S.C. 290jj(a)(4)(d) covering non-medical community-based facilities for children and youth. The definitions in the proposed restraint and seclusion legislation (HR 4247 and S 2860) mirror the CHA definitions.*

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*“Physical Restraint” means a personal restriction that immobilizes or reduces the ability of an individual to move his or her arms, legs or head freely.*

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*“Mechanical restraint” means the use of devices as a means of restricting an individual’s freedom of movement.*

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*“Seclusion” means a behavior control technique involving locked isolation.*

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*For more definitions, go to the Glossary in [Appendix 3](#).*

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with state-wide protections has not significantly changed:

- 39% of states still have no laws, policies, or guidelines concerning the use of restraint or seclusion,<sup>1</sup>
- 87.5% of states and territories still allow prone restraints or restraints that restrict breathing,<sup>2</sup>
- Only 45% of states and territories require or recommend that schools automatically notify parents or guardians of restraint or seclusion use.<sup>3</sup> This number has not changed from the previous year.

Even in states where legislation was strengthened, the provisions preventing restraint and seclusion are not consistent. For example, Missouri allows the use of restraint and seclusion only to ensure the immediate physical safety of the student or others, but Minnesota still allows school personnel to use restraint and seclusion to ensure physical safety and to prevent serious property damage. Maryland and Tennessee still allow restraint or seclusion to be used if written into a student's Individualized Education Program even when no emergency exists. The Missouri statute does not require notice to parents of restraint and seclusion use, but Minnesota, Nevada, Maryland, Maine and Tennessee do. In sum, the country still has a patchwork of state laws where children in some states are protected while others are not.

School children continue to be hurt when restraint or seclusion is used. Several Protection and Advocacy agencies issued reports in 2009 regarding the harm that restraint or seclusion has caused in their states. Most disturbing is that school children were harmed in 2009 even after schools were alerted to the dangers caused by restraint or seclusion. This follow-up report contains examples of continuing harm from some states that have no laws or policies on the use of restraint or seclusion in schools (Alabama and South Carolina), only voluntary guidelines (Michigan and Wisconsin) or an inadequate state law (New York). Appendix 1 to this report contains a state-by-state summary of activities that have taken place in 2009 to protect school children from abusive restraint and seclusion practices.

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<sup>1</sup> States and territories that do not have statewide restrictions on restraint and seclusion use in schools are: Alabama, Alaska, American Samoa, Arizona, California, District of Columbia, Georgia, Guam, Florida, Idaho, Indiana, Louisiana, Mississippi, Nebraska, New Jersey, the Northern Marianas Islands, Ohio, Oklahoma, South Carolina, South Dakota, the Virgin Islands, West Virginia and Wyoming.

<sup>2</sup> The only states that ban prone restraint, restraints that restrict breathing or restraints that put pressure on the chest are Colorado, Connecticut, Iowa, Pennsylvania, and now Maine and Maryland. Michigan's ban on prone restraint is in a voluntary board policy, and is not required by state law. The Ohio Department of Education has stated that it intends to follow a recent Governor's Executive Order prohibiting prone restraints but allowing certain face-down holds that are simply another type of prone restraint.

<sup>3</sup> The only states and territories that require parental or guardian notification after an incident of restraint or seclusion are: Colorado, Connecticut, Hawaii, Iowa, Illinois, Kansas, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Hampshire, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont and Virginia. Kentucky and Florida recommend, but do not require, that there be parental or guardian notification.

<http://www.state.ky.us/agencies/behave/bi/to.pdf> ; <http://www.fldoe.org/ese/pdf/y1993-3.pdf> Michigan's notification provision is in a voluntary board policy and is not required by state law.

[http://www.michigan.gov/documents/mde/Seclusion\\_and\\_Restraint\\_Standards\\_180715\\_7.pdf](http://www.michigan.gov/documents/mde/Seclusion_and_Restraint_Standards_180715_7.pdf)

Recognizing that continuing harm caused by restraint and seclusion and the slow progress of some states to protect children from these abusive practices, Chairman Miller (D-CA) of the House Education and Labor Committee, and Representative McMorris Rodgers (R-WA), also a member of that committee, introduced legislation in the House of Representatives on December 9, 2009 to prevent and reduce the use of restraint and seclusion in schools (HR 4247). The legislation would establish minimum standards, including restricting restraint and seclusion to emergency situations, requiring notice to parents, data collection and the training and certification of school personnel. It requires states to enact their own policies and procedures within two years. Senator Dodd (D-CT), who has always been a champion of protecting children from abusive restraint and seclusion, introduced legislation in the Senate on the same day (S 2860).

NDRN urges Congress to adopt the proposed legislation at the beginning of 2010 so that all our nation's school children (regardless of where they are learning) will be protected from abusive restraint and seclusion practices. School is not supposed to hurt.

#### **I. One Year Ago: Lack of Consistent and Meaningful Protections for School Children**

In January 2009, the National Disability Rights Network released a report entitled *School is Not Supposed to Hurt*. The report revealed that students across the country were being killed, confined, tied up, pinned down, and battered through the use of restraint and seclusion.

NDRN's report uncovered that there were no federal laws protecting school children from the dangerous use of restraint and seclusion although the Children's Health Act of 2000 protected children from abusive restraint and seclusion practices in many other settings, such as hospitals, residential treatment centers and residential group homes. The critical question was:

***If Congress enacted laws to protect children in residential settings, why were there no federal laws protecting children in our nation's schools?***

NDRN also examined all state laws, policies and guidelines. See the map at [www.ndrn.org](http://www.ndrn.org) for a description of each state's laws. NDRN found that:

- 41% of states had no laws, policies or guidelines concerning restraint or seclusion in schools,
- almost 90% still allowed prone (face-down) restraints, and
- only 45% required or recommended that schools automatically notify parents or guardians of restraint or seclusion use.

NDRN's report was issued at a press conference on January 19, 2009. Sen. Chris Dodd of Connecticut, who led the fight for legislation to reduce restraint and seclusion in health care settings ten years ago, recognized that students were not safe in their own schools:

*"Children are supposed to be safe at school, and most of the time they are, but unfortunately, this report shows us that in too many schools, in too many places, children with disabilities are not safe and are often subjected to inhuman treatment," Sen. Dodd (CT), Press Conference for NDRN Report, 1/19/09*

NDRN's report shocked the nation. The media and the public responded with outrage, asking how such dangerous practices could exist in our nation's public schools:

*I did not know that things like this happen in America. It is not this children's fault that they have disability, they should be protected, it is sad to know that they are given such inhuman treatment, this is very disturbing, a school should be home away from home, not an isolation camp. Anthonia F (1/23/09)*  
<http://disabilityintel.blogspot.com/2009/01/school-seclusion-and-restraint-abuse.html>

*I am a retired teacher who taught for almost 25 years. Teaching is a labor of love. I was horrified to learn about the barbaric and cruel methods some schools allow their teachers and staff to use to restrain disabled children.... Teachers must be trained to deal with their disabilities... (Melissa Barton, Blog response to article in West Palm Beach Post, 1/17/09)*



[http://www.palmbeachpost.com/blogs/content/shared-blogs/palmbeach/extracredit/entries/2009/01/16/national\\_group\\_and\\_local\\_mom\\_s.html](http://www.palmbeachpost.com/blogs/content/shared-blogs/palmbeach/extracredit/entries/2009/01/16/national_group_and_local_mom_s.html)

## II. Federal Government Begins to take Action During 2009

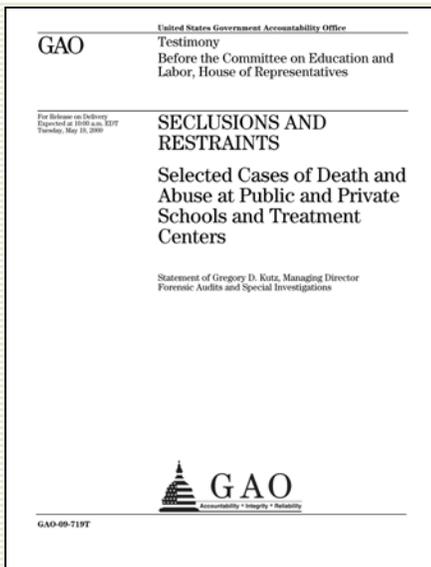
### A. Congress

In its January 2009 report, NDRN asked Congress to enact legislation to ban the use of seclusion in schools, prone restraints, or any other restraint that could suffocate a student, and all other types of restraint in schools except restraints as applied by trained individuals when the immediate physical safety of the student, staff, or others is clearly in danger. In addition, NDRN asked Congress to include in its legislation language requiring training of school personnel on the use of positive behavior supports and other best practices, prompt reporting and a requirement that states enact standards at least as strong as the federal standards.

NDRN applauds Chairman George Miller (D-CA) of the House Education and Labor Committee, the first Member of Congress to take action to protect children from abusive restraint and seclusion practices in schools. Just a week after NDRN issued its report, the House Education and Labor Committee asked the U.S. Government Accountability Office (GAO) to further investigate recent reports of seclusion and restraint of children in public and private schools across the country.

#### i. Government Accountability Office Report (May 19, 2009)

The GAO issued a report May 19, 2009 on selected cases of death and abuse at public and private schools and treatment centers. Although the GAO could not determine whether allegations were widespread, it did find hundreds of cases of alleged abuse and death related to the use of these methods on school children during the past two decades. Examples of these cases include a seven-year-old who died after being held face down for hours by school staff, five-year-olds being tied to chairs with bungee cords and duct tape, and a 13-year-old who hung himself in a seclusion room after prolonged confinement.



The GAO also examined the details of ten restraint and seclusion cases in which there was a criminal conviction, a finding of civil or administrative liability, or a large financial settlement. The cases shared the following common themes:

- restraint and seclusion of children with disabilities, often in cases where they were not physically aggressive and their parents did not give consent;
- restraints that block air to the lungs can be deadly; and
- untrained teachers and staff.

The GAO found that Texas public schools had restrained 4,202 students 17, 741 times during the 2007-08 school year and that California officials reported 14, 354 instances of students being subjected to restraint, seclusion or other undefined emergency interventions.

## ii. House Education and Labor Committee Hearing (May 19, 2009)

Chairman Miller conducted a hearing before the House Education and Labor committee on the day the GAO report was released. After listening to testimony from the GAO about its findings, Chairman Miller responded:

*“GAO’s report shows that in too many cases, a child’s life wound up being threatened even though that child was not a threat to others. This behavior, in some instances, looks like torture. The current situation is unacceptable and cannot continue.” Rep. George Miller, 5/19/09 Hearing*

Parents of children who had been killed or injured and educators also testified:

- **Toni Price**, whose foster son Cedric Napoleon was restrained and killed in a Texas school, said that Cedric had experienced a lot of abuse and neglect before he came to her home at the age of 12. He was particularly sensitive about food because he had been underfed when he was young. Seventh grade went well for him, but his eighth grade teacher frequently withheld food from him as punishment. On the morning of his death, his teacher delayed his lunch because he stopped working around 11 a.m. At 1 p.m. Cedric got in trouble when, still not having lunch, he was caught taking candy. After 2:30 p.m., he still hadn’t been allowed to eat his lunch and attempted to leave the classroom. His teacher, who was roughly six feet tall and weighed over 230 pounds, forced him into his chair and restrained him. Cedric struggled as he was being held in the chair so the teacher put him in a face down, or prone restraint and sat on him. He struggled and said repeatedly:



"I can't breathe." "If you can speak, you can breathe," she snapped at him. Shortly after that, he stopped speaking and he stopped struggling. The teacher continued to restrain him. An aide wiped drool from his mouth and they sat him up, but he slumped over and slipped out of his chair. Precious minutes passed by before a nurse was called. Mrs. Price received a call at work that Cedric was not breathing and that an ambulance had been called. When she got to the school, her son was lying on the floor with a paramedic beside him. She knelt down and said, "Cedric, get up. You're not going to be in any trouble." But Cedric didn't move, and instead, the paramedic stood her up. Her son was dead. Although Cedric's death was ruled a homicide, the teacher involved went on to teach students with disabilities in Virginia. The GAO referred the case to the Virginia Department of Education.

**Ann Gaydos** testified that she was never told that teachers were using restraint tactics on her daughter, Paige, until she came home with bruises:

*"Within a week at her new school, she came home bruised and told me, 'Mommy, my teacher hurt me and I couldn't breathe.' We were shocked that we had not been informed by the school of this use of force that had injured our daughter, and that such force could so easily be used for something as small as playing with a loose tooth in time out."*

*Testimony of Ann Gaydos, 5/19/09 Education and Labor Committee hearing.*



- **Reece Peterson**, who is a professor at the University of Nebraska–Lincoln and has been a researcher, teacher and educator in special education for more than 30 years, who has studied the use of restraint and seclusion in schools and how it can be prevented testified, "There is agreement among knowledgeable professional educators that physical restraint and seclusion procedures should only be used rarely in school settings to prevent injuries- when there is immediate danger of physical injury to someone- in 'emergency situations.'" He went on to say "while some have suggested that both restraint and seclusion can be used to change student behavior, there is virtually no evidence to support their effectiveness for that purpose." Dr. Peterson also indicated that most experts would say that restraint and seclusion should not be employed when students may be causing serious property damage to the school environment because "Most would say that they should not be used in such situations because of the risks for injury from these procedures may be larger than the risks without such strategies "

Testimony of Reece Peterson, Ph.Ed. in 5/19/09 hearing

(<http://edlabor.house.gov/documents/111/pdf/testimony/20090519ReecePetersonTestimony.pdf>)

Once again, the public and the media were horrified by what they heard:

## **Abuse in Schools Widespread, Report Finds, CBS News May 19, 2009**

### **Is a license to teach also a license to kill?**

May 23, 12:28 AM • [Special Education Examiner](#) • Robin Hansen

**Report Warns of Student Injuries, Even Deaths, at the Hands of Teachers, ABC News, May 12, 2009** "Teachers should not have the right to restrain a child as punishment," Robin Quill, Massachusetts mother of an 11-year old son with autism who came home from his Boston-area school one day last year with [a cut lip and a limp](#) as a result of a restraint.

### **iii. Federal Legislation Introduced (December 9, 2009)**



Over the next half-year, Chairman Miller, Senator Dodd and their staffs worked tirelessly on bills to create federal minimum standards to prevent and reduce the use of restraint and seclusion in schools. They got input from families, experts and representatives of the disability and education communities. On December 9, 2009, a bipartisan bill was introduced by Chairman Miller and Representative McMorris Rodgers (R-WA). Senator Dodd (D-CT) introduced similar legislation in the Senate on the same day.

At the press conference for the bill's introduction, additional families spoke about the horrors their children endured. The mother of a 6-year-old child from Michigan shared that her son was tied to a chair for hours at a time. When the chair fell over, no one helped him get up. He was physically bruised and traumatized by these experiences.

Representatives of the disability and education communities also attended and spoke. Both supported the bill. Curt Decker, executive director, NDRN: "This balanced legislation will help

ensure the safety of students and teachers nationwide when enacted.” In addition, the Alliance on the Prevention of Restraint, Aversive Interventions and Seclusion submitted a letter of support. NDRN applauds the efforts of Representatives Miller and McMorris Rodgers and Senator Dodd. The proposed legislation addresses many of the problems documented in NDRN’s report.

Below is a summary of the key elements of the House Bill:

**Summary of HR 4247:           A bill to prevent and reduce the use of physical restraint and seclusion in schools and for other purposes**

- **Definitions**

**Same definitions as Children’s Health Act (CHA).** The definitions of the different types of restraint (chemical, mechanical and physical), “seclusion,” and “physical escort” in HR 4247 mirror the definitions in the Children’s Health Act of 2000, 42 U.S.C. 290jj *et seq.* This makes the definitions consistent across all settings for children. States can provide even more protection for school children by expanding the definition of seclusion to “a behavioral control technique in which a student is involuntarily confined to a room or area from which the student is physically prevented from leaving.” This expanded definition is already in the CMS regulations for the CHA involving psychiatric hospitals<sup>4</sup> and psychiatric residential treatment centers for individuals under age 21.<sup>5</sup>

**All schools that receive USDOE funding directly or indirectly are covered.** “School” is defined as a “public or private day or residential early childhood, elementary or secondary school or program that receives, or serves students who receive funds directly or indirectly from the U.S. Department of Education. Therefore, all educational settings are covered unless they receive no funds directly or indirectly from USDOE.

- **Bans.** Within 180 days of the enactment of the Act, the Secretary of the U.S. Department of Education must establish minimum standards, including bans on:
  - Chemical restraint;
  - Mechanical restraints;
  - Aversives;
  - Physical restraint or escort that restricts breathing;
  - Physical restraint and seclusion unless all of the following conditions are met:

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<sup>4</sup> 42 C.F.R. §482.13(e)(1)(ii) (Final Rule: Conditions of Participation for Hospitals) “Seclusion is the involuntary confinement of a patient alone in a room or area from which the patient is physically prevented from leaving. Seclusion may only be used for the management of violent or self destructive behavior.”

<sup>5</sup> 42 C.F.R. §441.352

- the student’s behavior poses an imminent danger of physical injury to the student, school personnel or others,
    - less restrictive interventions would be ineffective, and
    - school personnel provide continuous face-to-face monitoring unless there is a clear and unavoidable emergency where trained staff are not immediately available.
  - Restraint or seclusion may not be included as a planned intervention in an individualized education plan (IEP), education plan, safety plan, or behavioral plan. However, schools may have policies for use of restraint or seclusion as part of general school safety or crisis plans.
- **Notice to Parents.** Schools must provide immediate verbal or electronic notice to parents following each incident of restraint or seclusion. Written notice must be provided to parents within 24 hours of the incident.
  - **State Plan.** State education agencies must submit to the Secretary of USDOE a State plan that provides assurances that the state has in effect state policies and procedures that meet the minimum standards, including the standards with respect to State-approved training programs, and a state mechanism to effectively monitor and enforce the minimum standards.
  - **State Reporting Requirements.** State education agencies (SEAs) must report to the USDOE the total number of incidents in which restraint was imposed during the academic year, and the total number of incidents of seclusion. These must be disaggregated by race, ethnicity, gender, disability status, migrant status, English proficiency, and status as economically disadvantaged. States must also report the total number of incidents which resulted in injury or death or which were imposed by untrained individuals.
  - **Non-compliance.** If a SEA fails to comply with the submission of a state plan or the reporting requirements, the USDOE may require the SEA to implement a corrective action plan within one year and may withhold in whole or in part further payments, e.g. IDEA funding, after notice and opportunity to be heard. The withholding must cease when the Secretary of USDOE determines that an SEA being subjected to withholding comes into compliance.
  - **Grant Authority.** The USDOE Secretary may award 3-year grants to SEAs, which in turn may award sub-grants to Local Education Agencies (LEAs) to assist in establishing, implementing and enforcing the policies to meet minimum standards, improving state and local data collection and analysis capacity, and improving schools climate and culture by implementing school-wide positive behavior support approaches. SEAs which receive grants are required to submit a report to the Secretary at the end of the three-

year period on the state's progress toward the prevention and reduction of restraint or seclusion consistent with minimum standards.

- **National Assessment.** The Secretary must carry out a national assessment to determine the effectiveness of the Act, including analyzing data, the effectiveness of state and local efforts, identifying programs and services that have shown the greatest effectiveness in preventing and reducing restraint and seclusion and identifying evidence-based personnel training models with demonstrated success in reducing restraint and seclusion, including models emphasizing positive behavior supports and de-escalation techniques over physical intervention.
- **Protection and Advocacy systems.** Congressionally mandated and funded protection and advocacy systems shall have the authority provided under the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. § 15043 to investigate, monitor and enforce the protections given to students in this Act.
- **Other federal and state laws.** Nothing in the Act shall be construed to restrict or limit, or allow the Secretary to restrict or limit, any other rights or remedies otherwise available to students or parents under federal or state law. In other words, states can enact more protections.

S. 2860 has two additional protections that are not presently in H.R. 4247. The Senate bill also requires that all school personnel involved and appropriate supervisory and administrative staff shall participate in a debriefing, which shall include documentation of the antecedents to the restraint or seclusion, as well as prevention planning. Parents must be given advance notice of the debriefing session and an opportunity to attend the session. In addition, the Senate bill requires schools to report any serious bodily injuries or deaths related to the use of restraint or seclusion to the Protection and Advocacy system within 24 hours.

Appendix 2 contains a side-by-side of the provisions in the House and Senate bills. Advocates can use this side-by-side to compare bills and laws in their state to the proposed federal legislation.

## **B. Obama Administration**

In its January 2009 report, NDRN asked the Administration to:

- propose and support legislation to ban the use of seclusion in schools, prone restraints (and any other restraint that can suffocate an individual) and all other types of restraint in schools, except as applied by trained individuals where the immediate physical safety of the student, staff, or others is clearly in danger,
- revise prior USDOE guidance allowing the use of restraint and seclusion under federal education law to reflect best practices,

- require the USDOE Office of Civil Rights to investigate abuse and neglect allegations and the use of restraint and seclusion by schools against children as possible violations of Civil Rights,
- convene a national summit hosted by the Secretaries of Education and Health and Human Services to devise plans to implement the bans on restraint and seclusion and to encourage the use of evidence based positive behavioral supports and other best practices, and
- increase federal funding for protection and advocacy systems.

#### **i. White House**

The White House responded shortly after the Education and Labor Committee hearing. At the end of May 2009, Kareem Dale, the Special Assistant to the President for Disability Policy, brought together representatives of national disability and education organizations to discuss how restraint and seclusion in schools could be prevented and reduced. The Alliance for the Prevention of Restraint, Aversive Interventions and Seclusion (APRAIS), of which NDRN is a member, sent a follow-up letter to Special Assistant Dale with suggestions about what the White House could do to prevent and reduce restraint and seclusion of school children.

On the day after the introduction of the House and Senate bills to prevent and reduce restraint and seclusion, Special Assistant Dale emphasized that “President Obama’s Administration is committed to ending harmful restraint and seclusion” and that the “much-needed legislation illustrates that, when we work together to find common ground, we can overcome any hurdle.” He stated that the Administration “looks forward to working with Congress, advocates, teachers, and education professionals to ensure that all of America’s children can learn in a safe, secure environment.”

#### **ii. The U.S. Department of Education (USDOE)**

##### **a. Secretary Duncan**

Arne Duncan, the Secretary of the U.S. Department of Education, immediately responded to the disturbing information revealed in the 5/19/09 House Education and Labor Committee hearing on deaths and injuries caused by restraint and seclusion in schools. At a Committee hearing the very next day, Secretary Duncan stated that he was “deeply troubled” by the testimony and declared that “children’s safety has to be the number one concern” in schools. He pledged to ask state school chiefs to report to him about their plans to make sure students are safe in the 2009-10 school year. On July 31, 2009, he sent a letter to all state school chiefs urging them to:

- develop or review and, if appropriate, revise their State policies and guidelines to ensure that every student in every school under their jurisdiction is safe and protected from being unnecessarily or inappropriately restrained or secluded,

- publicize these policies and guidelines so that administrators, teachers, and parents understand and consent to the limited circumstances under which these techniques may be used,
- ensure that parents are notified when these interventions do occur,
- provide the resources needed to successfully implement these policies and hold school districts accountable for adhering to the guidelines, and
- have their revised policies and guidance in place prior to the start of the 2009-2010 school year to help ensure that no child is subjected to the abusive and potentially deadly use of seclusion or restraint in a school.

Finally, he asked the USDOE Office of Elementary and Secondary Education to contact state education departments to discuss their relevant laws, regulations, policies and guidance and indicated that the results of these discussions would be placed on the USDOE website. Unfortunately, more than six months later, this has still not happened. A spokeswoman for the department recently indicated that the department intends to make the information available to the general public on the department's website by February 12, 2010. The information will be updated as states develop or revise policies and guidelines on the use of seclusion and restraints to ensure that all students are safe and protected.<sup>6</sup>

When federal legislation was introduced on December 9, 2009, Secretary Duncan sent a letter to Chairman Miller applauding him for his efforts to develop legislation to limit the use of physical restraint and seclusion in schools and other educational settings that receive federal funds, except when necessary to protect a child or others from immediate danger.<sup>7</sup> In his letter, he set forth a number of principles the USDOE believes would be useful for Congress to consider in the context of any legislation on this issue, including the following:

- Any behavioral intervention must be consistent with a child's right to be treated with dignity and to be free from abuse, regardless of the child's educational needs or behavioral challenges.
- Physical restraint and seclusion should never be used as punishment or discipline, nor in a manner that restricts a child's breathing.
- Every instance of physical restraint and seclusion should be appropriately monitored to ensure the safety of the child, other children, teachers, and other personnel.
- Teachers and other personnel should be trained regularly on the appropriate use of restraint and seclusion and the use of effective alternatives, such as positive behavioral interventions and supports.

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<sup>6</sup> Under Pressure, Duncan To Release States' Restraint And Seclusion Policies, Michelle Diament, Disability Scoop (1-26-10) <http://www.disabilityscoop.com/2010/01/26/duncan-restraint/6758/>. In fact, NDRN believes that some state education agencies have intentionally avoided sharing information with the USDOE, as requested. For example, the Michigan Department of Education issued guidelines on school restraint and seclusion use in 2006, but instead of proactively informing the Secretary that Michigan had voluntary guidelines, it responded that "no direct action was required by the Michigan Department of Education." A recently-issued report by the Michigan Protection and Advocacy Services indicates that the Michigan education department has not taken any concrete actions to implement the voluntary Board policy or even measure its impact.

<sup>7</sup> 12/8/09 Letter from the Secretary of Education to Chairman Miller. <http://olrs.ohio.gov/other/duncanletter.pdf>

- Parents should be informed of the policies on restraint and seclusion at their child's school or other educational setting, as well as applicable state or local laws.
- Parents should be notified promptly following the use of restraint or seclusion on their child, and any such use should be documented in writing.
- Policies regarding the use of restraint and seclusion should be reviewed regularly and updated as appropriate.
- Legislation should apply to all children, not just children with disabilities.
- Legislation should promote the collection of data that would enable teachers, staff and other educational personnel to understand and implement the preceding principles.

The USDOE has been encouraging local education agencies to use their IDEA Recovery Funds for intensive, district-wide professional development in school-wide positive behavior supports.<sup>8</sup>

NDRN encourages USDOE to fund grants to state educational agencies to assist them in establishing, implementing and enforcing policies and procedures to meet the minimum standards in H.R. 4247 and S. 2860, and to promote school-wide positive behavior supports and other best practices. Unfortunately, school districts such as Greenfield, Wisconsin attempted to use stimulus funds to build sound-proofed and padded seclusion rooms.<sup>9</sup> The Wisconsin Department of Public Instruction rejected the school district's plan to use stimulus dollars to construct seclusion areas for students, stating that "the federal discussion and possible legislation regarding the use of seclusion" was the reason why the state could not approve the request.<sup>10</sup> Using stimulus funds to build new seclusion rooms flies in the face of the Secretary's principle that each child be treated with dignity and be free of abuse. NDRN urges the Secretary to ensure that stimulus funds are not used to build or alter seclusion rooms.

### **b. Office of Civil Rights**

Currently, a limited number of state departments of education are collecting data from school districts on the use of restraint and seclusion.<sup>12</sup> There is a need for data collection and analysis

<sup>8</sup> US DEP'T of Educ. American Recovery and Reinvestment Act of 2009: IDEA Recovery Funds for Children and Youths with Disabilities, 3 (2009) [www.ed.gov/policy/gen/leg/recovery/index.html](http://www.ed.gov/policy/gen/leg/recovery/index.html)

<sup>9</sup> Greenfield district's stimulus funds fill special school needs : Officials await final approval from state (Greenfield Now, December 15, 2009) <http://www.greenfieldnow.com/news/79322582.html>

<sup>10</sup> State rejects Greenfield seclusion rooms for students with disabilities, Journal Sentinel (1/8/10) (<http://www.jsonline.com/news/education/81049867.html>)

<sup>12</sup> Only California, Kansas, Pennsylvania, Rhode Island, and Texas require schools to report on the number of restraint and seclusion incidents. The Rhode Island Disability Law Center (the Rhode Island P&A) made a public information request to the Rhode Island Department of Education for schools restraint and seclusion incident reports. The P&A learned that only 7 of 43 school districts had reported any incidents and that the Providence School District had 450 incidents in the 13-month period between September, 2007 and October, 2008. In Pennsylvania, a state-wide web-based restraint reporting system has been implemented. The reported data, which includes the student's disability, type and length of restraint, staff involved and date of subsequent individualized educational program meeting, is reviewed by state personnel daily with regular reporting to the Bureau Director and the relevant Special Education Advisor. The Disability Rights Network of Pennsylvania (the Pennsylvania P&A) was extensively involved in developing these requirements through its participation on the Special Education Advisory Panel and leadership of the Positive Behavior Support Committee. The Kansas Department of Education collects data from school districts on seclusion use and then provides support to these schools to reduce the use of seclusion.

on the national level to go beyond anecdotes, understand the extent to which restraint and seclusion are being used in schools and target resources to prevent and reduce the use of restraint and seclusion. The Office of Civil Rights (OCR) of the USDOE recognized the need for data collection and analysis on restraint and seclusion in schools. On Sept. 11, 2009, the USDOE published a notice of Proposed Information Collection Requests in the Federal Register.<sup>13</sup> The Department, through Ed Facts, has implemented a multiple year effort to consolidate the collection of education information about states, school districts and schools in a way that improves data quality and reduces the paperwork burden for all national education partners. The USDOE already collects extensive data from school districts about suspension, expulsion, and corporal punishment. In its notice of proposed data collection, OCR sought comments on expanding its current data collection to also include data on the frequency of restraint and seclusion incidents in schools.

NDRN applauded the proposed national data collection because data collection is necessary to limit the use of these dangerous practices. NDRN recommended, among other things, that data be separately collected on the use of physical and mechanical restraints and that the definition of seclusion be modified to leave out the word “alone” because a student may be effectively secluded by placing a staff person in a doorway of the room to prevent the student from leaving.

On December 2, 2009, OCR published its response to public comments. It decided to use the definitions in the Children’s Health Act of 2000 to define the terms it will be using to collect data on restraint and seclusion use. In addition to collecting data on frequency of restraint and seclusion incidents, it will also collect separate data on the number of times restraint was used on students with and without disabilities, and the number of times seclusion was used on students with and without disabilities.

OCR has also indicated that it will investigate any complaints about restraint and seclusion that constitute civil rights violations, such as a denial of a free and appropriate education under the Individuals with Disabilities Education Act (IDEA) or violations of Section 504 of the Rehabilitation Act or the Americans with Disabilities Act. While NDRN applauds the efforts of OCR, it would be valuable for OCR to provide written guidance to parents and guardians about when the use of restraint and seclusion might constitute a violation of these laws.

### **c. Office of Special Education Programs (OSEP)**

The Office of Special Education Programs (OSEP) in the United States Department of Education oversees the implementation of IDEA. OSEP has funded two technical assistance projects - one focused specifically on positive behavioral interventions and supports and the other focused on developing collaboration between federal, state and local educational entities of best practices, including behavioral supports. However, OSEP has not taken a position opposing the use of

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<sup>13</sup> 74 CFR 46750.

abusive restraint and seclusion practices. In response to a query about the use of mechanical restraints in schools, OSEP recently wrote:

*While IDEA emphasizes the use of positive behavioral interventions and supports to address behavior that impedes learning, IDEA does not flatly prohibit the use of mechanical restraints or other aversive behavioral techniques for children with disabilities.*<sup>14</sup>

NDRN calls on OSEP to revise the above letter, stating that the use of mechanical restraints or other aversive behavioral techniques could be a denial of a free and appropriate public education (FAPE).

### **iii. The Substance Abuse Mental Health Services Administration (SAMSHA)**

The Substance Abuse Mental Health Services Administration has been actively involved in reducing the use of restraint and seclusion in residential facilities for years. It has published manuals about how to reduce restraint and seclusion and funded trainings and pilot projects. It recently funded the development of an issue brief written by educational and mental health experts and disability rights advocates. That brief makes recommendations about how the lessons learned in mental health settings to prevent and reduce restraint and seclusion can be effectively applied to schools. This issue brief is still in clearance at the U.S. Department of Education. NDRN hopes that the brief will be published in the near future so that schools can continue to apply and adapt strategies that have been successful in mental health settings to schools.

### **iv. The U.S. Department of Justice**

The use of restraint and seclusion in schools may violate Section 504 of the Rehabilitation Act, the Americans with Disabilities Act and other federal discrimination laws if it is applied in a discriminatory manner. Additionally, restraint and seclusion could result in a denial of a free and appropriate public education. If you are currently involved in school restraint/seclusion litigation involving the violation of these laws, please contact Ron Hager at NDRN ([ron.hager@ndrn.org](mailto:ron.hager@ndrn.org)) so that he can alert attorneys at the Educational Opportunities Section of the Civil Rights Division.

## **III. Slow State Response During 2009**

Most states have been slow to enact laws to protect children from abusive restraint and seclusion practices and do not provide any meaningful oversight. In January 2009, when NDRN alerted the nation about the dangers of restraint and seclusion use in schools:

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<sup>14</sup> *Letter to Anonymous*, 50 IDELR 228 (OSEP, March 17, 2008).

- forty-one percent (41%) of states had no laws, policies or guidelines concerning the use of restraint or seclusion,
- almost ninety percent (90%) still allowed prone restraints, and
- only forty-five percent (45%) required or recommended that schools automatically notify parents or guardians of restraint and seclusion use.

Although there have been significant efforts on the state level by families, advocates and others to prevent and reduce the use of restraint and seclusion through legislative and regulatory advocacy, investigations, training and individual educational advocacy, only two state legislatures and six state departments of education strengthened their protections for school children in 2009<sup>15</sup> and Utah actually weakened existing rules<sup>16</sup>:

- **New Minnesota statute.** Prior to 2009, Minnesota had regulations regarding the use of restraint and seclusion. As a result of efforts by the Minnesota Disability Law Center, in collaboration with families and other advocates, Minnesota enacted a new law, which will become effective August 1, 2011. This new law requires face-to-face monitoring, notice to parents within 24 hours and increased training requirements for any staff using restraint and seclusion. This law also prohibits all “physical holding that restricts or impairs a child's ability to breathe.” However, while the new law attempts to restrict restraint and seclusion use to emergency situations, such situations include preventing serious property damage in addition to protecting a child or other individual from physical injury. The new law also does not include external reporting of restraint and seclusion use.
- **New Missouri statute.** When NDRN issued its report in January of 2009, Missouri did not have any laws, regulations, policies or guidelines regarding the use of restraint or seclusion in schools. The Missouri P&A, the Missouri Planning Council for Developmental Disabilities, and several Missouri families publicized the plight of students with disabilities being placed in seclusion rooms, held a press conference about the lack of laws to protect Missouri school children from abusive restraint and seclusion practices and followed up with a radio and several print interviews. The Planning Council wrote advocacy letters to legislators. As a result of the P&A’s advocacy and collaborative efforts, the Missouri legislature passed a school restraint and seclusion law in the fall of 2009 requiring restrictions on use and accountability. The law still allows potentially dangerous prone restraint techniques, does not limit use to trained personnel and does not require notice to parents of restraint or seclusion incidents.

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<sup>15</sup> In **California**, legislation was introduced defining restraint and seclusion in schools and implementing safeguards comparable to the limitations and standards that are already enacted in other settings. The bill was met with fierce opposition and was suspended until the next legislative year.

<sup>16</sup> However, **Utah** weakened its existing rules. Previously, the local educational agencies in Utah were required to strictly follow the Least Restrictive Behavior Interventions rules developed by the Utah State Office of Education. Those rules included many requirements related to the use of restraint or seclusion. That requirement has been changed, and the Least Restrictive Behavior Intervention rule is now treated as a guideline which any local education agency is free to disregard. The Utah P&A has initiated a project to attempt to quantify any changes in the rate of the use of restraint or seclusion throughout the state.

- **Tennessee statute goes into effect and regulations issued.** Tennessee's new legislation regulating restraint and seclusion went into effect on January 1, 2009. Rules and regulations regarding the new legislation were proposed by the Tennessee State Board of Education and the P&A stayed involved in the process by reviewing and making public comments on the proposal. The rules were revised in part due to the P&A's comments. The rules and regulations were promulgated and will go into effect on January 18, 2010. The P&A will be monitoring schools for compliance with the new law.
- **Colorado Rules Strengthened.** Colorado's P&A was an active member of the Restraint and Seclusion Task Force, which reviewed the state's restraint rules and drafted language that clarified those rules and more closely aligned them with the Act. The new restraint rules went into effect on December 31, 2009. The new rules prohibit mechanical and chemical restraints, the use of restraints that inhibit breathing or communication, and the use of restraints that apply excess pressure to the student's chest or back. The Colorado P&A continues to work on a legislative initiative that will result in the insertion of an enforcement mechanism into Colorado's Restraint Act.
- **Improved Maine regulations.** The Maine P&A drafted a bill, introduced last legislative session, to improve the enforceability of Maine's restraint and seclusion regulations. The bill was defeated, but in order to bargain for its defeat, the state Department of Education agreed to issue guidance that would ban prone restraint and to convene a work group to revise the school based restraint and seclusion regulations. The Department issued an administrative letter banning prone restraint and requiring that a nurse evaluate all students, in a timely manner, after restraint is used.
- **Improved Maryland regulations.** After an unsuccessful legislative effort in 2008 to ban prone restraint, the Maryland P&A turned back to the regulatory arena and worked with the Maryland State Department of Education and the nonpublic schools association, the group that had opposed the legislative effort, to craft revisions to Maryland's regulations. These revisions became effective in early October, 2009 and strengthen state regulations related to effective communication with the student, time outs and physical restraint (not to exceed 30 minutes) and training for school professionals about the use of seclusion and restraint and its dangers.
- **Improved Nevada regulations.** The largest school district in Nevada submitted a bill that would have weakened existing state law requiring schools to report incidents of restraint and seclusion within 24 hours. In response, the Nevada P&A joined other groups in opposing delayed reporting. As a result of these efforts, the draft bill failed and existing reporting requirements were ultimately strengthened. AB56, effective July 1, 2009, increases accountability at the school and teacher level and adds independent education program review requirements where physical or mechanical restraints for a student reach five or more.

- **New Pennsylvania protocols and guidelines.** The Pennsylvania Department of Education and Bureau of Special Education issued a notice in the fall of 2008 outlining a restraint incident reporting protocol. In spring 2009, the Pennsylvania Department of Education released “Guidelines for De-Escalation and Use of Restraints in Educational Programs” which provides information regarding positive behavior support, de-escalation techniques, training considerations and reporting requirements for school districts. A state-wide web-based restraint reporting system has been implemented. The reported data, which includes a student’s disability, type and length of restraint, staff involved and date of subsequent individualized educational program meeting, is reviewed by state personnel daily with regular reporting to the Bureau Director and the relevant Special Education Advisor. The Pennsylvania P&A was extensively involved in these developments through its participation on the Special Education Advisory Panel and leadership of the Positive Behavior Support Committee.

Despite the aforementioned state efforts, as of January 2010, the number of states with protections has not significantly changed.

- Thirty-nine percent (39%) of states had no laws, policies or guidelines concerning the use of restraint or seclusion,<sup>17</sup> down from forty-one percent (41%) a year ago.
- Eighty-five percent (87.5%) of states and territories still allow prone restraints or restraints that restrict breathing,<sup>18</sup> down from almost 90% a year ago.
- Only forty-five percent (45%) of states and territories require or recommend that schools automatically notify parents or guardians of restraint or seclusion use.<sup>19</sup> This number has not changed from the previous year.

Even in the states where legislation was strengthened, the provisions preventing restraint and seclusion are not consistent. Missouri allow the use of restraint and seclusion only to ensure the immediate physical safety of the student or others, but Minnesota still allows school personnel to use restraint and seclusion to ensure physical safety and to prevent serious property damage. Maryland and Tennessee still allow restraint or seclusion to be used if they

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<sup>17</sup> States and territories that do not have statewide restrictions on restraint and seclusion use in schools are: Alabama, Alaska, American Samoa, Arizona, California, District of Columbia, Florida, Georgia, Guam, Idaho, Indiana, Louisiana, Mississippi, Nebraska, New Jersey, the Northern Marianas, Ohio, Oklahoma, South Carolina, South Dakota, the Virgin Islands, West Virginia and Wyoming. Note that California has vague laws regarding “behavioral interventions,” but no laws specifically dealing with restraint or seclusion. Cal. Admin. Code tit. 5, § 3001.

<sup>18</sup> The only states that ban prone restraint, restraints that restrict breathing or restraints that put pressure on the chest are Colorado, Connecticut, Iowa, Pennsylvania, and now Maine and Maryland. Michigan has a voluntary Board policy, but it is not required by state law. The Ohio Department of Education has stated that it intends to follow a recent Governor’s Executive Order prohibiting prone restraints but allowing certain face-down holds that are simply another type of prone restraint.

<sup>19</sup> The only states and territories that require parental or guardian notification after an incident of restraint or seclusion are: Colorado, Connecticut, Hawaii, Iowa, Illinois, Kansas, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Hampshire, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont and Virginia. Kentucky and Florida recommend, but do not require, that there be parental notification

(<http://www.state.ky.us/agencies/behave/bi/to.pdf>; <http://www.fldoe.org/ese/pdf/y1993-3.pdf>). Michigan has a voluntary Board policy, but it is not required by state law

([http://www.michigan.gov/documents/mde/Seclusion\\_and\\_Restraint\\_Standards\\_180715\\_7.pdf](http://www.michigan.gov/documents/mde/Seclusion_and_Restraint_Standards_180715_7.pdf)).

are in the student's individual education plan even, when no emergency exists. The Missouri statute does not require notice to parents of restraint and seclusion use, but Minnesota, Nevada, Maryland, Maine and Tennessee do. In essence, the country still has a patchwork of state laws where children in some states are protected while others are not. That is why consistent federal minimum standards are needed to protect all children.

#### **IV. The Harm Continues**

Restraint and seclusion continues to be a serious and frightening problem for students in school districts across the country. State Protection and Advocacy agencies are involved in ongoing monitoring and information collection on the prevalence of these practices within states. Since the issuance of ***School is not Supposed to Hurt*** in January 2009, some P&As have released their own reports chronicling restraint and seclusion in schools across their states.

The incidents reported to the P&As by parents and guardians are just a small segment of the actual number of incidents because very few states require schools to collect or analyze data on the use of restraint and seclusion. Incidents are overwhelmingly discovered when children return home from school with bruises or emotional anxiety about returning to school, or when parents make a surprise visit to their child's school and witnesses restraint or seclusion firsthand. Nevertheless, there is plenty of evidence that restraint and seclusion in school continues to be a trend.

Below are examples of ongoing restraint and seclusion taken from reports published in 2009 by P&As in Alabama, Michigan, New York, South Carolina, and Wisconsin.

##### **Alabama (no state law or policies)**

(<http://www.adap.net/Seclusion%20&%20Restraint%20Final.pdf>)

The Alabama Disabilities Advocacy Program, the Alabama P&A, issued a report in June 2009, entitled ***Seclusion and Restraint in Alabama Schools***. The report includes a chronicle of some of the cases that occurred in Alabama, which were brought to the attention of the P&A. Below are some examples:

*A five year old student with autism, Attention Deficit Hyperactivity Disorder, oppositional defiant disorder, and a mood disorder was left unattended in a posture correcting chair in a school hallway. A teacher explained the chair was used as a discipline measure and to get students with autism to focus. The teacher went on to say she gives students with disabilities the choice to comply before punishing them by restraining them in the chair.*

*A seventh grader with a progressive genetic disorder that affects her brain and nervous system was physically restrained to deescalate her. The effort was unsuccessful, so the teacher instructed another student to get a cloth so she could tie her to a chair. When the seventh grader went home, she reported to her guardian "they tied me to a chair and... laughed at me."*

*A seven year old student with autism, a seizure disorder, heart arrhythmia, and asthma was placed in seclusion in a large box the size of a refrigerator in her classroom as a form of discipline. The student's offenses included talking out of turn.*

*A nine year old with Attention Deficit Hyperactivity Disorder and depression disorder was placed in a supply closet in the school library repeatedly for extended periods of time without supervision as a disciplinary measure.*

**Michigan (no state law or regulations, only inadequate voluntary guidelines)**

<http://www.ndrn.org/aboutus/states/michigan/86323MPAS-Restraint-Seclusion.pdf>

Michigan Protection and Advocacy Services, the Michigan P&A, issued a November, 2009 report entitled ***Safe and Protected? Restraint and Seclusion Remain Unregulated and Underreported in Michigan Schools.*** Despite two tragic deaths due to restraint of students in 2003, Protection and Advocacy Services found restraint and seclusion still exist in every part of the state, as evidenced by the examples that follow:

*A seven year old with an emotional impairment was secluded for between twenty- five minutes and five hours each day for infractions such as being too loud and not paying attention. Because the student was not allowed to leave the room under any circumstance until freed by school personnel, she would take off her clothes in the seclusion room to avoid getting urine on them.*

*A mother pulled her child out of school when she made a visit and walked in on him as he was struggling to breathe while in a prone restraint. When she returned him to school years later after home schooling him, he was restrained and injured so severely that he had to undergo emergency medical treatment.*

*The mother of a preschool student with autism made a surprise visit to his classroom during a class party. She was shocked to find him strapped to a highchair in the corner of the room, preventing him from participating in the party. She subsequently learned this practice was routine, and in order for the child to interact with his peers, he'd learned to drag himself and the chair over to the other children. On occasion, this resulted in a toppled chair and bruising on the child's body. He now suffers from anxiety and his speech is severely delayed.*

*A seven year old with learning disabilities and language delay repeatedly came home with torn clothing and other signs of abuse. His parents asked to install a camera in his classroom to observe his treatment, and the school agreed. Subsequent tapes revealed staff rarely speaking to the child, but just resorting to physical measures, including in an extreme instance, folding him into a gymnastics mat in an attempt to calm him. His mother told the P&A, "at home he gets time-out for three or four minutes every four or five months. I don't need to manhandle or scream at him to get him to comply. That tells me something isn't right at school."*

### **New York (inadequate state regulations)**

(<http://www.ndrn.org/issues/an/rs/schools/0409AN-of-Children-with-Disabilities-NY.pdf>)

Disability Advocates, Inc., the New York P&A, issued a report, ***Abuse and Neglect of Children with Disabilities in New York Non-Residential Public Schools***, in conjunction with the Disabled Abuse Coalition in 2009. Below are examples of restraint and seclusion documented in the report:

*A child with a disability was dragged by the feet to a “time out” room by a school aide after an altercation. The aide threatened to kill the student. The child’s parents, upon picking up the student from school, observed facial bruises, fingernail marks, and welts on the child’s face, arms, back, and hands. The parents filed a police report, which was ignored.*

*A second grade student with a disability was disciplined by the school psychologist and a behavioral consultant by being repeatedly secluded in an elevator closet for up to fifty minutes at a time. This practice was not approved in an Individualized Education Program (IEP), and parents were not aware until their child, with limited processing and language skills, figured out a way to communicate it to them.*

*A preschool child with a disability was considered to be non-compliant for not putting a book away during “free play.” The situation escalated when repeated verbal commands to put the book away agitated the child. The student’s aide, teacher, and a therapist dragged the child to the principal’s office and restrained the child for twenty minutes. Upon inquiry, the child’s parents learned restraint of up to six hours four times in a week was common as a discipline measure for this preschool student.*

*A six year old student with asthma and Attention Deficit Hyperactivity Disorder was placed in a prone restraint by two adults for attempting to run away from adult supervision. Despite the six year old’s complaints of being unable to breathe, the restraint continued. The student was injured and received rug burns on his forehead and arms. The school refused to change their restraint practice for this child despite acknowledging his medical condition made prone restraint dangerous to his health.*

### **South Carolina (no state laws or policies)**

(<http://www.pandasc.org/SC2009R&SReport.pdf>)

Protection and Advocacy for People with Disabilities, Inc., the South Carolina P&A, issued a report in December, 2009 entitled ***Policies and Practices on the Use of Restraint, Seclusion, and Timeout in South Carolina Public Schools: A Cause for Concern***. The report, funded in part by the U.S. Department of Health and Human Services, concluded that children with disabilities are subjected to seclusion and restraint, including mechanical restraint, in South Carolina public schools without adequate school district policies in place to ensure appropriate safeguards and accountability. The following are some examples from the report:

- *An eleven year old student with developmental disabilities was repeatedly restrained on a floor, with adults holding her down by pressing on her with beanbags. As another means of behavior modification, school staff attempted to restrain her in a modified chef's jacket used like a straight jacket.*
- *For failing to do a school assignment, an eight year old student with autism was sent to "time out" in an area he reported was similar to a closet. Staff physically restrained him to get him into the room, and then turned the lights off. He went home with bruises on his body and has developed anxiety about returning to school. His parents decided they will move to a different state.*
- *The guardian of a young student with developmental disabilities discovered the student in a seclusion room for being too noisy in the classroom. The student was found lying on the floor of the seclusion room because staff had taken away his wheelchair. The guardian has no knowledge of the frequency or duration of seclusion being imposed on the student.*
- *An eleven year old student's chin was split when he was placed in a prone restraint. The student, with emotional disabilities, was frequently subjected to prone restraint.*

**Wisconsin (no state laws or policies, only inadequate voluntary guidelines)**

<http://www.disabilityrightswi.org/archives/296>

There is no state requirement in Wisconsin for reporting of incidents of restraint or seclusion. The Wisconsin P&A, Disability Rights Wisconsin, issued a report, ***Out of Darkness... Into the Light*** in collaboration with Wisconsin FACETS and Wisconsin Family Ties, in the spring of 2009. Below is a snapshot of the stories included in that report:

*A middle school student with autism had an individualized education program (IEP) which allowed the use of "time out" as a response to aggression, for five minute durations or until the student calmed down. His parents later learned the student was secluded for seventy five percent of each day.*

*A seventeen year old student with autism, a seizure disorder and cognitive disabilities was repeatedly locked in a 5x5 foot carpeted closet without a window or internal door handle as a means of "controlling" his behavior. He would bite his knuckles as a coping mechanism. Coming home from school with bloody knuckles is how his mother discovered her child was being locked in seclusion.*

*Over the course of kindergarten and first grade, a student with an anxiety disorder was restrained on a weekly basis. His mother discovered this when he went home and reported that teachers restrained him face-down in the dirt and told him "it was for his own good." When his mother filed a complaint for mistreatment, she was met with retaliation.*

*A sixth grade student with Lennox-Gastaut Syndrome, cerebral palsy, and autism was repeatedly strapped to a wheelchair for entire school days despite being ambulatory. It was a practice only authorized for instances of "extreme fatigue." Each time the student's parents*

*visited the school, they discovered their child strapped to the chair. The school reacted by attempting to limit parental visits.*

**Media stories highlighted additional incidents of abusive restraint and seclusion in 2009. The following are some stories from parents and advocates that came forward this year:**

*An isolation booth at Westridge Elementary School in the Raytown, MO school district, where children, and particularly those with autism, are sent when they disrupt class.- Fox4kc, May 19, 2009*

*A non-violent eleven year old student with Down's syndrome in the Chesterfield school district of Virginia was physically restrained and "dropped to the floor" on numerous occasions and secluded roughly 20 times. –Style Weekly, June 16, 2009*

*The Wisconsin Department of Public Instruction directed the Ashland Middle School to stop using seclusion rooms, referred to as "quiet rooms."- Fox News, June 8, 2009*

*A child with autism was repeatedly locked in seclusion in a Douglas County elementary school closet, causing him extreme emotional damage. -Denver Post, July 12, 2009*

*When his fourteen year old autistic son came home with ripped clothing in Lecanto, Florida, a father reviewed school surveillance tapes and discovered forceful restraint ignored by school administrators. -Fox News, August 27, 2009*

*A Newark, Ohio school teacher restrained five year old sisters with developmental disabilities by strapping them to their chairs so they couldn't move. -Columbus Dispatch, September 12, 2009*

*A Sarasota, Florida teacher was able to retain her job because of a technicality although she had been abusing students in her special education class for decades, including restraining and then kicking children. -Sarasota Herald Tribune, September 1, 2009*

For a full list of P&A activity over the past year, please see Appendix 1.

## **V. Debunking the Myths of Restraint and Seclusion**

There are many myths being perpetuated about the use of restraint and seclusion. Below are the myths and the reality.

### **Myth #1: Restraint and seclusion are therapeutic and improve behavior.**

**Reality ►** No evidence-based research has demonstrated restraints or seclusion are therapeutically effective. However, research has demonstrated that restraint and seclusion can be physically and psychologically harmful.

Experts generally view restraint and seclusion as a “treatment failure,” rather than a way to promote self-regulation. In fact, there is literature that points to restraint/seclusion having the opposite effect of promoting self-regulation. Restraint and seclusion actually promote more emotional and behavioral disruptions.<sup>20</sup>

**Myth #2: Restraint and seclusion need to be included in individualized education program (IEPs), behavioral intervention plans (BIP) or safety plans so that school personnel know what to do when a student creates an imminent danger to herself or others.**

**Reality** ► The Individual with Disabilities Education Act requires public schools to develop an IEP for every student with a disability who is found to meet the federal and state requirements for special education. The IEP must be designed to provide the child with a free appropriate public education (FAPE). The IEP refers both to the educational program to be provided to a child with a disability and to the written document that describes that educational program.<sup>21</sup> Since restraint and seclusion do not constitute a program, treatment, therapy, or services and may actually deny a student FAPE, restraint and seclusion cannot be included in an IEP. However, the IEP, as well as the BIP which is part of an IEP, should include positive behavioral supports and other services, supports and assistance to prevent restraint and seclusion and to provide a student with FAPE. In addition, the IEP should include a trauma-informed care plan, if appropriate, which describes what special needs a student may have because of prior trauma.<sup>22</sup>

**Myth #3: Decisions about restraint and seclusion use should be left to the teacher and aides in the classroom, not school administrators.**

**Reality** ► Research has shown that one of the key factors in reducing the use of restraint and seclusion in schools is leadership. Schools serving children with

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<sup>20</sup> For more information, see, L.M. Finke, *The Use of Seclusion is Not an Evidence-Based Practice*, 14 *Journal of Child and Adolescent Psychiatric Nursing*, 186 (2001).; K.H. Millstein & N.S. Cotton, *Predictors of the Use of Seclusion on an Inpatient Child Psychiatric Unit*, 29 *Journal of the American Academy of Child & Adolescent Psychiatry* 256, 256-64 (1990); W. K. Mohr & J.A. Anderson, *Faulty Assumptions Associated With the Use of Restraints With Children*, 14 *Journal of Child and Adolescent Psychiatric Nursing* 141 (2001); D.E. Miller., *The Management of Misbehavior by Seclusion*, 4(1) *Residential Treatment for Children and Youth* 63 (1986); National Association of State Mental Health Program Directors (NASMHPD), *Seclusion and Restraint Position Statement as Revised by NASMHPD Forensic Division and Accepted by NASMHPD Membership (7/15/07)*, [http://www.nasmhpd.org/general\\_files/position\\_statement/S&R%20position%20statement.Forensic%20Div.%20prop.%20approved%20by%20NASMHPD.07.07.final.pdf](http://www.nasmhpd.org/general_files/position_statement/S&R%20position%20statement.Forensic%20Div.%20prop.%20approved%20by%20NASMHPD.07.07.final.pdf)

<sup>21</sup> Individuals with Disabilities Educ. Improvement Act of 2004, 20 U.S.C. § 1400 et. seq.

<sup>22</sup> See generally G.R. Hodas, *Responding to Childhood Trauma: The Promise and Practice of Trauma Informed*. (2006), [http://www.nasmhpd.org/nasmhpd\\_collections/collection5/publications/ntac\\_pubs/Responding%20to%20Childhood%20Trauma%20-%20Hodas.pdf](http://www.nasmhpd.org/nasmhpd_collections/collection5/publications/ntac_pubs/Responding%20to%20Childhood%20Trauma%20-%20Hodas.pdf).

multiple challenges leading to emotional and behavioral issues will need to work to implement administrative systems to support staff in learning alternative strategies to prevent the need for restraint and seclusion. Any time that a student reaches the threshold of creating a danger to self or others, it should be an administrative issue where the leaders of the school are involved.<sup>23</sup>

#### **Myth #4: Restraint and seclusion keeps students who are out of control safe.**

**Reality** ► Restraint and seclusion can escalate a student’s agitation. Physical restraint or seclusion can cause students to act more aggressively, increasing the possibility for harm to themselves, teachers, and others. Struggles during physical restraint have led to injury and even death of students by asphyxia.<sup>24</sup> Students secluded for disruptive behavior have also suffered emotional distress, and have inflicted harm on themselves while in seclusion, some cases leading to death.<sup>25</sup> This can hardly be categorized as “safe.”

#### **Myth #5: Teachers use restraint and seclusion to protect themselves and others.**

**Reality** ► Teachers have restrained and secluded students for offenses as minor as not staying seated or blowing bubbles in milk at lunchtime. In these specific cases, both of these offenses have resulted in death.<sup>26</sup> In a recently released General Accountability Office (GAO) Report, nowhere does it point to teacher self-defense as a motivation for using restraint or seclusion on a student.<sup>27</sup> In fact, research has shown that teacher injuries are actually reduced when restraint or seclusion use is reduced.<sup>28</sup>

#### **Myth #6: Only large, older children are being restrained or secluded.**

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<sup>23</sup> For more information, see, National Association of State Mental Health Program Directors. *A Snapshot of Six Core Strategies for the Reduction of S/R*, (rev. 5/20/05)

[http://www.nasmhpd.org/nasmhpd\\_collections/collection5/publications/ntac\\_pubs/Core%20Strategies%20Snapshot%20with%20cover%207-05.pdf](http://www.nasmhpd.org/nasmhpd_collections/collection5/publications/ntac_pubs/Core%20Strategies%20Snapshot%20with%20cover%207-05.pdf); National Technical Assistance Center, National Association of State Mental Health Program Directors, *Trauma Informed Care: Six Core Strategies to Reduce the Use of Restraint Planning Tool*, <http://www.nasmhpd.org/ntac.cfm>.

<sup>24</sup> **The Lethal Hazard of Prone Restraint: Positional Asphyxiation**, prepared by Protection and Advocacy, Inc (CA P&A)(April 2002) <http://www.disabilityrightsca.org/pubs/701801.pdf>.

<sup>25</sup> For more information, see, National Disability Rights Network, *School is Not Supposed to Hurt*, 7 (2009), <http://www.ndrn.org/sr/SR-Report.pdf>, Council of Parent Attorneys and Advocates, Inc., *Unsafe in the SchoolHouse: Abuse of Children with Disabilities*, 4 (2009), [http://www.copaa.org/pdf/UnsafeCOPAAMay\\_27\\_2009.pdf](http://www.copaa.org/pdf/UnsafeCOPAAMay_27_2009.pdf), D.E. Miller., *The Management of Misbehavior by Seclusion*, 4(1) *Residential Treatment for Children and Youth* 63, 63-73 (1986).

<sup>26</sup> For more information, see, National Disability Rights Network, *School is Not Supposed to Hurt*, 7 (2009), <http://www.ndrn.org/sr/SR-Report.pdf>, Council of Parent Attorneys and Advocates, Inc., *Unsafe in the SchoolHouse: Abuse of Children with Disabilities*, 4 (2009), [http://www.copaa.org/pdf/UnsafeCOPAAMay\\_27\\_2009.pdf](http://www.copaa.org/pdf/UnsafeCOPAAMay_27_2009.pdf).

<sup>27</sup> U.S. Government Accountability Office, *Seclusions and Restraints: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers* 33 (2009).

<sup>28</sup> P.L. Foerster, C. Cavness, & M.A. Phelps. *Staff training decreases use of seclusion and restraint in an acute psychiatric hospital*, 13 *Archives of Psychiatric Nursing* 269 (1999).

**Reality** ► Although there is no federal data collected on the use of restraint or seclusion in schools, reports and surveys reveal that mostly small, younger children are being restrained or secluded.<sup>29</sup>

**Myth #7: There are no alternatives to restraint and seclusion.**

**Reality** ► There are numerous alternatives to restraint and seclusion, including positive behavioral interventions and supports and other de-escalation techniques. The Individuals with Disabilities Education Act (IDEA) recommends positive reinforcement techniques such as positive behavioral support for students with challenging behaviors. Not only has this method proven effective in reducing incidents of problem behaviors, but it has also contributed to increased classroom learning.<sup>30</sup>

**Myth #8: Parents think their children need to be restrained or secluded in certain scenarios.**

**Reality** ► Most parents of children who are routinely restrained or secluded in school report that they did not consent to their children being restrained or secluded. The few who have consented to the use of restraint or seclusion report they were misled about the frequency and circumstances under which these practices were used and found they were used beyond the intended level in the child's education plan.

**Myth #9: Property damage needs to be prevented.**

**Reality** ► Restraint and seclusion are dangerous interventions that can result in injury and even death.<sup>31</sup> The protection of property is not worth compromising the safety of a child. Protection of property has led to violent restraints in response to offenses as simple as a student breaking a pencil.<sup>32</sup>

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<sup>29</sup> For more information, see, National Disability Rights Network, *School is Not Supposed to Hurt*, 7 (2009), <http://www.ndrn.org/sr/SR-Report.pdf>, Council of Parent Attorneys and Advocates, Inc., *Unsafe in the SchoolHouse: Abuse of Children with Disabilities*, 4 (2009), [http://www.copaa.org/pdf/UnsafeCOPAAMay\\_27\\_2009.pdf](http://www.copaa.org/pdf/UnsafeCOPAAMay_27_2009.pdf), N. S. Cotton, *The Developmental-Clinical Rationale for the Use of Seclusion in the Psychiatric Treatment of Children*, 59 *American Journal of Orthopsychiatry* 442, 442–50 (1989); See also K.R. Delaney & L. Fogg, *Patient Characteristics and Setting Variables Related to Use of Restraint on Four Inpatient Psychiatric Units for Youth*, 56 *Psychiatric Services* 186, 186-92 (2005); K. Earle & S. Forquer, *Use of Seclusion with Children and Adolescents in Public Psychiatric Hospitals*, 65 *American Journal of Orthopsychiatry* 238, 238–44(1995); D. Fassler & N. Cotton, *A National Survey on the Use of Seclusion in the Psychiatric Treatment of Children*, 43 *Hospital and Community Psychiatry* 370, 370–74 (1992); M. Nunno et al., *Learning From Tragedy: A Survey of Child and Adolescent Restraint Fatalities*, 30 *Child Abuse & Neglect* 1333, 1333–42 (2006); J.B. Ryan & R.L. Peterson, *Physical Restraints in Schools* (2002) (unpublished manuscript, at the Michigan Positive Behavioral Support Network-PBS), <http://www.bridges4kids.org/PBS/articles/RyanPeterson2004.htm>.

<sup>30</sup> For more information, see, Office of Special Education Programs Technical Assistance Center on Positive Behavioral Interventions and Supports, <http://www.pbis.org/>.

<sup>31</sup> For more information, see, National Disability Rights Network, *School is Not Supposed to Hurt*, 7 (2009), available at <http://www.ndrn.org/sr/SR-Report.pdf>.

<sup>32</sup> See, *Unsafe in the Schoolhouse*, published by the Council on Parent Attorneys and Advocates (May 10, 2009), Chart, Case ID C105, p. 27.

**Myth #10: There is no funding for adequate teacher training of positive behavior supports and other alternative behavioral management methods.**

**Reality** ► Many school districts already provide training on classroom management. Training on the use of positive behavioral interventions and supports and the reduction of restraint or seclusion should be included in this training. In addition, there are several other available funding resources:

- The Individuals with Disabilities Education Act (IDEA) includes funds for early intervening services.<sup>33</sup>
- The Office of Special Education Programs specifically listed that teacher training in positive behavioral interventions and supports are an acceptable use of American Recovery and Reinvestment Act funding.<sup>34</sup>
- Additionally, school districts can use up to fifteen percent of their IDEA funding for early intervention services, part of which can be directed at teacher training to deliver scientifically based academic instruction and behavioral interventions.<sup>35</sup>
- The proposed federal law establishing minimum standards for restraint and seclusion use in schools authorizes the U.S. Secretary of Education to award grants from amounts appropriated by Congress to state educational agencies for activities related to restraint and seclusion reduction.

**Myth #11: Children who are out of control should not be in regular education classrooms.**

**Reality** ► Studies have shown that children with special needs learn and perform better in integrated classrooms. However, many children with disabilities are still being placed in classrooms and schools exclusively for children with disabilities.<sup>36</sup> The GAO report shows that restraint and seclusion is usually occurring in these segregated settings.<sup>37</sup>

**Myth #12: States, not the federal government, should be regulating restraint and seclusion in schools.**

**Reality** ► In May 2009, the GAO reported that 19 states had no laws or regulations related to the use of restraint or seclusion in schools and that existing state

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<sup>33</sup> Individuals with Disabilities Educ. Improvement Act of 2004, 20 U.S.C. § 1413(a)(4)(A)(ii).

<sup>34</sup> For more information, see, Positive Behavior Supports: A Wise Investment, published by the Southern Poverty Law Center, [http://www.pbis.org/common/pbisresources/publications/PBS\\_WiseInvestmentofEconomicStimulusFunds.pdf](http://www.pbis.org/common/pbisresources/publications/PBS_WiseInvestmentofEconomicStimulusFunds.pdf)

<sup>35</sup> Individuals with Disabilities Educ. Improvement Act of 2004, 20 U.S.C. § 1413(4)(A)(ii).

<sup>36</sup> U.S. Dep't. of Ed., Off. of Special Educ. Programs, *28th Annual Report to Congress, Parts B and C 1* (2009).

<sup>37</sup> U.S. Government Accountability Office, *Seclusions and Restraints: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers* 33 (2009).

laws vary widely.<sup>38</sup> While individual states have the ability to strengthen any existing federal law, there should be an existing baseline that protects the safety of all American children.

**Myth #13: Schools, not governments, should determine behavior management policy, because they know children best.**

**Reality** ► The proposed law creates a federal baseline that protects the safety of all American children. Schools, teaming up with parents, are in the best position to understand the needs and abilities of school children, and will have the autonomy to create best practices for behavior management under the proposed federal law.

**Myth #14: Laws should be developed for public schools but not private schools.**

**Reality** ► The Children’s Health Act of 2000 regulates the use of restraint and seclusion in health care facilities, psychiatric residential treatment facilities and group homes.<sup>39</sup> All children have the right to be protected from abusive restraint and seclusion, including those in both public and private schools which receive any federal funding, directly or indirectly from the U.S. Department of Education. No school should be exempt from protecting children.

**Myth #15: Restraint is needed to stop fights.**

**Reality** ► School personnel may need to physically restrain (immobilize or reduce the ability of an individual to move his or her arms, legs or head freely) during a fight in which a student is in imminent danger to self or others. Whenever school personnel restrain students, they should comply with the proposed minimum federal standards in order to protect students and school personnel and keep parents and the administration informed about what happened.

**Myth #16: Police officers will need to use restraint to protect students and others.**

**Reality** ► School resource officers need the same training to prevent and reduce restraint and seclusion, as other school personnel do. If schools call the police to deal with a dangerous situation, then the laws covering police officers would apply.

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<sup>38</sup> U.S. Government Accountability Office, *Seclusions and Restraints: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers* 33 (2009).

<sup>39</sup> Children’s Health Act of 2000, 42 U.S.C. § 290ii(a).

## **VI. Conclusion – Federal Minimum Standards Needed**

Federal legislation reflecting best practices and minimum standards is needed so that school children do not have to suffer in 2010. Slow-moving state legislation may eventually protect some children, but there will still be inconsistency among state laws across the country. Why should school children be protected in one state and not across the border in another state? Proposed Congressional legislation (H.R. 4247 and S. 2860) addresses many of the problems documented in NDRN's report:

- inconsistent (and sometimes non-existent) standards in many states about the use of restraint and seclusion in schools,
- a lack of notification to parents and guardians about the use of restraint and seclusion on their children,
- use of inherently dangerous restraint and seclusion techniques with little to no training or monitoring, and
- use of restraint and seclusion in situations that clearly do not call for the use of such extreme techniques (i.e. blowing bubbles in milk, fidgeting in a chair), and
- the lack of reporting of such incidents to proper authorities to identify where problems may exist and provide additional training and technical assistance when necessary.

States can enact even more protections as they see fit.

NDRN urges Congress to enact the proposed legislation to prevent and reduce the use of restraint or seclusion so that school no longer hurts. Specifically, NDRN recommends the following:

## **VII. Recommendations to the Administration, Congress, the states and local education agencies**

### **► For the Obama Administration**

- 1) Actively support proposed legislation to prevent and reduce the use of restraint and seclusion in schools (H.R. 4247 and S. 2860).
- 2) Revise prior U.S. Department of Education guidance allowing the use of restraint or seclusion under federal education law to:
  - a) reflect best practices utilizing positive behavioral interventions and supports to reduce or eliminate the use of seclusion and restraints, and
  - b) provide guidance on when the use of restraint and seclusion would violate the Individual with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act and other civil rights laws.

- 3) Publish the issue brief prepared and funded by SAMSHA to apply the lessons learned about preventing and reducing restraint and seclusion in mental health settings to schools.
- 4) Ensure that no federal school construction funds are used to build or alter rooms or areas used to seclude students.
- 5) Request increased funding for school personnel to be trained in a “state-approved training program,” as described in H.R. 4247 and S.2860.
- 6) Request increased federal funding for Protection and Advocacy programs to investigate allegations of abuse or neglect in schools.

► **For the Congress**

- 1) Enact legislation to prevent and reduce the use of restraint and seclusion in schools (H.R. 4247 and S. 2860).
- 2) Reaffirm legislatively and through implementing regulations existing P&A authority to access schools, students, their records and other individuals.
- 3) Increase funding for Protection and Advocacy programs to investigate abuse or neglect in schools.
- 4) Establish a P&A program through the Department of Education focused specifically on addressing the needs of students with disabilities in elementary and secondary schools.
- 5) Monitor the impact of these pieces of legislation through oversight hearings and independent governmental entities.

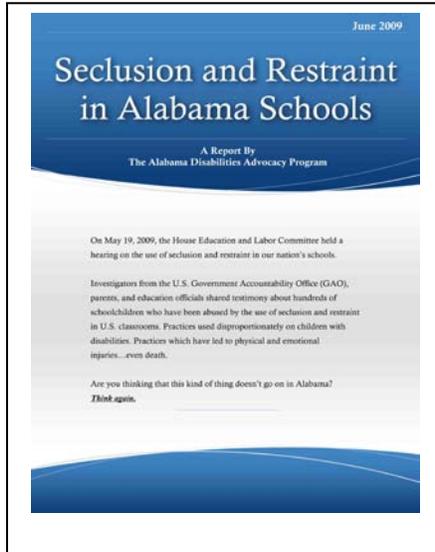
► **For State Legislatures and Boards of Education**

- 1) Enact legislation and / or promulgate regulations to
  - a) Conform with the minimum standards and requirements proposed in H.R. 4247 and S. 2860,
  - b) expand the definition of “seclusion” in H.R. 4247 and S. 2860 to include not only a “behavior control technique involving locked isolation,” but also “a behavioral control technique in which a student is involuntarily confined to a room or area from which the student is physically prevented from leaving,”
  - c) ban all types of seclusion, and
  - d) protect students and school personnel in accordance with best practices.
- 2) Require background checks for school personnel and establish a statewide directory of individuals who have lost their licenses, been convicted of abuse or neglect in any setting or been found to have committed abuse or neglect by the state agency investigating restraint or seclusion.

► **For Local School Districts**

- 1) Establish policies in school district to:
  - a) Conform with the minimum standards and requirements proposed in H.R. 4247 and S. 2860,
  - b) ban the use of seclusion, and
  - c) protect students and school personnel in accordance with best practices.
  
- 2) Require background checks for school personnel to determine whether they have lost their licenses, been convicted of abuse or neglect in any setting or been found to have committed abuse or neglect by the state agency investigating restraint or seclusion.

**Appendix 1**  
**Short Summaries of P&A Efforts**  
**to Reduce Restraint and Seclusion in Schools in 2009**



**ALABAMA: Report Issued**

In June 2009, the Alabama P&A issued a report highlighting more than a dozen incidents of school-based seclusion and restraint that it had investigated, including one involving a mechanical restraint being used on a five year old with autism. Among its recommendations, the report called for a ban on the use of seclusion and chemical, mechanical and prone restraints in schools. Since the report's release, the P&A has been providing input to the state regarding its proposed restraint and seclusion regulations. This advocacy will be ongoing as the initial draft regulations do not adequately protect the rights and safety of students with disabilities.

<http://www.adap.net/Seclusion%20&%20Restraint%20Final.pdf>

**ALASKA: Stakeholder Efforts and Surveys**

Subsequent to the release of the National Disability Rights Network's report, the Alaska P&A contacted the Governor's Council on Disabilities and Special Education seeking to engage Alaska stakeholders in an effort towards eliminating the use of seclusion and restraint in Alaska's schools. To date, several stakeholder meetings have been held, from which emerged a survey on the use of seclusion and restraint that was issued to all schools. Additionally, the 2009 Special Education Directors' Conference offered two training sessions that addressed seclusion and restraint in schools. The next step will be to review the findings of the survey, which should inform future legislative proposals.

**ARIZONA: Training, Task Forces and a Report**

The Arizona P&A conducted a training on the Use of Positive Behavioral Interventions and Supports to Prevent Restraint and Seclusion, in conjunction with the University Center of Excellence in Developmental Disabilities Education, Research and Services, which is located at the Institute for Human Development, Northern AZ University, Flagstaff, AZ. The Arizona legislature created a Task Force on Best Practices in Special Education and Behavior Management in July, 2009 to make recommendations that school districts could adopt and implement at their discretion. The Arizona P&A submitted a paper outlining the National Disability Rights Network's position and the need for legislation. The Task Force issued its report in August, 2009. The Arizona P&A will collect information on how many districts adopt these recommendations. The P&A will also be conducting investigations into the use of restraint and seclusion in schools.

**ARKANSAS: Educating State Legislators**

Advocates in Arkansas have had little success getting the state to discontinue the usage of restraint and seclusion in schools. The Arkansas P&A will continue to provide information to the legislature and also draw attention to any individual cases that are particularly concerning. The Arkansas P&A over the past year has tried ensuring that if districts are going to use restraint and seclusion it is done safely and in compliance with the law. Although Arkansas is not ready as a state to demand the discontinuation of restraint and seclusion, the Arkansas P&A will continue to educate both legislators and schools about how dangerous restraint and seclusion can be, with the long-term goal of moving toward significant state legislative action.

**CALIFORNIA: Investigations, Legislative Advocacy and a White Paper**

The California P&A investigated ten (10) new cases, finding that restraint and seclusion was used for non-compliant but not imminently dangerous behavior by untrained staff for lengthy durations, and often repeated for the same problematic behavior. The California P&A found that there was no behavioral plan in place to assist staff in de-escalating a student. The P&A is sponsoring legislation defining restraint in schools and implementing safeguards comparable to the limitations and standards that are already enacted in other settings. The bill was suspended until this legislative year to allow time to work with stakeholders on bill language. The California P&A continues to conduct trainings to California school personnel and national consumer groups about restraint and seclusion. The California P&A also coordinated and drafted a white paper, under contract with the Substance Abuse and Mental Health Services Administration, to apply the Six Core Strategies used in mental health settings to schools.

**COLORADO: Investigations and Rule Strengthening**

The Colorado P&A advocates for victims of restraint through investigations and legislative change. Once the Colorado P&A concludes an investigation, it outlines activity for the district to be in compliance with Colorado's Restraint Act. In addition to investigations, Colorado's P&A was an active member of the Restraint and Seclusion Task Force, which reviewed the Restraint Rules and drafted language that clarified those Rules and more closely aligned them with the Act. The new Restraint Rules went into effect on December 31, 2009. The new Rules prohibit mechanical and chemical restraints, the use of restraints that inhibit breathing or communication, and the use of restraints that apply excess pressure to the student's chest or back. The Colorado P&A continues to work on a legislative initiative that will result in the insertion of an enforcement mechanism into Colorado's Restraint Act.

**CONNECTICUT: Multi-Faceted Approach**

The Connecticut P&A has taken a multifaceted approach to the issue of restraint and seclusion in public schools. In addition to making it a priority issue and providing case representation, the Connecticut P&A is developing a publication explaining Connecticut's restraint and seclusion statutes and regulations, including advocacy tips for parents/guardians. The Connecticut P&A education unit staff is also creating a training that focuses on the issue in the context of least restrictive environment, the individual educational plan and positive behavioral supports. The training will be videotaped for viewing through

the Connecticut P&A website. Other general and Connecticut specific information will also be available on the website. (<http://www.ct.gov/opapd/site/default.asp>)

**DELAWARE: Individual Education Plans and Behavioral Plans**

The Delaware P&A obtained information from the State Department of Education concerning the paucity of seclusion and restraint regulations applicable to schools. One option under consideration is the development of peer review/human rights committees to review the use of seclusion and restraint. The Delaware P&A offered to participate in meetings or otherwise provide technical assistance in development of standards. The Delaware P&A is also collaborating with the Developmental Disabilities Council in an assessment of the use of seclusion and restraint within a private residential school which is subject to comprehensive Office of Child Care Licensing seclusion/restraint regulations. In addition, Delaware is holding a conference on disability issues which will feature reducing seclusion and restraint in schools.

The Delaware P&A is focusing its efforts on ensuring that children with disabilities have appropriate individual education plans and behavioral intervention plans that meet their unique needs. The Delaware P&A is targeting schools that fail to provide appropriate accommodations and de-escalation techniques for kids at risk of seclusion or restraint and reviewing regulations and plans to proposed draft regulations/revisions of seclusion and restraint practices in educational residential placements.

**DISTRICT OF COLUMBIA: Drafted Proposals for Standards Following an Incident**

In conjunction with a December 2008 investigation report regarding a seclusion and restraint incident in a private school, the District of Columbia P&A, University Legal Services (ULS), wrote the District of Columbia's Office of the State Superintendent of Education (OSSE) to encourage the creation of a stakeholder's group to draft seclusion and restraint policies for schools that serve District students, including public, charter, and private schools. OSSE issued proposed rules in June 2009 significantly restricting the use of seclusion and restraint in nonpublic schools that serve District students at public expense. The P&A provided extensive written comments and testified at a public hearing supporting, but seeking to improve, the proposed rules and extend them to public and private charter schools.

**FLORIDA: Legislative Advocacy and Investigations**

The Florida P&A has continued to work on an initiative to stop abusive restraint and seclusion in Florida schools. Its work has included raising awareness, educating media outlets, briefing policy makers, organizing a support coalition, training parents and prioritizing cases for investigation and advocacy.

Florida currently has no state law or state rule specifically addressing school restraint and seclusion. Proposed legislation was filed in early 2009, but those bills did not progress during Florida's 2009 session. For 2010, a House bill has already been filed and has received strong bi-partisan support as evidenced by twenty – seven co-sponsors.

For the third year, the family based organization Florida Families Against Restraint and Seclusion (FFARS) has partnered with the Florida P&A on legislative advocacy and played a lead role in grassroots mobilization. For the 2010 effort, the Florida P&A also organized a large cross-disability coalition. Many parent, provider and self-advocacy groups pledged to assist with the passage of reform legislation of 2010. Moreover, for the first time, official support for legislative action came in the form of endorsements from the Florida Governor's Commission on Disabilities, the Florida Governor's Task Force on Autism and the Florida Substance Abuse and Mental Health Corporation. The Florida House sponsor, the Florida P&A, FFARS and other organizations participated in a press conference about the bill on January 13, 2010.

Numerous individual cases were investigated and advocacy efforts pursued to assist individual children escape ongoing abusive use of restraint and seclusion at school. In most cases, the Florida P&A finds that children subjected to restraint and seclusion are not receiving a free and appropriate public education (FAPE). The Florida P&A finds that many cases involve children who are in segregated schools where inappropriate and routine use of restraint and seclusion is being implemented, out of date policies and practices are being conducted and there is a lack of training of staff

**GEORGIA: Multi-faceted Effort to Get Rules Promulgated**

The Georgia P&A, in collaboration with our federal partners, is leading the effort to eradicate the use of restraint and seclusion in all Georgia public schools and to replace punitive measures with the use of positive behavior supports.

This summer, the Georgia Department of Education (DOE) announced its intent to promulgate a rule banning the use of seclusion and significantly reducing the use of restraint in public schools. The Georgia P&A invited the Georgia Developmental Disabilities Network (DD Network) to work together to support the rule, provide feedback to the DOE, and engage agency and community stakeholders to make public comment. The Georgia P&A currently anticipates a January 2010 rule initiation followed by a 30-day public written comment period. The public will also have the opportunity to provide oral commentary at the February 2010 State Board of Education meeting.

In anticipation of both events, the DD Network is preparing to host a series of forums for both the public and interested agency stakeholders. The Georgia P&A will host one meeting with agency leaders, followed by four public forums that will be held across the state. During these four community forums, the Georgia P&A will educate community members about how to make public comment and will work with them to create written comment during the day-long forums. Additionally, the Georgia P&A is partnering with Parent to Parent of Georgia to create a series of webinars.

**HAWAII: Continuing to Discover Disturbing Cases**

The Hawaii P&A continues to advocate against the use of restraint and seclusion in schools. In one case, a nine year-old girl diagnosed with Attention Deficit Hyper Activity Disorder, a mild

intellectual disability and an anxiety disorder was being forced to stay under her teacher's desk as a form of "time out" when she tried to run away from school. Once a 1:1 paraprofessional was put in place, no further incident occurred. In another case, a non-verbal 7 year-old boy with Autism was placed in a fully self contained classroom and strapped into a stroller all day to keep him from disturbing the rest of the class. The Hawaii P&A advocated for the provision of an American Sign Language interpreter and augmentative device to assist with communication. As a result, the student is now participating in an integrated setting.

**IDAHO: Initial Policy Exploration and Development**

Idaho is in the very early stages of developing rules and/or policy governing the use of restraint, seclusion and aversive behavior techniques in public schools. A task force, of which the Idaho P&A is a founding member, has been authorized by the State Superintendent of Public Instruction to evaluate Idaho's existing laws, rules and/or policies (there are none), and draft appropriate rules or policies to hopefully be presented to the Idaho State Board of Education in March 2010, with the target date for full implementation being the beginning of the 2011-12 school year.

**ILLINOIS: Multi-Faceted Approach**

The Illinois P&A, Equip for Equality's efforts to reduce restraint and seclusion has been longstanding and includes legal representation of students, garnering media attention and public policy initiatives. Legislative efforts to ban restraint outright or ban prone restraint have not passed. EFE has called for systematic reporting of incidents and greater oversight in both public and private schools. EFE is seeking to amend regulations to further curtail usage and dangerous practices. EFE's Special Education Clinic and Abuse Investigation Unit is examining the school districts' usage of restraint and seclusion practices, conducting investigations of problematic districts and educating parents about their dangers.

**INDIANA: State Department of Ed Issues Guidelines**

In December 2009, Indiana's Department of Education (IDOE) issued a Memorandum and Policy Guidance concerning the use of seclusion and restraint. The guidance resulted from the United States Department of Education July 31, 2009 letter to all Chief State Schools Officers. IDOE recommended, but did not require, that individual school corporations adopt local policies regarding the use of seclusion and restraint. IDOE provided definitions for seclusion (using the term "isolated time out,") and physical restraint. In its definition of isolated time out, the guidance limited its use to 30 minutes after the child ceases the behavior that led to the use of timeout. No time limit was suggested concerning the use of physical restraints.

The guidance advised school corporations that any policies developed should address issues of staff training, documentation and reporting requirements. IDOE recommended these interventions only as a means to maintain a safe and orderly environment, not as a form of punishment. IDOE acknowledged that isolated timeout and physical restraint may be components of a behavioral intervention plan (BIP) or an Individualized Education Program (IEP). IDOE's guidance document ended with the disclaimer that nothing in their policy

guidance should be construed to limit the rights and abilities of teachers and school staff to keep order and administer necessary discipline in their classrooms and on school grounds, especially the powers and immunities found in Indiana Code. With the issuance of IDOE's guidance in early December, the Indiana P&A plans to delay its follow-up survey to allow school corporations an opportunity to react and respond to the IDOE recommendations.<sup>40</sup>

**IOWA: Iowa Successfully Sues to Enforce New Rules and Obtain Systemic Improvements**

Iowa amended Corporal Punishment, Chapter 103, to include rules regarding restraint and seclusion. Additionally, the Chapter bans the use of prone restraint. The Iowa P&A. was instrumental in bringing this issue to the Department of Education. The ban on prone restraint mirrors changes in policy already in place at state run institutions and prisons. Since the ban went into effect last year, the Iowa P&A has filed due process and state complaints on behalf of two separate students whose school districts violated these rules. Both actions have resulted in systemic improvements which will affect all students in the school district and across the state.

**KANSAS: P&A Convinces School Board to Adopt Non-Binding Restraint and Seclusion Guidelines**

The Kansas P&A's direct legal advocacy for students and families has included legal and advocacy representation to make improvements in student individual education plans by discouraging the use of seclusion and restraint and instead making modification to behavior plans to ensure inclusion of positive behavior supports and collaboration with community based service providers. The P&A has seen first-hand how its advocacy has made improvements for individual students who otherwise may have been forced into a more restrictive environment or may have been expelled inappropriately due to a manifestation of a disability.

The P&A has also successfully advocated for the Kansas Board of Education to adopt non-binding, best-practice seclusion and restraint guidelines in Kansas, which are being implemented in some Kansas schools. The P&A is now building a coalition of advocacy organizations to create systems change regarding the use of positive behavioral supports as well as requiring better data collection on the use of restraint in public schools. Currently Kansas school districts' track data far more closely on the use of seclusion, but do not effectively collect data on the use of restraint.

**KENTUCKY: P&A Collaborates to Develop Draft Regulations**

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<sup>40</sup> The Indiana P&A had previously commissioned Indiana University, a University Center for Excellence in Developmental Disabilities, to publish the following two reports: V. Pappas, J. Chait, and M. Norris, TIME-OUT, SECLUSION AND RESTRAINT IN INDIANA SCHOOLS, Indiana Institute on Disability and Community, Indiana University, (March 2008)[http://www.in.gov/ipas/files/SR\\_Final\\_Report\\_Full\\_IPAS\\_2-C.pdf](http://www.in.gov/ipas/files/SR_Final_Report_Full_IPAS_2-C.pdf); V. Pappas, J. Chair, and M. Norris Time-Out, Seclusion, and Restraint in Indiana Schools Literature Review , Indiana Institute on Disability and Community, Indiana University (March 2008) [http://www.in.gov/ipas/files/SR\\_Lit\\_Review\\_Final\\_AA.pdf](http://www.in.gov/ipas/files/SR_Lit_Review_Final_AA.pdf)

The Kentucky P&A attended a meeting hosted by the Kentucky Department for Education on September 29, 2009 in response to U.S. Education Secretary Arne Duncan's letter calling for states to submit recommendations and information about state restraint and seclusion laws. Numerous stakeholders were involved including representatives from the Kentucky Department for Behavioral Health, Developmental and Intellectual Disabilities, educational cooperatives, Center for School Safety, Center for Instructional Discipline, Educational Collaborative for State Agency Children and various schools. At the meeting, the P&A reviewed Secretary Duncan's charge, the current state of Kentucky guidance on the issues of restraint and seclusion, and various additional resources, including the U.S. Department of Education's Seclusion and Restraint Report and statements from the Crisis Prevention Institute and the National School Boards Association. The P&A then discussed essential components of definitions for restraint and seclusion, acceptable and unacceptable practices, guidelines for districts and schools, and necessary resources. The Kentucky Department of Education is attempting to get draft recommendations out by early January 2010.

**LOUISIANA: P&A Increases Awareness and Training about Restraint and Seclusion**

The Louisiana P&A trained its staff to be alert to restraint and seclusion in schools, and P&A staff has increased training to family members and people with disabilities on this issue. There is no current legislation in Louisiana to protect children from restraint and seclusion in schools.

**MAINE: P&A Drafts Bill and Files Suit Resulting in New State Guidance Banning Prone Restraint**

The Maine P&A drafted a bill introduced in the last legislative session to improve the enforceability of Maine's restraint and seclusion regulations. The bill was defeated, but in order to bargain for its defeat, the state Department of Education agreed to issue guidance that would ban prone restraint and to convene a work group to revise Chapter 33 (school based restraint and seclusion) regulations. An administrative letter was issued banning prone restraint and requiring that a nurse evaluate all students, in a timely manner, after restraint is used.

The P&A also prepared a PowerPoint presentation for parents regarding Chapter 33 rights which was presented to a large crowd at the annual conference of Maine's state parent training center. The P&A developed a survey to collect data about the problem of restraint and seclusion in schools. This data, along with any data collected by the U.S. Office of Special Education Programs and U.S. Department of Education Office of Civil Rights, will be used when legislation is developed for the next regular state legislative session in 2011.

**MARYLAND: P&A Successfully Works with State and School Associations to Strengthen Seclusion and Restraint Regulations**

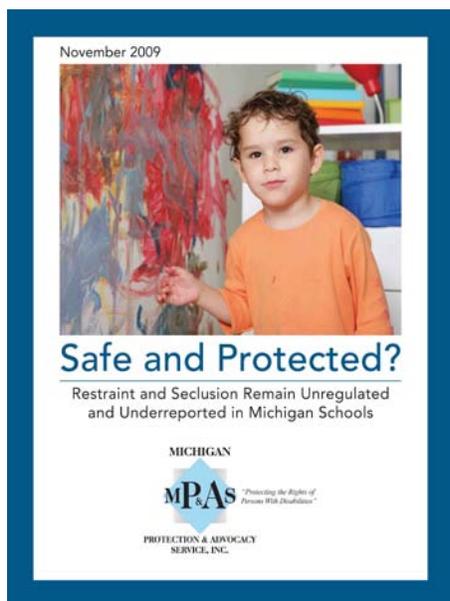
After an unsuccessful legislative effort in 2008 to ban prone restraint, the Maryland P&A turned back to the regulatory arena and worked with the Maryland State Department of Education and the nonpublic schools association, the group that had opposed the legislative effort, to craft revisions to Maryland's regulations. These revisions became effective in early October 2009 and strengthen state regulations related to effective communication with the student, time

outs and physical restraint (not to exceed 30 minutes), and training for school professionals about the use of seclusion and restraint and their dangers.

**MASSACHUSETTS: P&A Plans to Release Two Investigation Reports, Urges Bans and Better Data Reporting**

The Massachusetts P&A met with the state education agency to discuss the letter from U.S. Department of Education Secretary Arne Duncan recommendations from state's about how they will decrease the use of restraint and seclusion in schools. The P&A emphasized the need for a ban on face-down prone restraint, better data collection, and the need for the local education agency to develop expertise in positive behavioral supports. Additionally, the Massachusetts P&A actively participates in a new state Inter-agency Task Force on reducing the use of restraint and seclusion in all programs for children.

The P&A plans to release two new investigative reports within the next few months. The first involves the excessive use of restraint and seclusion and suspensions in an alternative school. The second is an investigation into abuse, including restraint, in a collaborative school.



**MICHIGAN: P&A Builds Coalition Seeking Passage of State Laws**

The Michigan P&A issued a report on Michigan's 2006 voluntary board policy on restraint and seclusion in schools. The report featured over 50 parent stories and also included the results of a P&A survey of intermediate school districts on the use of restraint and seclusion. Safe and Protected: Restraint and Seclusion Remain Unregulated and Underreported in Michigan Schools

(<http://www.ndrn.org/aboutus/states/michigan/86323MPAS-Restraint-Seclusion.pdf>).

The survey revealed that only 22 of 57 intermediate school districts collect data, and of those, 3,222 incidents of restraint or seclusion were reported in Michigan schools in 2008-9. The report concluded that the voluntary policy has failed to limit the use of restraint and seclusion in schools.

In completing the report, the P&A asked for the state's response to U.S. Department of Education Secretary Arne Duncan's letter to states about restraint and seclusion in schools. The state replied that, "a review of the letter's contents and the Secretary's requests indicated that no direct action was required."

The P&A convened a coalition to support state legislation to make the voluntary policy mandatory and to further limit the use of restraint and seclusion in schools. The legislation has been introduced in the State House of Representatives by Rep. Kennedy and has 18 co-sponsors.

### **MINNESOTA: P&A Report Shows Patterns of Restraint and Seclusion Use and Recommends Policy Improvements**

The Minnesota P&A reported on a study it did on restraint and seclusion in Minnesota public schools. The report was based on a review of P&A cases, analysis of state complaint and hearing decisions and survey responses from special education directors, advocates and parents. The report contains recommendations to policy makers and school districts, and best practices noted by schools and advocates. The report also contains a conservative estimate of between 2,100 and 3,800 instances of restraint, seclusion, and unlocked time out room use in Minnesota Public Schools. Additionally, the P&A remains active in individual casework, policy discussions, and training for on restraint and seclusion topics.

### **MISSISSIPPI: Educational Advocacy and Training**

Mississippi remains one of the states that does not have policies specifically addressing restraint and seclusion in schools. The Mississippi P&A has represented clients to stop some schools from using time out rooms and partitions as a method of discipline and control of children with disabilities. The P&A also continues to provide training to school personnel about the inappropriate reactions to behaviors of students with disabilities and alternatives to "arrests" and referrals to youth court.

### **MISSOURI: Individual Advocacy Leads to Passage of State Law**

In early 2009, the Missouri P&A provided advocacy to the family of a student who had been injured as a result of being forcibly placed in a seclusion room in a school. The P&A's efforts resulted in an individualized education plan designed to limit the use of restraint and seclusion in the future. The P&A, the Missouri Planning Council for Developmental Disabilities and several Missouri families publicized the plight of students with disabilities being placed in seclusion rooms. The Missouri P&A and the family it assisted held a press conference about the lack of laws to protect Missouri school children from abusive restraint and seclusion practices, and followed up with a radio and several print interviews. The Planning Council wrote advocacy letters to legislators. As a result of the P&A's educational advocacy and these collaborative efforts, including the dedicated efforts of Missouri: Families against Restraint and Seclusion and MPACT, the Missouri legislature passed a school restraint and seclusion law in the fall of 2009. The final version of the law, while not banning the use of restraint and seclusion rooms outright, does require restrictions on use and requires accountability. The new state law requires the state education agency to develop a model policy that school districts can choose to adopt. School districts are required to develop their own policies, and the Missouri P&A is a member of the state committee developing a model policy.

### **MONTANA: Investigations into Deplorable School Abuse**

The Montana P&A has conducted several investigations into the use of restraint and seclusion in schools. A great deal of the P&A's work has been to obtain records over the schools' resistance. However, at this point, the P&A is getting most of the material requested. The P&A believes that the use of seclusion may be very widespread in Montana, especially among rural

primary schools which are often very isolated and understaffed. Below are examples of some of the investigations that the P&A has been involved in:

- The P&A received a complaint that the Special Education Director of a school put a young girl with intellectual disabilities in a prone restraint. He then lay on top of her to keep her from crawling away. The P&A conducted a full investigation and eventually obtained the school's own investigation report, which was inadequate and exposed conflicts of interest. The family has since obtained private counsel.
- Two aides in a Resource Room disciplined a young boy with autism by holding his head underwater, forcing him to eat his own vomit, and leaving him sitting all day in his feces-soiled clothes. His parents contacted the P&A, which opened an investigation. Pressure by the family and their private attorney resulted in a police investigation, which led to charges against the two aides, which may be expanded to include the classroom teacher, who has since resigned and moved to an adjacent state. The P&A is currently investigating whether other children in the classroom have been subjected to these aversive interventions.
- A 10 year old girl with cerebral palsy was either restrained or taught in a room described as a broom closet. The P&A is investigating.
- Another school district locked a teenage student with autism alone in a darkened bathroom to seclude him. While there, he bit himself so badly he bled all over the bathroom and injured his hands. During and after the P&A investigated, the school district hired a new special education director and the abusive teacher left. The new Special Ed director is implementing an appropriate positive behavior support program and the school district is paying \$10,000 in damages to the youth.

**NEBRASKA: State Education Department to Fund Technical Assistance to Schools**

Nebraska does not currently have any statutes or regulations regarding the restraint or seclusion of students. However, the Nebraska Department of Education has contracted with a professor from the University of Nebraska- Lincoln to provide technical assistance to school districts to revise their policies.

**NEVADA: P&A Works in Coalition to Halt Bill that would Slow Reporting of Seclusion and Restraint, Wins Stronger Protections for Students**

Nevada's largest school district recently submitted a bill which would weaken state law currently requiring schools to report incidents of restraint and seclusion within 24 hours. In response, the Nevada P&A joined other groups in opposing delayed reporting. As a result of these efforts, the draft bill failed and existing reporting requirements were ultimately strengthened. AB56, effective July 1, 2009, increases accountability at the individual school and teacher level, and adds independent education program review requirements when physical or mechanical restraints for a student reach five or more. The Nevada P&A has also joined the

nationwide initiative to reduce or eliminate restraint and seclusion in schools. The P&A is requesting: 1) access to reports of violations under AB56 and AB280 from the State Department of Education; 2) all policies and guidelines on restraint and seclusion from school districts in Nevada; 3) interpretation from the Attorney General of “violations” and “denial of rights” under the statute; 4) immediate publication of the revised Technical Assistance document by the State Department of Education to guide teachers and administrators on new statutory reporting requirements; and 5) input from various parent advocacy organizations and state advisory councils on disabilities on these issues.

**NEW HAMPSHIRE: P&A Drafts Bill to Ban Prone Restraint and Limit Other Forms of Restraint and Seclusion**

A bill to support the reduction of the use of restraint of children across all settings in New Hampshire. The bill has been introduced in the New Hampshire Senate and has a bi-partisan group of sponsors. The bill is in committee, but has not been scheduled for a hearing yet. The legislation would ensure that restraints are only used on children in emergency situations, when no other safe, effective intervention is possible. It would ban dangerous practices, including prone restraint. Finally, the legislation would eliminate the practice of indiscriminately placing youth in mechanical restraints during transport to and from the state’s juvenile justice facility and during court appearances. The P&A is also working to revise New Hampshire’s special education regulations on aversive behavioral interventions and discipline. In addition to restraint reform, the proposal would ban seclusion, and place additional protections on the use of “time-outs.”

**NEW JERSEY: P&A Works to Draft Regulations on Restraint and Seclusion**

The New Jersey Department of Education brought together a group of stakeholders to discuss and comment on the state’s proposed ideas regarding the regulation of restraint and seclusion in schools. Disability Rights New Jersey participated in two meetings with stakeholders and sent a letter to the New Jersey Department of Education commenting on the state’s recent efforts to reduce seclusion and restraint. DRNJ is concerned about the status of regulations because a new administration is coming into office that may have different priorities. In addition, DRNJ is working in collaboration with other advocacy and self-advocacy groups through the New Jersey Council on Developmental Disabilities’ Public Policy Committee to address the issue.

**NEW MEXICO: P&A Urges State to Modify Laws Governing Seclusion and Restraint in Schools, Trains School Personnel**

Disability Rights New Mexico (DRNM) and Pegasus, a legal rights agency for children, wrote a letter urging the State to review its guidance on the use of restraint and seclusion in New Mexico schools and establish a stronger statewide policy. The letter was referred to the Public Education Department’s (PED) legal counsel.

DRNM subsequently received an invitation to participate in the PED’s newly established Restraint and Seclusion Work Group, along with several other stakeholders. The work group’s

mission is to develop legislation and/or rulemaking on the usage of seclusion and restraint in New Mexico's public schools.

The newly formed group is scheduled to begin its work in January and DRNM has appointed its representative.

**NEW YORK: P&A Launches Efforts to Strengthen Response to Restraint and Seclusion**

After a successful campaign which improved State Education Department regulations on the use of "time out rooms," the New York State Protection and Advocacy for Individuals with Developmental Disabilities (PADD) program has been giving testimony on the need to address the use of restraint in public schools. In written testimony to the State legislature, three of the PADD contract offices called for State Education Department regulations addressing training, timely notification to parents, specific behavioral plans, and physical evaluation by a school nurse after restraint and annual data collection. Simultaneously, PADD is seeking a legislative solution to the lack of any state investigatory agency having authority to investigate allegations of abuse or neglect in public schools.

Disability Advocates, Inc. (DAI) continues to advocate for stricter state laws governing physical restraints of children with disabilities in schools. The New York State Department of Education (NYSED) has been reluctant to amend its current regulations and develop comprehensive statewide standards for the use of physical restraints in public schools.

In response to our growing concerns about school districts' practices of physically restraining students with disabilities, DAI also created a coalition with other interested parent groups, independent living centers, clinicians, State legislators, and advocacy organizations to help develop New York State legislation regarding this issue. Assembly Bill A-01862 by Nolan and Lupardo was introduced in 2008 to amend the Education Law to require uniform guidelines for the use of physical restraints in public schools. Although this bill did not pass it has created dialogue. DAI will continue its efforts to pass this legislation during the next session.

**NORTH CAROLINA: P&A Investigations Trigger Systemic Change on the Local Level**

Over the past year, the North Carolina P&A has investigated complaints related to the use of seclusion and restraint in several school districts across North Carolina. In addition to remedies for individual students, these investigations have resulted in systemic changes in each school district. Based on these investigations and other outreach activities, DRNC has set a goal to ban the use of prone restraint in North Carolina's schools. DRNC is making progress on this goal, as one school system has agreed to introduce a resolution banning the use of prone restraint. A second school system has agreed to ban such restraints pending the outcome of an ongoing DRNC investigation. DRNC also plans to improve training and policies for school resource officers to prevent the excessive use of mechanical restraints on students with disabilities.

**NORTH DAKOTA: Plan to Develop Guidelines**

Currently, there are no laws or administrative rules that specifically regulate seclusion and restraint in North Dakota schools. In an extreme case, criminal laws might apply or the state Standards and Practices Board might take notice of a violation of the ethical standards that apply to North Dakota teachers. However, the Standards and Practices Board has not established specific standards on seclusion and restraint. During the current fiscal year, the North Dakota P&A plans to collaborate with the North Dakota Department of Public Instruction toward the development of statewide guidelines on use of restraint/seclusion within schools. Guidelines would be advisory only.

### **OHIO: Advocating for a Complete Ban on Potentially Lethal Restraints**

For years, the Ohio P&A has urged the Ohio Department of Education (ODE) to write rules regulating restraints, seclusion and aversives. ODE has failed to do so. In 2009, in response to LRS' advocacy and media coverage of abuse and deaths caused by the use of restraints, the Governor issued an Executive Order affecting fourteen agencies, including ODE, prohibiting prone restraints but allowing face-down transitional holds that are simply another type of prone restraint. The Ohio P&A advocated with the Governor, ODE and other state agencies for a complete ban on restraints that are potentially lethal because they can restrict breathing or compromise respiratory and cardiac functions. Several state agencies proposed rules to comply with the Executive Order and LRS provided comments to the Governor's task force which includes ODE, and to state agencies, about the possible dire consequences of the transitional holds that would be allowed.

Despite LRS' vehement opposition based on the risks of abuse, death and trauma to its clients, in October 2009 the State Board of Education adopted as policy the Executive Order to ban prone restraints yet allow certain dangerous holds that should be also banned.

The Ohio P&A also continues to push for written notice to parents and guardians, and to ODE when students are restrained, secluded or subjected to aversives; for ODE certified, mandatory training in positive behavioral interventions; for mandatory training of staff that will perform any type of behavioral intervention; and for ODE to use incident reports to improve student safety and the quality of educational settings.

Ohio P&A attorneys and advocates, in collaboration with Ohio's Parent Training and Information center, are planning a series of regional trainings for parents, advocates and educators throughout the state about the need for legislation and rules that protect students with disabilities from unnecessary and dangerous restraints and the obligation of school officials to use positive behavioral interventions under the IDEA, Section 504 and the ADA.

The Ohio P&A continues to represent students who have been injured and traumatized during incidents of school restraints and seclusion. In one egregious example, LRS represented a young child who had been restrained by a teacher and an aide. Despite a police report and medical evidence of physical abuse (including cervical abrasions secondary to probable choking and a shoe shaped patterned bruise on the child's back), and a complaint of educator misconduct

against the teacher with ODE's Office of Professional Conduct, ODE determined the incident was "an unsuccessful restraint" and the only disciplinary action was the requirement that the teacher complete six hours of training on the specific needs of children with autism.

This and other restraint cases are frightening and systemic examples of the failure, at both local and state levels, to enact adequate legal protections for school children with disabilities and to exercise oversight of educators who victimize students by using prone restraints. See <http://olrs.ohio.gov/asp/OLRSNewsOct09.asp#ode>; <http://olrs.ohio.gov/ASP/restraintseclusion.asp>

#### **OKLAHOMA: Pursuing Legal and Administrative Remedies to Ban Discriminatory Practices**

The Oklahoma P&A has initiated a lawsuit in district court to enforce the state mental health code against school districts. A complaint is pending at the U.S. Department of Education about a written policy that discriminates against children with disabilities by allowing only children with disabilities, but no other students, to be secluded in a small shut room for children with disabilities only. Additionally, the Oklahoma P&A initiated access authority activity against a large school district with seclusion rooms in multiple elementary school sites. The Oklahoma P&A is reaching out to parents and professionals with increasing number of speaking engagements. The Oklahoma P&A is also collaborating with the State Department of Education and others to increase positive behavioral interventions and supports.

#### **OREGON: Investigating Abusive Practice Toward Elementary School Children**

The Oregon P&A has made seclusion and restraint in school a top priority. The Oregon P&A recently filed a complaint on behalf of a first grade student who was restrained or secluded approximately 30 times over the course of four months. The student was secluded for up to 3 hours at a time. In addition, the Oregon P&A is currently investigating two cases in which students, one of whom was 8 years old and less than 50 lbs, were handcuffed by police at school. As part of the efforts of the Oregon P&A to ensure full compliance, the P&A is currently obtaining various school district policies to determine if they are consistent with Oregon regulations. The Oregon P&A is also considering proposing legislation that would ban prone restraint and strengthen existing regulations, particularly with regard to local educational authority reporting requirements.

#### **PENNSYLVANIA: Reporting and Other Rules Strengthened**

The Pennsylvania Department of Education and Bureau of Special Education issued a notice in the fall of 2008 outlining restraint incident reporting protocol. In spring 2009, the Pennsylvania Department of Education released "Guidelines for De-Escalation and Use of Restraints in Educational Programs" which provides information regarding positive behavior support, de-escalation techniques, training considerations and reporting requirements for school districts. A state-wide web-based restraint reporting system has been implemented. The reported data, which includes a student's disability, type and length of restraint, staff involved and date of subsequent individualized educational program meeting is reviewed by state personnel daily with regular reporting to the Bureau Director and the relevant Special Education Advisor. The

Pennsylvania P&A was extensively involved in these developments through its participation on the Special Education Advisory Panel and leadership of the Positive Behavior Support Committee. Additionally, the Pennsylvania P&A continued its address of restraint and seclusion in educational programs through onsite monitoring and assistance to families.

**RHODE ISLAND: Working to Improve Data Collection & Restraint and Seclusion Reporting**

The Rhode Island P&A recently completed a review of restraint and seclusion reports received through a Freedom of Information Act request to the Rhode Island Department of Education. The Rhode Island P&A plans to analyze the data for public dissemination. In addition, the P&A is currently working with the University Center for Excellence Developmental Disabilities and the Sherlock Center to add the P&A's data to their collection of Positive Behavioral Intervention Supports Data. Furthermore, the Rhode Island P&A is currently representing a child with multiple disabilities who was restrained repeatedly for noncompliance with assigned tasks in violation of the state's Restraint and Seclusion regulations. The Rhode Island P&A has been in discussions with the Rhode Island Department of Education concerning the utilization of its informational technology capabilities to track restraint and seclusion reports and the potential for legislation to further that goal by requiring districts to report via a system to be developed.

**SOUTH CAROLINA: Developing State Guidelines on the Use of Restraint and Seclusion**

South Carolina has no statute, regulation or guidance on the use of restraint and seclusion in schools. Over the summer of 2009, the South Carolina Department of Education organized a Seclusion and Restraint Workgroup. The workgroup is currently in the process of creating state guidelines on the use of seclusion and restraint in South Carolina public schools. The South Carolina P&A has been a member of this workgroup and final guidelines should be disseminated in the upcoming months.

The South Carolina P&A also collaborated with the state Developmental Disabilities Council and the Center for Disability Resources at the University of South Carolina on a survey of school district policies and practices on restraint, seclusion, and timeout. The three organizations issued a report covering the survey results in December 2009. The report is entitled *Policies and Practices on the Use of Restraint, Seclusion, and Timeout in South Carolina Public Schools: A Cause for Concern* (<http://www.pandasc.org/SC2009R&SReport.pdf>). The report, funded in part by the U.S. Department of Health and Human Services, concluded that children with disabilities are subjected to seclusion and restraint, including mechanical restraint, in South Carolina public schools without adequate school district policies in place to ensure appropriate safeguards and accountability. The following are some examples from the report:

- An eleven year old student with developmental disabilities was repeatedly restrained on a floor, with adults holding her down by pressing on her with beanbags. As another means of behavior modification, school staff attempted to restrain her in a modified chef's jacket used like a straight jacket.
- For failing to do a school assignment, an eight year old student with autism was sent to "time out" in an area he reported was similar to a closet. Staff physically

restrained him to get him into the room, and then turned the lights off. He went home with bruises on his body and has developed anxiety about returning to school. His parents decided they will move to a different state.

- The guardian of a young student with developmental disabilities discovered the student in a seclusion room for being too noisy in the classroom. The student was found lying on the floor of the seclusion room because staff had taken away his wheelchair. The guardian has no knowledge of the frequency or duration of seclusion being imposed on the student.
- An eleven year old student's chin was split when he was placed in a prone restraint. The student, with emotional disabilities, was frequently subjected to prone restraint.

### **SOUTH DAKOTA: Advocating on the Need for Specific Statutory Protections for Children**

South Dakota currently has minimum laws on seclusion of students. However, there are no laws or regulations clearly setting out specific protections for school children from abusive restraint. The South Dakota P&A is aware of the importance of this issue and has been acting as a liaison with the South Dakota Department of Education, providing them with information and materials about the harm caused by restraint and seclusion practices.

### **TENNESSEE: Providing Comments on Regulations for Mandatory Notice to Parents**

Tennessee's new legislation regulating restraint and seclusion went into effect on January 1, 2009. Rules and regulations regarding the new legislation were proposed by the Tennessee State Board of Education, and the P&A stayed involved in the process by reviewing and making public comments on the proposal. The rules were revised in part due to the P&A's comments. The rules and regulations were promulgated and will go into effect on January 18, 2010. The P&A will be monitoring schools for compliance with the new law. Tennessee is in the process of finalizing the rules and regulations for its restraint and seclusion statute. The P&A made oral and written comments on the rules regarding mandatory notice to parents of restraint or seclusion even if written into the Individualized Educational Program and the recognition that the P&A has authority to investigate and monitor in schools for abuse and neglect.

### **TEXAS: P&A Investigates High Number of Restraint and Seclusion Incidents Documented by the State**

In conjunction with the Congressional hearings and the GAO report on restraint and seclusion in schools, the Texas P&A (Advocacy, Inc.) issued a press release detailing the Texas-related findings and stories from the hearing and report. The release generated some cursory media coverage initially and ultimately resulted in a 3-part series in the Texas Tribune, featuring a former Advocacy, Inc. client.

The GAO report documented over 18,000 incidents of restraint in Texas schools. To better understand this shockingly high number, the Texas P&A requested restraint data from the Texas Education Agency, broken down by district and disability category. Advocacy, Inc. compiled and analyzed this data to determine whether the over use of restraint was state-wide, particular to certain school districts or related to the mishandling of students with a particular disability. Data analysis revealed that a handful of school districts were extreme outliers when

it came to the number of incidents of restraint and the percentage of students with disabilities subjected to restraint. Advocacy, Inc. approached the three school districts with the most outlying data, requesting to meet and collaborate on restraint reduction through, among other things, the implementation of district-wide positive behavior interventions and supports. One of the three school districts agreed to meet with the P&A and has undertaken an independent evaluation of its entire Special Education program and to begin implementing positive behavior interventions and supports.

In an attempt to reduce the number of incidents of restraint, Advocacy, Inc. staff has conducted trainings for advocates and parents on the Texas statutory and regulatory limits on restraint. The P&A has also consulted with Special Education experts at universities in Texas to strategize about the most effective means for reducing the incidents of restraint in Texas schools. Finally, Advocacy, Inc. has collaborated with other advocacy organizations on media, policy and litigation strategies to reduce restraint in Texas schools.

#### **UTAH: Working to Clarify the State’s Restraint and Seclusion Guidelines**

Until recently, local educational authorities were required to strictly follow the Least Restrictive Behavior Interventions rules developed by the Utah State Office of Education. Those rules included many requirements related to the use of restraint or seclusion. That regulation has now been changed, and the Least Restrictive Behavior Intervention rule is treated as a guideline, which a Local Educational Authority is free to disregard. The P&A believes that this is a step backwards, and fears Utah will see more harm from the inappropriate use of restraint and seclusion. The P&A has initiated a project to attempt to quantify any changes in the rate of the use of restraint or seclusion throughout the state.

#### **VERMONT: Advocating for Restraint and Seclusion Legislation**

Legislation was introduced in the first half of the 2009-2010 session by the Disability Law Project, in concert with the Vermont P&A and Vermont parent support and child advocacy organizations. The group met with the Commissioner of Education to solicit collaborative involvement of the Department of Education to address restraint and seclusion in schools through legislation and/or regulations. With pledged commitment, a series of focus group meetings were convened to look at specific aspects of the bill over the summer and fall and are making revisions to the initial bill based on the input received. These groups, made up of broad constituencies, looked at and made recommendations with respect to procedures for identifying and developing positive behavioral intervention supports plans for children with challenging behaviors, the use of restraint and seclusion in schools and data collection. The Vermont P&A, as part of VT Legal Aid, is also participating in a legislative breakfast on January 26, 2010 where a brief presentation on the proposed R&S bill will be made to all legislators attending.

#### **VIRGIN ISLANDS: Advocating to Ban Corporal Punishment in Schools**

After the receipt of the National Disability Rights Network restraint and seclusion report, the Virgin Islands P&A sent the report to the Chief Executive of the local school district and followed up with the Territorial Board of Education. As a result, the P&A obtained all policies

from the Board of Education regarding restraint, seclusion and corporal punishment. The P&A's research uncovered a very limited statute which allows for corporal punishment in school. The P&A is informing parents through the National Disability Rights Network report about the status of these issues in the Virgin Island. The P&A is participating in parent training events and will use the report as a basis for group discussions.

**VIRGINIA: Investigating Restraint and Seclusion Related Injuries**

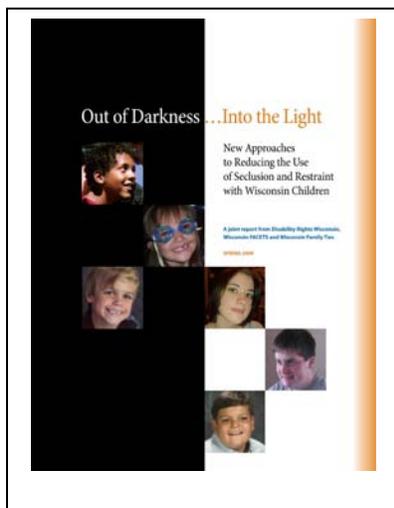
The Virginia P&A is committed to investigating reports of seclusion and restraint related to injuries at private and public facilities in the Commonwealth of Virginia serving children and adolescents. The P&A reviewed seclusion practices at an alternative public school in FY2009, and will investigate inappropriate or excessive use of seclusion and restraint in a selected public and private school in FY2010. The P&A is in the process of developing a presentation regarding functional behavior assessments, behavioral intervention plans and addressing seclusion and restraint practices and methodologies in schools. The presentation is geared toward parent advocacy groups, teachers and school staff across the Commonwealth in the coming year.

**WASHINGTON: Litigating Class Action**

The P&A has a class action pending concerning community supports for children with mental illness. Many of the putative class members have experienced restraint and seclusion in school.

**WEST VIRGINIA: Survey of Public School Policies**

The West Virginia P&A requested policies and procedures governing restraint and seclusion measures in public schools from each of the 55 counties in WV, the WV Schools for the Deaf and Blind, the Office of Institutional Education and the State Director of Special Education. The P&A received 47 responses. Initial findings indicate that none of the counties adequately regulate the use of restraint and seclusion measures.



**WISCONSIN: Investigations and Legislative Advocacy**

The Wisconsin P&A worked in coalition with Wisconsin Family Ties (supporting kids and families with mental health issues) and other organizations to collect stories of children who were secluded and restrained. Their collaboration resulted in a report entitled, *Out of Darkness...Into the Light: New Approaches to Reducing the Use of Seclusion and Restraint with Wisconsin Children*

(<http://www.disabilityrightswi.org/archives/296>).

The P&A conducted parent and educator trainings based on this report. As a result of the P&A's efforts, a bill was introduced to increase the use of positive behavior intervention and supports in schools, ban certain dangerous

seclusion and restraint practices and significantly limit their use to imminently dangerous circumstances. The Wisconsin P&A worked with these legislators on this bill and we will work to have successful committee hearings as the next step towards getting the bill passed. The identical bills are SB 468 and AB 682. Click here to see the bill: [SB 468](#). Here is a link to a 2 page plain language summary of the bills: [Summary SB 468](#).

**WYOMING: Advocating to Ban Restraint and Seclusion Practices in Schools**

Wyoming has no statutes or regulations addressing restraint or seclusion in schools. The last legislative session produced a bill prohibiting bullying, which the Wyoming Department of Education has interpreted as also prohibiting disability-based harassment. There is a potential that the bullying/harassment restriction could be applied to inappropriate restraint or seclusion. The P&A has requested the Wyoming Department of Education to prohibit inappropriate restraint and seclusion during the general revision of the state's educational rules, currently in progress. To date, the state has not addressed this concern. Wyoming's Department of Family Services rarely investigates allegations of injuries to students resulting from restraints.

**Appendix 2**  
**Side-By-Side Analysis of the House and Senate Bills**  
**to Prevent and Reduce Restraint and Seclusion in Schools**

<b>House Restraint and Seclusion Bill</b> BH.R. 4247	<b>Senate Restraint and Seclusion Bill</b> BS. 2860	<b>Applicable State Requirements</b>
<b>DEFINITIONS</b> ' 4	<b>DEFINITIONS</b> ' 4	<b>DEFINITIONS</b>
<b>Chemical Restraint</b> ' 4(1)	<b>Chemical Restraint</b> ' 4(4)	
A drug or medication that is used to control behavior or restrict movement that is not prescribed by an MD for standard treatment and administered as prescribed.	Same	
<b>Mechanical Restraint</b> ' 4(5) refers to 42 U.S.C. ' 290jj(d)(1)	<b>Mechanical Restraint</b> ' 4(2)	
The use of devices as a means of restricting a resident=s freedom of movement.	Same	
<b>Physical Escort</b> ' 4(7) refers to 42 U.S.C. ' 290jj(d)(2)	<b>Physical Escort</b> ' 4(2)	
The temporary touching or holding of the hand, wrist, arm, shoulder or back for the purpose of inducing a resident who is acting out to walk to a safe location.	Same	

**Physical Restraint** ' 4(8)  
refers to 42 U.S.C. ' 290jj(d)(3)

A personal restriction that immobilizes or reduces the ability of an individual to move his or her arms, legs, or head freely. Such term does not include a physical escort.

**Physical Restraint** ' 4(2)

Same

**Positive Behavior Supports** ' 4(9)

A systematic approach to embed evidence-based practices and data driven decision-making to improve school climate and culture, including a range of systemic and individualized strategies to reinforce desired behaviors and diminish reoccurrence of problem behaviors, in order to achieve improved academic and social outcomes and increase learning for all students, including those with the most complex and intensive behavioral needs.

**Positive Behavior Supports** ' 4(5)

Same

**School** ' 4(11)

A public or private day or residential early childhood, elementary or secondary school or

**School** ' 4(7)

Same

program that receives, or serves students who receive, funds directly or indirectly from the U.S. Education Department.

**School Personnel** ' 4(12) refers to 20 U.S.C. ' 7161(10) and (11)

Includes teachers, principals, administrators, counselors, social workers, psychologists, nurses, librarians, and other support staff who are employed by a school or who perform services for the school on a contractual basis.

Includes school resource officers who are career law enforcement officers, assigned by the employing police department to a local educational agency.

**Seclusion** ' 4(14) refers to 42 U.S.C. ' 290jj(d)(4)

A behavior control technique involving locked isolation. Such term does not include a time out.

**State-Approved Training Program** ' 4(16)

A training program approved by the State and the Secretary of Education that, at a minimum,

**School Personnel** ' 4(8) refers to 20 U.S.C. ' 7161(10) and (11)

Same

Same

**Seclusion** ' 4(2) refers to 42 U.S.C. ' 290jj(d)(4)

Same

**State Approved Training Program** ' 4(10)

A training program approved by the State that, at a minimum,

provides (a) evidence-based techniques shown to be effective in prevention and safe use of restraint and seclusion; (b) evidence-based skills training in positive behavior supports, safe physical escort, conflict prevention, de-escalation, and conflict management; (c) first aid and cardiopulmonary resuscitation; and (d) certification, which shall be periodically renewed.

**Time Out** ' 4(20) refers to 42 U.S.C. ' 290jj(d)(5)

A behavior management technique that is part of an approved treatment program and may involve the separation of the resident from the group, in a non-locked setting, for the purpose of calming. Time out is not seclusion.

**REGULATIONS** ' 5(a)

Secretary shall promulgate regulations within 180 days of enactment which protect students from physical or mental abuse, aversive behavioral interventions that compromise student health or safety, or any physical restraint or

provides (a) evidence-based techniques shown to be effective in prevention and safe use of seclusion and restraint; (b) evidence-based skills training in positive behavior supports, conflict prevention, de-escalation, and conflict management; (c) first aid and cardiopulmonary resuscitation; and (d) certification, which shall be periodically renewed.

**Time Out** ' 4(2) refers to 42 U.S.C. ' 290jj(d)(5)

Same

**REGULATIONS** ' 5(a)

Same

seclusion imposed for purposes of discipline or convenience or in a manner otherwise inconsistent with the Act.

**MINIMUM STANDARDS**

' 5(a)

**Ban On: ' 5(a)(1)**

- (A) Mechanical restraints,
- (B) Chemical restraints,
- (C) Physical restraint or escort that restricts breathing, and
- (D) Aversives that compromise health or safety.

**Ban On Use of Restraint or Seclusion Unless:**

' 5(a)(2)

- (A) Behavior poses an imminent danger of physical injury to student, school personnel or others,
- (B) Less restrictive interventions would be ineffective,
- (C) School personnel continuously monitor the student face-to-face (unless staff safety is significantly compromised by face-to-face and then it must be continuous,

**MINIMUM STANDARDS**

' 5(a)

**Ban On: ' 5(a)(1)**

- (A) Mechanical restraints,
- (B) Chemical restraints,
- (C) Physical restraint or escort that restricts air flow to the lungs, and
- (D) Aversives that compromise health or safety.

**Ban On Use of Restraint or Seclusion Unless: ' 5(a)(2)**

- (A) Same, and
- (B) Same.

' 5(a)(3)(B)BSame

direct visual contact),

(D) School personnel are trained and certified (unless there is a rare and clearly unavoidable emergency where trained staff are not immediately available), and

' 5(a)(3)(C)BSame

(E) Restraint or seclusion immediately ends upon the cessation of the conditions.

' 5(a)(3)(A)BEnds upon the cessation of the conditions.

**Adequate Numbers of Trained Staff** ' 5(a)(3)

There must be a sufficient number of trained and certified staff to meet the needs of the specific student population in each school.

**Adequate Numbers of Trained Staff** ' 5(a)(4)

Same.

**Ban on Inclusion in IEP** ' 5(a)(4)

Restraint or seclusion, as a planned intervention, shall not be written into an IEP, education plan, safety plan, or behavioral plan.

**Ban on Inclusion in IEP** ' 5(a)(5)

Same.

Schools may have policies for use of restraint or seclusion as part of general school safety or crisis plans.

Not included.

**Post-Restraint or Seclusion Procedures**

**Post-Restraint or**

' 5(a)(5)

Not included.

Mandatory immediate (the same day) verbal or electronic notice to parents following each incident involving restraint or seclusion.

Written notice within 24 hours of each incident.

Not included.

Not included.

**Exceptions ' 5(b)**

Nothing to prohibit the use of:

(1) Time out, or

**Seclusion Procedures**

' 5(a)(6)

Within 72 hours, all school personnel involved and appropriate supervisory and administrative staff shall participate in a debriefing, which shall include documentation of the antecedents to the restraint or seclusion and prevention planning.

' 5(7)(A)(i)BA documented reasonable attempt to provide immediate verbal or electronic notification to the parent on the same day.

' 5(7)(A)(ii)BSame.

' 5(7)(A)(iii)BAdvance notice of the debriefing session and an opportunity to attend the session.

' 5(7)(B)BIn the case of serious bodily injury, as defined in 18 U.S.C. ' 1365(h), or death of a student, written notification to the P&A system within 24 hours.

**Exceptions ' 5(b)**

Same.

(2) Devices used for specific, approved therapeutic safety purposes for which they were designed, including:

(A) Restraints for medical immobilization,

(B) Adaptive devices or mechanical supports to achieve proper body position, or

(C) Vehicle safety restraints during transport.

**State Plan ' 6(a)**

Developed within 2 years of issuance of regulations and updated annually.

**State Plan ' 6(a)**

Same.

Provides assurances that the State=s policies meet the minimum standards.

Same.

Provides assurances that the State has a mechanism to effectively monitor and enforce the standards.

Same.

Describes the State=s policies and procedures, including its training program.

Does not separately mention the State=s training program.

Describes the procedures to ensure school personnel and parents are aware of the State=s

Same.

procedures.

**STATE REPORTING REQUIREMENTS ' 6(b)**

Developed within 2 years of issuance of regulations and updated annually.

Reports must be consistent with privacy rights under FERPA, 20 U.S.C. ' 1232g.

**Must include ' 6(b)(A):**

(i) total number of incidents in which restraint imposed during the academic year, and

(ii) total number of incidents in which seclusion was imposed.

**Must be disaggregated by ' 6(b)(B)(i)(I):**

Total number of incidents that resulted in injury,

Total number of incidents that resulted in death, and

Total number of incidents in which the person imposing the seclusion or restraint was not trained.

**Must be disaggregated by demographic characteristics including ' 6(b)(B)(i)(II):**

**STATE REPORTING REQUIREMENTS ' 6(b)**

Same.

Same.

**Must include ' 6(b)(A):**

Same.

Same.

**Must be disaggregated by ' 6(b)(B)(i)(I):**

Same.

Same.

Same.

**Must be disaggregated by demographic**

<p>Categories in 20 U.S.C. ' 6311(h)(1)(C)(i)--race, ethnicity, gender, disability status, migrant status, English proficiency, and status as economically disadvantaged,</p>	<p><b>characteristics</b> including ' 6(b)(B)(i)(II):</p> <p>Same.</p>
<p>Age, and</p>	
<p>Disability status under Section 504, 29 U.S.C. ' 705(20).</p>	<p>Same.</p> <p>Same, except it excludes subparagraph (A), which is the general definition.</p>
<p><b>Unduplicated Count</b> ' 6(b)(B)(ii):</p>	<p><b>Unduplicated Count</b> ' 6(b)(B)(ii):</p>
<p>Disaggregation must result in an unduplicated count of the total number of incidents in the preceding full academic year in which:</p>	<p>Same.</p>
<p>Physical restraint was used on a student, and</p>	<p>Same.</p>
<p>Seclusion was used on a student.</p>	<p>Same.</p>
<p>Disaggregation not required for any category in which the number of students in the category would reveal personally identifiable information.</p>	<p>Same.</p>
<p><b>ENFORCEMENT</b> ' 6(c)</p>	
<p><b>Available Remedies</b></p>	<p><b>ENFORCEMENT</b> ' 6(c)</p>

' 6(c)(1)(A)

If an SEA fails to comply with (a) (State plan) or (b) (reporting), the Secretary shall:

(i) Withhold in whole or in part further payments under an applicable program as defined by 20 U.S.C. ' 1221BESEA, IDEA, for example) in accordance with the provisions or 20 U.S.C. ' 1234d (notice and opportunity for a hearing), or

(ii) Require the SEA to implement a corrective action plan within one year of the failure to comply, which may include the redirection of funds, or

(iii) Issue a complaint to compel SEA compliance through a cease and desist order as provided by 20 U.S.C. ' 1234d [Note: 20 U.S.C. ' 1234e is the provision for cease and desist orders, which are heard in an administrative hearing].

**Cessation of Withholding of Funds ' 6(c)(1)(B)**

When the Secretary

**Available Remedies**

' 6(c)(1)(A)

Same, except (b)(2) (information requirements) is referred to.

Same, except 20 U.S.C. ' 1221 is not explicitly referred to.

Same.

Same, except 20 U.S.C. ' 1234e is referred to.

**Cessation of Withholding of Funds ' 6(c)(1)(B)**

determines that an SEA being subjected to a withholding of funds comes into compliance, the withholding shall cease.

Same.

**Other Authority ' 6(c)(2)**

**Other Authority ' 6(c)(2)**

Nothing in this section shall limit the Secretary's authority under 20 U.S.C. ' 1221, *et seq.* ( ' 1234 - 1234i include recovery of funds, withholding of funds, cease and desist orders, and compliance agreements).

Same.

**GRANT AUTHORITY ' 7**

**GRANT AUTHORITY ' 7**

**In General ' 7(a) - (d)**

**In General ' 7(a) - (d)**

The Secretary may award 3-year grants to the SEAs, which in turn may award sub-grants to LEAs to assist in:

Same.

(1) Establishing, implementing and enforcing the policies to meet the minimum standards,

Same.

(2) Improving State and local capacity to collect and analyze data, and

Omitted.

(3) Improving school climate and culture by implementing school-wide positive behavior support

(2)--Same.

approaches.

**Required Activities ' 7(e)**

SEAs or LEAs shall use funds for:

(1) Researching, developing, implementing and evaluating policies and procedures to prevent and reduce restraint and seclusion,

(2) Providing professional development, training and certification for school personnel, and

(3) Carrying out the reporting requirements and analyzing the data to identify student, school personnel and school needs related to use of restraint and seclusion.

**Additional Authorized Activities ' 7(f)**

SEAs or LEAs may use funds for developing, implementing and evaluating evidence-based systematic approaches to school-wide positive behavior supports, and providing technical assistance.

**Evaluation and Report ' 7(g)**

Each SEA receiving a grant

**Required Activities ' 7(e)--**  
Same.

**Authorized Activities ' 7(f)**

Same.

**Evaluation and Report ' 7(g)**

shall, at the end of the 3-year grant:

(1) Evaluate the State's progress toward the prevention and reduction of restraint and seclusion consistent with the minimum standards, and

(2) Submit a report to the Secretary on its progress.

**NATIONAL ASSESSMENT**

' 8

**National Assessment**

' 8(a)

The Secretary shall carry out a national assessment to determine the effectiveness of the Act, including:

(1) Analyzing data relating to restraint and seclusion incidents,

(2) Analyzing the effectiveness of Federal, State and local efforts to prevent and reduce restraint and seclusion,

(3) Identifying the programs and services that have shown the greatest effectiveness in preventing and reducing restraint and seclusion, and

Same, except does not explicitly include A3-year@

**NATIONAL ASSESSMENT**

' 8

**National Assessment ' 8(a)**

Same.

(4) Identifying evidence-based personnel training models with demonstrated success in preventing and reducing restraint and seclusion, including models emphasizing positive behavior supports and de-escalation techniques over physical intervention.

**Report ' 8(b)**

The Secretary shall submit to the House Committee on Education and Labor and to the Senate HELP Committee:

(1) An interim report within 3 years of the date of enactment, summarizing the findings of the assessment, and

(2) A final report within 5 years of the date of enactment.

**PROTECTION AND ADVOCACY SYSTEMS ' 9**

P&As shall have the authority provided under the DD Act to investigate, monitor and enforce the protections given to students under this Act.

**HEAD START PROGRAMS ' 10**

**Report ' 8(b)**

Same.

**PROTECTION AND ADVOCACY SYSTEMS ' 9**

Same.

**HEAD START PROGRAMS ' 10**

**Regulations ' 10(a)**

The Secretary of HHS shall, in consultation with the Secretary of Education develop regulations for Head Start programs that are consistent with the Act.

**Grant Authority ' 10(b)**

The Secretary of Education may allocate funds to the Secretary of HHS to assist Head Start programs in carrying out the provisions of the Act.

**LIMITATION OF AUTHORITY ' 11**

Nothing in this Act shall be construed to restrict or limit, or allow the Secretary to restrict or limit, any other rights or remedies otherwise available to students or parents under Federal or State law.

**AUTHORIZATION OF APPROPRIATIONS ' 12**

**Regulations ' 10(a)**

Same.

**Grant Authority ' 10(b)**

Same.

**LIMITATION OF AUTHORITY ' 11**

Same.

**AUTHORIZATION OF APPROPRIATIONS ' 12**

### APPENDIX 3: Glossary

**ADA** -- The Americans with Disabilities Act was enacted into law in 1990 and is a broad-based law focused on the protection of the civil rights of individuals with disabilities. It is similar to the civil rights laws which protect people based on race, sex, national origin, or religion.

**BIP** – A Behavioral Intervention Plan is to be developed for a child based on a Functional Behavioral Assessment (FBA).

**CMS** – The Centers for Medicare and Medicaid Services is part of HHS and responsible for the administration of the Medicaid program and ensuring that entities (hospitals, institutions, individual providers, community settings, group homes, schools, etc.) which receive Medicaid funding comply with federal civil rights laws, such as Section 504. <http://www.cms.hhs.gov/>

**DOE** – The United States Department of Education oversees the provision of special education services. <http://www.ed.gov>

**Due Process** – The due process provisions of IDEA are designed to provide the child/family with the legal right to appeal any decision regarding any portion of the special education process, i.e. evaluation, eligibility, the IEP, progress, concerns related to the child’s safety and well being.

**FAPE** – Each child with a disability (age three through 21) is entitled to a Free, Appropriate, Public Education.

**FBA** -- The 2004 IDEA reauthorization included the requirement of a Functional Behavioral Assessment prior to the development of a Behavioral Intervention Plan (BIP) for students with disabilities who have behavioral challenges that impede functioning in the educational environment. An FBA is an evaluation using several methods to determine the causal and maintaining factors for a behavior that lead to the development of intervention strategies to meet the individualized and unique needs of the student.

**IDEA** – The Individuals with Disabilities Education Act (IDEA) was amended in 2004 by the Individuals with Disabilities Education Improvement Act (IDEIA). The law was first passed in 1975 and went into effect in 1978 as the Education of the Handicapped Act (EHA).

**IEP** - Individualized Education Program- an education plan designed to meet the specific needs of a child with a disability or disabilities. The plan is developed by a team that includes the family, the child if possible, and school personnel.

**HHS** – The United States Department of Health and Human Services oversees the implementation of the P&A programs which focus on the rights of individuals with developmental disabilities, mental illness, and traumatic brain injury. It also oversees the provision of the majority of federally funded health programs <http://www.hhs.gov/>

**LEA** – Local Educational Agency -- local school district.

**LRE** - Each child with a disability is entitled to be educated in the Least Restrictive Environment. This is a concept which is prevalent in disability law beyond education, i.e. a person is entitled to live in the least restrictive environment in the community.

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**Mechanical restraint-** the use of devices as a means of restricting an individual's freedom of movement.

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**NDRN** – The National Disability Rights Network is the nonprofit membership organization for the federally mandated Protection and Advocacy (P&A) Systems and Client Assistance Programs (CAP) for individuals with disabilities. Through training and technical assistance, legal support, and legislative advocacy, NDRN strives to create a society in which people with disabilities are afforded equality of opportunity and are able to fully participate by exercising choice and self-determination. [www.ndrn.org](http://www.ndrn.org)

**OSEP** – The Office of Special Education Programs is directly responsible for the oversight of the implementation of special education laws.

<http://www.ed.gov/about/offices/list/osep/programs.html>

**OSERS** – The Office of Special Education and Rehabilitative Services is the headquarters in the United States Department of Education that is responsible for disability and special education services. <http://www.ed.gov/about/offices/list/osers/index.html>

**P&A/CAP Network** – The federally mandated Protection and Advocacy (P&A) programs and Client Assistance Program (CAP). Collectively, the P&A/CAP network is the largest provider of legally based advocacy services to people with disabilities in the United States. <http://www.ndrn.org/>

**Positive Behavioral Interventions and Supports** – Positive Behavioral Interventions and Supports are also called positive behavior supports (PBS) and is an approach to changing behavior that encourages positive behaviors rather than just punishing negative behaviors. Positive behaviors and supports are most effective when implemented school-wide, but may be used to support positive behavior in individual students.

**Positional Support Chair** – Positional support chairs are designed to offer additional support to children and adolescents when seated at home or in a classroom environment. They are intended to be therapeutic and not disciplinary.

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**Physical Restraint** - a personal restriction that immobilizes or reduces the ability of an individual to move his or her arms legs, or head freely.

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**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.

**Protection and Advocacy System** - There is a P&A program in every state and territory. There also is a P&A program in the District of Columbia and one in the Four Corners area of the American Southwest, which addresses the needs of Native Americans with disabilities. P&A programs provide services to people with all types of disabilities – intellectual, mental, sensory, physical, as well as focusing on the voting rights of people with disabilities and their access to assistive technology. <http://www.ndrn.org>

**SAMHSA** – The Substance Abuse and Mental Health Services Administration is part of HHS and is responsible for the administration of federal mental health and substance abuse programs, including the P&A program for individuals with mental illness. SAMHSA has responsibility for the oversight (along with CMS) of Residential Treatment Centers (RTC), hospitals and other settings which provide supports and services to children and adults with mental illness. <http://www.samhsa.gov/>

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**Seclusion** is – a behavior control technique involving locked isolation.” However, state laws can be enacted to include the involuntary confinement of [an individual] alone in a room or area from which the [individual] is physically prevented from leaving.

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**Section 504** – This is the section of the Rehabilitation Act which established the basis for later disability civil rights protections. Section 504 states that "no qualified individual with a disability in the United States shall be excluded from, denied the benefits of, or be subjected to discrimination under" any program or activity that either receives Federal financial assistance or is conducted by any Executive agency or the United States Postal Service.

**SEA** – State Educational Agency.

## Appendix 4: Contact Information for Protection and Advocacy Agencies

For information about reporting abuse and neglect, or to get more information about this report, contact [www.ndrn.org](http://www.ndrn.org), or the P&As:

### Alabama

<http://www.adap.net>

### Alaska

[www.dlcak.org](http://www.dlcak.org)

### American Samoa

E-mail: [uta.opad@americansamoa.gov](mailto:uta.opad@americansamoa.gov)

### Arizona

[www.azdisabilitylaw.org](http://www.azdisabilitylaw.org)

### Arkansas

[www.arkdisabilityrights.org](http://www.arkdisabilityrights.org)

### California

[www.disabilityrightscalifornia.org](http://www.disabilityrightscalifornia.org)

### Colorado

[www.thelegalcenter.org](http://www.thelegalcenter.org)

### Connecticut

[www.state.ct.us/opapd/](http://www.state.ct.us/opapd/)

### Delaware

[www.declasi.org](http://www.declasi.org)

### District of Columbia

[www.uls-dc.org](http://www.uls-dc.org)

### Florida

[www.advocacycenter.org](http://www.advocacycenter.org)

### Georgia

[www.thegao.org](http://www.thegao.org)

### Guam

E-mail: [pna@guamlegalservices.com](mailto:pna@guamlegalservices.com)

### Hawaii

[www.hawaiidisabilityrights.org](http://www.hawaiidisabilityrights.org)

### Idaho

<http://www.disabilityrightsidaho.org>

### Illinois

[www.equipforequality.org](http://www.equipforequality.org)

### Indiana

[www.IN.gov/ipas](http://www.IN.gov/ipas)

### Iowa

[www.ipna.net](http://www.ipna.net)

### Kansas

[www.drckansas.org](http://www.drckansas.org)

### Kentucky

[www.kypa.net](http://www.kypa.net)

### Louisiana

[www.advocacyla.org](http://www.advocacyla.org)

### Maine

[www.drcme.org](http://www.drcme.org)

### Maryland

[www.mdclaw.org](http://www.mdclaw.org)

### Massachusetts

[www.dlc-ma.org](http://www.dlc-ma.org)

### Michigan

[www.mpas.org](http://www.mpas.org)

### Minnesota

[www.mndlc.org](http://www.mndlc.org)

### Mississippi

[www.disabilityrightsms.com](http://www.disabilityrightsms.com)

### Missouri

[www.moadvocacy.org](http://www.moadvocacy.org)

### Montana

[www.disabilityrightsmt.org](http://www.disabilityrightsmt.org)

### Native American

[www.nativedisabilitylaw.org](http://www.nativedisabilitylaw.org)

### Nebraska

[www.nebraskaadvocacyservices.org](http://www.nebraskaadvocacyservices.org)

### Nevada

[www.ndalc.org](http://www.ndalc.org)

### New Hampshire

[www.drcnh.org](http://www.drcnh.org)

### New Jersey

[drnj.org](http://drnj.org)

### New Mexico

[drnm.org](http://drnm.org)

### New York

[www.cqcapd.state.ny.us](http://www.cqcapd.state.ny.us)

### North Carolina

[www.disabilityrightsncc.org](http://www.disabilityrightsncc.org)

### North Dakota

[www.ndpanda.org](http://www.ndpanda.org)

**Northern Mariana Islands**

[www.NMPASI.com](http://www.NMPASI.com)

**Ohio**

[www.state.oh.us/olrs/](http://www.state.oh.us/olrs/)

**Oklahoma**

[www.oklahomadisabilitylaw.org](http://www.oklahomadisabilitylaw.org)

**Oregon**

[www.disabilityrightsoregon.org](http://www.disabilityrightsoregon.org)

**Pennsylvania**

[www.drnpa.org](http://www.drnpa.org)

**Puerto Rico**

<http://www.oppi.gobierno.pr>

**Rhode Island**

[www.ridlc.org](http://www.ridlc.org)

**South Carolina**

[www.pandasc.org](http://www.pandasc.org)

**South Dakota**

[www.sdadvocacy.com](http://www.sdadvocacy.com)

**Tennessee**

[www.DLACTN.org](http://www.DLACTN.org)

**Texas**

[www.advocacyinc.org](http://www.advocacyinc.org)

**Utah**

[www.disabilitylawcenter.org](http://www.disabilitylawcenter.org)

**Vermont**

[disabilityrightsvermont.org](http://disabilityrightsvermont.org)

**Virgin Islands**

<http://drcvi.org>

**Virginia**

[www.vopa.state.va.us](http://www.vopa.state.va.us)

**Washington**

[www.disabilityrightswa.org](http://www.disabilityrightswa.org)

**West Virginia**

[www.wvadvocates.org](http://www.wvadvocates.org)

**Wisconsin**

[www.disabilityrightswi.org](http://www.disabilityrightswi.org)

**Wyoming**

[www.wypanda.com](http://www.wypanda.com)

January 2009



Wisconsin girl, age 7, killed while physically restrained and secluded.

## School is Not Supposed to Hurt:

Investigative Report on Abusive Restraint and Seclusion in Schools



## Out of Darkness ... Into the Light



New Approaches to Reducing the Use of Seclusion and Restraint with Wisconsin Children

A joint report from Disability Rights Wisconsin, Wisconsin FACETS and Wisconsin Family Tree

SPRING 2009

June 2009

# Seclusion and Restraint in Alabama Schools

A Report By  
The Alabama Disabilities Advocacy Program

On May 19, 2009, the House Education and Labor Committee held a hearing on the use of seclusion and restraint in our nation's schools.

Investigators from the U.S. Government Accountability Office (GAO), parents, and education officials shared testimony about hundreds of schoolchildren who have been abused by the use of seclusion and restraint in U.S. classrooms. Practices used disproportionately on children with disabilities. Practices which have led to physical and emotional injuries...even death.

Are you thinking that this kind of thing doesn't go on in Alabama?

***Think again.***

November 2009



## Safe and Protected?

Restraint and Seclusion Remain Unregulated and Underreported in Michigan Schools

MICHIGAN



"Protecting the Rights of Persons With Disabilities"

PROTECTION & ADVOCACY SERVICE, INC.