

### CODIFYING BEST PRACTICE

The 111<sup>th</sup> and 112<sup>th</sup> U.S. Congress considered legislation on the use of restraint and seclusion in schools (*H.R. 4247, S. 2860, S. 3895, H.R. 1381, and S. 2020*). However, to date, Congress has not taken action on legislation related to restraint and seclusion in schools.

The 2006 MDE Standards, titled *Supporting Student Behavior: Standards for the Emergency Use of Seclusion and Restraint*, is recognized nationally as one of the best of its kind. Written by a statewide referent group of stakeholders, the Standards are clearly written and grounded in research and evidenced-based practices. When implemented with fidelity, they provide excellent guidance and safeguards for students, parents, and school personnel.

**Recommendation #1:** *Other than prohibiting certain practices such as corporal punishment and chemical and mechanical restraint (which are already prohibited in §380.1312(1) of The Revised School Code, 1976 PA 451), the Legislature should leave decisions about seclusion and restraint to policy that is developed by the Department, in conjunction with key stakeholders. Attempts to codify best practice for school districts are ultimately not enforceable.*

*If the Legislature insists on codifying best practice, we recommend that the Michigan House and Senate instead pass a joint resolution that the Department, in conjunction with key stakeholders (including parents), draft a State Board of Education Policy that draws on the 15 principles outlined in the United States Department of Education's 2012 Restraint and Seclusion: Resource Document, which are as follows:*

- **Principle 1:** Every effort should be made to prevent the need for the use of restraint and the use of seclusion.
- **Principle 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).
- **Principle 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.
- **Principle 4:** Policies restricting the use of restraint and seclusion should apply to all children, not just children with disabilities/IEPs.
- **Principle 5:** Any behavioral intervention must be consistent with the child's rights to be treated with dignity and to be free from abuse.
- **Principle 6:** Restraint or seclusion should never be used as punishment or discipline as a means of coercion or retaliation, or as a convenience.
- **Principle 7:** Restraint or seclusion should never be used in a manner that restricts a child's breathing or harms the child.
- **Principle 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.
- **Principle 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.
- **Principle 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. Key identified personnel shall additionally be trained to support instances involving imminent danger of serious physical harm, on the safe use of physical restraint and seclusion.
- **Principle 11:** Every instance in which restraint or seclusion is used should be carefully and continuously and visually monitored to ensure the appropriateness of its use and safety of the child, other children, teachers, and other personnel.
- **Principle 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.

- **Principle 13:** Parents should be notified as soon as possible following each instance in which restraint or seclusion is used with their child.
- **Principle 14:** Policies regarding the use of restraint and seclusion should be reviewed regularly and updated as appropriate.
- **Principle 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.

## DEFINITIONS & TERMINOLOGY

The term **Seclusion** is a term that is used at a national level and is recognized by the following (among others):

- U.S. Department of Education (USDOE)
- U.S. Department of Civil Rights (OCR)
- U.S. Government Accountability Office (GAO)
- U.S. Congress (House of Representatives, Senate)
- National Association of State Mental Health Programs (NASMHP)
- Federal Department of Health and Human Services (DHHS)
- Federal Office of Special Education (OSEP)
- Substance Abuse and Mental Health Services Administration (SAMHSA)

The terms “separation” and “emergency separation” are deceptive to parents and the public in general. A person unfamiliar with the obscure definition of the term provided in the draft legislation would likely assume that it meant removal from the classroom or immediate environment, not confinement in a room or area from which exit is physically prevented. The term seclusion accurately and honestly describes the conditions of confinement.

**Recommendation 2:** *If restraint & seclusion is codified, strike the term ‘Separation’ from the proposed legislation language, including Definition U.*

**Recommendation 3:** *If restraint & seclusion is codified, modify Definition T to read as follows:*

*To qualify as seclusion, the room or area used for confinement must not be locked; must not prevent the student from exiting the area should staff become incapacitated or leave that area; and must provide for adequate space, lighting, ventilation, constant viewing, and the safety of the student. Seclusion does not include confinement that occurs in a sensory deprivation room—~~seclusion room, quiet room, padded isolation room, or any other room that is outside the usual teaching environment.~~ Seclusion does not include or the confinement of preschool children or of pupils who are severely self-injurious or suicidal.*

Narrowing the locations where seclusion (‘separation’) may be used to that of “usual teaching environment” is problematic. The legislation prohibits seclusion and then describes a practice that constitutes seclusion, but which can only occur in environments that are inherently dangerous for a student whose behavior is an “imminent risk to their own safety or that of others.” Seclusion rooms, when utilized correctly, are designed to provide for the maximum safety, dignity, and well-being of the student. To do seclusion or “separation” in what is referred to as the “usual teaching environment” would—in almost all cases—increase risk to the safety of the student, classmates, and staff.

**Recommendation 4:** *If restraint & seclusion is codified, eliminate reference to the ‘usual teaching environment’ as the only location where seclusion (‘separation’) may be used and strike Definitions H, W, and U.*

Prohibiting the use of seclusion ('separation') in case of emergency (Subsections (4)(A)(iv) and (4)(A)(v)) is problematic. In their individualized Behavior Intervention Plans (BIPs), many children have time away or timeout listed as a proactive strategy that allows them to regain composure in a dignified way and return to the larger educational environment.

**Recommendation 5:** *If restraint & seclusion is codified, eliminate Subsection 4 from legislation. Prohibited practices are already governed by §380.1312(1) of The Revised School Code, 1976 PA 451. Additional language is redundant and removes the ability of an IEP team, which includes parents, to prescribe positive behavioral supports and de-escalation techniques, which may include seclusion (or what the draft legislation is terming 'separation').*

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Creating new definitions for terms is problematic, when there are already nationally-recognized ones.

**Recommendation 6:** *If restraint & seclusion is codified, utilize the definitions contained in the US Department of Education's 2012 document titled *Restraint and Seclusion: Resource Document for the following terms:**

- Functional Behavioral Assessment
  - Physical Restraint
  - Positive Behavior Interventions and Supports
  - Seclusion
  - Timeout
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While it doesn't preclude its use, draft legislation provides no reference to an individualized Behavior Intervention Plan (BIP). This term appears instead to have been replaced by the term 'Positive Behavioral Intervention and Support Plan' (Definition N), which is similar to Definition M (Positive Behavioral Intervention and Support, or PBIS). In the field, PBIS refers to a classroom-wide or school-wide plan for *all* students to encourage and support appropriate behavioral choices. Adding the word 'Plan' on the end of a widely-utilized term will confuse staff and parents.

A BIP is often developed for an individual child with behavioral concerns by his/her IEP team, which includes parents. If the school team anticipates the need to utilize seclusion or restraint after all other de-escalation techniques and positive behavior supports are exhausted, the BIP allows parents to have informed consent in the case of an emergency. Otherwise, schools face the prospect of a student experiencing many uses of the procedure without explicit consent from the parent. This is in the best interest of the student, parents, or staff.

**Recommendation 7:** *If restraint & seclusion is codified, Definition N should become 'Behavior Intervention Plan'.*

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There are multiple definitions contained in the draft legislation that should be eliminated.

**Recommendation 8:** *If restraint & seclusion is codified, remove the following definitions:*

- *Contingent Observation (C)*
- *Emergency Separation (G)*
- *Exclusionary Timeout (H)*
- *Planned Ignoring (L)*
- *Positive Behavior Support Plan (N)*
- *Separation (U)*
- *Usual Teaching Environment (V)*
- *Withdrawal of Materials (X)*

## STAFF TRAINING AND PROFESSIONAL DEVELOPMENT

Currently, most school districts provide ongoing training in de-escalation techniques, as well as more comprehensive training for key identified staff in restraint and seclusion (e.g. Crisis Prevention Intervention). Current draft language significantly increases training requirements on the LEA/PSA/ISD to provide comprehensive training for the following:

- the broader educational community,
- preservice teachers, and
- substitute teachers.

This is well beyond the scope of what districts should be required and are able to provide.

**Recommendation 9:** *If restraint & seclusion is codified, strike (4)(F) from the legislation in its entirety. If it must remain, it should read as follows:*

*A school district, intermediate school district, or public school academy must implement comprehensive training framework that includes awareness training for the broader educational community, including at least preservice training for all teachers, awareness training for substitute teachers, and for key identified personnel as described in Subparagraph (ii).*

## HEADLEE AMENDMENT IMPLICATIONS

Section 29 of the Headlee Amendment prohibits the state from mandating that local governments provide new services unless the state reimburses the locals for any necessary increased costs they may incur. The following new LEA/PSA/ISD requirements pose significant Headlee implications:

- New data collection and submission components - Section (4)(E)
- Comprehensive training framework that includes training for the broader community, district-wide, key personnel, preservice teachers, and substitute teachers- Section (4)(F)
- Identification and data submission of key personnel and their credentials - Section (4)(E)
- Development and publication of new 'Emergency Intervention Plan' - Section (4)(D)
- Creation of a Human Rights Committee- Section (4)(D)

**Recommendation 10:** *If restraint & seclusion is codified, strike Section (4)(F) from the legislation in its entirety.*