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September 27, 2010

MEMORANDUM

TO: Legislative Education Study Committee

FR: Ally Hudson

**RE: STAFF REPORT: PUBLIC EDUCATION DEPARTMENT (PED) WORK
GROUP ON THE RESTRAINT AND SECLUSION OF STUDENTS IN PUBLIC
SCHOOLS**

Introduction

As explained in a Legislative Education Study Committee (LESC) staff report during the 2009 interim, attention to issues of physical restraint and seclusion of students has risen across the United States through published accounts of alleged abuse, which prompted an investigation by the Government Accountability Office (GAO) at the request of the US House Education and Labor Committee. The GAO report, published May 19, 2009, found “no federal laws restricting the use of seclusion and restraint in public and private schools and widely divergent laws at the state level.”

On July 31, 2009, US Education Secretary Arne Duncan sent a letter to each Chief State School Officer encouraging them to review their state’s current policies and guidelines regarding the use of restraints and seclusion in schools, and if necessary, develop or revise its policies and guidelines. In compliance with Secretary Duncan’s request and in response to the requests of various advocacy groups, former Secretary of Public Education, Dr. Veronica C. García, created

a work group to consider legislation and/or rulemaking on the subject of restraint and seclusion of all children in New Mexico public schools.¹

In a memo to a number of education associations and advocacy groups dated November 16, 2009, the former Secretary of Public Education directed the work group to:

- make recommendations regarding the scope and nature of the use of restraint and seclusion with respect to children in public schools;
- study the best ways to address the use of restraint and seclusion with respect to children in public schools including surveying practices and methods used in other states where laws and/or rules have been adopted;
- consider the issue of liability that might be placed upon school employees, school districts and the state when making any recommendations; and
- make recommendations for legislation and/or rulemaking regarding the use of restraint and seclusion on children in public schools.

On September 20, 2010, the Public Education Department (PED) submitted a report on behalf of the Restraint and Seclusion Work Group to the Governor and the LESC entitled “Recommendations on the Use of Restraint and Seclusion in Public Schools” (Attachment 1). The report has two parts:

- a memo that provides details on the status of both New Mexico and federal law and guidance, activities of the work group, recommendations on the use of restraint and seclusion in public schools, and recommended definitions for rule or legislation; and
- a number of exhibits, including:
 - Ø Exhibit A: Contact List: Restraint and Seclusion Workgroup;
 - Ø Exhibit B: H.R. 4247, *Keeping All Students Safe Act* (Amendment in the Nature of a Substitute);
 - Ø Exhibit C: H.R. 5628, *Ending Corporal Punishment in Schools Act*;
 - Ø Exhibit D: Letter to Anonymous (Office of Special Education Programs (OSEP) 2008);
 - Ø Exhibit E: Letter to Barbara Trader (OSEP 2006);
 - Ø Exhibit F: Restraint and Seclusion Educator Survey Results;
 - Ø Exhibit G: Restraint and Seclusion Parent Survey Results;
 - Ø Exhibit H: Best Practices Subcommittee Report;
 - Ø Exhibit I: Survey Subcommittee Report; and
 - Ø Exhibit J: Liability/Costs Issues Subcommittee Report.

This staff report provides highlights of the PED report including a synopsis of the:

- current status of New Mexico law on restraint and seclusion;
- current status of federal law and guidance on restraint and seclusion;

¹ As a means of acknowledging the seriousness of the issue, an LESC-endorsed memorial entitled “Study School Student Seclusion and Restraint” was introduced in the 2010 legislative session. Although the memorial did not pass, the intent of the legislation was fulfilled by the formation of the work group in November 2009.

- activities of the work group; and
- recommendations on the use of restraint and seclusion in public schools including recommended definitions of terms.

The staff report concludes with a brief discussion of policy developments nationwide.

Highlights of the PED Report

Current Status of New Mexico Law on Restraint and Seclusion

According to the PED report, there are no state statutes or rules governing the use of restraint and seclusion in public schools. A review of state law indicates that physical restraint and seclusion are addressed in provisions of the *Children's Mental Health and Developmental Disabilities Act (Children's Code)*. These provisions, however, apply to "children in hospitals or psychiatric residential treatment or habilitation facilities as provided by federal law and regulation." The *Public School Code* does not include provisions specific to the restraint and seclusion of students.

Regardless, the PED report notes that the department has issued guidance on the subject of restraint and seclusion in at least two instances:

- in March 2006, the department issued guidance on the use of physical restraint as a behavioral intervention for students with disabilities; and
- in 2003, PED issued guidance on the use of time-out rooms as a behavioral intervention.

The guidance on restraint makes it clear that in all cases:

- the use of physical restraint should be approved by the student's individualized education program (IEP) team, documented in the student's behavioral intervention plan (BIP), and have the expressed written agreement of the parent;
- a mental health professional should be a member of the IEP team if physical restraint is being considered as an intervention; and
- physical restraint may be performed by trained personnel only.

Additional restrictions on the use of restraints, as well as recommendations for documentation and reporting, are also provided in the guidance. Perhaps most importantly, the PED report emphasizes that existing guidance supports the use of physical restraint in emergency situations only.

The PED report also notes that there are no New Mexico court cases dealing specifically with restraint and seclusion. Regardless, the report cites a New Mexico Supreme Court case that "held that a school district's failure to follow through on safety policies for at-risk students was an act of negligence in the operation of the school." The report suggests that although this case did not deal specifically with issues of restraint or seclusion in a school, the lack of policies governing these practices could pose a risk for schools.

Current Status of Federal Law and Guidance on Restraint and Seclusion

The PED report states that there are no federal laws governing the use of seclusion and restraints in public and private schools. Notably, two companion bills are pending in Congress dealing with restraint and seclusion.

- H.R. 4247 (Exhibit B of the PED report) entitled “Keeping All Students Safe Act” (Amendment in the Nature of a Substitute) seeks to establish minimum safety standards in schools and requires the States to have their own policies, procedures, monitoring, and enforcement systems in place within two years of the bill’s passage to meet the minimum standards; and
- H.R. 5628 (Exhibit C of the PED report) entitled “Ending Corporal Punishment in Schools Act” seeks an end to corporal punishment in schools.

On March 3, 2010, the US House of Representatives passed H.R. 4247. According to a *SpecialEdConnection* article, the sponsors in the US Senate are hopeful that they “will be able to vote on the bill before the end of the year.” If passed by the US Senate and enacted into law, H.R. 4247 would allow the US Department of Education (USDE) to distribute grants of undisclosed amounts to states for design and development of programs and enhancement of existing programs. It is not yet clear if these grants will be awarded on a competitive basis. A copy of the bill is attached as Exhibit B.

On June 29, 2010 H.R. 5628 was referred to the House Committee on Education and Labor. If passed and signed into law, the bill would deny federal funds to any “educational agency or institution” that permits corporal punishment as “a form of punishment or for the purpose of modifying undesirable behavior.” According to the PED report, this law would impact New Mexico because state law authorizes school districts to include corporal punishment in their discipline policy. A copy of the bill is attached as Exhibit C.

Additionally, the PED report acknowledges that decisions regarding the use of aversive behavioral interventions such as restraint are left to the state. The report cites advisement from the USDE OSEP that does not expressly prohibit the use of physical restraints or other aversives on students with disabilities. Regardless, the report emphasizes that positive behavioral interventions and supports are encouraged (Exhibit D, Letter to Anonymous (OSEP 2008); Exhibit E, Letter to Barbara Trader (OSEP 2006)).

Activities of the Work Group

The Restraint and Seclusion Work Group began meeting in March and had meetings every month except April. According to the PED report, the work group developed a work plan and formed three subcommittees at its first meeting:

- The Survey Subcommittee was tasked with preparing surveys to be sent to school districts and parents in order to determine the perceptions and practices relating to the use of restraint and seclusion in New Mexico public schools.
- The Best Practices Subcommittee was tasked with researching best practices relating to the use of restraint and seclusion in schools in both New Mexico and other states.

- The Liability/Costs Issues Research Subcommittee was tasked with researching how to implement the training required, including re-certification training that aligns with regulations and statutes, and the potential costs involved in implementing the work group recommendations.

Regarding the Survey Subcommittee, the PED report states that the educator survey was placed on the internet in late April 2010 and a memo went out from the Secretary of Public Education asking the districts to respond to the survey by May 10, 2010. Of the 89 school districts, 42 responded to the survey. A copy of the educator survey results are attached as Exhibit F of the PED report. The PED report also indicated that a survey was distributed to parents in July 2010. Eighty-six parents responded to the survey. The PED report emphasized that the results from the parent survey varied from those reported in the educator survey. For example, “only 24.4% reported that school staff contacted them after each incident of restraint or seclusion whereas the districts reported that 93.3% of them contacted parents after each incidence of restraint.” A copy of the parent survey results are attached as Exhibit G.

The PED report explains that the Best Practices Subcommittee reviewed data and information regarding restraint and seclusion from a variety of sources including the “Summary of Seclusion and Restraint Statutes, Regulations, Policies and Guidance, by State and Territory: Information as Reported to the Regional Comprehensive Centers” which was collated at the request of US Secretary Duncan. A copy of the Best Practices Subcommittee Report is attached as Exhibit H of the PED report.

According to the PED report, the Liability/Costs Issues Research Subcommittee “looked at a number of factors relating to the liability arising from the use of restraint and seclusion and researched the costs of providing appropriate training to school districts for researched based and best practice positive behavior support programs including intervention programs, de-escalation techniques, and the appropriate use of restraint in emergency situations.” Specifically, the subcommittee researched two methodologies:

- Crisis Prevention Institute (CPI): a de-escalation and crisis prevention intervention program; and
- Positive Behavior Interventions and Supports (PBIS): a framework for creating and sustaining effective school-wide behavior systems.

According to the PED report, the subcommittee was unable to determine the estimated cost involved in training school staff across the state and recertification. Nonetheless, Exhibit J of the PED report presents preliminary information on potential costs but emphasizes that this information is tentative and the issue of cost will require additional research.

Recommendations on the Use of Restraint and Seclusion in Public Schools

The PED report states that the work group reached a consensus at the September meeting with respect to recommendations to be made to the Governor and the LESC. A comprehensive list of the recommendations endorsed by the Restraint and Seclusion Work Group follows:

- Ensure that any behavioral intervention is consistent with the child's right to be treated with dignity and to be free from abuse, regardless of the child's educational needs or behavioral challenges.
- Prohibit the use of seclusion in schools.
- Review and update the guidance on time-out.
- Prohibit the use of aversive interventions.
- Prohibit prone restraints, or any other restraint that can suffocate a child. Likewise, any technique that obstructs a child's airways should be prohibited.
- Prohibit the use of mechanical or chemical restraints.
- Eliminate all other types of restraints except those which are documented as part of a school-wide crisis plan that addresses the need to protect students or others from imminent, serious physical harm in the case of an emergency.
- School-wide crisis plans should be written as a part of the Safe Schools/Healthy Students initiative every New Mexico school should have in place and should be provided to PED on an annual basis.
- Require the use of evidence-based positive behavioral intervention supports and other best practices and require appropriate and ongoing training in the use of such supports as well as crisis reduction and management, de-escalation techniques and other best practices and require that personnel are trained and certified in such supports to meet the needs of the specific student population in each school.
- Require school districts to establish procedures to be followed after each incident of restraint including the requirement that parents be verbally notified immediately after a restraint occurs and in writing within 24 hours.
- Require that each school district collect data on the total number of incidents of restraint in the previous school year as well as whether the incidences resulted in injury or death and whether the person who performed the physical restraint was trained according to the requirements of the legislation and that the data be collected in the Student Teacher Accountability Reporting System (STARS) as part of the annual Safe Schools report that includes discipline information.
- Prohibit the use of corporal punishment in schools because it is contrary to establishing positive behavioral interventions and to prohibiting the use of aversive interventions.
- It is highly recommended that the Legislature provide adequate funding for the implementation of any mandates imposed on school districts as a result of any proposed legislation.

- A preliminary estimate of the cost of recommended training is approximately \$535,000 for the first year and a sliding budget for the years thereafter. This training builds on the cohort and state implementation model that was in place several years ago for the PBIS program and does not ignore the lessons learned, the continued use of the PBIS program in several school districts and the resources already available to the state.
- Implementation of PBIS shall ensure the safety of all students and staff.
- Definitions are crucial for the consistent implementation of any proposed legislation.

Finally, the work group recommended that the LESC create a statewide Planning and Implementation Group to carry on its work. They emphasized that the group will need particular members who represent all school disciplines, outside agencies providing support to schools, and law enforcement, as well as representatives of PED, the Children, Youth and Families Department, the Department of Health, the Department of Corrections, the New Mexico Public Schools Insurance Authority, and representatives from school districts (including charter schools, advocacy groups, and parent organizations).

Recommended Definitions

In addition to the aforesaid recommendations, the PED report also provides a list of suggested definitions for the following terms:

- aversive intervention;
- chemical restraint;
- emergency interventions;
- mechanical restraint;
- mechanical support;
- physical escort;
- physical restraint;
- Positive Behavioral Interventions and Supports (PBIS);
- prone restraint;
- seclusion; and
- time-out.

Policy Developments Nationwide

In August 2010, PED distributed a survey to members of the National Association of State Directors of Special Education (NASDE) (Attachment 2, *Restraint Seclusion Survey, NASDE Survey by State*). The survey focused on two central issues:

- states' policy developments since the GAO report and the letter to state departments of education from US Secretary Duncan; and
- the population to whom any existing or proposed legislation applies (all students vs. special education students).

Of the 27 states that replied, 12 indicated that they either already had, or were planning to introduce, legislation that regulates the use of restraint and seclusion in public schools. While some states' statute only applies to special education students, all of the states proposing new legislation indicated the application of the law for all students.

Of the remaining 15 respondents:

- six already have, or are in the process of developing, regulation;²
- five already have, or are in the process of developing, guidance;³ and
- four are waiting to take action until it is clear what will happen with H.R. 4247.⁴

² Alabama, Georgia, Idaho, Massachusetts, Pennsylvania, and Vermont either have or are developing regulation.

³ Arkansas, Kansas, Oklahoma, Ohio, and Virginia either have or are developing guidance.

⁴ Montana, Nebraska, North Dakota, and Wyoming are waiting to take action.



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DR. SUSANNA M. MURPHY
SECRETARY OF EDUCATION

BILL RICHARDSON
Governor

September 27, 2010

MEMORANDUM

TO: The Honorable Bill Richardson
Governor of the State of New Mexico

The Honorable Cynthia Nava
Chair, Legislative Education Study Committee

The Honorable Rick Miera
Vice-Chair, Legislative Education Study Committee

FROM: Restraint and Seclusion Work Group

**RE: RECOMMENDATIONS ON THE USE OF RESTRAINT AND
SECLUSION IN PUBLIC SCHOOLS**

I. Introduction

The United States Government Accountability Office (GAO) issued a report on seclusions and restraints in public and private schools on May 19, 2009 which was the subject of hearings before the Committee on Education and Labor in the U.S. House of Representatives. As a result of these hearings, U.S. Education Secretary Arne Duncan sent a letter to the Chief State School Officer of each State on July 31, 2009. Secretary Duncan encouraged each State to review its current policies and guidelines regarding the use of restraints and seclusion in schools to ensure every student is safe and protected, and if appropriate, develop or revise its policies and guidelines. In compliance with Secretary Duncan's request and in response to the requests of various advocacy groups, former Secretary of Education Veronica García created a work group to consider legislation and/or rulemaking on the subject of restraint and seclusion of children in New Mexico public schools.

By memorandum dated November 16, 2009, Secretary García asked various stakeholder groups to appoint representatives from their organizations to serve on the work group. She requested that the work group (1) make recommendations regarding the scope and nature of the use of restraint and seclusion with respect to children in public schools; (2) study the best ways to address the use of restraint and seclusion with respect to children in public schools including surveying practices and methods used in other states where laws and/or rules have been adopted; (3) consider the issue of liability that might be placed upon school employees, school districts and the state when making any recommendations; and (4) make recommendations for legislation and/or rulemaking regarding the use of restraint and seclusion of children in public schools. Although the Secretary had initially asked the work group to address the use of restraint and seclusion on only children with disabilities, she later expanded the scope of the study to include all children attending public schools. The Secretary asked the work group to report its findings and recommendations to the Governor and the Legislative Education Study Committee (LESC) on or before October 1, 2010.

The work group consists of representatives from the New Mexico Public Education Department (NMPED), the New Mexico Coalition of School Administrators, the New Mexico Coalition of Charter Schools, the Albuquerque Teachers Federation, NEA-New Mexico, Albuquerque Educational Assistants Association, Parents Reaching Out, the Individuals with Disabilities Education Act (IDEA) Advisory Panel, Education for Parents of Indian Children with Special Needs, Disability Rights New Mexico (formerly Protection and Advocacy), Pegasus Legal Services for Children, the American Civil Liberties Union, Children, Youth and Families Department, Department of Health, and New Mexico Public School Insurance Authority, as well as a representative from the LESC. A list of the members of the work group is attached as Exhibit A.

II. Current Status of New Mexico Law on Restraint and Seclusion

There are no state statutes or rules governing the use of restraint and seclusion in public schools. The Children's Mental Health and Developmental Disabilities Act regulates the use of restraint and seclusion when a child is physically present in a residential treatment or habilitation program such as a mental health or developmental disabilities facility, a hospital, a clinic, an institution or a nursing home. (*See* Sections 32A-6A-9 and 32A-6A-10 NMSA 1978) However, the NMPED has issued guidance on the subject of restraint and seclusion. In March 2006, the NMPED issued guidance on the "Use of Physical Restraint as a Behavioral Intervention for Students with Disabilities" (<http://www.ped.state.nm.us/seo/guide/Restraint.Policy.pdf>) and in 2003 issued guidance on the use of seclusion in "Use of Time-Out Rooms as a Behavioral Intervention" (<http://www.ped.state.nm.us/seo/guide/dl09/TimeOutMemo2-EG.pdf>). The guidance on restraint makes it clear that in all cases, the use of physical restraint should be approved by the student's individualized education program (IEP) team, documented in the student's behavioral intervention plan (BIP) and have the expressed written agreement of the parent. It also says that a mental health professional should be a member of the IEP team if physical restraint is being considered as an intervention. It also advises that physical restraint may be performed by trained personnel only. The guidance also lists other restrictions on the use of restraints and lists

recommended documentation and reporting. Otherwise, physical restraint may only be used in case of emergencies to protect the student and others from serious injury.

There are no New Mexico court cases dealing specifically with restraint and seclusion. There was a federal lawsuit brought under the IDEA that involved the issue of restraint, the settlement of which led to the 2006 NMPED guidance on restraint. However, the New Mexico Supreme Court in *Upton v. Clovis Municipal School District*, 2006-NMSC-040, 140 N.M. 205, 141 P.3d 1259 (2006) held that a school district's failure to follow through on safety policies for at-risk students was an act of negligence in the operation of the school, for purposes of waiving immunity under the Tort Claims Act. In that case, parents of a student who collapsed and died from an asthma attack after being required by a substitute physical education teacher to continue exercising brought a negligence claim under the Tort Claims Act. While this case did not deal with the use of restraint or seclusion in a school, the case suggests that the lack of policies governing restraint could potentially put a school district at risk if harm comes to a student as a result of restraint.

III. Current Status of Federal Law and Guidance on Restraint and Seclusion

There are no federal laws governing the use of seclusion and restraints in public and private schools. However, there are two companion bills pending in Congress dealing with restraint and seclusion. H.R. 4247 entitled "Keeping All Students Safe Act" was introduced in the U.S. House of Representatives and seeks to establish minimum safety standards in schools and requires the States to have their own policies, procedures, monitoring and enforcement systems in place within two years of the bill's passage to meet the minimum standards. The House passed this bill on March 3, 2010 but it has not yet been taken up by the Senate. Section 5 of the bill contains the minimum standards which the States will be required to meet if the bill is passed and signed into law by the President. A copy of that bill is attached to this Report as Exhibit B.

Another bill pending in the House seeks an end to corporal punishment in the schools. If H.R. 5628 is passed and signed into law, the bill would deny federal funds to any "educational agency or institution" that permits corporal punishment as "a form of punishment or for the purpose of modifying undesirable behavior." A copy of the bill is attached to this Report as Exhibit C. Currently, Section 22-5-4.3 NMSA 1978 and 6.11.2.10(E) NMAC permit New Mexico school districts to include corporal punishment in their discipline policy. The Tenth Circuit Court of Appeals has held that corporal punishments that are inflicted on students and are so grossly excessive as to be shocking to the conscience violate a student's substantive due process rights. *Garcia by Garcia v. Miera*, 817 F.2d 650 (10th Cir. 1987).

The Office of Special Education Programs (OSEP) of the U.S. Department of Education has advised that the IDEA does not expressly prohibit the use of physical restraints or other aversives on students with disabilities although it does require that an IEP Team consider the use of positive behavioral interventions and supports and as such, encourages the use of such supports. OSEP further advised that whether to allow IEP Teams to consider the use of aversive behavioral interventions like restraint is a decision left to each State. *See* Letter to Anonymous (OSEP 2008) attached as Exhibit D; Letter to Trader (OSEP 2006) attached as Exhibit E.

IV. Activities of the Work Group

The Work Group began meeting in March and had meetings in May, June, July, August and September. At its first meeting, the Work Group developed a work plan and subcommittees were formed to complete necessary preliminary tasks prior to submitting final recommendations. Each subcommittee had a balanced representation from the various stakeholders with a chairperson, responsibilities and timelines to report to all members of the Work Group. The Survey Subcommittee was tasked with preparing surveys to be sent to school districts and parents in order to determine the perceptions and practices relating to the use of restraint and seclusion in the public schools in New Mexico. The Best Practices Subcommittee was tasked with researching best practices relating to the use of restraint and seclusion in schools in both New Mexico and in other states. The Liability/Costs Issues Research Subcommittee was tasked with researching how to implement the training required, including re-certification training that aligns with regulations and statutes and the potential costs involved in implementing whatever is recommended by the Work Group.

The survey developed by the Survey Subcommittee and sent to school districts in April asked whether they had restraint and seclusion policies in place, whether the districts used a form to report each incident of restraint and seclusion to the school's administration, who most often restrains students or places them in seclusion in the district, whether the school staff contacts the parents after each incident of restraint or seclusion, and approximately how many cases of restraint and seclusion occurred since school year 2007-2008. The survey also addressed whether school staff had been trained to do restraints, who was trained, the amount of training provided in a school year, the type of training provided, and what training would help the schools reduce the number of restraint or seclusion incidents in their schools. The survey further asked whether the districts had additional procedures in place for other behavioral interventions, the methodology used, the school's policy for other behavioral interventions, how effective these interventions had been in de-escalating behaviors, and what mechanisms were used to collect data on effectiveness. The survey was placed on the Survey Monkey on the Internet and a memo went out from the Secretary of Education asking the districts to respond to the survey by May 10, 2010.

Of the eighty nine plus school districts, forty two districts responded to the survey. However, less than that number responded to each question. Of those responding, 70.3% said that they had restraint policies in place and 60% said they had seclusion policies in place. 57.1% reported that they used a form to report each incident of restraint to the school's administration while only 34.4% said they used a form to report incidences of seclusion. The staff person who most often restrains students was the special education teacher and it was evenly divided between the principal and the special education teacher on who most often places students in seclusion. 93.3% of districts reported contacting the parents after each incident of restraint and 81% of districts said they contacted parents after secluding students. The majority of the districts (56.3%) reported less than 5 incidences of restraint during the last three school years while 62.5% reported less than 5 cases of seclusion had occurred since school year 2007-2008. With regard to training, 77.1% of the districts responding reported that staff had been trained to do

restraints with the special education teachers being the staff members most often the ones to be so trained. The amount of training provided varied from a few hours to one to two days of training with in service training by district staff being the most prevalent type of training provided. A school wide positive behavior support (PBS) program was the preferred type of training that districts believed would reduce the number of restraints or seclusions in their schools. 80% of those responding reported that they had additional procedures in place for other behavioral interventions with positive behavior supports provided by the Crisis Prevention Institute (CPI) being the preferred methodology. The complete results of the survey are attached as Exhibit F.

A survey to parents was sent out in July and the results were reported to the Work Group at its August meeting. Eighty six parents responded to the survey and the results varied somewhat from the survey results from the districts. For example, only 24.4% reported that school staff contacted them after each incident of restraint or seclusion whereas the districts reported that 93.3% of them contacted parents after each incidence of restraint. However, a high percentage of parents reported a low incidence of restraint and seclusion during the last three years which is consistent with the results received from the districts. 67.8% of parents responding said their child was receiving special education services and 58.1% of them reported that restraint or seclusion practices were written into their child's IEP and a similar number reported such practices were written into their child's behavior intervention plan. The complete results of this survey are attached as Exhibit G.

The Best Practices Subcommittee extensively reviewed data and information regarding restraint and seclusion from a variety of sources. One of the sources the Subcommittee reviewed is the "Summary of Seclusion and Restraint Statutes, Regulations, Policies and Guidance, by State and Territory: Information as Reported to the Regional Comprehensive Centers" which was gathered at the request of Secretary Duncan as part of his request to the Chief State School Officers in his letter of July 31, 2009. The Department of Education's Regional Comprehensive Centers conducted research on each state's laws, regulations, guidance and policies regarding the use of seclusion and restraints in schools. A comprehensive summary of that research was issued in February 2010 which detailed what each state was doing with regard to the use of restraint and seclusion in schools. The Subcommittee also surveyed best practices noted in a number of publications and from a number of organizations which are detailed in its report attached as Exhibit H.

The Liability/Costs Issues Research Subcommittee looked at a number of factors relating to the liability arising from the use of restraint and seclusion and researched the costs of providing appropriate training to school districts for researched based and best practice positive behavior support programs including intervention programs, de-escalation techniques and the appropriate use of restraint in emergency situations. Data was reviewed from the New Mexico Public Schools Insurance Authority, Albuquerque Public Schools (APS), state supported schools and ACLU. The Subcommittee looked at various methodologies such as CPI, a de-escalation and crisis prevention intervention program currently being used and taught by trainers in APS as well as other school districts. The Subcommittee also looked at the Positive Behavioral Intervention System (PBIS) which is currently being used and taught at many districts, charters and state

supported schools. Attempts were made to estimate the costs of implementing both methodologies using a “train the trainer” model of training delivery. Because of the difficulty in estimating the cost involved in training school staff across New Mexico in either of these methodologies as well as the cost for recertifying training on a continuing basis, the Subcommittee was tasked with researching other programs within other agencies in order to collaborate on implementation and accordingly share the cost of training school personnel.

After discussion on how the Work Group could submit recommendations to the LESC in time for its September meeting, the Work Group decided to submit the policies it would like to see in any legislation governing the use of restraint, seclusion and corporal punishment in public schools. At the same time, the Work Group committed to continue researching the associated costs of the implementation of such legislation, particularly with respect to the costs of training school personnel in appropriate techniques and methodologies. Recommendations on the costs of implementation would be made at a later date. Based on the work done by the subcommittees, each subcommittee submitted its own recommendation to the Work Group for inclusion in the recommendation to be made to the Governor and the LESC. The recommendations of the Best Practices Subcommittee are attached as Exhibit H. The recommendations of the Survey and Liability/Costs Issues Research Subcommittees are attached as Exhibits I and J respectively.

V. Recommendations on the Use of Restraint and Seclusion in Public Schools

Based on the research done as well as extensive discussion among members of the Work Group, a vote was taken at its September meeting with respect to recommendations to be made to the Governor and the LESC. The Work Group has identified a number of principles listed below that we believe would be useful for the Governor and the LESC to consider in the context of any legislation on the issue of the use of restraint and seclusion in public schools:

- Ensure that any behavioral intervention is consistent with the child’s right to be treated with dignity and to be free from abuse, regardless of the child’s educational needs or behavioral challenges.
- Prohibit the use of seclusion in schools.
- Review and update the guidance on time out.
- Prohibit the use of aversive interventions.
- Prohibit prone restraints, or any other restraint that can suffocate a child. Likewise, any technique that obstructs a child's airways should be prohibited.
- Prohibit the use of mechanical or chemical restraints.
- Eliminate all other types of restraints except those which are documented as part of a school-wide crisis plan that addresses the need to protect students or others from imminent, serious physical harm in the case of an emergency.
- School-wide crisis plans should be written as a part of the Safe Schools/Healthy Students initiative every New Mexico school should have in place and should be provided to the NMPED on an annual basis.
- Require the use of evidence-based positive behavioral intervention supports and other best practices and require appropriate and ongoing training in the use of such supports as

well as crisis reduction and management, de-escalation techniques and other best practices and require that personnel are trained and certified in such supports to meet the needs of the specific student population in each school.

- Require school districts to establish procedures to be followed after each incident of restraint including the requirement that parents be verbally notified immediately after a restraint occurs and in writing within twenty-four hours.
- Require that each school district collect data on the total number of incidents of restraint in the previous school year as well as whether the incidences resulted in injury or death and whether the person who performed the physical restraint was trained according to the requirements of the legislation and that the data be collected in STARS as part of the annual Safe Schools report that includes discipline information.
- Prohibit the use of corporal punishment in schools because it is contrary to establishing positive behavioral interventions and to prohibiting the use of aversive interventions.
- It is highly recommended that the Legislature provide adequate funding for the implementation of any mandates imposed on school districts as a result of any proposed legislation.
- A preliminary estimate of the cost of recommended training is approximately \$535,000 for the first year and a sliding budget for the years thereafter. This training builds on the cohort and state implementation model that was in place several years ago for the PBIS program and does not ignore the lessons learned, the continued use of the PBIS program in several school districts and the resources already available to the state.
- Implementation of PBIS shall ensure the safety of all students and staff.
- Definitions are crucial for the consistent implementation of any proposed legislation.
- It is recommended that LESC create a statewide Planning and Implementation Group to carry on the work begun by the Work Group. This group will need particular members and those members will need to cut across all school disciplines, outside agencies providing support to schools, law enforcement, as well as NMPED, Children, Youth and Families Department, Department of Health, Department of Corrections, New Mexico Public School Insurance Authority, representatives from school districts including charter schools and advocacy groups including those advocating for parents.

Recommended Definitions:

1. **Aversive Intervention:** Any device or intervention, consequences or procedure intended to cause pain or unpleasant sensations, including interventions causing physical pain, tissue damage, physical illness or injury; electric shock; isolation; forced exercise; withholding of food, water or sleep; humiliation; water mist; noxious taste, smell or skin agents; and over-correction.

2. **Chemical Restraint:** A medication that is not standard treatment for the student's medical or psychiatric condition that is used to control behavior or to restrict a student's freedom of movement.

3. **Emergency Interventions:** Interventions used only to control unpredictable, spontaneous behavior which poses a clear and present danger of serious physical harm to the students or

injury to others, and which cannot be immediately prevented by a response less restrictive than physical restraint. Emergency interventions should be discontinued immediately when the emergency ends.

4. Mechanical Restraint: Any device or material attached or adjacent to the student's body that restricts freedom of movement or normal access to any portion of the student's body and that the student cannot easily remove but does not include mechanical supports or protective devices.

5. Mechanical Support: A device used to achieve proper body position, designed by a physical therapist and approved by a physician or designed by an occupational therapist, such as braces, standers or gait belts, but not including protective devices.

6. Physical Escort: The holding of a student for a very short period of time without undue force to calm or comfort the student or holding a student's hand to escort the student safely from one area to another.

7. Physical Restraint: The use of physical force without the use of any device or material that restricts the free movement of all or a portion of a child's body. Such term does not include a physical escort.

8. Positive Behavioral Interventions and Supports (PBIS): 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 recurrence 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.

9. Prone Restraint: 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.)

10. Seclusion: The involuntary confinement of a student alone typically in a locked room or area from which the individual is physically prevented from leaving.

11. Time Out: The NMPED defines the term time-out as a continuum of behavior management techniques designed to address inappropriate or negative student behavior resulting from overstimulation or challenging classroom situations. This continuum begins with minimally intrusive/restrictive strategies that can be implemented within the classroom setting. The continuum then progresses to more restrictive strategies that may involve the physical separation of a student from his or her classmates with adult supervision, for a brief amount of time, in order to enable the student to regroup and return to the classroom setting. Time-out is not seclusion. (Please refer to the definition of seclusion.)

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Date: September 27, 2010
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Susanna Murphy, Ph.D., Secretary of Education Designate
Sheila Hyde, Ph.D., Deputy Secretary, Learning and Accountability
Kris Meurer, Ph.D., Interim Assistant Secretary, Student Success Division

Restraint and Seclusion Workgroup

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SEP 29 2010
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111TH CONGRESS
2D SESSION

H. R. 4247

AN ACT

To prevent and reduce the use of physical restraint and
seclusion in schools, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Keeping All Students
3 Safe Act”.

4 **SEC. 2. FINDINGS.**

5 Congress finds the following:

6 (1) Physical restraint and seclusion have re-
7 sulted in physical injury, psychological trauma, and
8 death to children in public and private schools. Na-
9 tional research shows students have been subjected
10 to physical restraint and seclusion in schools as a
11 means of discipline, to force compliance, or as a sub-
12 stitute for appropriate educational support.

13 (2) Behavioral interventions for children must
14 promote the right of all children to be treated with
15 dignity. All children have the right to be free from
16 physical or mental abuse, aversive behavioral inter-
17 ventions that compromise health and safety, and any
18 physical restraint or seclusion imposed solely for
19 purposes of discipline or convenience.

20 (3) Safe, effective, evidence-based strategies are
21 available to support children who display challenging
22 behaviors in school settings. Staff training focused
23 on the dangers of physical restraint and seclusion as
24 well as training in evidence-based positive behavior
25 supports, de-escalation techniques, and physical re-

1 straint and seclusion prevention, can reduce the inci-
2 dence of injury, trauma, and death.

3 (4) School personnel have the right to work in
4 a safe environment and should be provided training
5 and support to prevent injury and trauma to them-
6 selves and others.

7 (5) Despite the widely recognized risks of phys-
8 ical restraint and seclusion, a substantial disparity
9 exists among many States and localities with regard
10 to the protection and oversight of the rights of chil-
11 dren and school personnel to a safe learning environ-
12 ment.

13 (6) Children are subjected to physical restraint
14 and seclusion at higher rates than adults. Physical
15 restraint which restricts breathing or causes other
16 body trauma, as well as seclusion in the absence of
17 continuous face-to-face monitoring, have resulted in
18 the deaths of children in schools.

19 (7) Children are protected from inappropriate
20 physical restraint and seclusion in other settings,
21 such as hospitals, health facilities, and non-medical
22 community-based facilities. Similar protections are
23 needed in schools, yet such protections must ac-
24 knowledge the differences of the school environment.

1 (8) Research confirms that physical restraint
2 and seclusion are not therapeutic, nor are these
3 practices effective means to calm or teach children,
4 and may have an opposite effect while simulta-
5 neously decreasing a child's ability to learn.

6 (9) The effective implementation of school-wide
7 positive behavior supports is linked to greater aca-
8 demic achievement, significantly fewer disciplinary
9 problems, increased instruction time, and staff per-
10 ception of a safer teaching environment.

11 **SEC. 3. PURPOSES.**

12 The purposes of this Act are to—

13 (1) prevent and reduce the use of physical re-
14 straint and seclusion in schools;

15 (2) ensure the safety of all students and school
16 personnel in schools and promote a positive school
17 culture and climate;

18 (3) protect students from—

19 (A) physical or mental abuse;

20 (B) aversive behavioral interventions that
21 compromise health and safety; and

22 (C) any physical restraint or seclusion im-
23 posed solely for purposes of discipline or con-
24 venience;

1 (4) ensure that physical restraint and seclusion
2 are imposed in school only when a student’s behavior
3 poses an imminent danger of physical injury to the
4 student, school personnel, or others; and

5 (5) assist States, local educational agencies,
6 and schools in—

7 (A) establishing policies and procedures to
8 keep all students, including students with the
9 most complex and intensive behavioral needs,
10 and school personnel safe;

11 (B) providing school personnel with the
12 necessary tools, training, and support to ensure
13 the safety of all students and school personnel;

14 (C) collecting and analyzing data on phys-
15 ical restraint and seclusion in schools; and

16 (D) identifying and implementing effective
17 evidence-based models to prevent and reduce
18 physical restraint and seclusion in schools.

19 **SEC. 4. DEFINITIONS.**

20 In this Act:

21 (1) **CHEMICAL RESTRAINT.**—The term “chem-
22 ical restraint” means a drug or medication used on
23 a student to control behavior or restrict freedom of
24 movement that is not—

1 (A) prescribed by a licensed physician, or
2 other qualified health professional acting under
3 the scope of the professional's authority under
4 State law, for the standard treatment of a stu-
5 dent's medical or psychiatric condition; and

6 (B) administered as prescribed by the li-
7 censed physician or other qualified health pro-
8 fessional acting under the scope of the profes-
9 sional's authority under State law.

10 (2) EDUCATIONAL SERVICE AGENCY.—The
11 term “educational service agency” has the meaning
12 given such term in section 9101(17) of the Elemen-
13 tary and Secondary Education Act of 1965 (20
14 U.S.C. 7801(17)).

15 (3) ELEMENTARY SCHOOL.—The term “elemen-
16 tary school” has the meaning given the term in sec-
17 tion 9101(18) of the Elementary and Secondary
18 Education Act of 1965 (20 U.S.C. 7801(18)).

19 (4) LOCAL EDUCATIONAL AGENCY.—The term
20 “local educational agency” has the meaning given
21 the term in section 9101(26) of the Elementary and
22 Secondary Education Act of 1965 (20 U.S.C.
23 7801(26)).

24 (5) MECHANICAL RESTRAINT.—The term “me-
25 chanical restraint” has the meaning given the term

1 in section 595(d)(1) of the Public Health Service
2 Act (42 U.S.C. 290jj(d)(1)), except that the mean-
3 ing shall be applied by substituting “student’s” for
4 “resident’s”.

5 (6) PARENT.—The term “parent” has the
6 meaning given the term in section 9101(31) of the
7 Elementary and Secondary Education Act of 1965
8 (20 U.S.C. 7801(31)).

9 (7) PHYSICAL ESCORT.—The term “physical es-
10 cort” has the meaning given the term in section
11 595(d)(2) of the Public Health Service Act (42
12 U.S.C. 290jj(d)(2)), except that the meaning shall
13 be applied by substituting “student” for “resident”.

14 (8) PHYSICAL RESTRAINT.—The term “physical
15 restraint” has the meaning given the term in section
16 595(d)(3) of the Public Health Service Act (42
17 U.S.C. 290jj(d)(3)).

18 (9) POSITIVE BEHAVIOR SUPPORTS.—The term
19 “positive behavior supports” means a systematic ap-
20 proach to embed evidence-based practices and data-
21 driven decisionmaking to improve school climate and
22 culture, including a range of systemic and individ-
23 ualized strategies to reinforce desired behaviors and
24 diminish reoccurrence of problem behaviors, in order
25 to achieve improved academic and social outcomes

1 and increase learning for all students, including
2 those with the most complex and intensive behav-
3 ioral needs.

4 (10) PROTECTION AND ADVOCACY SYSTEM.—
5 The term “protection and advocacy system” means
6 a protection and advocacy system established under
7 section 143 of the Developmental Disabilities Assist-
8 ance and Bill of Rights Act of 2000 (42 U.S.C.
9 15043).

10 (11) SCHOOL.—The term “school” means an
11 entity—

12 (A) that—

13 (i) is a public or private—

14 (I) day or residential elementary
15 school or secondary school; or

16 (II) early childhood, elementary
17 school, or secondary school program
18 that is under the jurisdiction of a
19 school, local educational agency, edu-
20 cational service agency, or other edu-
21 cational institution or program; and

22 (ii) receives, or serves students who
23 receive, support in any form from any pro-
24 gram supported, in whole or in part, with

1 funds appropriated to the Department of
2 Education; or

3 (B) that is a school funded or operated by
4 the Department of the Interior.

5 (12) SCHOOL PERSONNEL.—The term “school
6 personnel” has the meaning—

7 (A) given the term in section 4151(10) of
8 the Elementary and Secondary Education Act
9 of 1965 (20 U.S.C. 7161(10)); and

10 (B) given the term “school resource offi-
11 cer” in section 4151(11) of the Elementary and
12 Secondary Education Act of 1965 (20 U.S.C.
13 7161(11)).

14 (13) SECONDARY SCHOOL.—The term “sec-
15 ondary school” has the meaning given the term in
16 section 9101(38) of the Elementary and Secondary
17 Education Act of 1965 (20 U.S.C. 7801(38)).

18 (14) SECLUSION.—The term “seclusion” has
19 the meaning given the term in section 595(d)(4) of
20 the Public Health Service Act (42 U.S.C.
21 290jj(d)(4)).

22 (15) SECRETARY.—The term “Secretary”
23 means the Secretary of Education.

24 (16) STATE-APPROVED CRISIS INTERVENTION
25 TRAINING PROGRAM.—The term “State-approved

1 crisis intervention training program” means a train-
2 ing program approved by a State and the Secretary
3 that, at a minimum, provides—

4 (A) training in evidence-based techniques
5 shown to be effective in the prevention of phys-
6 ical restraint and seclusion;

7 (B) training in evidence-based techniques
8 shown to be effective in keeping both school
9 personnel and students safe when imposing
10 physical restraint or seclusion;

11 (C) evidence-based skills training related to
12 positive behavior supports, safe physical escort,
13 conflict prevention, understanding antecedents,
14 de-escalation, and conflict management;

15 (D) training in first aid and
16 cardiopulmonary resuscitation;

17 (E) information describing State policies
18 and procedures that meet the minimum stand-
19 ards established by regulations promulgated
20 pursuant to section 5(a); and

21 (F) certification for school personnel in the
22 techniques and skills described in subpara-
23 graphs (A) through (D), which shall be required
24 to be renewed on a periodic basis.

1 (17) STATE.—The term “State” has the mean-
2 ing given the term in section 9101 of the Elemen-
3 tary and Secondary Education Act of 1965 (20
4 U.S.C. 7801).

5 (18) STATE EDUCATIONAL AGENCY.—The term
6 “State educational agency” has the meaning given
7 the term in section 9101(41) of the Elementary and
8 Secondary Education Act of 1965 (20 U.S.C.
9 7801(41)).

10 (19) STUDENT.—The term “student” means a
11 student enrolled in a school defined in section 11,
12 except that in the case of a private school or private
13 program, such term means a student enrolled in
14 such school or program who receives support in any
15 form from any program supported, in whole or in
16 part, with funds appropriated to the Department of
17 Education.

18 (20) TIME OUT.—The term “time out” has the
19 meaning given the term in section 595(d)(5) of the
20 Public Health Service Act (42 U.S.C. 290jj(d)(5)),
21 except that the meaning shall be applied by sub-
22 stituting “student” for “resident”.

23 **SEC. 5. MINIMUM STANDARDS; RULE OF CONSTRUCTION.**

24 (a) MINIMUM STANDARDS.—Not later than 180 days
25 after the date of the enactment of this Act, in order to

1 protect each student from physical or mental abuse, aver-
2 sive behavioral interventions that compromise student
3 health and safety, or any physical restraint or seclusion
4 imposed solely for purposes of discipline or convenience
5 or in a manner otherwise inconsistent with this Act, the
6 Secretary shall promulgate regulations establishing the
7 following minimum standards:

8 (1) School personnel shall be prohibited from
9 imposing on any student the following:

10 (A) Mechanical restraints.

11 (B) Chemical restraints.

12 (C) Physical restraint or physical escort
13 that restricts breathing.

14 (D) Aversive behavioral interventions that
15 compromise health and safety.

16 (2) School personnel shall be prohibited from
17 imposing physical restraint or seclusion on a student
18 unless—

19 (A) the student's behavior poses an immi-
20 nent danger of physical injury to the student,
21 school personnel, or others;

22 (B) less restrictive interventions would be
23 ineffective in stopping such imminent danger of
24 physical injury;

1 (C) such physical restraint or seclusion is
2 imposed by school personnel who—

3 (i) continuously monitor the student
4 face-to-face; or

5 (ii) if school personnel safety is sig-
6 nificantly compromised by such face-to-face
7 monitoring, are in continuous direct visual
8 contact with the student;

9 (D) such physical restraint or seclusion is
10 imposed by—

11 (i) school personnel trained and cer-
12 tified by a State-approved crisis interven-
13 tion training program (as defined in sec-
14 tion 4(16)); or

15 (ii) other school personnel in the case
16 of a rare and clearly unavoidable emer-
17 gency circumstance when school personnel
18 trained and certified as described in clause
19 (i) are not immediately available due to the
20 unforeseeable nature of the emergency cir-
21 cumstance; and

22 (E) such physical restraint or seclusion
23 end immediately upon the cessation of the con-
24 ditions described in subparagraphs (A) and (B).

1 (3) States, in consultation with local edu-
2 cational agencies and private school officials, shall
3 ensure that a sufficient number of personnel are
4 trained and certified by a State-approved crisis
5 intervention training program (as defined in section
6 4(16)) to meet the needs of the specific student pop-
7 ulation in each school.

8 (4) The use of physical restraint or seclusion as
9 a planned intervention shall not be written into a
10 student's education plan, individual safety plan, be-
11 havioral plan, or individualized education program
12 (as defined in section 602 of the Individuals with
13 Disabilities Education Act (20 U.S.C. 1401)). Local
14 educational agencies or schools may establish poli-
15 cies and procedures for use of physical restraint or
16 seclusion in school safety or crisis plans, provided
17 that such school plans are not specific to any indi-
18 vidual student.

19 (5) Schools shall establish procedures to be fol-
20 lowed after each incident involving the imposition of
21 physical restraint or seclusion upon a student, in-
22 cluding—

23 (A) procedures to provide to the parent of
24 the student, with respect to each such inci-
25 dent—

1 (i) an immediate verbal or electronic
2 communication on the same day as each
3 such incident; and

4 (ii) within 24 hours of each such inci-
5 dent, written notification; and

6 (B) any other procedures the Secretary de-
7 termines appropriate.

8 (b) SECRETARY OF THE INTERIOR.—The Secretary
9 of the Interior shall ensure that schools operated or fund-
10 ed by the Department of the Interior comply with the reg-
11 ulations promulgated by the Secretary under subsection
12 (a).

13 (c) RULE OF CONSTRUCTION.—Nothing in this sec-
14 tion shall be construed to authorize the Secretary to pro-
15 mulgate regulations prohibiting the use of—

16 (1) time out (as defined in section 4(20)); or

17 (2) devices implemented by trained school per-
18 sonnel, or utilized by a student, for the specific and
19 approved therapeutic or safety purposes for which
20 such devices were designed and, if applicable, pre-
21 scribed, including—

22 (A) restraints for medical immobilization;

23 (B) adaptive devices or mechanical sup-
24 ports used to achieve proper body position, bal-
25 ance, or alignment to allow greater freedom of

1 mobility than would be possible without the use
2 of such devices or mechanical supports; or

3 (C) vehicle safety restraints when used as
4 intended during the transport of a student in a
5 moving vehicle; or

6 (3) handcuffs by school resource officers (as
7 such term is defined in section 4151(11) of the Ele-
8 mentary and Secondary Education Act of 1965 (20
9 U.S.C. 7161(11)))—

10 (A) in the—

11 (i) case when a student's behavior
12 poses an imminent danger of physical in-
13 jury to the student, school personnel, or
14 others; or

15 (ii) lawful exercise of law enforcement
16 duties; and

17 (B) less restrictive interventions would be
18 ineffective.

19 **SEC. 6. STATE PLAN AND REPORT REQUIREMENTS AND EN-**
20 **FORCEMENT.**

21 (a) STATE PLAN.—Not later than 2 years after the
22 Secretary promulgates regulations pursuant to section
23 5(a), and each year thereafter, each State educational
24 agency shall submit to the Secretary a State plan that pro-
25 vides—

1 (1) assurances to the Secretary that the State
2 has in effect—

3 (A) State policies and procedures that
4 meet the minimum standards, including the
5 standards with respect to State-approved crisis
6 intervention training programs, established by
7 regulations promulgated pursuant to section
8 5(a); and

9 (B) a State mechanism to effectively mon-
10 itor and enforce the minimum standards;

11 (2) a description of the State policies and pro-
12 cedures, including a description of the State-ap-
13 proved crisis intervention training programs in such
14 State; and

15 (3) a description of the State plans to ensure
16 school personnel and parents, including private
17 school personnel and parents, are aware of the State
18 policies and procedures.

19 (b) REPORTING.—

20 (1) REPORTING REQUIREMENTS.—Not later
21 than 2 years after the date the Secretary promul-
22 gates regulations pursuant to section 5(a), and each
23 year thereafter, each State educational agency shall
24 (in compliance with the requirements of section 444
25 of the General Education Provisions Act (commonly

1 known as the “Family Educational Rights and Pri-
2 vacy Act of 1974”) (20 U.S.C. 1232g)) prepare and
3 submit to the Secretary, and make available to the
4 public, a report with respect to each local edu-
5 cational agency, and each school not under the juris-
6 diction of a local educational agency, located in the
7 same State as such State educational agency that in-
8 cludes the information described in paragraph (2).

9 (2) INFORMATION REQUIREMENTS.—

10 (A) GENERAL INFORMATION REQUIRE-
11 MENTS.—The report described in paragraph (1)
12 shall include information on—

13 (i) the total number of incidents in
14 the preceding full-academic year in which
15 physical restraint was imposed upon a stu-
16 dent; and

17 (ii) the total number of incidents in
18 the preceding full-academic year in which
19 seclusion was imposed upon a student.

20 (B) DISAGGREGATION.—

21 (i) GENERAL DISAGGREGATION RE-
22 QUIREMENTS.—The information described
23 in subparagraph (A) shall be disaggregated
24 by—

1 (I) the total number of incidents
2 in which physical restraint or seclu-
3 sion was imposed upon a student—

4 (aa) that resulted in injury;

5 (bb) that resulted in death;

6 and

7 (cc) in which the school per-
8 sonnel imposing physical re-
9 straint or seclusion were not
10 trained and certified as described
11 in section 5(a)(2)(D)(i); and

12 (II) the demographic characteris-
13 tics of all students upon whom phys-
14 ical restraint or seclusion was im-
15 posed, including—

16 (aa) the categories identified
17 in section 1111(h)(1)(C)(i) of the
18 Elementary and Secondary Edu-
19 cation Act of 1965 (20 U.S.C.
20 6311(h)(1)(C)(i));

21 (bb) age; and

22 (cc) disability status (which
23 has the meaning given the term
24 “individual with a disability” in
25 section 7(20) of the Rehabilita-

1 tion Act of 1973 (29 U.S.C.
2 705(20))).

3 (ii) UNDUPLICATED COUNT; EXCEP-
4 TION.—The disaggregation required under
5 clause (i) shall—

6 (I) be carried out in a manner to
7 ensure an unduplicated count of the—

8 (aa) total number of inci-
9 dents in the preceding full-aca-
10 demic year in which physical re-
11 straint was imposed upon a stu-
12 dent; and

13 (bb) total number of inci-
14 dents in the preceding full-aca-
15 demic year in which seclusion
16 was imposed upon a student; and

17 (II) not be required in a case in
18 which the number of students in a
19 category would reveal personally iden-
20 tifiable information about an indi-
21 vidual student.

22 (c) ENFORCEMENT.—

23 (1) IN GENERAL.—

1 (A) USE OF REMEDIES.—If a State edu-
2 cational agency fails to comply with subsection
3 (a) or (b), the Secretary shall—

4 (i) withhold, in whole or in part, fur-
5 ther payments under an applicable pro-
6 gram (as such term is defined in section
7 400(c) of the General Education Provi-
8 sions Act (20 U.S.C. 1221)) in accordance
9 with section 455 of such Act (20 U.S.C.
10 1234d);

11 (ii) require a State educational agency
12 to submit, and implement, within 1 year of
13 such failure to comply, a corrective plan of
14 action, which may include redirection of
15 funds received under an applicable pro-
16 gram; or

17 (iii) issue a complaint to compel com-
18 pliance of the State educational agency
19 through a cease and desist order, in the
20 same manner the Secretary is authorized
21 to take such action under section 456 of
22 the General Education Provisions Act (20
23 U.S.C. 1234e).

24 (B) CESSATION OF WITHHOLDING OF
25 FUNDS.—Whenever the Secretary determines

1 (whether by certification or other appropriate
2 evidence) that a State educational agency who
3 is subject to the withholding of payments under
4 subparagraph (A)(i) has cured the failure pro-
5 viding the basis for the withholding of pay-
6 ments, the Secretary shall cease the withholding
7 of payments with respect to the State edu-
8 cational agency under such subparagraph.

9 (2) **RULE OF CONSTRUCTION.**—Nothing in this
10 subsection shall be construed to limit the Secretary’s
11 authority under the General Education Provisions
12 Act (20 U.S.C. 1221 et seq.).

13 **SEC. 7. GRANT AUTHORITY.**

14 (a) **IN GENERAL.**—From the amount appropriated
15 under section 12, the Secretary may award grants to State
16 educational agencies to assist the agencies in—

17 (1) establishing, implementing, and enforcing
18 the policies and procedures to meet the minimum
19 standards established by regulations promulgated by
20 the Secretary pursuant to section 5(a);

21 (2) improving State and local capacity to collect
22 and analyze data related to physical restraint and
23 seclusion; and

1 (3) improving school climate and culture by im-
2 plementing school-wide positive behavior support ap-
3 proaches.

4 (b) DURATION OF GRANT.—A grant under this sec-
5 tion shall be awarded to a State educational agency for
6 a 3-year period.

7 (c) APPLICATION.—Each State educational agency
8 desiring a grant under this section shall submit an appli-
9 cation to the Secretary at such time, in such manner, and
10 accompanied by such information as the Secretary may
11 require, including information on how the State edu-
12 cational agency will target resources to schools and local
13 educational agencies in need of assistance related to pre-
14 venting and reducing physical restraint and seclusion.

15 (d) AUTHORITY TO MAKE SUBGRANTS.—

16 (1) IN GENERAL.—A State educational agency
17 receiving a grant under this section may use such
18 grant funds to award subgrants, on a competitive
19 basis, to local educational agencies.

20 (2) APPLICATION.—A local educational agency
21 desiring to receive a subgrant under this section
22 shall submit an application to the applicable State
23 educational agency at such time, in such manner,
24 and containing such information as the State edu-
25 cational agency may require.

1 (e) PRIVATE SCHOOL PARTICIPATION.—

2 (1) IN GENERAL.—A local educational agency
3 receiving subgrant funds under this section shall,
4 after timely and meaningful consultation with appro-
5 priate private school officials, ensure that private
6 school personnel can participate, on an equitable
7 basis, in activities supported by grant or subgrant
8 funds.

9 (2) PUBLIC CONTROL OF FUNDS.—The control
10 of funds provided under this section, and title to ma-
11 terials, equipment, and property purchased with
12 such funds, shall be in a public agency, and a public
13 agency shall administer such funds, materials, equip-
14 ment, and property.

15 (f) REQUIRED ACTIVITIES.—A State educational
16 agency receiving a grant, or a local educational agency re-
17 ceiving a subgrant, under this section shall use such grant
18 or subgrant funds to carry out the following:

19 (1) Researching, developing, implementing, and
20 evaluating strategies, policies, and procedures to pre-
21 vent and reduce physical restraint and seclusion in
22 schools, consistent with the minimum standards es-
23 tablished by regulations promulgated by the Sec-
24 retary pursuant to section 5(a).

1 (2) Providing professional development, train-
2 ing, and certification for school personnel to meet
3 such standards.

4 (3) Carrying out the reporting requirements
5 under section 6(b) and analyzing the information in-
6 cluded in a report prepared under such section to
7 identify student, school personnel, and school needs
8 related to use of physical restraint and seclusion.

9 (g) ADDITIONAL AUTHORIZED ACTIVITIES.—In addi-
10 tion to the required activities described in subsection (f),
11 a State educational agency receiving a grant, or a local
12 educational agency receiving a subgrant, under this sec-
13 tion may use such grant or subgrant funds for one or more
14 of the following:

15 (1) Developing and implementing high-quality
16 professional development and training programs to
17 implement evidence-based systematic approaches to
18 school-wide positive behavior supports, including im-
19 proving coaching, facilitation, and training capacity
20 for administrators, teachers, specialized instructional
21 support personnel, and other staff.

22 (2) Providing technical assistance to develop
23 and implement evidence-based systematic approaches
24 to school-wide positive behavior supports, including
25 technical assistance for data-driven decision-making

1 related to behavioral supports and interventions in
2 the classroom.

3 (3) Researching, evaluating, and disseminating
4 high-quality evidence-based programs and activities
5 that implement school-wide positive behavior sup-
6 ports with fidelity.

7 (4) Supporting other local positive behavior
8 support implementation activities consistent with
9 this subsection.

10 (h) EVALUATION AND REPORT.—Each State edu-
11 cational agency receiving a grant under this section shall,
12 at the end of the 3-year grant period for such grant—

13 (1) evaluate the State’s progress toward the
14 prevention and reduction of physical restraint and
15 seclusion in the schools located in the State, con-
16 sistent with the minimum standards established by
17 regulations promulgated by the Secretary pursuant
18 to section 5(a); and

19 (2) submit to the Secretary a report on such
20 progress.

21 (i) DEPARTMENT OF THE INTERIOR.—From the
22 amount appropriated under section 12, the Secretary may
23 allocate funds to the Secretary of the Interior for activities
24 under this section with respect to schools operated or

1 funded by the Department of the Interior, under such
2 terms as the Secretary of Education may prescribe.

3 **SEC. 8. NATIONAL ASSESSMENT.**

4 (a) NATIONAL ASSESSMENT.—The Secretary shall
5 carry out a national assessment to determine the effective-
6 ness of this Act, which shall include—

7 (1) analyzing data related to physical restraint
8 and seclusion incidents;

9 (2) analyzing the effectiveness of Federal,
10 State, and local efforts to prevent and reduce the
11 number of physical restraint and seclusion incidents
12 in schools;

13 (3) identifying the types of programs and serv-
14 ices that have demonstrated the greatest effective-
15 ness in preventing and reducing the number of phys-
16 ical restraint and seclusion incidents in schools; and

17 (4) identifying evidence-based personnel train-
18 ing models with demonstrated success in preventing
19 and reducing the number of physical restraint and
20 seclusion incidents in schools, including models that
21 emphasize positive behavior supports and de-esca-
22 lation techniques over physical intervention.

23 (b) REPORT.—The Secretary shall submit to the
24 Committee on Education and Labor of the House of Rep-

1 representatives and the Committee on Health, Education,
2 Labor, and Pensions of the Senate—

3 (1) an interim report that summarizes the pre-
4 liminary findings of the assessment described in sub-
5 section (a) not later than 3 years after the date of
6 enactment of this Act; and

7 (2) a final report of the findings of the assess-
8 ment not later than 5 years after the date of the en-
9 actment of this Act.

10 **SEC. 9. PROTECTION AND ADVOCACY SYSTEMS.**

11 Protection and Advocacy Systems shall have the au-
12 thority provided under section 143 of the Developmental
13 Disabilities Assistance and Bill of Rights Act of 2000 (42
14 U.S.C. 15043) to investigate, monitor, and enforce protec-
15 tions provided for students under this Act.

16 **SEC. 10. HEAD START PROGRAMS.**

17 (a) REGULATIONS.—The Secretary of Health and
18 Human Services, in consultation with the Secretary, shall
19 promulgate regulations with respect to Head Start agen-
20 cies administering Head Start programs under the Head
21 Start Act (42 U.S.C. 9801 et seq.) that establish require-
22 ments consistent with—

23 (1) the requirements established by regulations
24 promulgated pursuant to section 5(a); and

1 (2) the reporting and enforcement requirements
2 described in subsections (b) and (c) of section 6.

3 (b) GRANT AUTHORITY.—From the amount appro-
4 priated under section 12, the Secretary may allocate funds
5 to the Secretary of Health and Human Services to assist
6 the Head Start agencies in establishing, implementing,
7 and enforcing policies and procedures to meet the require-
8 ments established by regulations promulgated pursuant to
9 subsection (a).

10 **SEC. 11. LIMITATION OF AUTHORITY.**

11 (a) IN GENERAL.—Nothing in this Act shall be con-
12 strued to restrict or limit, or allow the Secretary to restrict
13 or limit, any other rights or remedies otherwise available
14 to students or parents under Federal or State law or regu-
15 lation.

16 (b) APPLICABILITY.—

17 (1) PRIVATE SCHOOLS.—Nothing in this Act
18 shall be construed to affect any private school that
19 does not receive, or does not serve students who re-
20 ceive, support in any form from any program sup-
21 ported, in whole or in part, with funds appropriated
22 to the Department of Education.

23 (2) HOME SCHOOLS.—Nothing in this Act shall
24 be construed to—

1 (A) affect a home school, whether or not a
2 home school is treated as a private school or
3 home school under State law; or

4 (B) consider parents who are schooling a
5 child at home as school personnel.

6 **SEC. 12. AUTHORIZATION OF APPROPRIATIONS.**

7 There are authorized to be appropriated such sums
8 as may be necessary to carry out this Act for fiscal year
9 2011 and each of the 4 succeeding fiscal years.

10 **SEC. 13. PRESUMPTION OF CONGRESS RELATING TO COM-**
11 **PETITIVE PROCEDURES.**

12 (a) PRESUMPTION.—It is the presumption of Con-
13 gress that grants awarded under this Act will be awarded
14 using competitive procedures based on merit.

15 (b) REPORT TO CONGRESS.—If grants are awarded
16 under this Act using procedures other than competitive
17 procedures, the Secretary shall submit to Congress a re-
18 port explaining why competitive procedures were not used.

19 **SEC. 14. PROHIBITION ON EARMARKS.**

20 None of the funds appropriated to carry out this Act
21 may be used for a congressional earmark as defined in

1 clause 9e, of Rule XXI of the rules of the House of Rep-
2 resentatives of the 111th Congress.

Passed the House of Representatives March 3,
2010.

Attest:

Clerk.

111TH CONGRESS
2^D SESSION

H. R. 4247

AN ACT

To prevent and reduce the use of physical restraint
and seclusion in schools, and for other purposes.

111TH CONGRESS
2D SESSION

H. R. 5628

To end the use of corporal punishment in schools, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 29, 2010

Mrs. MCCARTHY of New York (for herself, Mr. HARE, Mr. SCOTT of Virginia, Mr. HOLT, Mr. POLIS of Colorado, Ms. WOOLSEY, Mr. GRIJALVA, Ms. SHEA-PORTER, Mr. KUCINICH, Mr. PAYNE, Mr. ANDREWS, Mr. HINOJOSA, Mrs. DAVIS of California, Ms. HIRONO, Mr. PASCRELL, Mr. CAPUANO, Mr. MURPHY of Connecticut, and Mr. SESTAK) introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To end the use of corporal punishment in schools, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the Ending Corporal Pun-
5 ishment in Schools Act.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) Behavioral interventions for children must
2 promote the right of all children to be treated with
3 dignity. All children have the right to be free from
4 any corporal punishment.

5 (2) Safe, effective, evidence-based strategies are
6 available to support children who display challenging
7 behaviors in school settings.

8 (3) School personnel have the right to work in
9 a safe environment and should be provided training
10 and support to prevent injury and trauma to them-
11 selves and others.

12 (4) According to the Department of Education's
13 Technical Assistance Center on School-Wide Positive
14 Behavior Interventions and Support, outcomes asso-
15 ciated with school-wide positive behavior support are
16 decreased office discipline referrals, increased in-
17 structional time, decreased administrator time spent
18 on discipline issues, efficient and effective use of
19 scarce resources, and increased perception of school
20 safety and sustainability through a team approach.

21 (5) Twenty States continue to permit corporal
22 punishment in public schools.

23 (6) According to Department of Education sta-
24 tistics, each year in the United States, hundreds of
25 thousands of school children are subjected to cor-

1 corporal punishment in public schools. School corporal
2 punishment is usually executed in the form of “pad-
3 dling”, or striking students with a wooden paddle on
4 their buttocks or legs, which can result in abrasions,
5 bruising, severe muscle injury, hematomas, whiplash
6 damage, life-threatening hemorrhages, and other
7 medical complications that may require hospitaliza-
8 tion.

9 (7) Gross racial disparity exists in the execution
10 of corporal punishment of public schoolchildren, and
11 Black schoolchildren are disproportionately cor-
12 porally punished. The most recent available statistics
13 show that African-American students make up 17.1
14 percent of the national student population, but 35.6
15 percent of all students subjected to physical punish-
16 ment at school.

17 (8) Public schoolchildren with disabilities are
18 subjected to corporal punishment at disproportion-
19 ately high rates, approximately twice the rate of the
20 general student population in some States.

21 (9) Corporal punishment is used in many in-
22 stances for minor disciplinary infractions, such as
23 being tardy or violating the dress code.

24 (10) Corporal punishment has resulted in phys-
25 ical injury and psychological trauma to children in

1 public and private schools. Social skills development
2 after the use of corporal punishment may be severely
3 altered, leading to aggressive behaviors. National re-
4 search shows students have been subjected to cor-
5 poral punishment in schools as a means of discipline,
6 to force compliance, or as a substitute for appro-
7 priate educational support.

8 (11) Children are protected from corporal pun-
9 ishment in other settings, such as hospitals, health
10 facilities, Head Start programs, and nonmedical
11 community-based facilities. Similar protections are
12 needed in schools.

13 (12) Prisoners in Federal prison are protected
14 from corporal punishment.

15 **SEC. 3. PURPOSES.**

16 The purposes of this Act are to—

17 (1) eliminate the use of corporal punishment in
18 schools;

19 (2) ensure the safety of all students and school
20 personnel in schools and promote a positive school
21 culture and climate;

22 (3) assist States, local educational agencies,
23 and schools in identifying and implementing effective
24 evidence-based models to prevent and reduce—

25 (A) corporal punishment in schools;

1 (B) aversive behavior interventions that
2 compromise health and safety; and

3 (C) physical, emotional, or psychological
4 abuse.

5 **SEC. 4. PROHIBITION AGAINST CORPORAL PUNISHMENT.**

6 Subpart 4 of part C of the General Education Provi-
7 sions Act (20 U.S.C. 1232f et seq.) is amended by adding
8 at the end the following:

9 **“SEC. 448. PROHIBITION AGAINST CORPORAL PUNISH-**
10 **MENT.**

11 “(a) GENERAL PROHIBITION.—No funds shall be
12 made available under any applicable program to any edu-
13 cational agency or institution, including a local edu-
14 cational agency or State educational agency, that has a
15 policy or practice which allows school personnel to inflict
16 corporal punishment upon a student—

17 “(1) as a form of punishment; or

18 “(2) for the purpose of modifying undesirable
19 behavior.

20 **“(b) LOCAL EDUCATIONAL AGENCY.—**

21 “(1) IN GENERAL.—In the case of an applicable
22 program under which a local educational agency may
23 only receive funds through a State educational agen-
24 cy that is prohibited under subsection (a) from re-
25 ceiving funds under any applicable program, a local

1 educational agency that is not prohibited under sub-
2 section (a) from receiving such funds may apply di-
3 rectly to the Secretary to receive funds under the
4 program.

5 “(2) CERTIFICATION.—Each local educational
6 agency applying directly to the Secretary under
7 paragraph (1) shall certify in such application that
8 the agency is not prohibited under subsection (a)
9 from receiving funds under any applicable program.

10 “(c) RULE OF CONSTRUCTION.—Nothing in this sec-
11 tion shall be construed to preclude school personnel from
12 using, within the scope of employment, reasonable re-
13 straint to the lightest possible degree upon a student, if—

14 “(1) the student’s behavior poses an imminent
15 danger of physical injury to the student, school per-
16 sonnel, or others;

17 “(2) less restrictive interventions would be inef-
18 fective in stopping such imminent danger of physical
19 injury; and

20 “(3) the reasonable restraint ends immediately
21 upon the cessation of the conditions described in
22 paragraphs (1) and (2).

23 “(d) DEFINITIONS.—For purposes of this section—

1 “(1) the term ‘corporal punishment’ means pad-
2 dling, spanking, or other forms of physical punish-
3 ment, however light, imposed upon a student;

4 “(2) the term ‘educational agency or institution’
5 means any public or private agency or institution
6 which is the recipient, or serves students who are re-
7 cipients of, funds under any applicable program;

8 “(3) the terms ‘local educational agency’ and
9 ‘State educational agency’ have the meanings given
10 such terms in section 9101 of the Elementary and
11 Secondary Education Act of 1965;

12 “(4) the term ‘school personnel’ has the mean-
13 ing—

14 “(A) given the term in section 4151(10) of
15 the Elementary and Secondary Education Act
16 of 1965 (20 U.S.C. 7161(10)); and

17 “(B) given the term ‘school resource offi-
18 cer’ in section 4151(11) of the Elementary and
19 Secondary Education Act of 1965 (20 U.S.C.
20 7161(11)); and

21 “(5) the term ‘student’ includes any person who
22 is in attendance at an educational agency or institu-
23 tion.”.

1 **SEC. 5. STATE PLAN AND ENFORCEMENT.**

2 (a) STATE PLAN.—Not later than 18 months after
3 the date of enactment of this Act and every third year
4 thereafter, each State educational agency shall submit to
5 the Secretary a State plan that provides—

6 (1) assurances to the Secretary that the State
7 has in effect policies and procedures that eliminate
8 the use of corporal punishment in schools;

9 (2) a description of the State's policies and pro-
10 cedures; and

11 (3) a description of the State plans to ensure
12 school personnel and parents, including private
13 school personnel and parents, are aware of the
14 State's policies and procedures.

15 (b) ENFORCEMENT.—

16 (1) IN GENERAL.—

17 (A) USE OF REMEDIES.—If a State edu-
18 cational agency fails to comply with subsection
19 (a), the Secretary shall—

20 (i) withhold, in whole or in part, fur-
21 ther payments under an applicable pro-
22 gram (as such term is defined in section
23 400(c) of the General Education Provi-
24 sions Act (20 U.S.C. 1221)) in accordance
25 with section 455 of such Act (20 U.S.C.
26 1234d);

1 (ii) enter into a compliance agreement
2 in accordance with section 457 of the Gen-
3 eral Education Provisions Act (20 U.S.C.
4 1234f); or

5 (iii) issue a complaint to compel com-
6 pliance of the State educational agency
7 through a cease and desist order, in the
8 same manner the Secretary is authorized
9 to take such action under section 456 of
10 the General Education Provisions Act (20
11 U.S.C. 1234e).

12 (B) CESSATION OF WITHHOLDING OF
13 FUNDS.—Whenever the Secretary determines
14 (whether by certification or other appropriate
15 evidence) that a State educational agency who
16 is subject to the withholding of payments under
17 subparagraph (A)(i) has cured the failure pro-
18 viding the basis for the withholding of pay-
19 ments, the Secretary shall cease the withholding
20 of payments with respect to the State edu-
21 cational agency under such subparagraph.

22 (2) RULE OF CONSTRUCTION.—Nothing in this
23 subsection shall be construed to limit the Secretary's
24 authority under the General Education Provisions
25 Act (20 U.S.C. 1221 et seq.).

1 (c) RULE OF CONSTRUCTION.—Nothing in this sec-
2 tion shall be construed to preclude school personnel from
3 using, within the scope of employment, reasonable re-
4 straint to the lightest possible degree upon a student, if—

5 (1) the student’s behavior poses an imminent
6 danger of physical injury to the student, school per-
7 sonnel, or others;

8 (2) less restrictive interventions would be inef-
9 fective in stopping such imminent danger of physical
10 injury; and

11 (3) the reasonable restraint ends immediately
12 upon the cessation of the conditions described in
13 paragraphs (1) and (2).

14 **SEC. 6. GRANT AUTHORITY.**

15 (a) IN GENERAL.—From the amount appropriated
16 under section 11, the Secretary may award grants to State
17 educational agencies to assist the agencies in improving
18 school climate and culture by implementing school-wide
19 positive behavior support approaches.

20 (b) DURATION OF GRANT.—A grant under this sec-
21 tion shall be awarded to a State educational agency for
22 a 3-year period.

23 (c) APPLICATION.—Each State educational agency
24 desiring a grant under this section shall submit an appli-
25 cation to the Secretary at such time, in such manner, and

1 accompanied by such information as the Secretary may
2 require, including information on how the State edu-
3 cational agency—

4 (1) will develop State training programs on
5 school wide-positive behavior support approaches,
6 such as training programs developed with the assist-
7 ance of the Secretary (acting through the Office of
8 Special Education Programs Technical Assistance
9 Center on Positive Behavioral Interventions and
10 Supports of the Department of Education); and

11 (2) will target resources to schools and local
12 educational agencies in need of assistance related to
13 improving school culture and climate through posi-
14 tive behavior supports.

15 (d) AUTHORITY TO MAKE SUBGRANTS.—

16 (1) IN GENERAL.—A State educational agency
17 receiving a grant under this section may use such
18 grant funds to award subgrants, on a competitive
19 basis, to local educational agencies.

20 (2) APPLICATION.—A local educational agency
21 desiring to receive a subgrant under this section
22 shall submit an application to the applicable State
23 educational agency at such time, in such manner,
24 and containing such information as the State edu-
25 cational agency may require.

1 (e) PRIVATE SCHOOL PARTICIPATION.—

2 (1) IN GENERAL.—A local educational agency
3 receiving subgrant funds under this section shall,
4 after timely and meaningful consultation with appro-
5 priate private school officials, ensure that private
6 school personnel can participate, on an equitable
7 basis, in activities supported by funds under this
8 section.

9 (2) PUBLIC CONTROL OF FUNDS.—The control
10 of funds provided under this section, and title to ma-
11 terials, equipment, and property purchased with
12 such funds, shall be in a public agency, and a public
13 agency shall administer such funds, materials, equip-
14 ment, and property.

15 (f) REQUIRED ACTIVITIES.—A State educational
16 agency receiving a grant, or a local educational agency re-
17 ceiving a subgrant, under this section shall use such grant
18 or subgrant funds to carry out the following:

19 (1) Developing and implementing high-quality
20 professional development and training programs,
21 such as training programs developed with the assist-
22 ance of the Secretary (acting through the Office of
23 Special Education Programs Technical Assistance
24 Center on Positive Behavioral Interventions and
25 Supports of the Department of Education), to imple-

1 ment evidence-based systematic approaches to
2 school-wide positive behavior supports, including im-
3 proving coaching, facilitation, and training capacity
4 for principals and other administrators, teachers,
5 specialized instructional support personnel, and
6 other staff.

7 (2) Providing technical assistance to develop
8 and implement evidence-based systematic approaches
9 to school-wide positive behavior supports, including
10 technical assistance for data-driven decisionmaking
11 related to behavioral supports and interventions in
12 the classroom and throughout common areas.

13 (3) Researching, evaluating, and disseminating
14 high-quality evidence-based programs and activities
15 that implement school-wide positive behavior sup-
16 ports with fidelity.

17 (4) Supporting other local positive behavior
18 support implementation activities consistent with
19 this subsection, including outreach to families and
20 community agencies and providers, such as mental
21 health authorities.

22 (g) EVALUATION AND REPORT.—Each State edu-
23 cational agency receiving a grant under this section shall,
24 at the end of the 3-year grant period for such grant, pre-
25 pare and submit to the Secretary, a report that—

1 (1) evaluates the State’s progress toward devel-
2 oping and implementing evidence-based systematic
3 approaches to school-wide positive behavior supports;
4 and

5 (2) includes such information as the Secretary
6 may require.

7 (h) DEPARTMENT OF THE INTERIOR.—From the
8 amount appropriated under section 11, the Secretary may
9 allocate funds to the Secretary of the Interior for activities
10 under this section with respect to schools operated or
11 funded by the Department of the Interior, under such
12 terms as the Secretary of Education may prescribe.

13 **SEC. 7. NATIONAL ASSESSMENT.**

14 (a) NATIONAL ASSESSMENT.—The Secretary shall
15 carry out a national assessment to—

16 (1) determine compliance with the requirements
17 of this Act; and

18 (2) identify best practices with respect to pro-
19 fessional development and training programs carried
20 out under section 6, which shall include identifying
21 evidence-based school personnel training models with
22 demonstrated success (including models that empha-
23 size positive behavior supports and de-escalation
24 techniques over physical intervention).

1 (b) REPORT.—The Secretary shall submit to the
2 Committee on Education and Labor of the House of Rep-
3 resentatives and the Committee on Health, Education,
4 Labor, and Pensions of the Senate—

5 (1) an interim report that summarizes the pre-
6 liminary findings of the assessment described in sub-
7 section (a) not later than 3 years after the date of
8 enactment of this Act; and

9 (2) a final report of the findings of the assess-
10 ment not later than 5 years after the date of the en-
11 actment of this Act.

12 **SEC. 8. PROTECTION AND ADVOCACY SYSTEMS.**

13 Protection and Advocacy Systems shall have the au-
14 thority provided under section 143 of the Developmental
15 Disabilities Assistance and Bill of Rights Act of 2000 (42
16 U.S.C. 15043) to investigate, monitor, and enforce protec-
17 tions provided for students under this Act.

18 **SEC. 9. LIMITATION OF AUTHORITY.**

19 (a) IN GENERAL.—Nothing in this Act shall be con-
20 strued to restrict or limit, or allow the Secretary to restrict
21 or limit, any other rights or remedies otherwise available
22 to students or parents under Federal, State, or local law
23 or regulation.

24 (b) APPLICABILITY.—

1 (1) PRIVATE SCHOOLS.—Nothing in this Act
2 shall be construed to affect any private school that
3 does not receive, or does not serve students who re-
4 ceive, support in any form from any program sup-
5 ported, in whole or in part, with funds appropriated
6 to the Department of Education.

7 (2) HOME SCHOOLS.—Nothing in this Act shall
8 be construed to—

9 (A) affect a home school, whether or not a
10 home school is treated as a private school or
11 home school under State law; or

12 (B) consider parents who are schooling a
13 child at home as school personnel.

14 **SEC. 10. RULE OF CONSTRUCTION ON DATA COLLECTION.**

15 Nothing in this Act shall be construed to affect the
16 collection of information or data with respect to corporal
17 punishment authorized under the statutes and regulations
18 implementing title VI of the Civil Rights Act of 1964 (42
19 U.S.C. 2000c), title IX of the Education Amendments of
20 1972 (20 U.S.C. 1681 et seq.), section 504 of the Reha-
21 bilitation Act of 1973 (29 U.S.C. 794 et seq.), and the
22 Department of Education Organization Act (20 U.S.C.
23 3401 et seq.).

1 **SEC. 11. AUTHORIZATION OF APPROPRIATIONS.**

2 There are authorized to be appropriated such sums
3 as may be necessary to carry out this Act for fiscal year
4 2011 and each of the 4 succeeding fiscal years.

5 **SEC. 12. DEFINITIONS.**

6 In this Act:

7 (1) CORPORAL PUNISHMENT.—The term “cor-
8 poral punishment” means paddling, spanking, or
9 other forms of physical punishment, however light,
10 imposed upon a student.

11 (2) EDUCATIONAL SERVICE AGENCY.—The
12 term “educational service agency” has the meaning
13 given such term in section 9101(17) of the Elemen-
14 tary and Secondary Education Act of 1965 (20
15 U.S.C. 7801(17)).

16 (3) ELEMENTARY SCHOOL.—The term “elemen-
17 tary school” has the meaning given the term in sec-
18 tion 9101(18) of the Elementary and Secondary
19 Education Act of 1965 (20 U.S.C. 7801(18)).

20 (4) LOCAL EDUCATIONAL AGENCY.—The term
21 “local educational agency” has the meaning given
22 the term in section 9101(26) of the Elementary and
23 Secondary Education Act of 1965 (20 U.S.C.
24 7801(26)).

25 (5) PARENT.—The term “parent” has the
26 meaning given the term in section 9101(31) of the

1 Elementary and Secondary Education Act of 1965
2 (20 U.S.C. 7801(31)).

3 (6) POSITIVE BEHAVIOR SUPPORTS.—The term
4 “positive behavior supports” means a systematic ap-
5 proach to embed evidence-based practices and data-
6 driven decisionmaking to improve school climate and
7 culture, including a range of systemic and individ-
8 ualized strategies to reinforce desired behaviors and
9 diminish reoccurrence of problem behaviors, in order
10 to achieve improved academic and social outcomes
11 and increase learning for all students, including
12 those with the most complex and intensive behav-
13 ioral needs.

14 (7) PROTECTION AND ADVOCACY SYSTEM.—The
15 term “protection and advocacy system” means a
16 protection and advocacy system established under
17 section 143 of the Developmental Disabilities Assist-
18 ance and Bill of Rights Act of 2000 (42 U.S.C.
19 15043).

20 (8) SCHOOL.—The term “school” means an en-
21 tity—

22 (A) that—

23 (i) is a public or private—

24 (I) day or residential elementary
25 school or secondary school; or

1 (II) early childhood, elementary
2 school, or secondary school program
3 that is under the jurisdiction of a
4 school, local educational agency, edu-
5 cational service agency, or other edu-
6 cational institution or program; and

7 (ii) receives, or serves students who
8 receive, support in any form from any pro-
9 gram supported, in whole or in part, with
10 funds appropriated to the Department of
11 Education; or

12 (B) that is a school funded or operated by
13 the Department of the Interior.

14 (9) SCHOOL PERSONNEL.—The term “school
15 personnel” has the meaning—

16 (A) given the term in section 4151(10) of
17 the Elementary and Secondary Education Act
18 of 1965 (20 U.S.C. 7161(10)); and

19 (B) given the term “school resource offi-
20 cer” in section 4151(11) of the Elementary and
21 Secondary Education Act of 1965 (20 U.S.C.
22 7161(11)).

23 (10) SPECIALIZED INSTRUCTIONAL SUPPORT
24 PERSONNEL.—The term “specialized instructional
25 support personnel” means school counselors, school

1 social workers, school nurses, school psychologists,
2 and other qualified professional personnel involved in
3 providing assessment, diagnosis, counseling, edu-
4 cational, health, therapeutic, and other necessary
5 corrective or supportive services.

6 (11) SECONDARY SCHOOL.—The term “sec-
7 ondary school” has the meaning given the term in
8 section 9101(38) of the Elementary and Secondary
9 Education Act of 1965 (20 U.S.C. 7801(38)).

10 (12) SECRETARY.—The term “Secretary”
11 means the Secretary of Education.

12 (13) STATE.—The term “State” has the mean-
13 ing given the term in section 9101 of the Elemen-
14 tary and Secondary Education Act of 1965 (20
15 U.S.C. 7801).

16 (14) STATE EDUCATIONAL AGENCY.—The term
17 “State educational agency” has the meaning given
18 the term in section 9101(41) of the Elementary and
19 Secondary Education Act of 1965 (20 U.S.C.
20 7801(41)).

21 (15) STUDENT.—The term “student” means a
22 student enrolled in a school defined in paragraph
23 (8).

1 **SEC. 13. PRESUMPTION OF CONGRESS RELATING TO COM-**
2 **PETITIVE PROCEDURES.**

3 (a) PRESUMPTION.—It is the presumption of Con-
4 gress that grants awarded under this Act will be awarded
5 using competitive procedures based on merit.

6 (b) REPORT TO CONGRESS.—If grants are awarded
7 under this Act using procedures other than competitive
8 procedures, the Secretary shall submit to Congress a re-
9 port explaining why competitive procedures were not used.

10 **SEC. 14. PROHIBITION ON EARMARKS.**

11 None of the funds appropriated to carry out this Act
12 may be used for a congressional earmark as defined in
13 clause 9e, of rule XXI of the rules of the House of Rep-
14 resentatives of the 111th Congress.

○

50 IDELR 228

108 LRP 33624

**Letter to Anonymous
Office of Special Education Programs**

N/A

March 17, 2008

Related Index Numbers

50.005 Aversives

50.015 In General

Judge / Administrative Officer

William W. Knudsen, Acting Director

Case Summary

OSEP advised a concerned individual that the IDEA does not expressly prohibit the use of physical restraints or other aversives on students with disabilities. Nonetheless, OSEP observed that the use of aversives may be limited by either state law or the provisions of a student's IEP. The IDEA states that if a student's behavior impedes his own learning or the learning of others, the IEP team must consider the use of positive intervention strategies and supports to address that behavior. 34 CFR 300.324(a)(2)(i). "While [the IDEA] emphasizes the use of positive behavioral interventions and supports to address behavior that impedes learning, [it] does not flatly prohibit the use of mechanical restraints or other aversive behavioral techniques," Acting Director William W. Knudsen wrote. OSEP indicated that districts should consult the laws of their respective states to determine whether those laws permit the use of restraints or other aversives. If state law permits the use of physical restraints, the district must consider whether the use of restraints or other aversives is consistent with the terms of the student's IEP. OSEP further noted that IEP teams should consider the use of positive behavioral interventions tailored to a child's unique needs regardless of whether state law permits the use of aversives.

Full Text

Appearances:

[]

This letter is in response to your inquiry to the U.S. Department of Education (Department) regarding the use of mechanical restraints on children with disabilities in the classroom. Your inquiry was forwarded to the Department's Office of Special Education Programs (OSEP), Office of Special Education and Rehabilitative Services, for reply.

You specifically ask:

"Where in the Education of the Handicapped Act of 1975, or in the 1997 or 2004 IDEA revisions is it written that mechanical restraints may not be used in the classroom?"

Alternatively, you ask:

"What is the policy/procedure regarding the use of mechanical restraints with special education students?"

Under Part B of the Individuals with Disabilities Education Act (IDEA), each State and its public agencies must have policies and procedures to ensure that a free appropriate public education (FAPE) is made available to all children with disabilities, residing in the State, between the ages of 3 and 21, inclusive, including children who have been suspended or expelled from school. 34 CFR § 300.101(a); see also 34 CFR § 300.201. The term FAPE includes, among other elements, special education and related services, at no cost to parents, that meet the standards of the State educational agency, including the requirements of 34 CFR Part 300, and provided in conformity with an individualized education program (IEP) that meets the requirements of 34 CFR §§ 300.320 through 300.324. 34 CFR § 300.17. Part B expresses a strong preference for educating children with disabilities in regular classes alongside their nondisabled peers with appropriate aids and supports. This principle, known as least restrictive environment, requires each public agency to ensure that, to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not

disabled; and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 CFR § 300.114(a)(2). Also, under IDEA, children with disabilities and their parents must be afforded procedural safeguards and due process rights, including additional protections in disciplinary situations. 34 CFR §§ 300.500 through 300.536.

The vehicle for determining the content of a child's special education program is the IEP process. 34 CFR §§ 300.320 through 300.324. The IEP is a written statement for each child with a disability that is developed, reviewed, and revised at a meeting in accordance with 34 CFR §§ 300.320 through 300.324. 34 CFR § 300.320(a). Each child's IEP must include, among other components, a statement of the child's present levels of academic achievement and functional performance, a statement of measurable annual goals, including academic and functional goals, and a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child or on behalf of the child, to enable the child to be involved in and make progress in the general education curriculum, and to participate in extracurricular and other nonacademic activities, and to be educated and participate with other children with and without disabilities in those activities. 34 CFR § 300.320(a)(1), (2), and (4). The final decision on the provision of special education and related services for any child with a disability rests with the IEP Team, which includes the child's parents and school officials. 34 CFR § 300.321. In the case of a child whose behavior impedes the child's learning or that of others, the IEP team, in developing, reviewing and revising the child's IEP, must consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior. 34 CFR §

300.324(a)(2)(i) and (b)(2). The child's unique needs are of paramount importance in determining what behavioral interventions and supports or behavioral management strategies are appropriate for a child with a disability and must be included in the child's IEP.

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. You may wish to consult your State law to see whether it addresses the use of mechanical restraints or other aversive behavioral techniques for children with disabilities. If Alaska law would permit the use of mechanical restraints or other aversive behavioral techniques for children with disabilities served under IDEA, the critical inquiry is whether the use of such restraints or techniques can be implemented consistent with the child's IEP and the requirement that IEP Teams consider the use of positive behavioral interventions and supports when the child's behavior impedes the child's learning or that of others.

Based on section 607(e) of the IDEA, we are informing you that our response constitutes informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented.

Should you have additional questions regarding IDEA, please feel free to contact Ms. Sara Doure, OSEP's Part B State Contact for Alaska, at (202) 245-7447.

Regulations Cited

- 34 CFR 300.101(a)
- 34 CFR 300.201
- 34 CFR 300.17
- 34 CFR 300.114(a)(2)
- 34 CFR 300.320(a)
- 34 CFR 300.320(a)(1)
- 34 CFR 300.320(a)(2)
- 34 CFR 300.320(a)(4)
- 34 CFR 300.321

34 CFR 300.324(a)(2)(i)

34 CFR 300.324(b)(2)



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

OCT 19 2006

THE ASSISTANT SECRETARY

Barbara Trader
Executive Director,
TASH
29 W Susquehanna Avenue Suite
210 Baltimore, MD 21204

Dear Director Trader:

Thank you for your August 23, 2006 electronic correspondence expressing concern regarding the New York State Department of Vocational and Educational Services for Individuals with Disabilities' preparation to implement State regulations on Aversive Behavioral Intervention (Regulations). It is our understanding that the other organizations listed in the electronic transmission (The Self-Advocacy Association of New York State, Inc; The RespectABILITY Law Center; The Family Alliance to Stop Abuse and Neglect; The Public Interest Law Center of Pennsylvania; and The Advocacy Institute) also object to implementation of these Regulations.

As you are aware, the Individuals with Disabilities Education Act (IDEA or Act) requires that in order for a State to be eligible to receive funds under Part B of the Act, the State must, among other conditions, ensure that a free appropriate public education (FAPE) is made available in the State to all children with specified disabilities in mandated age ranges. 20 U.S.C. 1412 (a)(1). The term "FAPE" includes, among other elements, special education and related services, provided at no cost to parents, in conformity with an individualized education program (IEP). 20 U.S.C. 1401(9). The Act provides a strong preference for educating children with disabilities in regular classes with appropriate aids and supports. Specifically, the Act provides that States must have in effect policies and procedures ensuring that, to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with nondisabled children, and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 20 U.S.C 1412 (a)(5)(A).

The final decision on the provision of special education and related services for any child with a disability rests with the IEP Team, including the child's parents. IDEA and the final Part B implementing regulations' require that the IEP Team consider, in the case of a child whose behavior impedes the child's learning or that of others, the use of positive behavioral interventions and supports, and other strategies, to address that behavior. 20 U.S.C. 1414(d)(3)(B)(i) and (C), and 34 CFR §300.324(a)(2)(i). Thus, while the Act

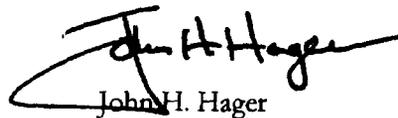
¹ Final regulations implementing the Individuals with Disabilities Education Improvement Act of 2004 will take effect on October 13, 2006. 71 Fed. Reg. 46,540 (August 14, 2006) (to be codified at 34 CFR Part 300).

requires that an IEP Team consider the use of positive behavioral interventions and supports, and as such, emphasizes and encourages the use of such supports, it does not contain a flat prohibition on the use of aversive behavioral interventions. Whether to allow IEP Teams to consider the use of aversive behavioral interventions is a decision left to each State.

Accordingly, based on the information we have reviewed, we do not believe the New York Regulations conflict with IDEA, so long as the requirements of the Act and its regulations are met. Consistent with Federal-State relations and authority, OSEP cannot provide an opinion on whether the State's regulations are consistent with New York civil and criminal laws and the New York Constitution.

This response regarding a policy, question, or interpretation under Part B of IDEA is provided as informal guidance, is not legally binding, is issued in compliance with the requirements of 5 U.S.C. 553, and represents the interpretation by the Department of Education of the applicable statutory or regulatory requirements in the context of the specific facts presented.

Sincerely,

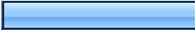


John H. Hager

CC: Dr. Rebecca Cort

Restraint and Seclusion Survey

1. Name of district or charter school		
		Response Count
		42
		<i>answered question</i> 42
		<i>skipped question</i> 1

2. Does your district/school have restraint policies and/or procedures in place?			
		Response Percent	Response Count
Yes		70.3%	26
No		29.7%	11
If yes, how does your district check on whether these policies/procedures are being followed?			25
			<i>answered question</i> 37
			<i>skipped question</i> 6

3. Briefly describe your district/school's restraint policy.		
		Response Count
		29
		<i>answered question</i> 29
		<i>skipped question</i> 14

4. Does your district use a form to report each incident of restraint to the school's administration			
		Response Percent	Response Count
Yes		57.1%	20
No		42.9%	15
If yes, is there a timeline for submitting the report and if so, what is it?			24
<i>answered question</i>			35
<i>skipped question</i>			8

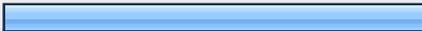
5. Who most often restrains students in your district?			
		Response Percent	Response Count
Principal		34.8%	8
Assistant Principal		0.0%	0
Regular Education Teacher		0.0%	0
Special Education Teacher		56.5%	13
Instructional Assistant		0.0%	0
School Security Staff		8.7%	2
Other, Please Identify Please Identify by position			16
<i>answered question</i>			23
<i>skipped question</i>			20

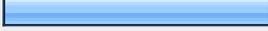
6. Does school staff contact the student's parent(s)/guardian after each incident of restraint?			
		Response Percent	Response Count
Yes		93.3%	28
No		6.7%	2
If so, how are the parents contacted and is there a timeline for the contact?			27
<i>answered question</i>			30
<i>skipped question</i>			13

7. Approximately how many cases of restraint have occurred in your school since school year 2007-2008?			
		Response Percent	Response Count
<5		56.3%	18
5-10		9.4%	3
10-15		6.3%	2
15-20		28.1%	9
<i>answered question</i>			32
<i>skipped question</i>			11

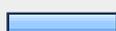
8. Does your district/school have seclusion policies and/or procedures in place?			
		Response Percent	Response Count
Yes		60.0%	21
No		40.0%	14
If yes, how does your district check on whether these policies/procedures are being followed?			26
<i>answered question</i>			35
<i>skipped question</i>			8

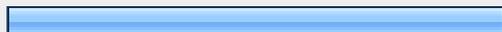
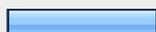
9. Briefly describe your district/school's seclusion policy.		
		Response Count
		26
<i>answered question</i>		26
<i>skipped question</i>		17

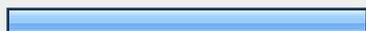
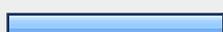
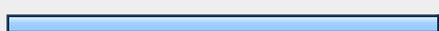
10. Does your district use a form to report each incident of seclusion to the school's administration?			
		Response Percent	Response Count
Yes		34.4%	11
No		65.6%	21
If yes, is there a timeline for submitting the report and if so, what is it?			18
<i>answered question</i>			32
<i>skipped question</i>			11

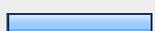
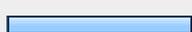
11. Who most often places students in seclusion at your district?			
		Response Percent	Response Count
Principal		41.2%	7
Assistant Principal		5.9%	1
Regular Education Teacher		5.9%	1
Special Education Teacher		41.2%	7
Instructional Assistant		0.0%	0
School Security Staff		5.9%	1
Other, Please Identify Please Identify by position			9
<i>answered question</i>			17
<i>skipped question</i>			26

12. Does school staff contact the student's parent(s)/guardian after each incident of seclusion?			
		Response Percent	Response Count
Yes		81.0%	17
No		19.0%	4
If so, how are the parents contacted and is there a timeline for the contact?			22
<i>answered question</i>			21
<i>skipped question</i>			22

13. Approximately how many cases of seclusion have occurred in your school since school year 2007-2008?			
		Response Percent	Response Count
<5		62.5%	15
5-10		12.5%	3
10-15		8.3%	2
15-20		16.7%	4
<i>answered question</i>			24
<i>skipped question</i>			19

14. Has your staff been trained to do restraints?			
		Response Percent	Response Count
Yes		77.1%	27
No		22.9%	8
<i>answered question</i>			35
<i>skipped question</i>			8

15. Who is trained at each school?			
		Response Percent	Response Count
Principal		66.7%	18
Assistant Principal		33.3%	9
Regular Education Teachers		55.6%	15
Special Education Teachers		85.2%	23
School Security Staff		33.3%	9
Instructional Assistants		66.7%	18
Counselors		44.4%	12
Bus drivers		22.2%	6
Secretary		7.4%	2
		Others; please identify	15
		answered question	27
		skipped question	16

16. What is the amount of training that school staff (who restrain/seclude students) receive in a school year (i.e. August-June)?			
		Response Percent	Response Count
0–2 hours		25.0%	8
3–5 hours		25.0%	8
6–8 hours		21.9%	7
1–2 days		28.1%	9
More than 2 days		0.0%	0
		Other; please identify	6
		answered question	32
		skipped question	11

17. What type of training is provided? (mark all that apply)			
		Response Percent	Response Count
None		16.1%	5
District in-service by district staff		51.6%	16
District in-service by outside consultants		19.4%	6
Training at a state conference		3.2%	1
Training at an out of state conference		3.2%	1
Training by vendor or system Provider		16.1%	5
		Other; please identify	9
		<i>answered question</i>	31
		<i>skipped question</i>	12

18. What professional development or training would help you reduce the number of restraint or seclusion incidents in your school? (Rank in order of importance, 1=Low, 5=High)								
	1	2	3	4	5	6	Rating Average	Response Count
School wide positive behavior support program from outside consultant	9.4% (3)	6.3% (2)	15.6% (5)	12.5% (4)	40.6% (13)	15.6% (5)	4.16	32
Train-the-trainer program on school wide Positive Behavioral Supports (PBS)	6.5% (2)	6.5% (2)	12.9% (4)	16.1% (5)	38.7% (12)	19.4% (6)	4.32	31
Ongoing/as-needed technical assistance, through a state approved PBS trainer	12.9% (4)	9.7% (3)	12.9% (4)	16.1% (5)	29.0% (9)	19.4% (6)	3.97	31
College-level distance education course, ITV course, or face-to-face course	22.6% (7)	35.5% (11)	19.4% (6)	6.5% (2)	12.9% (4)	3.2% (1)	2.61	31
Online/e-module of basic PBS training for new staff	19.4% (6)	12.9% (4)	25.8% (8)	16.1% (5)	16.1% (5)	9.7% (3)	3.26	31
Training by Vendor or System Provider	27.6% (8)	17.2% (5)	10.3% (3)	20.7% (6)	13.8% (4)	10.3% (3)	3.07	29
	<i>answered question</i>							32
	<i>skipped question</i>							11

19. Does your district/school have additional procedures in place for other behavioral interventions?			
		Response Percent	Response Count
Yes		80.0%	28
No		20.0%	7
If yes, how does your district check on whether these procedures are being followed?			28
	<i>answered question</i>		35
	<i>skipped question</i>		8

20. If yes, check the methodology/system you do use?			Response Percent	Response Count
MANDT	<input type="checkbox"/>		12.0%	3
CPI	<input checked="" type="checkbox"/>		88.0%	22
Other; please identify				9
			<i>answered question</i>	25
			<i>skipped question</i>	18

21. Briefly describe your district/school's policy for other behavioral interventions (i.e. RTI, Positive Behaviors Supports, school health and wellness policy, etc.).			Response Count
			29
			<i>answered question</i>
			<i>skipped question</i>
			29
			14

22. How effective have these interventions been in de-escalating behaviors?			Response Count
			29
			<i>answered question</i>
			<i>skipped question</i>
			29
			14

23. What mechanism(s) is used to collect data on effectiveness?		
		Response Count
		30
	<i>answered question</i>	30
	<i>skipped question</i>	13

RESTRAINT SECLUSION SURVEY

NASDE Survey by State

August, 2010
New Mexico Public Education Department
Denise Koscielniak, Special Education Director, Special Education Bureau
Albert Gonzales, Assistant General Counsel, Office of General Counsel

State	Question 1: Since the GAO report on restraint and seclusion and the letter from Secretary Duncan, is your state pursuing legislation on restraint and seclusion now or are/ is your state waiting for the federal legislation?	Question 2: Is your state pursuing legislation for all students or just special education students?	Question 3: If your state has already enacted legislation, can you attach a copy to your email or provide a link to it on your website?	Notes:
Alabama	We are developing a rule now that will be proposed next year but are concerned that it may not meet all requirements of the federal legislation when we get it	All Students	(No comment)	
Arkansas	Arkansas SEA is drafting 'guidelines' for best practice for its LEAs but is not pursuing legislation at this time	The guidelines pertain to ALL students, as would any proposed legislation if that were being pursued	Not applicable	
California	In 1990, the California Legislature enacted legislation requiring the CA Superintendent of Public Instruction to conduct a study on the use of behavior modification techniques for special education students statewide. In addition, the	In 1986, the CA Legislature enacted legislation prohibiting corporal punishment for all children under the	See attached CALIFORNIA LAW & REGS.doc.	

	<p>legislation required the Superintendent to develop, and the CA State Board of Education to adopt, regulations governing the use of such behavioral interventions which may be used that did not cause pain or trauma, in other words, positive behavioral interventions.</p> <p>Regulations governing behavioral interventions for special education pupils were approved in 1993, and amended in 1996.</p> <p>See attached copy of laws and regulations.</p> <p>Our State is monitoring the legislation pending in Congress.</p>	<p>control of public schools. "Corporal punishment" means the willful infliction of, or willfully causing the infliction of, physical pain on a pupil.</p>		
Colorado	<p>Colorado passed restraint legislation in 1999----The Rules for implementing the legislation were recently revised----See above attachments</p> <p>We now have HB 1073 as of the last session</p>	<p>Colorado's legislation pertains to all students</p>	<p>See above</p>	
Florida		<p>Only special education----this includes 504</p>	<p>See attached bill and memo</p>	
Georgia	<p>We have passed a state board rule applicable to all students- rule and guidance on the</p>	<p>All students</p>	<p>Rule and guidance on the gadoe website</p>	

<p>Idaho</p>	<p>gadoo website Yes. Our SEAP made a request of our State Supt. to form a work group to draft rules. He directed me to form the work group and draft rules if the group decided that was needed. We formed the 'Safe and Supportive Schools Task Force' a year ago. The Task Force decided to submit draft rules to the State Board of Education for their consideration. The State Board acted on the rules August 11 and will publish them in the October Administrative Bulletin as proposed rules. We have a public hearing scheduled for October 21, revised rules go to the State Board in November for action and the Legislature in January</p>	<p>For all students</p>	<p>(no comment)</p>	
<p>Iowa</p>	<p>Iowa currently has a state law. It closely aligns to the proposed federal statute</p>	<p>Iowa's all applies to all students</p>	<p>Our state law is attached as a PDF document. I have also provided a link to our state's web page on seclusion and restraint, which includes the State's training and technical assistance materials (see attached link)</p>	
<p>Kansas</p>	<p>No legislation, but we have guidelines on seclusion in</p>	<p>Only for students with</p>	<p>(no comment)</p>	

	Kansas	disabilities		
Louisiana	The state passed legislation in the most recent session	It is for students with exceptionalities only. In LA that includes gifted and talented	It requires the SEA and state board to develop guidelines. We wanted it to be regulatory, but that didn't pass the full Senate. See Act 698 of the 2010 session.	
Massachusetts	We have a statewide interagency initiative on restraint and seclusion reduction/elimination. We also have had regulations on restraint for a number of years, so no legislation at the state level is in consideration. We are not waiting on the feds though as our statewide initiative is active.			
Michigan	A piece of legislation has been introduced in our State legislature. The legislation contains some of the language in our existing State Board of Education Policy for the emergency use of seclusion and restraint. The legislation was introduced in December of 2009, had a first reading, and was referred to our State House Committee on Education. As of this date, it has not moved out of the Education Committee.	The introduced legislation is for all students.	(no comment)	

Missouri	<p>Link to model policy: http://www.dese.mo.gov/schoollaw/documents/Seclusionpolicy.pdf and the link to bill/legislation containing the seclusion/restraint provisions: http://www.senate.mo.gov/09info/BTS_Web/Bill.aspx?SessionType=R&BillID=683252</p>	Missouri passed legislation last year and it was not specific to kids with disabilities.	It required the dept to develop a model policy which is now posted on our website. I will send you later as I am in the state board of ed mtg right now. All districts must adopt policy by July 1	
Montana	Waiting	Not pursuing any legislation	We deal with aversive treatment by rule- http://www.mtrules.Org/Gateway/RuleNo.asp?RN=10%2E16%2E3346	
Nebraska	Waiting- However, requirement for public schools to have a restraint/seclusion policy (all students) will be a requirement for the 2011 -12 school year	Policy requirement speaks to all students	NE has provided a technical assistance document to guide districts in developing their policies and procedure found at: http://www.Education.ne.gov/Documents/Restraint-Seclusion_final_guidance_Document_6-22-10.pdf	
Nevada	Nevada was actually one of the first states (for better or worse) to adopt legislation—we have had state law on the books since 1999. The statute was amended in 2009. If anybody wants copies of the legislation, I can steer them to	Current law only affects students with disabilities	See attached for a copy of the law as amended in 2009	

New Hampshire	it. Legislation was recently passed	All students	The legislation is Chapter 126 – T Limiting the Use of Child Restraint Practices in Schools and Treatment Facilities. This was passed as SB 396-FN http://www.gencourt.state.nh.us/bill_status/Results.aspx?q=1&txtsessionyear=2010	
North Dakota	There is not legislation planned at this time. We just discussed this topic with local administrators and we're currently reviewing policy from other states.	No	(No comment)	
Oklahoma	We did not pursue legislation, however, we did adopt a State Board of Education policy in May 2010, to be fully implemented by January 2011	Due to existing state law regarding discipline; our policy will only address special education students	I am attaching the State Board of Education guidelines	
Ohio	Our Governor has convened an Interagency Work Group to address this issue and develop and overarching policy for restraint and seclusion. It is expected that all agencies (14) will adopt the policy and then develop specific procedures for their agencies to implement	All students	The policy has been drafted and approved by all agency Directors. It was sent to the Governor for final approval. I do not have a copy to send.	
Oregon	Oregon already had	The legislation	Oregon's information is on	

	legislation regarding restraint and seclusion	is under general education with the specific additional steps needed for students with disabilities	page 162 of this link. http://www2.ed.gov/policy/seclusion/summary-by-state.pdf	
Pennsylvania	Pennsylvania included restraints in our state regulations in 2008. We have not yet dealt with seclusion.	Our legislation dealt only with special education students		
South Carolina	We are providing "guidance" for now. The committee that developed the guidance would like us to pursue legislation.	The guidance is for all students		
South Dakota	We are looking at possible legislation to bring forward to the Governor's Office for consideration	It would be for all students	(no comment)	
Vermont	Our legislature decided not to pursue legislation and the State Board of Education is promulgating rules instead. Rule making was initiated just today.	The Rules will apply to all students, not just special education students	Not yet on our web site, but should be shortly. I have attached a copy.	
Virginia	No legislation at this time – we have guidelines in the form of model policy	Our guidelines pertain to all students and are framed in the context of "emergency"		

<p>Wyoming</p>	<p>We are waiting for the federal legislation. My Advisory Panel created a position paper which went to our Chief</p>	<p>situations” Still in discussion states, but we are leaning toward legislation for all students</p>	<p>N/A</p>	
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