



COMMONWEALTH OF VIRGINIA
Department of Education
Division of Special Education and Student Services
Office of Dispute Resolution & Administrative Services

July 8, 2009

SUPPLEMENTAL REPORT

TO: Special Education Directors Council
Special Education Administrators
State Special Education Advisory Committee (SSEAC)

FR: Judy Douglas, Director, and ODR/AS Staff

RE: Physical Restraint and Seclusion in Virginia's Public Schools

Since the SSEAC and Special Education Directors Council meetings in April 2009, the use of restraint and seclusion has been the subject of national meetings and reports, including a congressional hearing. As a follow up to the previous report provided in April, ODR/AS was asked to provide a summary of information on selected meetings and reports.¹ In addition, Virginia school divisions were contacted to compile a listing of those school divisions that do and do not provide training on the use of restraint and seclusion. Included in this follow-up report are summaries of national meetings recently held, major reports that have been issued, and the data from a survey of local school divisions related to training on the use of restraint and seclusion.

I. National Meetings

Congressional Hearing

The Committee on Education and Labor convened a full committee hearing on May 19, 2009. The committee reviewed a report from the Government Accountability Office (summarized in this document), entitled *Seclusions and Restraints: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers*, and heard testimonies from two mothers of victims,

¹ Following the April Special Education Directors Council meeting, a number of special education administrators requested that a copy of VDOE's Supplemental Report on this subject be mailed directly to them.

two assistant superintendents from local school divisions, and a university professor. The hearing included a great deal of interaction among the committee members and those testifying. While no recommendations resulted from the meeting, the committee indicated that some action is needed to address the issues. A video of the hearing and copies of the testimony are available at:

<http://edlabor.house.gov/hearings/2009/05/examining-the-abusive-and-dead.shtml>

White House Meeting

On May 25, 2009, approximately 40 representatives of education and disability groups were invited to meet at the White House with Kareem Dale, special assistant to the president for disability policy, to discuss issues related to the use of restraint and seclusion in schools. The White House press office reported that the meeting resulted in general agreement that action is needed to address these issues. The press office further reported that the meeting was very productive, but offered no specific information on the issues or potential outcomes.

Council for Exceptional Children (CEC) Briefing

CEC, in collaboration with its Division, the Council for Children with Behavioral Disorders (CCBD), held a congressional briefing entitled "Enhancing School Safety: Appropriate Use of Restraint & Seclusion Procedures" on June 8, 2009. Clemson University Assistant Professor Joe Ryan, Ph.D., was an invited speaker. Dr. Ryan, who is also a CCBD Board Member, presented CCBD's positions on the use of physical restraints and seclusion in school settings and spoke about the use of positive behavioral supports. Reports related to these positions are summarized in this report.

II. Major Reports Issued

- Congressional Research Service (May 21, 2009). *The Use of Seclusion and Restraint in Public Schools: The Legal Issues* [On-line]. Available at: http://www.spannj.org/information/CRS_Report_on_Legal_Issues_in_Seclusion_&_Restraints.pdf

In response to congressional interest on the topic, the CRS developed this report as a review of legal issues related to the seclusion and restraint in public schools. Among the key points made:

- The applicability of the fourth amendment (which prohibits the government from subjecting individuals to “unreasonable search and seizures”) and the fourteenth amendment (which prohibits the government from depriving an individual of his liberty without the due process of the law) has been used to argue against the use of restraint and seclusion. The courts, however, have applied a reasonableness standard to the use of restraint and seclusion.

- Neither restraint nor seclusion is specifically mentioned in IDEA, but the IEP team must consider the use of positive behavioral supports and other strategies to address behavior.
 - The U.S. Supreme Court has not expressly addressed the use of restraint and seclusion but in *Honig v Doe* (1988), the Supreme Court indicated that educators may utilize “normal procedures” which may include the use of study carrels, timeouts, detention, or the restriction of privileges.”
- Council for Children with Behavioral Disorders (May 17, 2009). *CCBD’s Position Summary on the Use of Physical Restraint Procedures in School Settings* [On-line]. Available at: http://www.cec.sped.org/AM/Template.cfm?Section=Content_Folders&TEMPLATE=/CM/ContentDisplay.cfm&CONTENTID=12385

This position paper provides some basic information, but specifically details recommendations regarding the use of physical restraint in schools. Each recommendation is elaborated. Among the recommendations are:

- Physical restraints should rarely be used.
 - Restraints should be conducted by those who are trained in the use of restraint procedures.
 - Restraints to control behavior should be used only under certain emergency situations.
 - Physical restraint should be used only by a team and never conducted without at least one additional staff member present and in line of sight.
 - Prone restraints should never be used.
 - Restraint procedures are not teaching procedures and should not be used as a punishment or to force compliance.
 - The use of restraint should always be documented immediately and placed in the student’s record and provided to the parent.
- Council for Children with Behavioral Disorders (May 17, 2009). *CCBD’s Position Summary on the Use of Seclusion in School Settings* [On-line]. Available at: http://www.cec.sped.org/AM/Template.cfm?Section=Content_Folders&TEMPLATE=/CM/ContentDisplay.cfm&CONTENTID=12386

This position paper provides some basic information, but most specifically details and discusses recommendations regarding the use of seclusion in schools. Among the recommendations are:

- Seclusion should be used only rarely in schools.
- Staff who use seclusion procedures must have training in conflict prevention, the crisis cycle and interventions at each stage, possible effects of seclusion, first aid and CPR.

- Seclusion should never be used as a punishment, to force compliance, or as a substitute for appropriate educational support.
 - Seclusion to control behavior should be used only under specific emergency circumstances which are described in the report.
 - The use of seclusion should be documented after each use with a copy placed in the student's file and provided to the parent.
 - A staff de-briefing should occur after every use of seclusion.
 - Any student in seclusion must be continuously observed by an adult both visually and aurally for the entire period of the seclusion.
- National Association of State Mental Health Program Directors National Technical Assistance Center (October 31, 2005). *A Snapshot of Six Core Strategies for the Reduction of S/R* [On-line]. Available at:
http://www.hogg.utexas.edu/PDF/Six%20Core%20Strat_Snapshot.pdf

Listed and discussed in this document are the following strategies to reduce the use of seclusion and restraint:

- Leadership toward organizational change
 - Use of data to inform practice
 - Workforce development
 - Use of seclusion and restraint tools
 - Consumer roles in inpatient settings
 - Debriefing techniques
- National Disability Rights Network (2009, January). *School is Not Supposed to Hurt: Investigative Report on Abuse and Restraint in Schools* [On-line]. Available at
<http://www.napas.org/sr/SR-Report.pdf>

ODR/AS' April 2009 report provided a brief summary of this document. The Network addresses the problems associated with the use of restraint and seclusion, what the Network identified as inadequate legal protections and oversight, and provides snapshots of cases that resulted in harm to children. Suggested and discussed are a number of actions including outreach and training, education advocacy, investigations and monitoring, and state legislation. Generally recommended is the use of positive behavioral support programs that are proactive, comprehensive, and data driven. There are also specific recommendations

included for the Obama administration, Congress, state legislatures, and Boards of Education. Common among these recommendations are:

- Ban the use of seclusion in schools.
 - Ban the use of prone restraints or any other restraint than can suffocate an individual in schools.
 - Ban the use of all other types of restraint in schools except restraints as applied by trained individuals where the immediate physical safety of the student, staff, or others is clearly required.
 - Require the use of evidence-based positive behavioral supports and other best practices.
- United States Government Accountability Office (May 22, 2009). *Seclusions and Restraints: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers* [On-line]. Available at <http://www.gao.gov/new.items/d09719t.pdf>

This report was developed as the result of a request from the Committee on Education and Labor after learning about cases that resulted in the injury or death of students who had been restrained. Specifically, this report provides: an overview of federal and state laws related to the use of restraints and seclusions; examples of cases where it was alleged that children were harmed or died as the result of the use of restraint or seclusion in public and private schools; and, a number of more in-depth case studies. The appendix lists the laws in each state related to the use of restraint and seclusion in public and private schools.

In several places in its report, the GAO includes Virginia as one of the states having regulations governing restraint and seclusion. However, the report's focus is on public schools and private schools. Virginia's private special education schools and residential facilities are governed by regulations that include provisions related to the use of restraint and seclusion; however, Virginia has no similar regulations for its public schools. The GAO Report is misleading as to Virginia being included in those states having regulations specific to restraint and seclusion. It is not until the reader views the report's appendix containing the various states' laws that the reader understands that Virginia law relative to restraint and seclusion pertains only to private special education schools.

III. Training Results for Virginia LEAs

Polling results indicated that 81 LEAs (61.4%) provide training on the use of restraint and seclusion, and 51 LEAs (38.6%) do not. Following are lists of those schools divisions that provide training and those that do not.

Some respondents volunteered the following reasons for not providing training:

- The LEA does not have students that require the use of restraint/seclusion.
- Students who may need either restraint or seclusion are placed in private placements.
- Some LEAs provided training in the past, but no longer do.
- The LEA relies on School Resource Officers for any restraint needed.

A variety of training programs are used ranging from locally developed programs to formal, proprietary training. The most frequently cited programs were the Mandt System and training provided by the Crisis Prevention Institute. Other programs cited included Handle with Care, TOVA (Therapeutic Options of Virginia), Managing Aggressive Children, Non-Violent Conflict Intervention (NCI); and Applied Crisis Training (ACT).

LEAs that provide training to staff on the use of restraint and seclusion: 81

Accomack	Dinwiddie	Loudoun*	Roanoke City
Albemarle	Fairfax	Louisa	Rockingham
Alexandria	Falls Church	Lunenburg	Salem
Amherst*	Fauquier	Lynchburg	Scott
Appomattox	Floyd*	Madison	Shenandoah
Arlington*	Fluvanna	Manassas	Smyth
Augusta	Franklin County*	Mathews	Spotsylvania
Bath	Frederick	Mecklenburg*	Stafford
Bedford*	Galax	Nelson*	Staunton
Botetourt	Giles	New Kent	Sussex
Bristol	Gloucester	Newport News	Tazewell
Buena Vista	Goochland	Norfolk*	Virginia Beach
Campbell	Greene	Norton	Warren
Caroline	Halifax	Nottoway	Westmoreland
Carroll	Hampton	Orange*	Williamsburg/JCC
Charlottesville	Hanover	Page	Wise
Chesapeake	Harrisonburg	Poquoson*	Wythe
Chesterfield	Henry	Prince William	York*
Covington	Hopewell	Pulaski	
Culpeper	Isle of Wight	Radford*	
Danville	King William*	Richmond City	

* The school divisions identified with a single asterisk (*) were not contacted for this report since they had indicated in the April survey that they provide training.

- **LEAs that do not provide training to staff on the use of restraint and seclusion: 51**

Alleghany	Dickenson	Manassas Park	Rappahannock
Amelia	Essex	Martinsville	Richmond County
Bland	Franklin City	Middlesex	Roanoke County
Brunswick	Fredericksburg	Montgomery	Rockbridge
Buchanan	Grayson	Northampton	Russell
Buckingham	Greensville	Northumberland	Southampton
Charles City	Henrico	Patrick	Suffolk
Charlotte	Highland	Petersburg	Surry
Clarke	King and Queen	Pittsylvania	Washington
Colonial Beach	King George	Portsmouth	Waynesboro
Colonial Heights	Lancaster	Powhatan	West Point
Craig	Lee	Prince Edward	Winchester
Cumberland	Lexington	Prince George	

Questions regarding this report should be directed to Dr. Judy Douglas at 804-225-2771, or Dr. Suzanne Creasey at 804-225-2923.

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