

**FINAL REPORT OF THE
VIRGINIA COMMISSION ON YOUTH**

Study of Seclusion and Restraint in Schools

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



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COMMONWEALTH of VIRGINIA
Commission on Youth

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TO: The Honorable Terry R. McAuliffe, Governor of Virginia

and

Members of the Virginia General Assembly

During the 2014 General Assembly Session, Delegate Patrick Hope introduced House Bill 1106. The legislation, as adopted, directed the Commission on Youth, in consultation with the Department of Education and the Department of Behavioral Health and Developmental Services, to review (i) statewide policies and regulations related to seclusion and restraint in public and private elementary and secondary schools; and (ii) methods used in other states to reduce and eliminate the use of seclusion and restraint in public and private elementary and secondary schools. The legislation required the Commission on Youth to make recommendations and report its findings to the General Assembly no later than the first day of the 2015 Regular Session of the General Assembly.

This report represents the work of many government and private agencies and individuals who provided input to the study. The Commission on Youth gratefully acknowledges their support to this effort.

Respectfully submitted,

A handwritten signature in cursive script that reads "Christopher K. Peace".

Christopher K. Peace

MEMBERS OF THE VIRGINIA COMMISSION ON YOUTH

House of Delegates

The Honorable Christopher K. Peace, Chair

The Honorable Mamy E. BaCote

The Honorable Richard P. "Dickie" Bell

The Honorable Peter F. Farrell

The Honorable Mark Keam

One Vacancy

Senate of Virginia

The Honorable Barbara A. Favola, Vice Chair

The Honorable Dave W. Marsden

The Honorable Stephen H. Martin

**Gubernatorial Appointments
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I. Authority for Study

Section 30-174 of the Code of Virginia establishes the Commission on Youth and directs it to "...study and provide recommendations addressing the needs of and services to the Commonwealth's youth and their families." This section also directs the Commission to "...encourage the development of uniform policies and services to youth across the Commonwealth and provide a forum for continuing review and study of such services."

Section 30-175 of the Code of Virginia outlines the powers and duties of the Commission on Youth and directs it to "[u]ndertake studies and to gather information and data...and to formulate and report its recommendations to the General Assembly and the Governor."

During the 2014 General Assembly Session, Delegate Patrick Hope introduced House Bill 1106. The legislation, as passed, directed the Commission on Youth, in consultation with the Department of Education and the Department of Behavioral Health and Developmental Services, to review (i) statewide policies and regulations related to seclusion and restraint in public and private elementary and secondary schools; and (ii) methods used in other states to reduce and eliminate the use of seclusion and restraint in public and private elementary and secondary schools. The legislation required the Commission on Youth to make recommendations and report its findings to the General Assembly no later than the first day of the 2015 Regular Session of the General Assembly. A copy of the legislation is included as Appendix A.

II. Members Appointed to Serve

The Commission on Youth is a standing legislative commission of the Virginia General Assembly. It is comprised of twelve members: six Delegates, three Senators, and three citizens appointed by the Governor.

Members of the Virginia Commission on Youth are:

- Delegate Christopher K. Peace, Mechanicsville, Chair
- Delegate Mamyé E. BaCote, Newport News
- Delegate Richard P. "Dickie" Bell, Staunton
- Delegate Peter F. Farrell, Richmond
- Delegate Mark Keam, Vienna
- Senator Barbara A. Favola, Arlington, Vice Chair
- Senator David W. Marsden, Burke
- Senator Stephen H. Martin, Chesterfield
- Deirdre S. Goldsmith, Abingdon
- Frank S. Royal, Jr., M.D., Richmond
- Charles H. Slemph, III, Esq., Norton

There is one vacancy from the House of Delegates.

III. Executive Summary

During the 2014 General Assembly Session, Delegate Patrick Hope introduced House Bill 1106. The legislation, as adopted, directed the Commission on Youth, in consultation with the Department of Education and the Department of Behavioral Health and Developmental Services, to review (i) statewide policies and regulations related to seclusion and restraint in public and private elementary and secondary schools; and (ii) methods used in other states to reduce and eliminate the use of seclusion and restraint in public and private elementary and secondary schools. The Commission is to make recommendations and report its findings to the General Assembly no later than the first day of the 2015 Regular Session of the General Assembly. A copy of the legislation is included as Appendix A.

An update on the study activities and draft recommendations was reported at the Commission's September 16th and October 20th meetings. At its November 17, 2014 meeting, the Commission on Youth approved the following recommendations:

1. Request that the Governor finalize Virginia's Proposed Regulations Governing the Operation of Private Day Schools for Students with Disabilities.
2. Introduce legislation requiring the Virginia Board of Education to promulgate regulations on the use of seclusion and restraint in Virginia's public schools. These regulations will incorporate the 2009 Virginia Department of Education (VDOE) Guidelines and the U.S. Department of Education's 15 Principles on Seclusion & Restraint and address definitions, criteria for use, restrictions for use, training, notification requirements, reporting, and follow-up. The regulations will also address the diverse population of students in the public school setting including students in the general education and special education populations and distinctions between primary and secondary schools including the students' emotional and physical developmental differences.
3. Support the Department of Criminal Justice Services efforts in training appropriate parties, including School Resource Officers and School Security Officers, in student development, de-escalation, and conflict mediation in the school setting.
4. Request the Virginia Department of Education support local school divisions by providing resources and training on research-based appropriate behavioral management, prevention, de-escalation techniques to reduce the use of seclusion and restraint.

IV. Study Goals and Objectives

At its meeting on May 7, 2014, the Commission on Youth adopted a Study Plan, included as Appendix B, to examine the use of seclusion and restraint in Virginia schools. The study originated during the 2014 General Assembly Session when Delegate Patrick Hope introduced House Bill 1106. The legislation, as adopted, directed the Commission on Youth, in consultation with the Department of Education and the Department of Behavioral Health and Developmental Services, to review (i) statewide policies and regulations related to seclusion and restraint in public and private elementary and secondary schools; and (ii) methods used in other states to reduce and eliminate the use of seclusion and restraint in public and private elementary and secondary schools. The Commission was directed to report its findings to the General Assembly no later than the first day of the 2015 Regular Session of the General Assembly.

A. ISSUES

Seclusion and restraint refer to safety procedures in which a student is isolated from others (seclusion) or physically held (restraint) in response to serious behavior that places the student or others at risk of injury or harm.¹ Federal special education law and regulations guide the removal of students with disabilities from the classroom but do not establish parameters or prohibitions on the use of seclusion and restraint. In Virginia, the Department of Education has promulgated regulations governing seclusion and restraint in Virginia's private schools for students with disabilities.² Additionally, other agencies in Virginia serving youth, including the Department of Behavioral Health and Developmental Services, have promulgated regulations overseeing seclusion and restraint.³ However, there is no statute or regulation specifically governing the use of seclusion and restraint in Virginia's public schools.

In 2006, the Virginia Department of Education's Office of Special Education Instructional Services issued *Guidelines for the Development of Policies and Procedures for Managing Student Behaviors in Emergency Situations in Virginia Public Schools Focusing on Physical Restraint and Seclusion* (VDOE Guidelines). These Guidelines were later updated in 2009 and distributed to school divisions. The 2009 VDOE Guidelines were also accompanied by a Superintendent's Memorandum requesting that the school divisions review these Guidelines.

In 2009, the Department of Education conducted a review to ascertain whether Virginia's school divisions had developed local policies and procedures for restraint and seclusion. At the time of the review, 34 schools had adopted written policies on restraint and seclusion and four schools had policies on use of restraint. There were 96 schools that had no written policies on seclusion or restraint but, of these schools, 20 were in the process of developing policies.⁴ Many of the school divisions without a policy in place or in development noted that they relied upon the Virginia School Boards Association's Policy Service. At this time, the Virginia School Boards Association had not adopted a policy on this issue. However, in August of 2010, the Association adopted a policy on the use of restraint and seclusion in public schools.⁵

Virginia's use of Guidelines means that there is discretion in handling incidents pertaining to the use of seclusion and restraint. The Guidelines recommend training for staff and notifying parents after restraint or seclusion has been utilized, but there is no enforcement of these provisions. Both the VDOE Guidelines and the VSBA Policy will be discussed in greater detail in the sections which follow.

B. STUDY ACTIVITIES

The study plan approved by the Commission on Youth on May 7, 2014 included the following activities:

- Interview impacted stakeholders
 - Secretary of Education

¹ Virginia Department of Education (VDOE). (2009). *Guidelines for the Development of Policies and Procedures for Managing Student Behaviors In Emergency Situations in Virginia Public Schools Focusing on Physical Restraint and Seclusion*. [Hereinafter *VDOE Guidelines*].

² *Proposed Regulations Governing the Operation of Private Schools for Students with Disabilities* (8VAC § 20-671-630 to -660).

³ 12VAC § 35-105-830 to -840.

⁴ VDOE Guidelines. (2009).

⁵ Virginia School Boards Association. (2012). Virginia School Boards Association Policy Manual. *Restraint and Seclusion of Students*. Policy JM. 8/10. [Hereinafter *VSBA Policy*].

- Board of Education & Board of Education’s Advisory Committee on Special Education
- Superintendent of Public Instruction
- Virginia Department of Education
- Department of Behavioral Health and Developmental Services
- Virginia Board for People with Disabilities
- ARC of Virginia
- Virginia Parent Teacher Association
- Virginia School Boards Association
- Virginia School Boards Association Attorney
- Virginia Education Association
- Virginia Association of School Superintendents
- Virginia Association of Elementary School Principals
- Virginia Association of Secondary School Principals
- Educators/Guidance Counselors
- Private School and Residential Facility Representatives
- Alternative Education Representatives
- Local Education Agencies
- Virginia Council of Administrators of Special Education
- Parent Educational Advocacy Training Center
- Virginia Association of Specialized Education Facilities
- Partnership for People with Disabilities
- Clinicians and School Psychologists
- Parent and Advocacy Organizations
- Conduct extensive background and literature reviews
 - U.S. Senate’s Health, Education, Labor and Pensions Committee Study
 - Substance Abuse and Mental Health Services Administration (SAMHSA)
 - Literature on best practices of other alternatives (e.g., Positive Behavioral Supports)
 - Other states’ statutes, regulations, studies, and activities
- Review federal legislation/statutes
 - Individuals with Disabilities Education Act (IDEA)
 - Developmental Disabilities Assistance and Bill of Rights Act
 - Other related federal laws and regulations
- Review Virginia laws and regulations
 - Virginia’s Human Rights Regulations
 - Disciplinary statutes in the Code of Virginia
 - Virginia’s Regulations Governing Special Education
 - Regulations Governing the Operation of Private Day School for Students with Disabilities
 - Regulations for the Licensing of Providers of Behavioral Health and Developmental Services
 - State Special Education and Student Services’ Reports
- Analyze Virginia practices and data
 - Local school divisions’ policies on seclusion and restraint
 - Model policies from associations
 - State and local training activities
 - Practices at private schools serving youth with disabilities

- Synthesize findings of literature review and interviews
- Develop findings and recommendations
- Solicit feedback on draft recommendations from impacted stakeholders
- Refine findings and recommendations
- Present findings and recommendations to the Commission on Youth
- Prepare final report

V. Methodology and Objectives

The findings from the study are based on several distinct research activities conducted by the Commission on Youth.

A. RESEARCH AND ANALYSIS

Commission staff conducted a literature review of other states' laws and regulations dealing with seclusion and restraint in both public and private school settings. Staff reviewed the *Individuals with Disabilities Education (IDEA) Act of 2004* to understand federal requirements and procedures related to the use of seclusion and restraint with students diagnosed with a disability. Proposed federal legislation was also analyzed including the *Keeping All Students Safe Act* (H.R. 1893 and S. 2036) which was first introduced in 2013 and re-introduced in the Senate in 2014. Staff next reviewed reports published by the federal government on the issue, including reports by the Government Accountability Office and the Senate Committee on Health, Education, Labor, and Pensions. Staff also reviewed the report published by the Virginia disABILITY Law Center, *Unrestrained Danger: Seclusion and Restraint in Virginia's Public Schools*,⁶ the accompanying report: *Seclusion and Restraint in Virginia's Public Schools: Investigative Study of Policies and Procedures to Protect Students*,⁷ as well as reports published by other advocacy organizations representing all sides of the issue.

Virginia statutes related to seclusion and restraint were also studied. These statutes addressed rights of individuals receiving behavioral health/developmental services; duties of the State Inspector General to inspect juvenile justice facilities and behavioral health/development services; the prohibition of corporal punishment in Virginia's public schools; duty of educational officers to report child abuse/neglect; and definitions of child abuse and neglect. The Virginia statutes reviewed by staff related to seclusion and restraint of youth are listed below.

- Va. Code § 2.2-309.1. – State Inspector General – Additional Powers and Duties; Behavioral Health And Developmental Services
- Va. Code § 2.2-309.4. – State Inspector General – Additional Powers and Duties; Juvenile Justice
- Va. Code § 22.1-279.1. – Education/Pupils – Corporal Punishment Prohibited
- Va. Code § 22.1-291.3. – Education/Teachers, Officers, and Employees – Notice of Duty to Report Child Abuse or Neglect
- Va. Code § 37.2-400. – Behavioral Health and Developmental Services – Rights of Individuals Receiving Services
- Va. Code § 63.2.100. – Definitions Of Abused And Neglected Child

⁶ Virginia disABILITY Law Center. (2014). *Unrestrained Danger: Seclusion and Restraint in Virginia's Public Schools*. Available at <http://dlcv.org/wp-content/uploads/2014/08/Unrestrained-Danger-2014-08.pdf>

⁷ Virginia disABILITY Law Center. (2014). *Seclusion and Restraint in Virginia's Public Schools: Investigative Study of Policies and Procedures to Protect Students*. Available at <http://dlcv.org/wp-content/uploads/2014/08/Final-School-Restraint-Seclusion-with-App-A-B-C.pdf>

Virginia's regulations addressing the use of seclusion and restraint were also studied. Staff reviewed regulations governing the Department of Juvenile Justice, State Board of Education, Department of Behavioral Health and Developmental Services, Private Day Schools for Students with Disabilities, Virginia's Licensed Residential Facilities, and Standards for License Child-Placing Agencies. Virginia's proposed regulations governing private schools for students with disabilities were also analyzed.⁸ The Virginia regulations related to seclusion and restraint of youth reviewed by staff are listed below.

- 6VAC35 – Board of Juvenile Justice
 - Chapter 41 Regulation Governing Juvenile Group Homes and Halfway Houses
 - Chapter 71 Regulation Governing Juvenile Correctional Centers
 - Chapter 101 Regulation Governing Juvenile Secure Detention Centers
- 8VAC20-670-130 – State Board of Education – Regulations Governing the Operation of Private Day Schools for Students with Disabilities – Behavior Management Programs
- 8VAC20-671-10 et seq. – State Board of Education – Regulations Governing the Operation of Private Schools for Students with Disabilities (Proposed Regulations)
- 12VAC35 Chapter 46 – Department of Behavioral Health and Developmental Services – Regulations for Children's Residential Facilities
- 12VAC35-105-830 – Department of Behavioral Health and Developmental Services – Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services – Seclusion, Restraint, and Time Out
- 12VAC35-115-110 – Department of Behavioral Health and Developmental Services – Rights of Individuals Receiving Services from Providers of Mental Health, Mental Retardation and Substance Abuse Services – Use of Seclusion, Restraint, and Time Out
- 22VAC40 – Department of Social Services
 - Chapter 151 Standards for Licensed Children's Residential Facilities
 - Chapter 131 Standards for Licensed Child-Placing Agencies

Commission staff reviewed materials from the Virginia Department of Education's State Special Education Advisory Committee. As discussed previously, staff reviewed the *Guidelines for the Development of Policies and Procedures for Managing Student Behaviors in Emergency Situations in Virginia Public Schools: Focusing on Physical Restraint and Seclusion (Guidelines)* first established in 2005 and later updated in 2009. Staff also analyzed the Virginia School Boards Association's *Policy on Restraint and Seclusion of Students*, which was adopted in 2010. Finally, staff reviewed the Virginia Association of Independent Specialized Education Facilities Standards of Accreditation that addressed the use of seclusion and restraint and behavior management.

B. STAKEHOLDER INTERVIEWS

Stakeholder interviews were conducted by Commission staff in order to receive input and information on the use of seclusion and restraint in schools. Stakeholders provided valuable

⁸ *Proposed Regulations Governing the Operation of Private Schools for Students with Disabilities (8VAC20-671-10 et seq.)*.

information for the formulation of study findings and recommendations. Interviews were conducted with representatives from the following organizations:

- Virginia Department of Education
- Virginia Department of Behavioral Health and Developmental Services
- Virginia Department of Aging and Rehabilitative Services
- Virginia Department of Criminal Justice Services
- Virginia Department of Social Services
- Virginia School Boards Association Attorney
- Virginia Association of School Superintendents
- Local Education Agency (LEA) Representatives
- Virginia Association of Independent Specialized Education Facilities
- Private Education Providers
- Special Education Teachers/Guidance Counselors
- Residential Facility Representatives
- Virginia Poverty Law Center
- Virginia Bar Association's Commission on the Needs of Children
- University of Richmond Educational Clinic Representatives
- Coalition for the Improvement of School Safety
- Child Abuse and Neglect Advocates
- Parent Representatives
- Virginia Child and Family Services Council
- Virginia Coalition for Students with Disabilities
- Virginia Association of Elementary School Principals
- Virginia Association of Secondary School Principals
- Virginia Council of Administrators of Special Education

C. SURVEY OF SCHOOL DIVISION POLICIES

In July 2014, in cooperation with the Virginia Department of Education, the Commission surveyed Virginia's 134 school divisions. Commission staff designed the survey to supplement information provided to the Department of Education from local school divisions included in Virginia's 2009 Guidelines. The survey was modified based upon information obtained from stakeholder interviews and feedback received from the Department of Education and the Virginia School Boards Association. On July 25, 2014, the Department of Education transmitted the survey to Virginia's school superintendents via a Superintendent's Memorandum, provided as Appendix C, with instructions for accessing the survey. The survey instrument is included as Appendix D. Respondents were asked to complete the survey by August 25, 2014 but later responses were solicited and accepted through October 2014.

The survey inquired whether school divisions had a policy addressing the use of seclusion and restraint and whether the policy had been adopted by the local school board. Questions were also directed at evaluating how closely divisions' policies followed recommendations contained in the 2009 Virginia Guidelines and/or whether school divisions followed the Virginia School Boards Association's Policy on Restraint and Seclusion. Other questions were included to ascertain whether training was provided by school divisions and to whom it was offered. Finally, questions were included to determine which staff members used seclusion or restraint as well as how frequently it was used during the past five school years. The results from the survey are outlined in Section VI of this report.

VI. Background

This section summarizes the results of the research and analysis conducted by Commission staff.

A. DEFINITIONS

For the purposes of this report:

"Physical restraint" (or simply "restraint") means the use of any physical method of restricting an individual's freedom of movement, physical activity, or to prevent a student from moving his/her body to engage in a behavior that places him/her or others at risk of physical harm. Physical restraint does not include:

- briefly holding a student in order to calm or comfort the student; or
- holding a student's hand or arm to escort the student safely from one area to another.⁹

"Prone restraint" is a physical restraint in which an adult holds a child's face on the floor while pressing down on the child's back.¹⁰

"Seclusion" means the confinement of a student alone in a room from which the student is physically prevented from leaving.¹¹

"Chemical restraint" means a drug or medication used on a student to control behavior or restrict freedom of movement that is not:

- prescribed by a licensed physician, or other qualified health professional acting under the scope of the professional's authority under state law, for the standard treatment of a student's medical or psychiatric condition; and
- administered as prescribed by the licensed physician or other qualified health professional acting under the scope of the professional's authority under state law.¹²

"Mechanical restraint" means the use of devices as a means of restricting a student's freedom of movement; and

- does not mean devices used by trained school personnel, or used by a student, for the specific and approved therapeutic or safety purposes for which such devices were designed and, if applicable, prescribed, including:
 - restraints for medical immobilization;
 - adaptive devices or mechanical supports used to allow greater freedom of mobility than would be possible without the use of such devices or mechanical supports; or
 - vehicle safety restraints when used as intended during the transport of a student in a moving vehicle.¹³

B. Seclusion and Restraint

Seclusion and restraint are physical procedures that may be used in classrooms by teachers and other school staff to maintain order and remove possible dangers. Seclusion refers to a practice of removing a disruptive student from the classroom and placing them in an enclosed space in order to isolate them from the other students. Restraint refers to physically holding a student in place, often to prevent them from harming themselves or others.

⁹ VDOE Guidelines, p. 5.

¹⁰ VDOE Guidelines, p. 31.

¹¹ Ibid.

¹² *Keeping All Students Safe Act*, S. 2036, 113th Cong. (2014).

¹³ Ibid.

The two issues have been in the public eye somewhat recently due to a series of reports and news stories centering on their use. In 2009, the National Disability Rights Network issued *School Is Not Supposed to Hurt: Investigative Report on Abusive Restraint and Seclusion in Schools*, the first of three investigative reports.¹⁴ That same year, a Government Accountability Office (GAO) report was released that counted hundreds of allegations of abuse stemming from the use of seclusion and restraint in public schools.¹⁵

Virginia has also had events which brought the two practices into the public eye.^{16 17} The two practices have garnered criticism due to the risk of both psychological and physical damage that can ensue when it is improperly used. The very nature of physical restraint involves a certain risk of harm for those involved. This is particularly true when used by school officials who are either untrained or improperly trained. At least twenty of the cases in the GAO report ended in the death of the student, often due to the use of prone restraints, which typically involve multiple staff members holding a student face down on the floor in an attempt to stop a disruption.¹⁸ Such restraints carry a significant risk of cutting airflow off to a student's lungs.¹⁹

Conversely, school officials' and school personnel's primary goal is to protect the safety of the students as well as that of educators, administrators, and staff.²⁰ The majority of school personnel understand that seclusion and restraint should only be used in serious circumstances when other interventions have failed to address student behavior. In addition, there are times when restraint or seclusion must be used on students with no prior history of behavioral misconduct or emotional disabilities for safety reasons (e.g., to break up a fight).²¹

C. FEDERAL GUIDANCE

At the federal level, there is little statutory or regulatory guidance addressing the use of seclusion and restraint in public schools. Any guidance that is in place deals with students with disabilities, since the majority of students who are secluded or restrained are students with disabilities.²² According to the U.S. Department of Education's Office of Civil Rights, students with disabilities represent 12 percent of students enrolled in public schools but account for:

- 75 percent of the students who are subjected to physical restraint during school; and

¹⁴ National Disability Rights Network. (2009). *School Is Not Supposed to Hurt: Investigative Report on Abusive Restraint and Seclusion in Schools*. Available at

<http://www.ndrn.org/images/Documents/Resources/Publications/Reports/SR-Report2009.pdf>

¹⁵ U.S. Government Accountability Office, GAO-09-719T, (2009). *Seclusions and Restraints – Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers*. Available at <http://www.gao.gov/new.items/d09719t.pdf>

¹⁶ In March 2014, a father came forward claiming his son had been secluded for at least thirty minutes on nine separate occasions. Lorenzo Hall, *Father Claims School Leaders Locked Son in Closet Nine Times*, WTVR (Mar. 29, 2014, 10:41 AM), <http://wtvr.com/2014/03/28/powhatan-father-son-locked-away-in-storage-closet/>

¹⁷ In Prince William County, the federal Department of Education's Office for Civil Rights completed an investigation and concluded that staff of several private schools for students with disabilities were restraining and secluding students too frequently. Letter from Kay Bhagat, U.S. Office for Civil Rights, to William B. Reichhardt, Alan W.H. Gourley, and Angela A. Ciolfi (July 29, 2014) Available at https://www.justice4all.org/wp-content/uploads/2014/08/PWCPS_OCR_Letter.pdf

¹⁸ U.S. Government Accountability Office, *supra* note 7, p. 8.

¹⁹ *Ibid.*

²⁰ American Association of School Administrators. (2012). *Keeping Schools Safe: How Seclusion and Restraint Protects Students and School Personnel*. Available at http://www.aasa.org/uploadedFiles/Policy_and_Advocacy/AASA-July-2012-Keeping-Schools-Safe.pdf

²¹ *Ibid.*, p. 6.

²² Staff of S. Comm. on Health, Education, Labor, and Pensions, 114th Cong. (2014). *Dangerous Use of Seclusion and Restraints in Schools Remains Widespread and Difficult to Remedy: A Review of Ten Cases*. [Hereinafter HELP Report].

- 58 percent of students subjected to seclusion in school.²³

One of the most-cited laws in this area is the *Individuals with Disabilities Education Act of 2004* (IDEA). According to IDEA, every child with a disability has the right to “free appropriate public education,” or FAPE.²⁴ Pursuant to IDEA, FAPE must include the following:

- Education services designed to meet the individual education needs of students with disabilities as adequately as the needs of nondisabled students;
- Education of students with a disability with nondisabled students, to the maximum extent appropriate to the needs of the student with a disability;
- Evaluation and placement procedures established to guard against misclassification or inappropriate placement of students, and a periodic reevaluation of students who have been provided special education or related services; and
- Establishment of due process procedures that enable parents and guardians to:
 - Receive required notices;
 - Review their child’s records; and
 - Challenge identification, evaluation and placement decisions.²⁵

IDEA also stipulates that this education must be provided in the “least restrictive environment”, or LRE. The law states generally 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 when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.*²⁶

The services provided to a student through IDEA are specified in the child’s Individualized Education Program (IEP). An IEP is a written statement designed to meet a student’s unique needs and must be in effect:

- at the beginning of each school year;
- before special education and related services are provided for a student; and
- as soon as possible after a parent consents to the IEP.²⁷

The IEP is a very important document for students with disabilities and for those who are involved in educating them. Each student’s IEP describes the educational program that has been designed to meet their unique needs. State and federal regulations provide information on what must be included in the IEP.²⁸ The federal and Virginia-specific requirements for the IEP are provided in the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia*.²⁹ Pursuant to IDEA, services must be provided in the least restrictive setting (LRE) possible.

²³ U.S. Department of Education Office for Civil Rights. (2014). Civil Rights Data Collection. *Data Snapshot: School Discipline. Issue Brief #1.*, p. 9.

²⁴ 20 U.S.C. § 1400(d)(1)(A).

²⁵ U.S. Department of Education, Office for Civil Rights. (2010). *Free Appropriate Public Education for Students With Disabilities: Requirements Under Section 504 of the Rehabilitation Act of 1973.* Available at <https://www2.ed.gov/about/offices/list/ocr/docs/edlite-FAPE504.html>

²⁶ 20 U.S.C. § 1412(a)(5)(A).

²⁷ Virginia Department of Education. (2014). *Special Education IEP & Instruction.* Available at http://www.doe.virginia.gov/special_ed/iep_instruct_svcs/

²⁸ Ibid.

²⁹ 8VAC20-81 et. seq (*Regulations Governing Special Education Programs for Children With Disabilities In Virginia*).

IDEA requires the child's IEP Team to consider the child's behavior if it interferes with his or her education or the education of others. If a child's behavior impairs his or her learning or that of others, the IEP team will consider the use of positive behavioral interventions and supports.³⁰ If school personnel decide to change the child's placement because of a violation of a code of student conduct, the school district, parent, and relevant members of the IEP team shall review all relevant information including the IEP, to determine if the conduct was caused by or had a relationship to the child's disability.³¹ If the team determines that the child's conduct was a manifestation of the disability, the IEP shall conduct a functional behavioral assessment, and must implement a behavior intervention plan.³² If a behavior intervention plan already exists, the team must review and modify it to address the child's behavior.³³

There is also an extensive body of case law which addresses FAPE and LRE. One Fourth Circuit case, *DeVries v. Fairfax County School Board*, held that integration in the school setting is a requirement of IDEA, but not always possible in certain cases.³⁴ The Court gave a test for considering whether the environment is the least restrictive one: if a local education agency places a student in a segregated facility or classroom, it should be determined whether, "the services which make that placement superior could be feasibly provided in a non-segregated setting."³⁵ If those services could also be provided in such a setting, like an integrated classroom in a public school, the placement is inappropriate.³⁶ In essence, one of the main goals of the educational system is integration; if integration cannot be achieved, a school must place the student in the least restrictive environment possible under the circumstances. Finally, IDEA mandates that that parents and school staff meet with each other to create an individualized education program, or IEP, for each student with special needs. The IEP must include:

1. A description of the student's present level of academic achievement;
2. Annual academic and functional goals for the student; and
3. A statement of what special services the school will use in order to help the student achieve those goals.³⁷

According to the federal regulations, these services must be supported by "peer-reviewed research to the extent practicable."³⁸

The U.S. Constitution has also been read to provide protection from seclusion and restraint through the Fourth and Fourteenth Amendments. Some lawsuits arising out of the use of seclusion and restraint have been based on allegations of violations of the Fourth Amendment's guarantee against unreasonable searches and seizures, and others have been based on a Fourteenth Amendment claim of denial of due process.³⁹ At least one court has held that seclusion could be considered unreasonable under the Fourth Amendment's seizure protections.⁴⁰ However, courts have been reluctant to apply these protections to prohibit the use of restraint or seclusion; the few cases that have gone forward have been egregious uses

³⁰ 20 U.S.C. §1414(d)(3)(B)(i).

³¹ 20 U.S.C. §1415(k)(1)(E).

³² 20 U.S.C. §1415(k)(i)(F).

³³ 20 U.S.C. §1415(k)(i)(F).

³⁴ *DeVries v. Fairfax County School Board*, 882 F.2d 876, 78 (4th Cir. 1989).

³⁵ *Ibid.*, p. 879. (quoting *Roncker v. Walter*, 700 F.2d 1058, 1063 (6th Cir. 1983).

³⁶ *Ibid.*

³⁷ Definition of Individualized Education Program, 34 C.F.R. 300.320(a)(1)-(4).

³⁸ *Ibid.* at (a)(4).

³⁹ VDOE Guidelines, p. 24.

⁴⁰ *Rasmus v. Arizona*, 939 F. Supp. 709 (D. Ariz. 1996).

the court considered unreasonable or shocking, like when a student was secluded for an entire school day without access to food or a restroom.⁴¹

In 2009, U.S. Secretary of Education Arne Duncan sent a letter to states encouraging them to review their rules pertaining to the use of seclusion and restraint.⁴² In the letter, he also asked states to “publicize these policies and guidelines so that administrators, teachers, and parents understand and consent to the limited circumstances under which these techniques may be used; ensure that parents are notified when these interventions do occur; and provide the resources needed to successfully implement the policies and hold school districts accountable for adhering to the guidelines.”⁴³ Finally, Secretary Duncan highlighted the importance of Positive Behavior Intervention and Supports, or PBIS, a system developed in part to prevent the use of seclusion and restraint altogether.⁴⁴

In 2012, the U.S. Department of Education followed up on the principles embodied in Duncan’s letter with a resource document on seclusion and restraint. The document listed fifteen principles for states and local educational agencies to consider when drafting policies covering seclusion and restraint. These principles help assure that restraint or seclusion is used only if there is a threat of imminent danger of serious physical harm to the student or others and occur in a manner that protects the safety of all children and adults. These principles are outlined below.

1. Every effort should be made to prevent the need for the use of restraint and for the use of seclusion.
2. Schools should never use mechanical restraints to restrict a child’s freedom of movement, and schools should never use a drug or medication to control behavior or restrict freedom of movement (except as authorized by a licensed physician or other qualified health professional).
3. Physical restraint or seclusion should not be used except in situations where the child’s behavior poses imminent danger of serious physical harm to self or others and other interventions are ineffective and should be discontinued as soon as imminent danger of serious physical harm to self or others has dissipated.
4. Policies restricting the use of restraint and seclusion should apply to all children, not just children with disabilities.
5. Any behavioral intervention must be consistent with the child’s rights to be treated with dignity and to be free from abuse.
6. Restraint or seclusion should never be used as punishment or discipline (e.g., placing in seclusion for out-of-seat behavior), as a means of coercion or retaliation, or as a convenience.
7. Restraint or seclusion should never be used in a manner that restricts a child’s breathing or harms the child.
8. The use of restraint or seclusion, particularly when there is repeated use for an individual child, multiple uses within the same classroom, or multiple uses by the same individual, should trigger a review and, if appropriate, revision of strategies currently in place to address dangerous behavior; if positive behavioral strategies are not in place, staff should consider developing them.

⁴¹ VDOE Guidelines, p. 24.

⁴² Letter from Arne Duncan, Secretary of Education, to Chief State School Officers (July 31, 2009). Available at <http://www2.ed.gov/policy/elsec/guid/secletter/090731.html>

⁴³ Ibid.

⁴⁴ Ibid.

9. Behavioral strategies to address dangerous behavior that results in the use of restraint or seclusion should address the underlying cause or purpose of the dangerous behavior.
10. Teachers and other personnel should be trained regularly on the appropriate use of effective alternatives to physical restraint and seclusion, such as positive behavioral interventions and supports and, only for cases involving imminent danger of serious physical harm, on the safe use of physical restraint and seclusion.
11. Every instance in which restraint or seclusion is used should be carefully and continuously visually monitored to ensure the appropriateness of its use and safety of the child, other children, teachers, and other personnel.
12. Parents should be informed of the policies on restraint and seclusion at their child's school or other educational setting, as well as applicable Federal, State, or local laws.
13. Parents should be notified as soon as possible following each instance in which restraint or seclusion is used with their child.
14. Policies regarding the use of restraint and seclusion should be reviewed regularly and updated as appropriate.
15. Policies regarding the use of restraint and seclusion should provide that each incident involving the use of restraint or seclusion should be documented in writing and provide for the collection of specific data that would enable teachers, staff, and other personnel to understand and implement the preceding principles.⁴⁵

Although these principles are not binding law, they illustrate the federal government's desire to limit the use of seclusion and restraint to emergency situations, and to eliminate dangerous practices, like prone, chemical, and mechanical restraints.

While there are no binding laws governing seclusion and restraint in schools, there are laws dealing with these practices in "virtually every type of institution, including hospitals, nursing homes, and psychiatric facilities."⁴⁶ For example, the *Children's Health Act of 2000* amended Title V of the *Public Health Service Act* to include provisions covering patients in health care facilities that receive any federal funding.⁴⁷ These provisions only allow restraint or seclusion if they are "imposed to ensure the physical safety of the resident, a staff member, or others" and "upon the written order of a physician, or other licensed practitioner permitted by the state and the facility to order such restraint or seclusion, that specifies the duration and circumstances under which the restraints are to be used," unless there is an emergency situation.

In response to the lack of legislation, federal lawmakers have introduced several bills in order to regulate the use of seclusion and restraint in public schools. The 2009 GAO testimony resulted in the introduction of two Congressional bills: the *Keeping All Students Safe Act* in the House of Representatives and the *Preventing Harmful Restraint and Seclusion in Schools Act* in the Senate.⁴⁸ Ultimately, neither bill was passed. Since then, similar bills have been introduced in Congress, but none have been passed.⁴⁹ Most recently, Senator Tom Harkin re-introduced the *Keeping All Students Safe Act* on February 24, 2014.⁵⁰ This most recent incarnation of the act would affect seclusion and restraint in several ways. First, the bill would ban seclusion, mechanical restraints, chemical restraints, and any physical restraint that is life-threatening,

⁴⁵ U.S. Department of Education. (2012). *Restraint and Seclusion: Resource Document*. Washington, D.C. Available at <https://www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf>

⁴⁶ *Ibid.*, p. 11.

⁴⁷ 42 U.S.C. § 290ii.

⁴⁸ *Keeping All Students Safe Act*, H.R. 4247, 111th Cong. (2009); *Preventing Harmful Restraint and Seclusion in Schools Act*, S. 2860, 111th Cong.

⁴⁹ *Keeping All Students Safe Act*, H.R. 1381, 112th Cong. (2011); *Keeping All Students Safe Act*, S. 2020, 112th Cong.

⁵⁰ *Keeping All Students Safe Act*, S. 2036, 113th Cong. (2014).

specifically naming ones that restrict a student’s air intake.⁵¹ Use of physical restraint would be limited to situations that involve “immediate danger of serious physical harm to self or others” and when less restrictive interventions have failed. Restraint would also not be allowed to be written into a student’s IEP.⁵² School staff who restrain children would be required to be certified by state-approved programs.⁵³ Finally, any instance of restraint would result in both a parental notification and a debriefing session attended by at least one family member, in which attendees would discuss the specific circumstances of the instance at hand and plans to reduce further use of restraint.⁵⁴

D. Guidance From Other States

Due to the lack of binding federal guidance, states have handled the use of seclusion and restraint in many different ways.⁵⁵ Solutions that states have taken vary widely; some states have adopted regulations or statutes to provide clear and binding rules, others have issued nonbinding guidance, and still others have taken no action on the issue.

One state that has adopted strict prohibitions directly addressing the use of seclusion and restraint is Georgia. The state has completely banned seclusion, prone restraints, chemical restraints, and mechanical restraints for all students.⁵⁶ Physical restraints may only be used if the student is an immediate danger to himself or others, and if that student is unresponsive to less restrictive interventions.⁵⁷ Any restraint must be terminated “when the student is no longer an immediate danger to himself or others or if the student is observed to be in severe distress.”⁵⁸ The regulation also addresses procedures for after the implementation of physical restraint: written notification to parents no later than one day after the incident and documentation to be filed with the school by staff supervising the restraint.⁵⁹ Finally, training is required for each staff member who uses restraint, and records of training attendance must be made available to the public upon request.⁶⁰

Other states have laws relating to seclusion and restraint, but, like Virginia’s regulations, they only apply to certain students. The District of Columbia is one of these; regulations dealing with the practices only apply in “nonpublic special education schools.” School staff may only use seclusion or restraint if they are included in the student’s IEP or, there is a risk of serious physical harm and less intrusive actions have not or will not suffice.⁶¹ Both mechanical and chemical restraints have been banned.⁶² As in Georgia, training is required, and copies of staff certifications must be made available to the public.⁶³

Other states have no binding statute or regulation directing school districts, but rely on nonbinding guidance. In 2006, New Mexico’s Director of Special Education issued a memorandum entitled “Use of Physical Restraints as a Behavioral Intervention for Students with Disabilities.” The memorandum stated that the New Mexico Public Education Department “does

⁵¹ Ibid. at § 4.

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ “States” includes the District of Columbia.

⁵⁶ Ga. Comp. R. & Regs. 160-5-1-.35.

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ D.C. Mun. Regs. tit. 5, § 2816.1.

⁶² §§ 2817–18.

⁶³ § 2816.2.

not condone the use of mechanical restraint” but, “recognize[s] that there may be certain instances where manual restraint of a student may be necessary.”⁶⁴ The memorandum advised that school districts adopt documentation and training requirements, and recommended that local districts adopt the suggested ideas or more stringent rules. Missouri took a different approach to nonbinding guidance; its Department of Elementary and Secondary Education authored a model policy which could be used by school districts when drafting their own policies, which a state law requires.⁶⁵ Finally, other states have no guidance dealing specifically with seclusion or restraint that could be found at all, leaving total discretion to school districts or individual schools.⁶⁶

A summary of states’ policies addressing seclusion and restraint in schools is included as Appendix E.

E. Virginia Guidance and School Division Policies

In the context of public schools, Virginia has no statute or regulation which directly addresses seclusion or restraint. As noted in the Issues Section, in 2009, the Virginia Department of Education issued *Guidelines for the Development of Policies and Procedures for Managing Student Behaviors in Emergency Situations in Virginia Public Schools (VDOE Guidelines)* to address the issue of seclusion and restraint. A survey undertaken in conjunction with the VDOE Guidelines revealed that only 38 divisions at the time of the survey had adopted a “written policy, procedure, regulation, protocol, or practices contained in VDOE’s Guidance Document,” while 20 divisions were in the process of adopting such a policy.⁶⁷ In an effort to assist school divisions, the VDOE Guidelines included elements the Department felt should be included in every seclusion or restraint policy. These provisions are:

1. A determination of the behavior management program adopted by the school division and advising parents and students of the program;
2. A description and explanation of the school division’s or program’s criteria for the use of seclusion or restraint;
3. A statement that the uses of seclusion or restraint are allowed only in emergency situations;
4. The conditions under which seclusion or restraint are allowed;
5. Training and certification requirements;
6. Room and monitoring requirements for the use of seclusion;
7. Incident reporting requirements;
8. Follow-up procedures after each incident;
9. A procedure for receiving and investigating complaints regarding the use of seclusion or restraint; and
10. A statement of how and when the parents will be informed of each occurrence of seclusion or restraint.⁶⁸

These elements, though non-binding, have served as the sole state-provided guidance to the divisions on the matter of seclusion and restraint in public schools.

⁶⁴ Memorandum from Denise Koscielniak, State Director of Education, New Mexico, to Superintendents, Special Education Directors, Charter Schools, and RECs (Mar. 14, 2006). Available at <http://www.ped.state.nm.us/SEB/law/Restraint.Policy.pdf>

⁶⁵ Missouri Department of Elementary and Secondary Education. (2010). *Model Policy on Seclusion and Restraint*. Available at <https://dese.mo.gov/sites/default/files/seclusionpolicy.pdf>

⁶⁶ Butler, J. (2014). *How Safe Is the Schoolhouse? An Analysis of State Seclusion and Restraint Laws and Policies*, p. 11.

⁶⁷ *VDOE Guidelines*, pp. 32-33.

⁶⁸ *Ibid.*, pp. 13-14.

The Virginia Board of Education has drafted regulations specifically governing seclusion and restraint in Virginia's private day schools for students with disabilities, with the guidance of 152 written comments and two audio conferences.⁶⁹ The proposed regulations state that seclusion and physical restraint are only allowed in emergency situations and would require school policies to identify the behavior management techniques to be implemented in order of least to most restrictive.⁷⁰ These proposed regulations also ban chemical, prone, and mechanical restraints.⁷¹ Finally, physical restraint would only be allowed by school staff who have received proper training.⁷²

Virginia's statutory prohibition on corporal punishment also provides guidance on the use of seclusion and restraint in Virginia's public schools. Section 22.1-279 of the *Code of Virginia* specifies that corporal punishment is prohibited in Virginia's public schools. However, the statute does allow for the use of necessary and reasonable force to quell a disturbance or remove a student from the scene of a disturbance that threatens physical injury to persons or damage to property. The statute also allows school officials to use reasonable and necessary force for self-defense or defense of others and to obtain possession of weapons, other dangerous objects, or controlled substances. The statute's provisions are outlined in Chart 1.

Chart 1

Virginia Corporal Punishment Statute

Code of Virginia § 22.1-279.1. – Education /Pupils

- A. No teacher, principal or other person employed by a school board or employed in a school operated by the Commonwealth shall subject a student to corporal punishment. This prohibition of corporal punishment shall not be deemed to prevent (i) the use of incidental, minor or reasonable physical contact or other actions designed to maintain order and control; (ii) the use of reasonable and necessary force to quell a disturbance or remove a student from the scene of a disturbance which threatens physical injury to persons or damage to property; (iii) the use of reasonable and necessary force to prevent a student from inflicting physical harm on himself; (iv) the use of reasonable and necessary force for self-defense or the defense of others; or (v) the use of reasonable and necessary force to obtain possession of weapons or other dangerous objects or controlled substances or paraphernalia which are upon the person of the student or within his control.
- B. In determining whether a person was acting within the exceptions provided in this section, due deference shall be given to reasonable judgments at the time of the event which were made by a teacher, principal, or other person employed by a school board or employed in a school operated by the Commonwealth.
- C. For the purposes of this section, "corporal punishment" means the infliction of, or causing the infliction of, physical pain on a student as a means of discipline. This definition shall not include physical pain, injury or discomfort caused by the use of incidental, minor or reasonable physical contact or other actions designed to maintain order and control as permitted in subdivision (i) of subsection A of this section or the use of reasonable and necessary force as permitted by subdivisions (ii), (iii), and (v) of subsection A of this section, or the participation in practice or competition in an interscholastic sport, or participation in physical education or an extracurricular activity.

⁶⁹ Virginia Board of Education, Virginia, Time Waiver Request. (July 7, 2013). Available at <http://townhall.virginia.gov/ViewTimeWaiver.cfm?stageid=6676>

⁷⁰ *Proposed Regulations Governing the Operation of Private Schools for Students with Disabilities* (8VAC20-671-660).

⁷¹ *Proposed Regulations Governing the Operation of Private Schools for Students with Disabilities* (8VAC20-671-650).

⁷² *Proposed Regulations Governing the Operation of Private Schools for Students with Disabilities* (8VAC20-671-660).

One part of this law was repeatedly cited as vital during stakeholder interviews. School staff and other school representatives expressed strong sentiments regarding the importance of the protections for teachers built into the law, and noted that similar protections should be drafted into any seclusion or restraint law that the Commonwealth might consider.

In the absence of seclusion and restraint regulations, school divisions are free to adopt their own policies, and many do so with the help of the Virginia School Boards Association (VSBA). The VSBA is a nonpartisan advocacy organization for school boards which tracks legislation, aids in drafting policies, and provides legal advice. In 2010, the VSBA adopted a seclusion and restraint policy. A copy of this policy is attached as Appendix F.

The VSBA policy specifies that physical restraint, mechanical restraint, and seclusion may only be used by a staff member who has been trained in the proper use of the technique applied or device utilized.⁷³ Moreover, these practices may only to be used in the following circumstances:

- as needed to protect an individual from his or her own actions;
- as needed to protect others from injury by the restrained person;
- as needed to quell a disturbance;
- as needed to gain possession of weapons or other dangerous objects on the person or within the control of a student;
- as needed for self-defense;
- as needed to escort a student safely from one area to another;
- as reasonably needed to prevent imminent destruction to school or another person's property;
- when using seat belts or other safety restraints to secure a student during transportation;
- to direct the movement or actions of a student to avoid the undue or deliberate disruption of the learning environment;
- as authorized by the *Code of Virginia*, or
- as authorized by a student's IEP, Section 504 plan or behavior intervention plan.⁷⁴

VSBA policy requires school divisions to notify parents within 15 school days of a restraint incident or a physical injury occurring in the seclusion room.⁷⁵ The staff person is to make a record of information regarding its use including the date, time, duration, precipitating behavior, outcome and other pertinent observations.⁷⁶

Stakeholders interviewed by Commission staff expressed concerns with certain elements contained in the VSBA Policy. These concerns were also articulated in a report compiled by the Virginia disABILITY Law Center, a protection and advocacy organization for Virginian's with disabilities.⁷⁷ One concern shared with Commission staff was that the VSBA policy did not incorporate all of the suggested elements included in the VDOE Guidelines. Moreover, the VSBA policy gives school divisions 15 days to notify parents when restraint is used. In instances when seclusion is used, parents may not be notified at all and are only notified when an injury occurs. Timely notification when seclusion and/or restraint are used is extremely critical. Prompt notification allows parents to address the child's problem behavior at home, possibly preventing further issues. School officials interviewed by Commission staff concurred

⁷³ VSBA Policy.

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ Virginia disABILITY Law Center. (2014). *Unrestrained Danger: Seclusion and Restraint in Virginia's Public Schools*. Available at <http://dlcv.org/wp-content/uploads/2014/08/Unrestrained-Danger-2014-08.pdf>

with this, although they noted that allowing too little time might place an undue burden upon schools and cause potential legal ramifications due to weekends, holidays, or school closings.

Stakeholders also noted that allowances for seclusion or restraint “to quell a disturbance” or to “avoid undue or deliberate disruption of the learning environment” are very broad and give large amounts of discretion to school staff. Staff found reports of such use in other states with similar provisions. Stakeholders also noted that the VSBA policy allows for the use of seclusion and restraint in situations involving property damage. Finally, much of the literature on the subject discourages the use of seclusion and restraint due to its potential to cause psychological or physical damage. Stakeholders stated that these practices should be used as a last resort in a crisis situation, and not as a technique of reshaping or managing behavior.

Representatives from the VSBA provided feedback to Commission staff about the VSBA policy. While developing the policy, the VSBA ensured that it did not conflict with existing federal or state statutes/regulations. The VSBA policy was developed to be consistent with Virginia’s corporal punishment statute and incorporated protections for school staff contained in that statute. The VSBA adopted this policy to provide assistance to schools on the use of seclusion and restraint. As noted by the VSBA, the appropriate use of seclusion and restraint is not prohibited by either federal or state law and can be an appropriate technique to avoid dangerous situations and maintain order. To complicate the issue, Virginia does not have a standard definition of restraint and seclusion. Moreover, the VSBA noted that parents may file complaints with the school division about the use of restraint and seclusion pursuant to procedures already in effect to handle parental complaints. The VSBA policy acknowledges instances when the student escalates quickly and their behavior presents an immediate danger where less intrusive techniques are not feasible.⁷⁸

F. Survey of Virginia School Divisions on Seclusion and Restraint Policies

In order to understand school divisions’ different approaches in overseeing the use of seclusion and restraint, Commission staff, in partnership with the Virginia Department of Education, sent out a survey to all school division via a Superintendents’ Memo. Most of the questions contained in the survey were developed based on suggestions from the Virginia Department of Education and to supplement information obtained from the VDOE 2009 Guidelines. Input was also solicited from education stakeholders as well as representatives from the Virginia School Boards Association.

Survey results produced information on whether school divisions had adopted written seclusion and/or restraint policies, adopted the VSBA policy, or had no guidance or policy governing the use of seclusion and restraint. For school divisions with separate policies, questions were asked to ascertain whether the school divisions had incorporated the elements outlined in the VDOE 2009 Guidelines. The survey also sought information on training programs school divisions were using as well as whether school divisions kept records when seclusion and restraint was utilized.

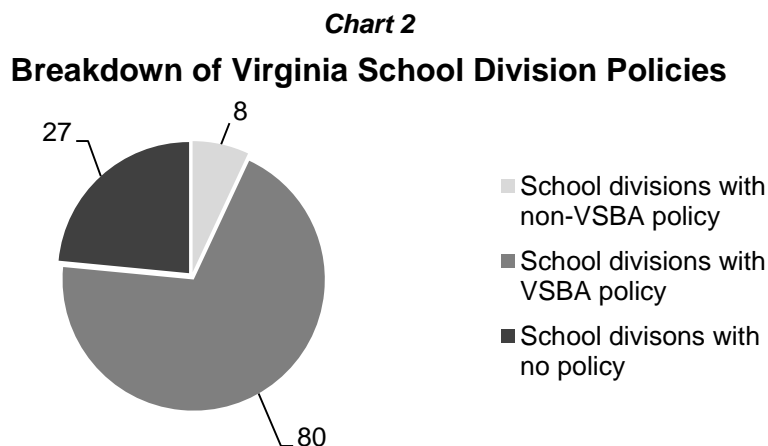
The response rate from school divisions was 86 percent (115 of 134).⁷⁹ The Superintendents’ Memo is included as Appendix C and the survey instrument is included as

⁷⁸ This information was obtained from stakeholder interviews conducted by Commission on Youth staff.

⁷⁹ Commission staff attempted to clarify any ambiguities by researching individual policies and speaking with school staff; however, the survey results are based on 115 individual interpretations of the questions. The charts included in this report are those shared with the Commission on Youth at the October 20, 2014 meeting.

Appendix D. The results of the survey were communicated to the Virginia Commission on Youth. The details from the survey are highlighted in the following paragraphs.

The breakdown of Virginia's school divisions' seclusion and restraint policies (out of the 115 respondents) are summarized in Chart 2.



In 2009 VDOE Guidelines, the Virginia Department of Education noted that 38 school divisions had a seclusion and restraint policy and 96 school divisions did not have a policy. Of the 115 responding school divisions to the Commission's survey, 80 divisions follow the VSBA policy and eight have a separate division-wide policy.⁸⁰ The survey also found that 27 school divisions did not have a seclusion and restraint policy. It is important to note that lack of a policy does not mean that a school division regularly utilizes seclusion and restraint; several divisions responded that they did not have official policies since seclusion and/or restraint did not occur in their division.⁸¹ Interviews also revealed a generalized concern among divisions that passage of a policy limiting their use of seclusion and restraint could open them up to litigation, should staff ever violate that policy. While Virginia law requires school divisions to make their policies publicly available,⁸² interviews with parents revealed that many of the parents did not view the policies online before enrolling their child in the public school system and were unaware that seclusion and restraint could be used in public schools.

Training is available for purposes of reducing the use of seclusion and restraint in schools. These training programs use positive interventions, conflict resolution, and de-escalation in an effort to prevent or limit the use of seclusion and restraint. The overall idea behind such training programs is that environments in which de-escalation or other positive means are used are healthier for students and employees alike. Furthermore, it is posited that the use of tactics such as the ones found in the training may reduce the number incidences. This training provides educators with a process to look at and treat the cause of behavioral issues rather than reacting to specific outbreaks.

⁸⁰ For the purposes of this survey, divisions that made minor modifications to the VSBA policy before adoption, such as changing the number of days given to schools to notify parents of the use of seclusion or restraint, were still considered as following the VSBA policy. More substantial modifications (i.e. modifications to the policy that would change answers to any of the questions) were separated out as not following the VSBA policy.

⁸¹ Stafford, Culpeper and Patrick Counties reported that their divisions do not use seclusion. Staunton City and the counties of Amelia, Alleghany, Danville and Highland reported their divisions do not utilize either seclusion or restraint. Alleghany County does not have a policy because seclusion and restraint are not used. One school division was in the process of drafting a seclusion and restraint policy.

⁸² 8VAC20-490-50.

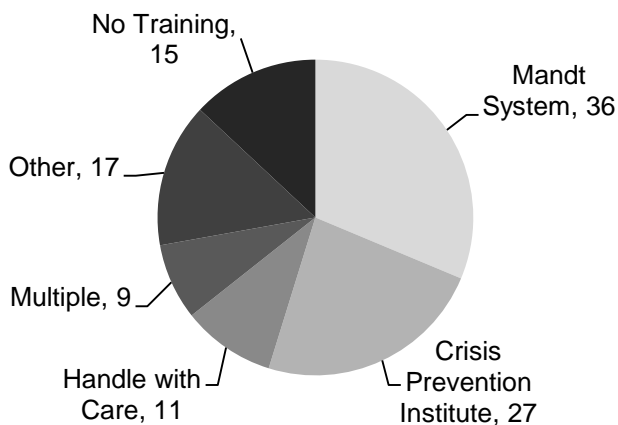
Across Virginia, school divisions train their staff using different programs with a variety of focuses, from physically-oriented programs to verbal ones. A majority of school divisions in Virginia employ training programs that utilize de-escalation techniques with the goal of reducing the use of physical force. De-escalation is a process of handling a crisis in a way that removes tension from the environment and calms the aggressor without an escalation in physical force or power. The goal is to calm an enraged or out-of-control individual to the point of having a beneficial discussion. This discussion attempts to curb future undesirable behavior and opens a dialogue for expression. By providing educators and staff with the necessary tools to effectively deal with potentially violent or belligerent students, out of control situations may be more readily avoided.

School divisions in Virginia are implementing training efforts for staff in relation to de-escalation and handling a crisis. Listed below are just a few of those training programs.

- Mandt System
- Non-Violent Conflict Intervention (NCI)
- Crisis Prevention Institute (CPI)
- Applied Crisis Training (ACT)
- Handle with Care
- Managing Aggressive Training

Training programs used by respondents to the Commission on Youth’s survey are highlighted in Chart 3.

Chart 3
Training Programs Used By Divisions



Of the 115 responding divisions, 100 divisions use some form of training. In addition to the above training programs, staff found that Positive Behavioral Intervention and Supports (PBIS) training is offered in 61 divisions. PBIS is a decision-making framework supported by the federal government aimed at teaching replacement behaviors and eliminating the need for physical interventions.⁸³ The system is gaining traction across the country, and already 19,000 of about 100,000 U.S. public schools implement it.⁸⁴ Recent federal grants are set to increase

⁸³ HELP Report, p. 10.

⁸⁴ Ibid.

this number; in October, the Governor announced that Virginia had been awarded nearly \$13.3 million in federal grant money in order to establish PBIS training in 45 additional divisions.⁸⁵

Staff found during stakeholder interviews that there were concerns associated with training. Specifically, interviewees highlighted the costs of initial training and re-certification, pointing out that school divisions may not be able to afford training if it were made mandatory, leaving teachers with no means to control a situation if a classroom were to get dangerous. School divisions nationally have also expressed concerns regarding the costs of providing such training. In 2012, the American Association of School Administrators (AASA) published a study – *Keeping Schools Safe: Ensuring Federal Policy Supports School Safety*. In an analysis of school districts across the country, the AASA used specific examples of school districts to exemplify the actual dollar amount it would take to train staff members. Loudoun County in Virginia, comprised of 9,000 employees, reported a potential cost in excess of \$120,000 for the initial training, test, and follow-up refresher course provided by the Mandt System. If such training were to become mandated, many school divisions would struggle to maintain the necessary levels of training.⁸⁶

Outside school purview, the Department of Criminal Justice Services (DCJS) trains School Resource Officers (SRO) and School Security Officers (SSO). Virginia’s SSOs are licensed by the DCJS.⁸⁷ Interviews with DCJS revealed that both SSOs and SROs receive certification from the Department, and their training includes both de-escalation and physical techniques. Among other requirements, standard training for SSOs includes knowledge of pertinent state and federal laws, mediation and conflict resolution, and student behavioral dynamics.

In addition, Virginia’s School Resource Officers (SROs) receive extensive training from law enforcement academies. The use of restraints is included in compulsory minimum training standards for law enforcement officers (i.e., SROs). Departmental policies usually cover more specific guidance on handling juveniles or those with special needs. The Virginia Center for School Safety at DCJS conducts regular School Resource Officer (SRO) Basic Training and School Security Officer Certification Trainings. Training goals are for SROs and SSOs to gain recognition of their positions within the school environment. DCJS also hosts Autism Awareness Train-the-Instructor courses. As a minimum requirement, SROs must be trained in the use of restraints in regards to juveniles and youth with special needs. DCJS also regularly hosts Autism Awareness Train-the-Instructor courses.

VII. Findings and Recommendations

At its September 16 and October 20, 2014, meetings, the Commission on Youth received findings and recommendations for this study. At its November 17, 2014 meeting, the Commission voted to adopt the following recommendations

⁸⁵ Press Release, Office of Governor Terry McAuliffe, *Governor McAuliffe Announces Federal Grants to Improve School Safety and Mental Health Services for Students* (Oct. 17, 2014). Available at http://www.doe.virginia.gov/news/news_releases/2014/10_oct17_gov.shtml

⁸⁶ American Association of School Administrators. (2012). *Keeping Schools Safe: How Seclusion and Restraint Protects Students and School Personnel*. Available at http://www.aasa.org/uploadedFiles/Policy_and_Advocacy/AASA-July-2012-Keeping-Schools-Safe.pdf

⁸⁷ Va. Code §9.1-102.

Finalize the Proposed Regulations Governing the Operation of Private Day Schools for Students with Disabilities

Findings

On June 27, 2013, the Board of Education (BOE) unanimously approved the proposed Regulations Governing the Operation of Private Schools for Students with Disabilities (8VAC20-671-10 et seq.). These regulations were drafted in response to legislation passed by the 2008 General Assembly requiring licensing agency to promulgate new regulations that govern the agency's role in serving students in group homes and residential facilities. BOE determined that a single set of regulations to govern the operation of all private schools for students with disabilities would be beneficial to placing agencies, licensing agencies, and parents seeking private placements. The proposed regulations also revised provisions pertaining to the use of seclusion and restraint. After much input from stakeholder organizations and families, the regulations included requirements that:

- the parent shall be informed on the day of each incident of physical restraint or seclusion;*
- the written report from an incident of restraint or seclusion will be made available to the parent within two business days of the occurrence and opportunity given for the parent and student, as appropriate, to discuss the matter with school staff; and*
- schools to annually report to the VDOE the number of times restraint and seclusion was used during the school year.*

Additional requirements for managing student behavior in emergency situations when it was necessary to use restraint or seclusion were also included in the regulations.

During the regulatory process, the VDOE held two audio conferences and received 152 written comments. Most comments were supportive of the recommendations submitted by the Coalition for Students with Disabilities, a statewide network of organizations collaborating to support education rights and opportunities for students. The VDOE agreed with the Coalition's recommendations and addressed each in the proposed regulations. The proposed regulations were certified by the Office of the Attorney General and are currently being reviewed by the Governor's Office.

Recommendation

Request that the Governor finalize Virginia's Proposed Regulations Governing the Operation of Private Day Schools for Students with Disabilities.

Regulate the Use of Seclusion and Restraint in Virginia's Public Schools

Findings

According to the VDOE Guidelines issued in 2009, seclusion and restraint refer to safety procedures in which a student is isolated from others (seclusion) or physically held (restraint) in response to serious problem behavior that places the student or others at risk of injury or harm. There is no statute or regulation specifically governing the use of seclusion and restraint in Virginia's public schools.

In 2006, the VDOE issued Guidelines for the Development of Policies and Procedures for Managing Student Behaviors in Emergency Situations in Virginia Public Schools Focusing on Physical Restraint and Seclusion. These Guidelines were updated in 2009 and a Superintendent's Memorandum requesting that all school divisions review these Guidelines was distributed to local school divisions. The VDOE encouraged school divisions to adopt its guidelines or develop policy regarding physical restraints and seclusion. The Guidelines outline what school divisions should include in their policies such as training requirements, inclusion of methods for preventing violent behavior, informing parents of policies, notifying

parents when seclusion/restraint is used, time limits for notification monitoring requirements, follow-up procedures and reporting requirements.

In August 2010, the Virginia School Boards Association (VSBA), a voluntary and nonpartisan organization of school boards, adopted a policy regarding restraints and seclusion – *Restraint and Seclusion of Students*. The VSBA policy addresses criteria and restrictions for use and notification and monitoring requirements. COY interviewed family members, advocates, and school officials. Concerns expressed about the VSBA policy include:

- authorizing the use of seclusion/restraint as needed to quell a disturbance;
- authorizing the use of seclusion/restraint as reasonably needed to prevent imminent destruction to school or another person's property;
- lack of follow-up procedures; and
- lack of timely notification and/or lack of parental notification (parents are notified within 15 school days of a restraint incident, and if seclusion is used, only when a physical injury occurs in the seclusion room).

The Commission on Youth conducted a survey of Virginia's school divisions during the summer of 2014 to determine which divisions had adopted policies. As of October 13, 2014, 114 of 134 school divisions responded to the survey. The survey revealed that:

- 78 school divisions utilize the VSBA Policy on Restraint and Seclusion;
- 9 have a separate school policy (non-VSBA) on seclusion and restraint; and
- 27 school divisions have no policy on seclusion and restraint.

Of these 27, two divisions noted they were drafting a policy, one noted they had documented procedures in place, and three school divisions responded that seclusion and restraint were not utilized.

Family members and advocacy organizations noted that Virginia's reliance upon guidelines means that there is discretion in handling incidents pertaining to the use of seclusion and restraint. The Guidelines recommend training for staff and notifying parents after restraint or seclusion has been utilized, but there is no enforcement of these provisions.

While there is no statute or regulation specifically governing the use of seclusion and restraint in Virginia's public schools, there are regulations overseeing the use of seclusion and restraint for:

- Virginia's private schools for students with disabilities licensed by DOE which oversee seclusion and restraint;
- Children's residential facilities and providers licensed by DBHDS;
- Children's residential facilities licensed by the Virginia Department of Social Services (VDSS); and
- Juvenile correctional centers, detention homes, residential centers, group homes and halfway houses.

It is important to note that seclusion and restraint are more likely to be used with students with disabilities. According to the U.S. Department of Education's Office of Civil Rights, students with disabilities represent:

- 12% of students enrolled in public schools;
- 75% of the students who are subjected to physical restraint during school; and
- 58% of students subjected to seclusion in school.

During interviews with school officials, concerns were raised regarding the need for flexibility. The majority of students attending Virginia's public schools are in the general

education population and do not receive special education services pursuant to the Individuals with Disabilities Education Act (IDEA). Any recommendation adopted by the Commission should not be a “one-size-fits-all” approach. The facility specifications of a public school with campus-style architecture are very different from many private school settings. Moreover, the emotional and physical developmental differences of students attending primary versus secondary schools must also be considered.

School officials’ primary goal is to protect the safety of the students as well as that of educators/administrators/staff. Schools are becoming increasingly confronted with youth who exhibit challenging behaviors. For example, if it is mandated that training is required for all staff prior to use of restraint, school officials may hesitate intervening when there is a need to restrain a student for safety reasons (e.g., to break up a fight in the cafeteria). Schools also lack funding to train school personnel in costly proprietary crisis intervention and de-escalation techniques.

The U.S. Department of Education has identified 15 principles that states, local school divisions, parents, and other stakeholders should consider as the framework when implementing seclusion and restraint policies. These principles help assure that restraint or seclusion is used only if there is a threat of imminent danger of serious physical harm to the student or others and occur in a manner that protects the safety of all children and adults. These principles encourage schools to establish policies that:

- 1. Prevent the use of restraint and seclusion;*
- 2. Prohibit the use mechanical and chemical restraint;*
- 3. Prohibit the use unless the student poses imminent danger of serious physical harm to self or others and other interventions are ineffective, and should be discontinued when imminent danger dissipates;*
- 4. Apply to all children;*
- 5. Are consistent with the students’ rights to be treated with dignity;*
- 6. Assures seclusion and restraint is never used as punishment, discipline, coercion, retaliation, or for convenience;*
- 7. Assures that restraint is never used in manner that restricts breathing (prone restraint);*
- 8. Trigger review and potential revision of strategies currently in place to address dangerous behavior and the implementation of positive behavioral strategies, if deemed necessary;*
- 9. Incorporate behavioral strategies to address the underlying cause or function/purpose of behaviors;*
- 10. Encourage regular training for teachers/school personnel;*
- 11. Establish careful and continuous visual monitoring;*
- 12. Inform parents of policies and applicable laws;*
- 13. Notify parents as soon as possible after each incident;*
- 14. Establish regular review and update, if appropriate, of existing policies; and*
- 15. Create documentation and data collection requirements.*

Recommendation

Introduce legislation requiring the Board of Education to promulgate regulations on the use of seclusion and restraint in Virginia’s public schools. These regulations will be consistent with the 2009 Department of Education Guidelines and the U.S. Department of Education 15 Principles on Seclusion & Restraint and address definitions, criteria for use, restrictions for use, training, notification requirements, reporting, and follow-up procedures.

Encourage Training Efforts

Findings

Training is available for purposes of reducing the use of seclusion and restraint in schools. These training programs use positive interventions, conflict resolution, and de-escalation in an effort to prevent or limit the use of seclusion and restraint. The overall idea behind such training programs is that environments in which de-escalation or other positive means are used are healthier for students and employees alike. Furthermore, it is posited that the use of tactics such as the ones found in the training may reduce the number incidences. This training provides educators with a process to look at and treat the cause of behavioral issues rather than reacting to specific outbreaks.

De-escalation is a process of handling a crisis in a way that removes tension from the environment and calms the aggressor without an escalation in physical force or power. The end result is to calm an enraged or out-of-control individual to the point of having a beneficial discussion. This discussion attempts to curb future undesirable behavior and opens a dialogue for expression.

A majority of school divisions in Virginia employ training programs that utilize de-escalation techniques with the goal of reducing the use of physical force. By providing educators and staff with the necessary tools to effectively deal with potentially violent or belligerent students, out of control situations may be more readily avoided. Listed below are just a few of those training programs.

- *Mandt System*
- *Crisis Prevention Institute (CPI)*
- *Handle with Care*

School divisions in Virginia are implementing training efforts for staff in relation to de-escalation and handling a crisis. The Commission on Youth surveyed 134 school divisions and found that 100 of the 114 responding school divisions provide staff de-escalation training. This training was offered to staff members authorized to implement seclusion and restraint.

The main concern associated with mandating school-wide training is the cost. School divisions both nationally and in the Commonwealth have expressed concerns regarding the costs of providing such training. In 2012, the American Association of School Administrators (AASA) published a study – Keeping Schools Safe: Ensuring Federal Policy Supports School Safety. In an analysis of school districts across the country, the AASA used specific examples of school districts to exemplify the actual dollar amount it would take to train staff members. Loudoun County in Virginia, comprised of 9,000 employees, reported a potential cost in excess of \$120,000 for the initial training, test, and follow-up refresher course provided by the MANDT program. If such training were to become mandated, many school divisions would struggle to maintain the necessary levels of training. According to the AASA report, 81 percent of school districts across the country report being inadequately funded.

Virginia's School Security Officers (SSOs) licensed by the Virginia Department of Criminal Justice Service (DCJS) also receive training on de-escalation techniques. Among other requirements, standard training for SSOs includes knowledge of pertinent state and federal laws, mediation and conflict resolution, and student behavioral dynamics. In addition, Virginia's School Resource Officers (SROs) received extensive training. As a minimum requirement, SROs must be trained in the use of restraints in regards to juveniles and youth

with special needs. DCJS also regularly hosts Autism Awareness Train-the-Instructor courses.

Recommendation 1

Support the Department of Criminal Justice Services efforts in training appropriate parties, including School Resource Officers and School Security Officers, in student development, de-escalation, and conflict mediation in the school setting.

Recommendation 2

Request the Department of Education support local school divisions by providing resources and training on research-based appropriate behavioral management, prevention, de-escalation techniques to reduce the use of seclusion and restraint.

VIII Acknowledgements

The Virginia Commission on Youth extends special appreciation to the following for their assistance and cooperation on this study:

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University of Richmond School of Law
Kevin Cottingham

CHAPTER 770

An Act to direct the Virginia Commission on Youth to review and report on the use of seclusion and restraint in the public and private elementary and secondary schools of the Commonwealth.

[H 1106]

Approved April 7, 2014

Be it enacted by the General Assembly of Virginia:

1. § 1. The Virginia Commission on Youth, in consultation with the Department of Education and the Department of Behavioral Health and Developmental Services, shall review (i) statewide policies and regulations related to seclusion and restraint in public and private elementary and secondary schools and (ii) methods used in other states to reduce and eliminate the use of seclusion and restraint in public and private elementary and secondary schools. The Virginia Commission on Youth shall make recommendations for the modernization of Virginia's policies and regulations related to seclusion and restraint in schools and submit its recommendations no later than November 30, 2014, to the General Assembly. The Virginia Commission on Youth shall report its findings to the Governor and the 2015 Regular Session of the General Assembly.

HB 1106

USE OF RESTRAINT/SECLUSION BY SCHOOLS STUDY PLAN

Study Mandate

- During the 2014 General Assembly Session, Delegate Patrick Hope introduced House Bill 1106, directing the Commission on Youth, in consultation with the Department of Education and the Department of Behavioral Health and Developmental Services, to review:
 - i. statewide policies and regulations related to seclusion and restraint in public and private elementary and secondary schools; and
 - ii. methods used in other states to reduce and eliminate the use of seclusion and restraint in public and private elementary and secondary schools.
- The Commission is to make recommendations and report its findings to the General Assembly no later than the first day of the 2015 Regular Session of the General Assembly.

Identified Issues

- Seclusion and restraint refer to safety procedures in which a student is isolated from others (seclusion) or physically held (restraint) in response to serious problem behavior that places the student or others at risk of injury or harm.⁸⁸
- Special education law and regulations guide the removal of students with disabilities from the classroom. Virginia's private schools for students with disabilities licensed by the Department of Education and the Department of Behavioral Health and Developmental Services have promulgated regulations overseeing seclusion and restraint.⁸⁹ However, there is no statute or regulation specifically governing the use of seclusion and restraint in Virginia's public schools.
- In 2006, the Virginia Department of Education's Office of Special Education Instructional Services issued *Guidelines for the Development of Policies and Procedures for Managing Student Behaviors in Emergency Situations in Virginia Public Schools Focusing on Physical Restraint and Seclusion*. These Guidelines were updated in 2009. A Superintendent's Memorandum requesting that all school divisions review these Guidelines was distributed to local school divisions.
- Virginia's use of Guidelines means that there is discretion in handling incidents pertaining to the use of seclusion and restraint. The Guidelines recommend training for staff and notifying parents after restraint or seclusion has been utilized, but there is no enforcement of these provisions.
- In 2009, the Department of Education conducted a review to ascertain whether Virginia's school divisions had developed local policies and procedures for restraint and seclusion. At the time of the review, 34 schools had adopted written policies on restraint and seclusion and 4 schools had policies on use of restraint. There were 96 schools that had no written

⁸⁸ Virginia Department of Education. (2009). *Guidelines for the Development of Policies and Procedures for Managing Student Behaviors In Emergency Situations in Virginia Public Schools Focusing on Physical Restraint and Seclusion*.

⁸⁹ 8VAC20-670 et seq. and 12VAC35-105 et seq.

policies on seclusion or restraint but, of these schools, 20 were in the process of developing policies. Many of the school divisions without a policy in place or in development noted that they relied upon the Virginia School Board Association's Policy Service.

- In February of 2014, legislation was introduced by Senator Tom Harkin (D-IA). The Keeping All Children Safe Act (S. 2036) would establish federal minimum standards to limit the use of restraint and seclusion in schools. This legislation is similar to HR 1893, introduced by Rep. George Miller (D-CA).

Study Activities

- Interview impacted stakeholders
 - Secretary of Education
 - Board of Education & Board of Education's Advisory Committee on Special Education
 - Superintendent of Public Instruction
 - Virginia Department of Education
 - Department of Behavioral Health and Developmental Services
 - Virginia Board for People with Disabilities
 - ARC of Virginia
 - Virginia PTA
 - Virginia School Boards Association
 - Virginia School Board Attorneys
 - Virginia Education Association
 - Virginia Association of School Superintendents
 - Virginia Association of Elementary School Principals
 - Virginia Association of Secondary School Principals
 - Educators/Guidance Counselors
 - Private School and Residential Facility Representatives
 - Alternative Education Representatives
 - Local Education Agencies
 - Virginia Council of Administrators of Special Education
 - Parent Educational Advocacy Training Center
 - Virginia Association of Specialized Education Facilities
 - Partnership for People with Disabilities
 - Clinicians and School Psychologists
 - Parent and Advocacy Organizations
- Conduct extensive background and literature reviews
 - U.S. Senate's Health, Education, Labor and Pensions Committee Study
 - Substance Abuse and Mental Health Services Administration (SAMHSA)
 - Literature on best practices of other alternatives (e.g., Positive Behavioral Supports)
 - Other states' statutes, regulations, studies, and activities
- Review federal legislation/statutes
 - Individuals with Disabilities Education Act (IDEA)
 - Developmental Disabilities Assistance and Bill of Rights Act
 - Other related federal laws and regulations
- Review Virginia laws and regulations
 - Virginia's Human Rights Regulations
 - Disciplinary statutes in the Code of Virginia
 - Virginia's Regulations Governing Special Education

- Regulations Governing the Operation of Private Day School for Students with Disabilities
- Regulations for the Licensing of Providers of Behavioral Health and Developmental Services
- State Special Education and Student Services' Reports
- Analyze Virginia practices and data
 - Local school divisions' policies on seclusion and restraint
 - Model policies from associations
 - State and local training activities
 - Practices at private schools serving youth with disabilities
- Synthesize findings of literature review and interviews
- Develop findings and recommendations
- Solicit feedback on draft recommendations from impacted stakeholders
- Refine findings and recommendations
- Present findings and recommendations to the Commission on Youth
- Prepare final report

Superintendent's Memo No. 197-14



COMMONWEALTH of VIRGINIA
Department of Education

July 25, 2014

TO: Division Superintendents

FROM: Steven R. Staples, Superintendent of Public Instruction

SUBJECT: Survey on the Use of Restraint/Seclusion by Public Schools

The Virginia Commission on Youth, a bipartisan commission of the Virginia General Assembly, is studying the use of restraint/seclusion by schools in the Commonwealth. This study originated from legislation adopted by the 2014 General Assembly. Delegate Patrick Hope introduced House Bill 1106, which directed the Commission on Youth to, “review statewide policies and regulations related to seclusion and restraint in public and private elementary and secondary schools and methods used in other states to reduce and eliminate the use of seclusion and restraint in public and private elementary and secondary schools.” The bill provides that this study will be conducted in consultation with the Virginia Department of Education (VDOE) and the Virginia Department of Behavioral Health and Developmental Services. The *Code of Virginia*, at §30-177, states that “The Commission may request and shall receive from every department, division, board, bureau, commission, authority or other agency created by the Commonwealth, or to which the Commonwealth is party, or from any political subdivision of the Commonwealth, cooperation and assistance in the performance of its duties.”

The Commission has developed a survey to gather this information. We ask that you complete this survey online at <https://www.surveymonkey.com/s/VCOYsurvey>. The survey should be completed no later than **Monday, August 25, 2014**, to afford the Commission adequate time to prepare the survey findings prior to the 2015 General Assembly Session.

The Commission and VDOE sincerely appreciate your support with this effort. It is critical that the General Assembly have this information to assist in making informed policy decisions. Please feel free to call Amy Atkinson, executive director of the Virginia Commission on Youth, at (804) 371-2481 if you have any questions. Thank you for your attention to this matter.

SRS/PVH/stg

APPENDIX D

COMMISSION ON YOUTH SURVEY ON THE USE OF RESTRAINT/SECLUSION BY PUBLIC SCHOOLS

What is the name of your school division?

Does your school division have a written seclusion and/or restraint policy?

- Yes, included in school board policies and procedures
- Yes, but not included in school board policies and procedures
- No

If your policy is not included in the school board policies and procedures, where can it be found? Use this space for any additional comments.

Has your division adopted the Virginia School Board Association's (VSBA) policy on seclusion and restraint?

- Yes
- No

Check all that apply.

Does your division's policy:

Obligate the school division to advise the parents of the schools' policy regarding the use of seclusion and restraint?

- Seclusion
- Restraint

Have a clear definition of seclusion and restraint?

- Seclusion
- Restraint

State that seclusion and restraint may only be allowed in emergency situations?

- Seclusion
- Restraint

Describe the conditions under which seclusion and restraint may be allowed?

- Seclusion
- Restraint

Set limitations on the use of seclusion (e.g., time and frequency of use) on seclusion and restraint?

- Seclusion
- Restraint

Establish training and certification requirements for all staff members who employ seclusion and restraint?

- Seclusion
- Restraint

Establish which school personnel are authorized to utilize seclusion and restraint?

- Seclusion
- Restraint

Provide incident reporting requirements to the principal or other staff when seclusion and restraint are utilized?

- Seclusion
- Restraint

Provide for follow-up procedures after the use of seclusion and restraint?

Seclusion Restraint

Provide a procedure for receiving and investigating complaints regarding the use of seclusion or restraint?

Seclusion Restraint

Mandate disclosure to parents after the use of seclusion or restraint?

Seclusion Restraint

Provide clear guidelines for how parents should be informed (e.g. in person or writing) when seclusion or restraint are utilized?

Seclusion Restraint

Establish a timeframe for parental notification when seclusion and restraint are utilized?

Seclusion Restraint

Does your division offer training on de-escalation techniques for engaging with students?

Yes

No

What training program(s), if any, are offered to staff regarding the use of de-escalation techniques?

Who receives training?

Principal

Assistant Principal

General Education teacher

Special Education teacher

Teacher's assistant

School security staff

Other (please specify) _____

What training program(s), if any, are offered to staff regarding the use of seclusion and/or restraint?

Who receives training?

Principal

Assistant Principal

General Education teacher

Special Education teacher

Teacher's assistant

School security staff

Other (please specify) _____

Who secludes and restrains students most often in your division? Multiple answers are permitted.

Seclusion	Restraint
<input type="checkbox"/> Principal	<input type="checkbox"/> Principal
<input type="checkbox"/> Assistant Principal	<input type="checkbox"/> Assistant Principal
<input type="checkbox"/> General Education teacher	<input type="checkbox"/> General Education teacher
<input type="checkbox"/> Special Education teacher	<input type="checkbox"/> Special Education teacher
<input type="checkbox"/> Teacher's assistant	<input type="checkbox"/> Teacher's assistant
<input type="checkbox"/> School security staff	<input type="checkbox"/> School security staff
<input type="checkbox"/> Other (please specify)	<input type="checkbox"/> Other (please specify)

Does your division keep records of seclusion and restraint use during the school year?

- Yes
 No

How many instances of seclusion were there in your division during:

- the 2013-2014 school year? _____
the 2012-2013 school year? _____
the 2011-2012 school year? _____
the 2010-2011 school year? _____
the 2009-2010 school year? _____

How many instances of restraint were there in your division during:

- the 2013-2014 school year? _____
the 2012-2013 school year? _____
the 2011-2012 school year? _____
the 2010-2011 school year? _____
the 2009-2010 school year? _____

Comments:

Do you have any other comments, questions, or concerns?

APPENDIX E

Summary of States' Laws and Regulations Addressing Seclusion and Restraint in Schools⁹⁰

State	Restraint	Restraint Law	Seclusion	Seclusion Law
Alabama	Regulated	Admin. Code 290-3-1-.02	Regulated	Admin. Code 290-3-1-.02
Alaska	No law		No law	
Arizona	No law		No law	
Arkansas	No law	Ark. Admin. Code 005.18.20-20.0	Regulated	Ark. Admin. Code 005.18.20-20.0
California	Regulated for special ed. students	Ca. Educ. § 56521.1	Regulated for special ed. students	Ca. Educ. § 56521.2
Colorado	Regulated	1 CCR 301-45	Regulated	1 CCR 301-45
Connecticut	Regulated	C.G.S.A. § 46a-152	Regulated	C.G.S.A. § 46a-152
Delaware	Regulated	Del. Code tit. 14, § 4122f	Regulated	Del. Code tit. 14, § 4122f
District of Columbia	Regulated for special ed. students	D.C. Mun. Regs. Subt. 5-A, § 2816	Regulated for special ed. students	D.C. Mun. Regs. Subt. 5-A, § 2819
Florida	Regulated	West's F.S.A. § 1003.573	Regulated	West's F.S.A. § 1003.573
Georgia	Regulated	Ga Comp. R. & Regs. 160-5-1-.35	Regulated	Ga Comp. R. & Regs. 160-5-1-.35
Hawaii	No law		No law	
Idaho	No law		No law	
Illinois	Regulated	23 Ill. Adm. Code 1.285	Regulated	23 Ill. Adm. Code 1.285
Indiana	No law; model code provided by commission	IC 20-20-40	No law; model code provided by commission	IC 20-20-40
Iowa	Regulated	Iowa Admin. Code 281-103.5(256B,280)	Regulated	Iowa Admin. Code 281-103.6(256B,280)
Kansas	Regulated	K.A.R. 91-42-2	Regulated	K.A.R. 91-42-2
Kentucky	Regulated	704 Ky. Admin. Regs. 7:160	Regulated	704 Ky. Admin. Regs. 7:160

⁹⁰ This table was last updated September 2014.

State	Restraint	Restraint Law	Seclusion	Seclusion Law
Louisiana	Regulated	La. Admin Code. tit. 28, pt. XLIII, § 543	Regulated	La. Admin Code. tit. 28, pt. XLIII, § 543
Maine	Regulated	05-071 CMR Ch.33, § 5	Regulated	05-071 CMR Ch.33, § 6
Maryland	Regulated	COMAR 13A.08.04.05	Regulated	COMAR 13A.08.04.05
Massachusetts	Regulated	603 CMR 46.04	Regulated	603 CMR 46.02
Michigan	No law		No law	
Minnesota	Regulated for special ed. students	M.S.A. § 125A.0942	Regulated for special ed. students	M.S.A. § 125A.0942
Mississippi	No law; all districts required to "limit" via policy	Miss. Admin. Code 7-114	No law; all districts required to "limit" via policy	Miss. Admin. Code 7-114
Missouri	No law; all districts required to define and limit	V.A.M.S. 160.263	No law; all districts required to define and limit	V.A.M.S. 160.263
Montana	Regulated	MCA 20-4-302	Regulated for special ed. students	Mont.Admin.R. 10.16.3346
Nebraska	No law	Neb. Admin. R. & Regs. Tit. 92, Ch. 10, § 011	No law; all districts required to address via policy	Neb. Admin. R. & Regs. Tit. 92, Ch. 10, § 011
Nevada	Regulated for special ed. students	N.R.S. 394.368	No law	N.R.S. 394.368
New Hampshire	Regulated for special ed. students	N.H. Code Admin. R. Ed 1113.04	Regulated for special ed. students	N.H. Code Admin. R. Ed 1113.04
New Jersey	No law		No law	
New Mexico	No law		No law	
New York	Regulated	8 NYCRR 200.15	Regulated	8 NYCRR 200.15
North Carolina	Regulated	N.C.G.S.A. § 115C-391.1	Regulated	N.C.G.S.A. § 115C-391.1
North Dakota	No law		No law	
Ohio	Regulated	OAC 3301-35-15	Regulated	OAC 3301-35-15
Oklahoma	No law		No law	
Oregon	Regulated	OAR 581-021-0553	Regulated	OAR 581-021-0553
Pennsylvania	Regulated for special ed. students	22 Pa. Code § 14.133	No law	22 Pa. Code § 14.133

State	Restraint	Restraint Law	Seclusion	Seclusion Law
Rhode Island	Regulated	R.I. Admin. Code 21-2-39:5.0	Regulated	R.I. Admin. Code 21-2-39:3.0
South Carolina	No law		No law	
South Dakota	No law		No law	
Tennessee	Regulated for special ed. students	Tenn. Comp. R. & Regs. 0520-01-09-.23	Regulated for special ed. students	Tenn. Comp. R. & Regs. 0520-01-09-.23
Texas	Regulated	19 TAC § 89.1053	Regulated	19 TAC § 89.1053
Utah	No law		No law	
Vermont	Regulated	Vt. Admin. Code 7-1-12:4502	Regulated	Vt. Admin. Code 7-1-12:4502
Washington	Regulated	WAC 392-172A-03120	Regulated	WAC 392-172A-03120
West Virginia	No law; recommendations	W. Va. Code St. R. § 126-99 Manual	No law; recommendations	W. Va. Code St. R. § 126-99 Manual
Wisconsin	Regulated	W.S.A. 118.305	Regulated	W.S.A. 118.305
Wyoming	Regulated	WY Rules and Regulations EDU GEN Ch 42 s 7	Regulated	WY Rules and Regulations EDU GEN Ch 42 s 7

RESTRAINT AND SECLUSION OF STUDENTS

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

As used in this policy,

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

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

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

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

- as needed to protect an individual from his or her own actions;
- as needed to protect others from injury by the restrained person;
- as needed to quell a disturbance;
- as needed to gain possession of weapons or other dangerous objects on the person or within the control of a student;
- as needed for self-defense;
- as needed to escort a student safely from one area to another;
- as reasonably needed to prevent imminent destruction to school or another person’s property;

- when using seat belts or other safety restraints to secure a student during transportation;
- to direct the movement or actions of a student to avoid the undue or deliberate disruption of the learning environment;
- as authorized by the Code of Virginia, or
- as authorized by a student's IEP, Section 504 plan or behavior intervention plan.

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

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

- the use of incidental, minor or reasonable physical contact or other actions designed to maintain order and control;
- the use of reasonable and necessary force to quell a disturbance or remove a student from the scene of a disturbance which threatens physical injury to persons or damage to property;
- the use of reasonable and necessary force to prevent a student from inflicting physical harm on himself;
- the use of reasonable and necessary force for self-defense or the defense of others;
- the use of reasonable and necessary force to obtain possession of weapons or other dangerous objects or controlled substances or paraphernalia which are upon the person of the student or within his control;
- physical pain, injury or discomfort caused by participation in practice or competition in an interscholastic sport; or
- participation in physical education or an extracurricular activity.

Documentation and Notice to Parents

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

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

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

Adopted:

Legal Ref.: Code of Virginia, 1950, as amended, § 22.1-78, 22.1-279.1.

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

