



SECLUSION & RESTRAINT IN SCHOOLS

North Dakota has no statewide rules governing seclusion and restraint

North Dakota is one of only four states that has no laws, regulations, or statewide policies or guidelines governing seclusion and restraint in schools. Based on the compelling testimony by parents and advocacy groups offered at a state Senate hearing in the last legislative session on a proposed bill that would have protected children from seclusion and restraint, there is evidence that seclusion and restraint is a problem in North Dakota's public schools. The Protection and Advocacy Project (P&A) is also aware of several incidents reported to P&A where school children were injured or traumatized by the improper or unnecessarily excessive use of seclusion and restraint.

Recent legislative efforts to address seclusion and restraint

In 2015, advocacy groups in the state submitted a resolution to the Legislature calling for an interim study of seclusion and restraint in schools. When Legislative Management chose the topic for study in the Interim Education Committee, P&A convened a task force that proposed a modest bill (S.B. 2275) for consideration in the 2017 legislative session. The bill failed in the Senate. In 2019 & 2021, statewide advocacy organizations again submitted legislation that would have defined key terms and specified minimal requirements for school districts to incorporate in their local policies. These legislative activities were not successful.

Federal civil rights laws impose limits on seclusion and restraint

The federal government, through agencies such as the Department of Education's Office for Civil Rights (OCR) and Office of Special Education and Rehabilitative Services (OSERS), the Government Accounting Office (GAO), and the Department of Justice's OCR have explained to local education agencies (LEAs) through "Dear Colleague" letters and other guidance that the use of seclusion and restraint may result in discrimination against students with disabilities, thereby violating Section 504 of the Rehabilitation

Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (ADA)(both as amended). (See, e.g., *OCR Dear Colleague Letter: Restraint and Seclusion of Students with Disabilities*, 2016)
<https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201612-504-restraint-seclusion-ps.pdf>

In its 2016 OCR Dear Colleague letter at page 9, Catherine Lhamon, Assistant Secretary for Civil Rights, wrote that OCR would likely find it to be a justified response to restrain or seclude a student with a disability in situations where the student’s behavior poses imminent danger of serious physical harm to self or others, but that OCR would not find the “repeated use of restraint and seclusion to be a justified response where alternative methods also could prevent imminent danger to self or others.” Also, the Assistant Secretary wrote at page 11 that when a school district restrains or secludes a student with a disability for behavior that would not result in the restraint or seclusion of peers without disabilities, OCR would likely find that the school district engaged in “unnecessary different treatment on the basis of disability” prohibited by Section 504.

CRDC data collection

The Civil Rights Data Collection (CRDC) is a biennial (i.e., every other school year) survey required by the Department of Education’s OCR. Since 1968, the CRDC has collected data on key education and civil rights issues, which now include incidents of seclusion and restraint, in our nation’s public schools for use by OCR in its enforcement and monitoring efforts regarding equal educational opportunity. The CRDC is also a tool for other Department offices and federal agencies, policymakers, researchers, educators, school officials, and the public to analyze student equity and opportunity. CRDC is intended to include data from nearly every public school in the nation (approximately 16,500 school districts, 97,000 schools, and 50 million students).

Schools are to use the CRDC’s definitions of seclusion and restraint when counting and reporting incidents. Under CRDC definitions, physical restraint broadly refers to restricting a student’s ability to freely move his or her torso, arms, legs, or head. Mechanical restraint broadly refers to the use of any device or equipment to restrict a student’s freedom of movement. Seclusion broadly refers to involuntarily confining a student alone in a room from which he or she cannot physically leave.

In the Department of Education’s May 15, 2012 publication entitled *Restraint and Seclusion: Resource Document*, the Department recommended, as part of fifteen guiding principles, that school districts never use mechanical

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restraint; that school districts never use physical restraint or seclusion for disciplinary purposes; and that trained school officials should use physical restraint or seclusion only if a child's behavior poses imminent danger of serious physical harm to self or others.

In March 2018, the Government Accounting Office reported on the use of seclusion and restraint for the 2013-2014 school year, the most recent data available at that time. The data showed that nationally, students with disabilities experienced seclusion and restraint disproportionately. Data disparity alone does not prove discrimination, but it raises a question regarding whether school districts are imposing seclusion and restraint in discriminatory ways. The newest data from the CRDC (2019) is disturbing. It reflects the experience of more than 50 million students at 97,000 schools across the country during the 2015-2016 school year. The figures show 122,000 students were restrained or secluded a school. The vast majority of these students had disabilities. The Education Department said children served under the IDEA represented 71% of those restrained and 66% of students subjected to seclusion.

A school district discriminates on the basis of disability by:

- (1) unnecessarily treating students with disabilities differently from students without disabilities;
- (2) implementing the policies, practices, procedures, or criteria that have the effect of discriminating against students on the basis of disability; or
- (3) denying the right to a free appropriate public education (FAPE).

Education's OCR and the Department of Justice's Civil Rights Division enforce several civil rights laws which protect students from discrimination based on disability. As part of their enforcement, both agencies conduct investigations in response to complaints or reports of possible discrimination. When investigating a school district, the agencies examine any available data, including the CRDC data, as well as the school district's policies, practices, procedures, and criteria to determine whether unlawful discrimination has occurred and, if so, they work with the school district to craft an appropriate remedy.

In January 2019, Secretary of Education Betsy DeVos announced a new initiative to respond to the inappropriate use of seclusion and restraint in schools reflected in the 2015-2016 CRDC data. She said the Department's OCR, in partnership with the Office of Special Education and Rehabilitative Services (OSERS), will conduct compliance reviews focused on inappropriate use of seclusion and restraint on children with disabilities and work with schools to correct noncompliance. She said OCR will conduct data-quality

reviews regarding reports of wide underreporting of seclusion and restraint data by school districts. OCR will provide technical assistance to school districts and work with them to improve the accuracy of the data. And finally, the OCR and OSERS offices will work together to provide joint educational assistance to school districts to help them understand how federal laws such as the IDEA and the ADA should inform the development of state and district seclusion and restraint policies. Currently the Education Department's OCR is investigating seclusion and restraint in the Fargo Public School District.

Additionally, in April of 2020, the US Government and Accountability Office (GAO) issued notice and recommendations to address the use of seclusion and restraint within schools, along with the data collection and reporting process. GAO identified that the processes currently in place for data collection is largely ineffective or do not exist after their analysis of the 2-15-2016 data. Details regarding this study can be found at <https://www.gao.gov/assets/710/706269.pdf>.

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