

## RESTRAINT AND SECLUSION INFORMATION SHEET

### What are Restraint and Seclusion?

Restraint and seclusion are two controversial methods that have been used in a school setting to control the behavior of students; these methods involve restricting a student's ability to move (restraint) or confining a student alone in an area that he or she cannot leave (seclusion). Restraint and seclusion drew national attention in 2009 with the issuance of a Government Accountability Office report describing cases of abuse and death involving these practices. While Congress has failed since that time to enact federal law governing these practices, the U.S. Department of Education (USED) has issued guidance in this area, and the majority of states have enacted laws limiting the use of restraint and seclusion in schools. In 2018, New Jersey joined those states, enacting a statute specific to students with disabilities. Under the New Jersey statute (the statute), "physical restraint" is defined as a "restriction that immobilizes or reduces the ability of a student to move all or a portion of his or her body," and "seclusion technique" is defined as "the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving," but not including a "timeout." USED guidance indicates that the temporary touching or holding of a student's hand, wrist, arm, shoulder, or back for the purpose of inducing the student to walk to a safe location (described as a "physical escort") does not constitute physical restraint. By contrast, USED guidance provides that mechanical devices should never be used to restrain students (with the exception of items such as vehicle safety devices or those prescribed for medical or therapeutic purposes).

### When may Restraint and Seclusion Techniques be used on Students with Disabilities under New Jersey Law?

The statute provides that restraint and seclusion techniques may be used "only in an emergency in which the student is exhibiting behavior that places the student or others in immediate physical danger." School districts and charter schools (as well as educational services commissions and approved private schools for students with disabilities) must attempt to minimize the use of restraint and seclusion through the use of positive behavior supports in behavior intervention plans. Students may not be restrained in the prone position (lying flat with chest down) unless the student's primary care doctor authorizes the use of this restraint technique in writing, and all staff members involved in restraint of a student must be trained in safe restraint techniques (with training updated annually). Each incident of restraint or seclusion must be "carefully and continuously visually monitored" to ensure compliance with board safety policies and must be documented in writing in sufficient detail to enable staff to use the information to develop or improve the student's behavior intervention plan. While some state laws explicitly require restraint or seclusion to end when an emergency ends or contain other time limits, New Jersey law is silent on the issue of when restraint/seclusion must end.

### What is a “Timeout”?

As noted above, seclusion does not include a “timeout”: timeouts are therefore not limited to cases of emergency. “Timeout” is defined in the statute as “a behavior management technique that involves the monitored separation of a student in a non-locked setting, and is implemented for the purpose of calming.”

### What are a Parent’s Rights to Notification if Restraint or Seclusion is used on their Child?

In the case of physical restraint, the statute provides that a parent or guardian must be notified “immediately,” including by telephone or electronic communication, and must be provided with a full written report within 48 hours of the incident of physical restraint. While the statute does not contain a timeline for notification of seclusion, New Jersey Department of Education (NJDOE) guidance indicates that this notification should be as soon as possible and that individual school boards should specify timelines. Notification to parents of incidents of restraint and/or seclusion should include: the nature of the behavior that caused the restraint and/or seclusion; the staff involved; and recommendations for follow-up including, if appropriate, revisions to the IEP or administration of a functional behavioral assessment.

### What Federal Laws Protect Students with Disabilities from Restraint and Seclusion?

While there is no federal statute specifically limiting the use of restraint and seclusion techniques in schools, the USED, through its Civil Rights Data Collection (CRDC) survey, has since 2009 required school districts to report (biennially) the number of students subject to restraint and seclusion, categorized by race and ethnicity, gender, disability status, and English learner status. CRDC reports indicate that students with disabilities are disproportionately subject to restraint and seclusion; for the 2015-2016 school year (which is, as of the date of this publication, the most recent school year for which data has been released), students with disabilities served under the Individuals with Disabilities Education Act represented only 12% of total students enrolled but 66% of students secluded and 71% of students restrained. The disproportionate use of restraint and seclusion on students with disabilities raises disability discrimination issues under Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act. A simple example of disability discrimination from a 2016 USED guidance document is illustrative: in the example, two 8<sup>th</sup> grade students are running around a classroom carrying sharp scissors; only the student with a disability is restrained, based on the teacher’s generalizations and assumptions about the student’s disability (a panic disorder). Under these circumstances, the use of restraint constitutes “unnecessary different treatment on the basis of disability.”

Notwithstanding the attention that has been given to restraint and seclusion in recent years at both the state and federal levels, a 2019 report issued by the Government Accountability Office indicates that there continues to exist widespread underreporting of restraint and seclusion practices by school districts: for the 2015-2016 school year, for example, 70 percent of school districts nationwide, and 78 percent of New Jersey school districts, reported zero incidents of restraint and seclusion. The USED has announced an Initiative to Address the Inappropriate Use of Restraint and Seclusion in Schools; the initiative aims both at improving data collection and

reporting by school districts and at providing technical assistance and resources to school districts regarding appropriate behavioral interventions.

### What Steps Can a Parent Take if their Child has been Subject to Restraint or Seclusion?

As noted in connection with parental notification, an incident of restraint or seclusion is an indication that a student's IEP may need revision or that a functional behavioral assessment may be needed. Parents may initiate an IEP meeting (or Section 504 team meeting) to: (1) address the behavior that led to restraint or seclusion; (2) determine if current interventions are being properly implemented; (3) consider the need for additional interventions and supports, including positive behavioral supports; and (4) revise the student's IEP or 504 plan accordingly. Parents may also request new evaluations of the student if needed. A parent who is unable to satisfactorily resolve concerns related to their child's educational program after an incident of restraint or seclusion may request mediation or due process, or file a complaint investigation request, with the NJDOE. Incidents of restraint or seclusion may warrant an award of compensatory education services for missed instructional/related services time or to remedy a denial of the student's right to a free appropriate public education ("FAPE").

Parents who believe that their child was inappropriately restrained or secluded or that these techniques were used in a discriminatory fashion based on their child's disability may report their concerns to the Director of Special Services and/or Superintendent of the school district and, if unable to resolve their concerns, may consider filing: (1) a complaint investigation request with NJDOE (within one year of the incident); (2) a discrimination complaint with the Office for Civil Rights of the USED (within 180 days of the incident); (3) a discrimination complaint with the New Jersey Division on Civil Rights (within 180 days of the incident); or (4) a complaint under the Americans with Disabilities Act (within 180 days of the incident).

### What is the Relationship between Restraint and Seclusion and FAPE?

The use of restraint and/or seclusion on a student with a disability may be an indication that the student's program is not effective and he or she is not receiving the educational and related services (including behavioral services) sufficient to provide FAPE. Restraint or seclusion may have a traumatic effect on a student, potentially resulting in new academic or behavioral difficulties or increased school absences resulting in a denial of FAPE. Repeated and extended periods of seclusion, moreover, may have the cumulative effect of denying the student the instructional time and related services needed to provide FAPE.

### Does the New Jersey Restraint and Seclusion Law Apply to Students without Disabilities?

While other states have enacted laws restricting the use of restraint and seclusion for all students, New Jersey's statute applies only to students with disabilities. New Jersey law does, however contain a provision banning "corporal punishment" of *all* students except: (1) to quell a disturbance, threatening physical injury to others; (2) to obtain possession of weapons or other dangerous objects; (3) for the purpose of self-defense; or (4) to protect persons or property. In the case of a student who is not receiving special education services or section 504 accommodations, behavior leading to an emergency situation in which staff believes that

restraint or seclusion is necessary may suggest that the student *has* an unidentified disability, triggering the school district’s obligation to evaluate the student for special education or related services.

### **Sources and Additional Information**

#### **New Jersey Statutes and NJDOE Guidance:**

N.J.S.A. 18A:46-13.4 – 13.7 (available online at <https://lis.njleg.state.nj.us/nxt/gateway.dll?f=templates&fn=default.htm&vid=Publish:10.1048/Enu>)

*Restraint and Seclusion Guidance for Students with Disabilities*, <https://www.nj.gov/education/specialed/memos/071018Restraint.pdf>

N.J.S.A. 18A:6-1 (corporal punishment of pupils)

#### **USED and Government Accountability Office Documents**

*SECLUSIONS AND RESTRAINTS: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers*, <https://www.gao.gov/new.items/d09719t.pdf> (May 2009)

*RESTRAINT AND SECLUSION: RESOURCE DOCUMENT*, available at <https://www2.ed.gov/policy/seclusion/restraint-and-seclusion-resource-document.html> (May 2012)

*Dear Colleague Letter: Restraint and Seclusion of Students with Disabilities*, <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201612-504-restraint-seclusion-ps.pdf> (December 28, 2016)

*U.S. Department of Education Announces Initiative to Address the Inappropriate Use of Restraint and Seclusion to Protect Children with Disabilities, Ensure Compliance with Federal Laws*, [https://www.ed.gov/news/press-releases/us-department-education-announces-initiative-address-inappropriate-use-restraint-and-seclusion-protect-children-disabilities-ensure-compliance-federal-laws?fbclid=IwAR3zOoOarIVaVkre3vSvYO8\\_ZqsUTTcY3gGL2UUVkip1j3r8mqh\\_XVR\\_Y](https://www.ed.gov/news/press-releases/us-department-education-announces-initiative-address-inappropriate-use-restraint-and-seclusion-protect-children-disabilities-ensure-compliance-federal-laws?fbclid=IwAR3zOoOarIVaVkre3vSvYO8_ZqsUTTcY3gGL2UUVkip1j3r8mqh_XVR_Y) (Jan. 17, 2019)

*2015–16 Civil Rights Data Collection School Climate and Safety*, <https://www2.ed.gov/about/offices/list/ocr/docs/school-climate-and-safety.pdf> (revised May 2019). As of the date of this publication, CRDC data for the 2017-18 school year has not yet been released, and data collection for the 2019-20 school year has been shifted to the 2020-21 school year due to COVID-19.

*K-12 Education: Education Should Take Immediate Action to Address Inaccuracies in Federal Restraint and Seclusion Data* (letter of June 18, 2019 to Senate and House Subcommittees), available at <https://www.gao.gov/products/gao-19-551r>

**Filing a Complaint:**

NJDOE Request for Complaint Investigation: <https://www.nj.gov/education/specialed/complaint/>

USED Office for Civil Rights Complaint Information:  
<https://www2.ed.gov/about/offices/list/ocr/docs/howto.html>

Americans with Disabilities Act Complaint Information:  
[https://www.ada.gov/filing\\_complaint.htm](https://www.ada.gov/filing_complaint.htm)

New Jersey Division on Civil Rights Complaint Information:  
<https://www.nj.gov/oag/dcr/filing.html#verified>

**Analysis of State Laws and Recent News Reports:**

*How Safe is the Schoolhouse? An Analysis of State Seclusion and Restraint Laws and Policies*, <https://www.autcom.org/pdf/HowSafeSchoolhouse.pdf> (July 2019)

*Parents Sue Fairfax Schools Over Alleged Student Seclusion, Discrimination*, <https://www.npr.org/local/305/2019/10/09/768593229/parents-sue-fairfax-schools-over-alleged-student-seclusion-discrimination> (includes text of complaint filed in federal court)

*Lawsuit challenges use of restraint, seclusion in California special education school*, <https://edsources.org/2019/lawsuit-challenges-use-of-restraint-seclusion-in-california-special-education-school/612690>

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