



## RESTRAINT AND SECLUSION

### FEDERAL POLICY UPDATE

**February 2022**

A 7- year-old in Massachusetts with attention deficit hyperactivity disorder (ADHD) was repeatedly restrained by teachers and even had water poured on him. A middle school student in Pennsylvania with autism was left in a seclusion room until 5:30 PM. Meanwhile, a high school student in Pennsylvania with ADHD and a hearing impairment was tased four times by a School Resource Officer and then put in a prone restraint. A 12-year-old in Texas with an Intellectual/Developmental disability (IDD) was restrained in a chair and had electrician gloves taped onto his arms and hands as a behavior intervention. In another state, a 6-year-old with severe mental illness was put in a classroom closet due to alleged daily incidents at school. These are just a handful of restraint and seclusion incidents reported by [Protection & Advocacy Agencies](#) that happen all too frequently in schools across our nation to students with disabilities.

While strides have been made over the years to reduce and regulate the use of restraint and seclusion, data collected through the [U.S. Department of Education's Civil Rights Data Collection](#) (CRDC) still shows these practices used disproportionately against students with disabilities and students of color. Not only does this data raise serious concerns about how schools are serving children, the continued disproportionately constitutes discrimination based on disability and thus a violation of several federal civil rights statutes. While the civil rights implications are stark, the human cost to students and their families is incalculable as students continue to [lose their lives](#) due to restraint and seclusion in schools.

## **National Disability Rights Network (NDRN) and the Protection and Advocacy Network**

NDRN is the non-profit membership association of Protection and Advocacy (P&A) agencies that are located in all 50 States, the District of Columbia, Puerto Rico, and the United States territories. In addition, there is a P&A affiliated with the Native American Consortium which includes the Hopi, Navajo and San Juan Southern Paiute Nations in the Four Corners region of the Southwest. P&A agencies are authorized under various federal statutes to provide legal representation and related advocacy services, and to investigate abuse and neglect of individuals with disabilities in a variety of settings. The P&A Network comprises the nation's largest provider of legally based advocacy services for persons with disabilities. A central part of the work of the P&As has been to advocate for opportunities for students with disabilities to receive a quality education with their peers.

NDRN and the P&A Network have been at the forefront of efforts to reduce and eliminate restraint and seclusion in schools. In [2009](#), [2010](#), and [2012](#), NDRN released a series of reports on the abusive practice of restraint and seclusion and offered federal policy recommendations to prevent and reduce the use of restraint and seclusion. Additionally, NDRN in conjunction with other national organizations has led in advocating for comprehensive federal legislation to eliminate seclusion and severely regulate restraint.

This paper outlines the major federal developments on restraint and seclusion since 2012 and includes recommendations for Congress and the Administration.

### **Restraint and Seclusion: Resource Document (U.S. Department of Education)**

In 2012, the U.S. Department of Education (ED) issued a restraint and seclusion [resource document](#). In issuing the resource document, ED's stated goal was "to inform States and school districts about how they can help to ensure that schools are safe learning environments for all students." Most notably, the resource document outlines 15 principles that States, local school districts, preschool, elementary, and secondary schools, parents, and other stakeholders should consider as the framework when developing and implementing policies and

procedures related to restraint and seclusion. The 15 principle framework is meant to ensure that any use of restraint or seclusion in schools does not occur, except when there is a threat of imminent danger of serious physical harm to the student or others. The resource document goes on to make clear the following regarding restraint and seclusion:

- Students must be free from abusive and dangerous practices in school.
- Restraint and seclusion should not be used as a disciplinary measure or as a planned intervention.
- The Individualized Education Program (IEP) team must take steps to address underlying behaviors including:
  - Performing Functional Behavior Assessments (FBA) and Creating Behavior Intervention Plans (BIP)
  - Providing individual psychological or social work counseling
- Staff must be given necessary training and supports in order to avoid the use of restraint and seclusion.
- Parents should be informed when restraint and seclusion is used on their child.
- Parents may need counseling and training.
- Consider referrals for students not yet identified under the Individuals with Disabilities Education Act (IDEA) or Section 504 of the Rehabilitation Act of 1973.—Students who may need education services should be referred for evaluation through Child Find.

In NDRN’s view, this resource document is the “gold standard” to which schools should strive in order to reduce instances of restraint and seclusion and create schools that are inclusive of all students. With that being said, we recognize the serious limitations of resource documents and sub-regulatory guidance as it pertains to enforcement at the school and district level and in the courts. Even though it was not a restraint and seclusion case, NDRN was alarmed by a recent decision in *In Csutoras v. Paradise High School*, 12 F.4th 960 (9th Cir. 2021). The case involved a student with a disability, who sued his school for money damages based on an assault at a football game. He relied on two Dear Colleague Letters from ED in support of his claim. The Ninth Circuit rejected plaintiff’s claims stating, “The only “fact” Csutoras points to in support of his “obvious” argument

is the existence of the Dear Colleague Letters—which cannot and do not satisfy his burden to demonstrate the school had actual notice of his need for a reasonable accommodation related to a qualifying disability.” Cases such as this and many like it underscore that in the absence of a federal law, sub-regulatory guidance issued by ED will inevitably continue to be limited in its practical impact depending on several factors most notably the discretion of judges in the court system, but still important in helping states and districts think about how to eliminate abusive restraint and seclusion practices.

### **Dear Colleague Letter: Restraint and Seclusion of Students with Disabilities (U.S. Department of Education)**

In 2016, the U.S. Department of Education’s Office for Civil Rights (OCR) issued a [Dear Colleague Letter](#) informing school districts how the use of restraint and seclusion may result in discrimination against students with disabilities in potential violation of Section 504 and Title II of the Americans with Disabilities Act of 1990 (Title II). The letter answers a series of questions and provides a summary of the disability discrimination laws that OCR enforces. It seeks to clarify for schools, school districts, States, parents, students, and other stakeholders how the use of restraint and seclusion can violate these Federal laws. The letter makes clear most notably the following:

- Students are entitled to safety in school.
- Restraint and seclusion are not effective at reducing negative or problematic behaviors; therefore, to rely on them as a planned intervention would be discriminatory.
- Districts must fully evaluate students in all areas of suspected disability and develop a plan to meet each area of need thus establishing an ongoing obligation of providing services to students.
- If student behavior is perceived to be severe enough that staff consider using restraint or seclusion, school districts must conduct, or revise, FBAs and BIPs or take other effective steps to address behavior—especially if the behavior is ongoing.
- Reiterates the need for parental notification when restraint or seclusion is used.

- Establishes, in the context of Section 504, that there is possible disparate impact discrimination even when schools adopt restraint and seclusion criteria, policies, practices, and procedures without the intent to discriminate.

### **Dangerous Use of Seclusion and Restraints in Schools Remains Widespread and Difficult to Remedy: A Review of Ten Cases (Senate Health, Education, Labor and Pensions Committee)**

In 2014, the majority staff of the Senate Health, Education, Labor and Pensions Committee under the leadership of Senator Harkin (D-IA) released a [report](#) on restraint and seclusion titled *Dangerous Use of Seclusion and Restraints in Schools Remains Widespread and Difficult to Remedy: A Review of Ten Cases*. The report calls for the need to pass federal legislation to regulate restraint and prohibit seclusion in order to bring some minimal level of uniformity to the patchwork of inconsistent state laws across the country, which still persists today. The report also highlighted the P&A Network as an excellent resource for parents seeking assistance and relief for their children. It also makes note that the P&As “have no dedicated funding for legal advocacy for students with disabilities and must therefore carefully weigh their responsibilities to other issues and populations versus providing representation to the large number of parents looking for assistance in special education<sup>1</sup> issues.” The absence of dedicated funding to serve students with disabilities is still true today. In the 116<sup>th</sup> Congress, Representative Mark DeSaulnier (D-CA-11) introduced the [Protection and Advocacy in Education Act](#). The bill would provide this dedicated funding for the P&A Network to protect and advocate for the rights of students with disabilities, including advocating for students experiencing restraint and seclusion in schools.

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<sup>1</sup> Note: While the word “special” continues to be used in government documents, NDRN avoids use of the term whenever possible. “Education” or “education of students with disabilities,” “IDEA eligible” or other language that accurately reflects the service, individual, or group is preferred.

## **K-12 Education: Education Should Take Immediate Action to Address Inaccuracies in Federal Restraint and Seclusion Data (U.S. Government Accountability Office)**

In June 2019, NDRN was pleased with the release of a Government Accountability Office (GAO) [study](#) on the under reporting of restraint and seclusion data in the Civil Rights Data Collection (CRDC) titled *K-12 Education: Education Should Take Immediate Action to Address Inaccuracies in Federal Restraint and Seclusion Data*.

GAO's study documented what those in the P&A Network have long known—the CRDC data significantly undercounts the actual incidents of restraint and seclusion in our nation's schools. GAO found that for the 2015-16 school year 70 percent of the more than 17,000 school districts in the United States reported zero incidents of restraint and zero incidents of seclusion. However, GAO's analysis and documents showed substantial evidence that nine of the 30 largest districts (those with more than 100,000 students) inaccurately reported zeros when they had incidents or did not have the data.

The GAO went on to give the example of the Fairfax County Public Schools in Virginia, which has about 186,000 students, and “reported zero incidents in school year 2015-16 but recently acknowledged that it had over 1,600 incidents of restraint or seclusion in school year 2017-18.”

NDRN calls on OCR to implement the recommendations of the GAO and to take whatever additional steps are needed to ensure that the CRDC data collection accurately reflects the use of restraint and seclusion across the country. As noted by the GAO, “it is important that Education immediately take steps to address underreporting.” NDRN would say it is critical.

The CRDC data summaries historically show that students with disabilities, students of color and boys are disproportionately subjected to restraint and seclusion. As noted by GAO, the uses of restraint and seclusion should only take place as a last resort— “when a child's behavior poses an imminent risk of serious physical harm to self or others.” Yet without accurate data, it is impossible to know the true extent of the use of restraint and seclusion or to know which school districts are using restraint and seclusion the most. As noted by GAO, “Without adequate systems in place to ensure the accurate, complete reporting

of restraint and seclusion data, districts may continue to erroneously report zero incidents and Education may be hindered in its enforcement of civil rights laws.”

NDRN was also extremely grateful for the [response](#) to the GAO study by Chairman Bobby Scott and Representative Don Beyer of the House Education and Labor Committee as they noted the “report is also further evidence that the state patchwork of restraint and seclusion standards is failing to protect students and educators. Congress must establish a nationwide minimum safety standard that gives educators, school districts, and states the tools and training to use more effective, evidence-based strategies that improve school climate.”

### **ED Initiative to Address the Inappropriate Use of Restraint and Seclusion to Protect Children with Disabilities**

Former Secretary of Education Betsy DeVos announced an [initiative](#) to address the inappropriate use of restraint and seclusion on January 17, 2020. The initiative is housed at ED in partnership with OCR and the Office of Special Education and Rehabilitative Services (OSERS) to help provide schools, districts, and States with technical assistance and with understanding of Section 504 and the IDEA.

Under this initiative, OCR is called to do reviews of compliance and data quality on restraint and seclusion. OSERS is to provide technical assistance, appropriate resources, and help to create better environments to prevent seclusion and restraint to identified schools. A webinar, “[Students with Disabilities and the Use of Restraint and Seclusion in K-12 Public Schools](#),” was published through this initiative to explain how federal laws apply to restraint and seclusion.

Additionally, we welcomed the recent OCR agreements in [Saco Public Schools](#) in Maine and [Huron Valley Schools](#) near Detroit, Michigan which will result in greater scrutiny of the use of restraint and seclusion in these districts. OCR reviewed these districts as part of a series of 24 compliance reviews initiated nationwide related to restraint and seclusion and we urge OCR to continue these compliance reviews.

## **Keeping All Students Safe Act (U.S. Congress)**

Since NDRN's [last report on restraint and seclusion](#), Congress has yet to pass comprehensive legislation, most notably in the form of the [Keeping All Students Safe Act \(KASSA\)](#). Broadly, KASSA would make it illegal for any school receiving federal funds to seclude a child or use dangerous restraint practices thereby establishing minimum safety standards for schools across the nation. The legislative trajectory of KASSA since its first introduction in 2009 and subsequent introductions has been well documented. Despite more than a decade since its introduction, NDRN's position remains, as outlined in our [2012 report](#), that in the absence of minimum federal standards on restraint and seclusion, the misperception that this issue can be addressed at the state or local level will persist ignoring that state and local level laws are inconsistent and slow in occurring. Broadly speaking, even some of the strongest state level bills are inadequate as measured by the continued disproportionate impact of restraint and seclusion on students with disabilities. NDRN welcomed the House Education & Labor Early Childhood, Elementary, and Secondary Education Subcommittee hearing titled "[Classrooms in Crisis: Examining the Inappropriate Use of Seclusion and Restraint Practices](#)" held in the 116<sup>th</sup> Congress. The hearing helped retain a level of Congressional focus on the issue of restraint and seclusion and the need for the enactment of KASSA.

In [May 2021](#), the *Keeping All Students Safe Act* ([H.R. 3474/S. 1858](#)) was reintroduced in the 117<sup>th</sup> Congress by U.S. Senator, Patty Murray (D-Wash.), Chair of the Senate Committee on Health, Education, Labor and Pensions (HELP), Senator Chris Murphy (D-Conn.), and U.S. Representatives Don Beyer (D-Va.), Robert C. "Bobby" Scott (D-Va.), Chair of the House Education and Labor Committee, and Donald McEachin (D-Va.). This version of the bill would continue to do most notably the following:

- Prohibiting seclusion, mechanical restraints, chemical restraints, physical restraint that restricts breathing or is life threatening, and any form of aversive behavioral intervention;
- Restraining any child, except when necessary, to protect students or staff from imminent danger of serious physical injury;



- Requiring certification of staff conducting physical restraint that meets the minimum standards;
- Prohibiting physical restraint as a planned intervention, and
- Requiring parental notification and follow-up meetings if a physical restraint occurs and notification to the appropriate P&A agency when physical injury or death of a student occurs.

NDRN continues to fiercely advocate for the passage of KASSA in order to alleviate the patchwork of state laws and establish much needed minimum federal standards.

### **Recommendations**

- Congress should pass the *Keeping All Students Safe Act* ([H.R. 3474/S. 1858](#)) which would establish minimum federal standards for the use of restraint and prohibit the use of seclusion.
- Congress should pass the *Protecting Our Students in Schools Act* ([H.R. 3836/S. 2029](#)) to prohibit schools receiving federal funding from using corporal punishment in schools and the *Counseling Not Criminalization Act* ([H.R. 4011/S. 2125](#)) to stop funding programs at the U.S. Department of Justice that support law enforcement in schools, targeting resources to expand trained school teams who support the social/emotional/behavioral needs of students. Both these bills would provide meaningful supports to improving school climate and serve as an ancillary to the goal of reducing restraint and seclusion.
- The U.S. Department of Education should utilize all of its authority at both the regulatory and sub-regulatory levels to help schools and school districts substantially reduce restraint and seclusion, improve data collection quality, and implement evidence-based positive school climates.
- The U.S. Department of Education Office of Special Education and Rehabilitative Services (OSERS) should issue a policy guidance document on restraint and seclusion in schools which at a minimum includes the recommendations for OSERS included in NDRN's report [School is Not Supposed to Hurt](#).

- The U.S. Department of Education’s Office for Civil Rights should continue to initiate compliance reviews of school districts given the national scope of the use of unnecessary restraint or seclusion which denies students with disabilities free appropriate public education (FAPE).
- The U.S. Department of Justice’s Civil Rights Division should continue to investigate whether school district’s seclusion and restraint practices violate Title II of the Americans with Disabilities Act given the national scope of the use of unnecessary restraint or seclusion.
- The U.S. Department of Education’s Office for Civil Rights and the U.S. Department of Justice’s Civil Rights Division should issue joint guidance on the implications of inappropriate and unnecessary use of restraint and seclusion on students with disabilities under the Americans with Disabilities Act. This guidance should be consistent with the respective findings in OCR’s compliance reviews and DOJ’s investigations.