

ND PROTECTION & ADVOCACY PROJECT

RESTRAINT AND SECLUSION

What are restraint and seclusion?

Physical restraint means restricting a student's ability to freely move their torso, arms, legs, or head. Mechanical restraint means using a device or equipment to restrict a student's freedom of movement (not including things like seatbelts or medically prescribed equipment or devices). Seclusion means closing a student in a room and not letting the student leave.

North Dakota has no statewide rules governing seclusion or restraint

School districts may have a policy or procedure about the use of restraint and/or seclusion. School board policies are often posted on your school district's website. You may also request copies of policies by contacting the school.

If your school district does not have a policy, you can ask the school board to adopt a policy. The U.S. Department of Education's resource document: [Restraint and Seclusion](#) (2012) contains fifteen (15) principles for states, local school districts, preschool, elementary and secondary schools, parents, and other stakeholders to consider as framework when developing and implementing policies and procedures.

The use of restraint and/or seclusion may result in discrimination of students with disabilities

Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of Americans with Disabilities Act of 1990 (Title II) (both as amended) protect against discrimination and may apply to situations involving restraint and/or seclusion.

Discrimination on the basis of disability by school districts occurs when:

- Students with disabilities are unnecessarily treated differently from students without disabilities;
- Policies, practices, procedures, or criteria are implemented that have the effect of discriminating against students on the basis of disability; or
- The right to a free appropriate public education (FAPE) is denied.

This handout is for informational purposes and is not legal advice.

Source: [Dear Colleague Letter: Restraint and Seclusion of Students with Disabilities](#), December 28, 2016.

Students with disabilities are disproportionately impacted by restraints and seclusions

The most recent federally reported data shows that North Dakota students with disabilities were secluded twice as often as students without disabilities in the 2017-18 school year. Students with disabilities were restrained three times as often as students without disabilities in the 2017-18 school year.

Source: [Office of Civil Rights \(OCR\) Civil Rights Data Collection \(CDRC\) biannual survey 2017-18 Restraint & Seclusion Estimations](#).

What is an improper use of restraint or seclusion?

It depends on whether your school has a policy and what that policy says. The U.S. Department of Education's guidance says that schools should never use mechanical restraint, physical restraint, or seclusion for disciplinary purposes. 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.

On September 7, 2022, the U.S. Department of Justice (DOJ) published information regarding "[Combating Improper Seclusion in Schools](#)," in an effort to educate about and stop improper use of seclusion in schools.

Restraints or seclusions that cause injury to a child are concerning (i.e. bruising, or restraints which interfere with the child's ability to breathe). If restraint or seclusion is occurring, your child's school should have records. Ask questions to learn what is happening and document your findings (how often, when, where, who).

A student experiencing behavior challenges in school may have a disability, even if there are no academic struggles. Repeated use of restraint and/or seclusion may indicate a student requires an evaluation or reevaluation of the need for special education services and related services. The cause for behavior should always be evaluated and responded to appropriately. If your child receives special education services and supports, they should be reevaluated for effectiveness. If there is a behavior plan in place, it should be reevaluated. Repeated use of restraint and/or seclusion indicates a student's needs are not being met.

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What do I do if I have concerns about restraint or seclusion?

Investigate what has happened or what is happening with your child and with the school. Document, find out if your school has a policy, get a copy of the policy, and gather records relating to the restraint(s) and/or seclusion(s). The U.S. Department of Education's (DOE) Office of Civil Rights (OCR) enforces Section 504 and Title II. OCR provides guidance on interpreting these laws and regulations. It also conducts investigations in response to complaints or reports of possible discrimination. The DOE's [Dear Colleague Letter: Restraint and Seclusion of Students with Disabilities](#) is a helpful resource which talks about Section 504 and restraint/seclusion.

If you believe your child has been improperly secluded, please visit the U.S. Department of Justice Civil Rights Division Portal to [file a complaint online](#) or call 1-877-292-3804 (toll free).

Anyone who believes a school that receives Federal financial assistance has discriminated against someone based on race, color, national origin, sex, disability, or age, can file a complaint of discrimination with the Office of Civil Rights within 180 days of the alleged discrimination. The person or organization filing the complaint need not be a victim of the alleged discrimination but may complain on behalf of another person or group.

For more details, please visit www.ed.gov/ocr/complaintintro.html or contact OCR's customer service team at 1-800- 421-3481 (TDD 1-800-877-8339)

FOR MORE INFORMATION, VISIT OR CONTACT:

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If you need this handout in an alternative format, please contact the Protection & Advocacy Project.



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