

Representative Barbara McLachlan, Chair
Representative Matthew Martinez, Vice-Chair
House Committee on Education

Ben Jones, J.D., Director of Legal and Policy Initiatives
Lives in the Balance
benjones@livesinthebalance.org

Hearing Date: Wednesday, March 27, 2024

Re: Support of HB 24-1167, Prohibit Student Seclusion

My name is Ben Jones and I am the Director of Legal and Policy Initiatives at Lives in the Balance, a national non-profit organization that advocates for our most vulnerable kids, and helps caregivers intervene in evidence-based ways that are collaborative, proactive, non-punitive, non-exclusionary, and effective.

With nearly one-third of Colorado students chronically absent, it is more important than ever for kids to feel safe in school.¹ Placing students in solitary confinement (seclusion) is not only dangerous and ineffective... it is simply unnecessary. HB 24-1167 bans the use of seclusion in school and provides educators more effective resources.

Seclusion is unnecessary - there are alternatives

Lives in the Balance has worked with countless schools and school systems to help them dramatically reduce or completely eliminate their use of seclusion (and restraint) through implementation of the evidence-based *Collaborative & Proactive Solutions* model. So we've been in the trenches, know the tremendous challenges being placed on educators in special education classrooms, and are all-too-aware of the training they've received previously that causes them to intervene in ways that are reactive instead of proactive.

We find that reducing reliance on restraint and seclusion requires the debunking of a few myths. Although restraint and seclusion are often referred to as crisis prevention strategies, they are not. They occur very late in a sequence of events that begins with an expectation a student is having difficulty meeting, usually an expectation that caregivers already know the student can't reliably meet. When caregivers are focused on proactively identifying those expectations (we call them unsolved problems) and help kids solve those problems – collaboratively and proactively – that's true crisis prevention and the need for crisis management is dramatically reduced. As one example, we worked extensively with the Fairfax County Public Schools (FCPS), the largest school system in Virginia. Three years ago, FCPS used thousands of

¹ Meltzer, E. (2023, November 9). *Nearly a third of Colorado students missed too much school last year.* Chalkbeat; <https://www.chalkbeat.org/colorado/2023/10/4/23904009/colorado-chronic-absenteeism-increase-2022-2023-attendance/>

restraints and seclusions per year. Over the course of our work with them, that number is now below 100.

There is a myth that restraint and seclusion procedures are necessary to keep kids and caregivers safe. There is no research – none – indicating that that is the case. In fact, it is when kids are being restrained and secluded that they and their caregivers are at greatest risk for being hurt. There are many, many schools dealing with equally difficult kids that never use restraint and seclusion. Those schools and school systems recognize that restraint and seclusion are failed, obsolete practices. Included with this letter is information and graphs showing two school districts' dramatic decrease in the use of restraint and seclusion when using an evidence-based, collaborative, proactive approach.

Change is needed now, especially for students with disabilities

Over 80 percent of the kids secluded by Colorado schools are students with disabilities; And, they are secluded repeatedly (1.7 instances of seclusion per student).² According to recent U.S. Department of Education reporting, just 12 Colorado school districts used seclusion (95% of schools reported no use of seclusion).³ There is probably good reason to question these figures, however, as seclusion is significantly underreported. Jefferson County School District revealed to journalists that in the 17-18 school year it had 220 incidents of seclusion.⁴ Yet, for the same year, Jefferson County reported 0 incidents of seclusion to the federal government.⁵ An educator whistleblower reported seeing students taken against their will to “quiet rooms” nearly every day in one Adams 12 School District elementary school, but administrators reported just 121 seclusions for all students across their nearly 50 schools.⁶

If Colorado does not take action on this issue, the federal government may do it for them. Currently, there are four active federal investigations into the discriminatory use of restraint and seclusion in Colorado schools, including two in Adams 12 and one in Jefferson and Moffat Counties.⁷ And, there have been federal settlements with five school districts in the past 10 years.⁸ Ending seclusion in schools is a core focus of the Department of Justice's efforts to protect students with disabilities, with Assistant Attorney General Kristen Clarke stating: “We cannot stand by and watch schools put children with disabilities in seclusion thousands of times and call it public education.”⁹

² U.S. Dept. of ED Office for Civil Rights, Civil Rights Data Collection, available at: <https://ocrdata.ed.gov/>.

³ *Id.*

⁴ Asmar, M. (2023, August 4). *Behind closed doors: When it comes to seclusion and restraint, Colorado Schools “are investigating themselves.”* Denver Gazette. https://denvergazette.com/news/little-oversight-on-use-of-colorado-schools-seclusion-rooms/article_2b01

⁵ U.S. Dept. of ED, *supra* note 2.

⁶ Denver Gazette, *supra* note 4.

⁷ U.S. Dept. of ED Office for Civil Rights, Open Investigations, available at: <https://ocrcas.ed.gov/open-investigations>

⁸ U.S. Dept. of ED Office for Civil Rights, Resolutions, available at: <https://ocrcas.ed.gov/ocr-search>

⁹ U.S. Dept. of Justice, Combating Improper Seclusion in Schools, available at: <https://www.justice.gov/crt/schoolseclusion>

Many states have already banned seclusion

Eleven states have already implemented seclusion bans. There are seven states (GA, HI, MA, MD, NV, NY, WV) where seclusion is prohibited for all students in public school. In one state, (DE) seclusion is prohibited for all students, but provides for a waiver process for individual children with school and parental consent.¹⁰ And, in three additional states (FL, PA, TX), seclusion is prohibited for students with disabilities in public school.

Colorado now has an opportunity to protect its most vulnerable kids and support educators on the front line. We urge the Committee to support HB 24-1167 to truly prevent crises, improve safety for both students and caregivers, and keep its kids in the classroom and out of solitary confinement.

Thank you for the opportunity to testify.

A handwritten signature in black ink, appearing to read 'Ben Jones', with a long horizontal stroke extending to the right.

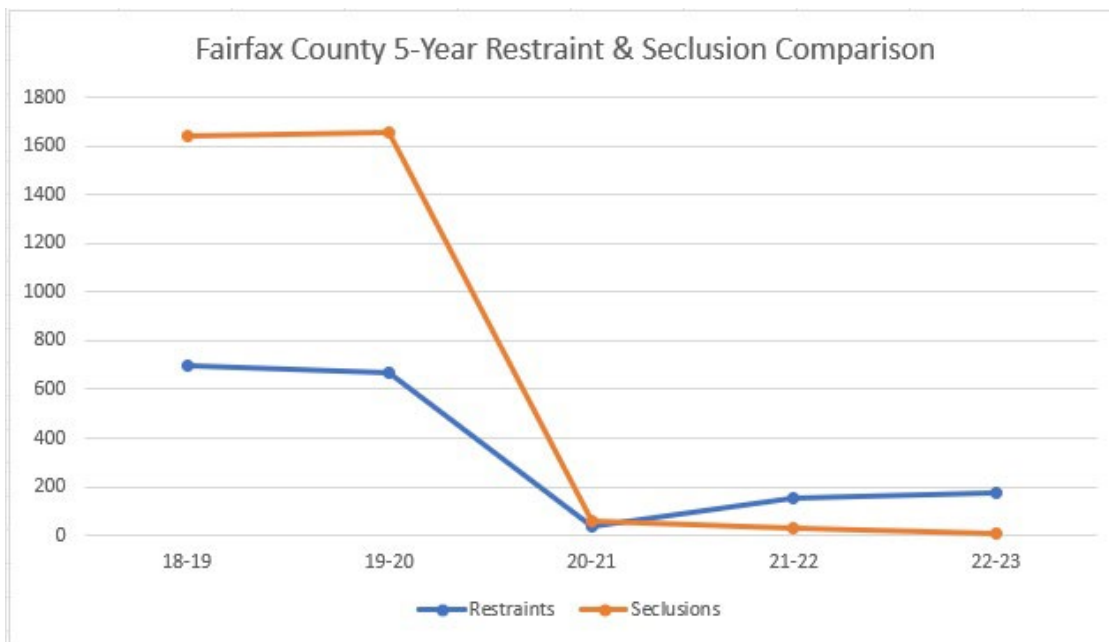
Ben Jones, J.D.

¹⁰ An amended bill may be before the Committee at hearing that includes exemptions to the seclusion ban – attached to this letter is a copy of Delaware’s law and regulations as an example of a state that banned seclusion, but maintained a limited waiver; 14 Del.C. §4112F and 14 Del. Admin. Code § 610-8.0.

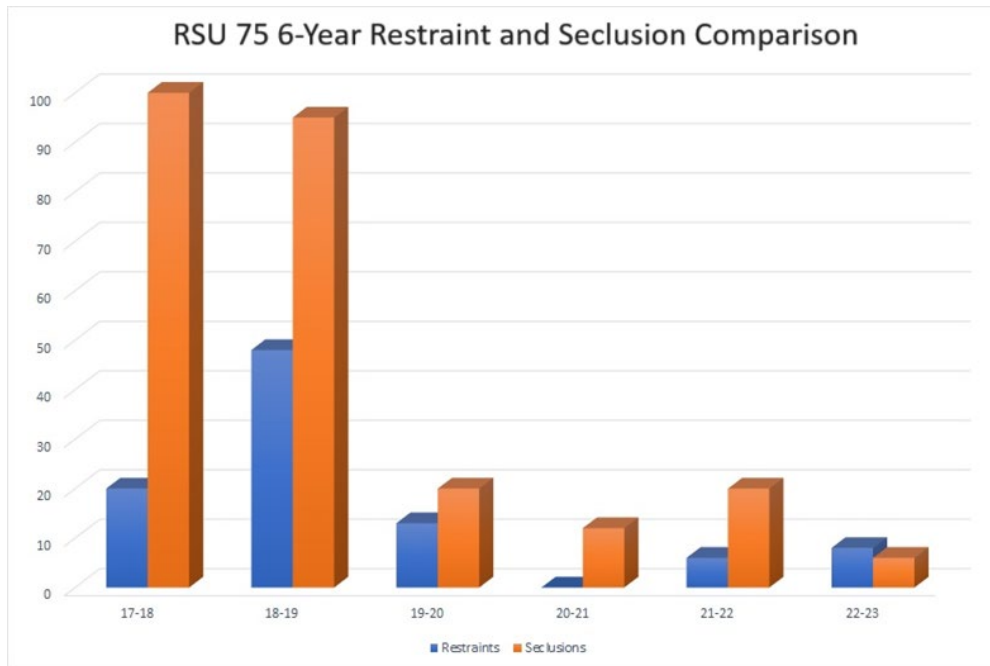


The Data Are In: Collaborative & Proactive Solutions (CPS) Dramatically Reduces Restraint and Seclusion in Schools

VIRGINIA: Fairfax County Public Schools (FCPS) is the largest school system in Virginia, with 220 schools and over 180,000 students. [Three years ago](#), at the urging of their involved parents, they asked [Lives in the Balance](#) to partner with them to dramatically reduce their use of restraint and seclusion. As shown in the graphic below, they've come a long way, thanks to the courage, hard work, and open-mindedness of their staff. They now know that [true crisis prevention](#) begins way before de-escalation, and that proactively solving the problems that are causing a student's concerning behavior is the best way to stay out of crisis management mode. While they're still working on getting those restraint numbers down to zero, they're also extending the work into general education classrooms. They're a great model for school systems throughout the world.



MAINE: Here's an update on a school district we [featured a while back](#), RSU 75 in Maine. After implementing CPS following the 2018-19 school year, the district has experienced a significant decline in their use of restraint and seclusion – graphic below. Good for the kids...good for the adults...good for everyone. A research paper describing these findings has been submitted for publication...but you can read it [here](#) now.





Title 14

Education

NOTICE: The Delaware Code appearing on this site is prepared by the Delaware Code Revisors and the editorial staff of LexisNexis in cooperation with the Division of Research of Legislative Council of the General Assembly, and is considered an official version of the State of Delaware statutory code. This version includes all acts enacted as of March 7, 2024, up to and including 84 Del. Laws, c. 251.

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- (1) Investigate and seek to resolve complaints made by and concerns of members of the public, school officials, and pupils regarding criminal offenses and incidents of bullying committed on school property;
 - (2) Investigate complaints regarding the alleged failure of school officials to report criminal offenses as required under § 4112 of this title and incidents of bullying as required under § 4164 of this title;
 - (3) Establish policies and procedures for eliciting, receiving, investigating, verifying, and resolving complaints; and
 - (4) Perform such other acts as are necessary to carry out the purpose set forth in subsection (b) of this section.
- (70 Del. Laws, c. 249, § 1; 70 Del. Laws, c. 186, § 1; 80 Del. Laws, c. 375, § 1; 81 Del. Laws, c. 122, §§ 2, 12; 81 Del. Laws, c. 425, § 9.)

§ 4112B. Ombudsperson access.

- (a) The Ombudsperson shall have access to any school record or pupil file which is relevant to the performance of the Ombudsperson's duties, including any record otherwise considered confidential under Delaware law.
 - (b) The Ombudsperson may initiate an investigation of any criminal offense committed on school property or any incident of bullying independent of the receipt of a specific complaint.
 - (c) The Ombudsperson shall protect the confidentiality of pupils' records and files as required under Delaware law.
 - (d) Notwithstanding any other provision of law, the Ombudsperson shall not disclose the identity of any complainant unless a court orders such disclosure or the complainant consents in writing to the disclosure of the complainant's identity.
- (70 Del. Laws, c. 249, § 1; 70 Del. Laws, c. 186, § 1; 80 Del. Laws, c. 375, § 1; 81 Del. Laws, c. 122, § 2.)

§ 4112C. Good faith immunity.

- Persons and agencies participating in an investigation of the Ombudsperson shall be immune from civil liability which may result from their good faith participation in such investigation.
- (70 Del. Laws, c. 249, § 1; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 122, § 2.)

§ 4112D. School bullying prevention.

- [Transferred to § 4164 of this title by 81 Del. Laws, c. 122, § 4, effective August 10, 2016.]
- (81 Del. Laws, c. 122, § 4.)

§ 4112E. School Teen Dating Violence and Sexual Assault Act.

- [Transferred to § 4166 of this title by 81 Del. Laws, c. 122, § 4, effective August 10, 2016.]
- (81 Del. Laws, c. 122, § 4.)

§ 4112F. Limitations on use of seclusion and restraint.

- (a) *Definitions.* — The following words, terms, and phrases when used in this section, shall have the meaning ascribed to them except where the context clearly indicates a different meaning:
- (1) "Chemical restraint" means a drug or medication used on a student to control behavior or restrict freedom of movement that is either not medically prescribed for the standard treatment of a student's medical or psychiatric condition or not administered as prescribed.
 - (2) "Mechanical restraint" means the application of any device or object that restricts a student's freedom of movement or normal access to a portion of the body that the student cannot easily remove. "Mechanical restraint" does not include devices or objects used by trained school personnel, or used by a student, for the specific and approved therapeutic or safety purposes for which they were designed and, if applicable, prescribed, including the following:
 - a. Restraints for medical immobilization;
 - b. Adaptive devices or mechanical supports used to allow greater freedom of movement stability than would be possible without use of such devices or mechanical supports;
 - c. Vehicle safety restraints when used as intended during the transport of a student in a moving vehicle;
 - d. Instruction and use of restraints as part of a criminal justice or other course; or
 - e. Notwithstanding their design for other purposes, adaptive use of benign devices or objects, including mittens and caps, to deter self-injury.
 - (3) "Physical restraint" means a restriction imposed by a person that immobilizes or reduces the ability of a student to freely move arms, legs, body, or head. "Physical restraint" does not include physical contact that:
 - a. Helps a student respond or complete a task;
 - b. Is needed to administer an authorized health-related service or procedure; or
 - c. Is needed to physically escort a student when the student does not resist or the student's resistance is minimal.

(4) “Public school personnel” means an employee or contractor of a public school district or charter school. “Public school personnel” does not include the following:

- a. A law-enforcement officer as defined in § 9200(b) of Title 11; or
- b. An employee or contractor providing educational services within a Department of Correction or Division of Youth Rehabilitative Services facility.

(5) “Seclusion” means the involuntary confinement of a student alone in a room, enclosure, or space that is either locked or, while unlocked, physically disallows egress. The use of a “timeout” procedure during which a staff member remains accessible to the student shall not be considered “seclusion.”

(6) “Timeout” means a behavior management technique in which, to provide a student with the opportunity to reflect or regain self-control, a student is separated from others for a limited period in a setting that is not locked and the exit is not physically blocked by furniture, closed door held shut from outside, or other inanimate object.

(b) *Prohibition and restriction on use.* — (1) Public school personnel are prohibited from imposing on any student the following:

- a. Chemical restraint; and
- b. Subject to waiver authorized pursuant to paragraph (c)(4) of this section, mechanical restraint and seclusion.

(2) Public school personnel may impose physical restraint only in conformity with all of the following standards:

- a. The student’s behavior presents a significant and imminent risk of bodily harm to self or others;
- b. The physical restraint does not interfere with the student’s ability to communicate in the student’s primary language or mode of communication;
- c. The physical restraint does not interfere with the student’s ability to breathe or place weight or pressure on the student’s head, throat, or neck;
- d. The physical restraint does not recklessly exacerbate a medical or physical condition of the student;
- e. Less restrictive interventions have been ineffective in stopping the imminent risk of bodily harm to the student or others, except in case of a rare and clearly unavoidable emergency circumstance posing imminent risk of bodily harm, including, without limitation, intervening in a student initiated physical assault or altercation;
- f. For a student with a disability as defined in Chapter 31 of this title or 34 C.F.R. Part 104, the physical restraint does not contravene provisions in an individualized education program (IEP), behavior intervention plan, accommodation plan, or any other planning document for the individual student;
- g. Personnel use only the amount of force necessary to protect the student or others from the threatened harm;
- h. The physical restraint ends when a medical condition occurs putting the student at risk of harm or the student’s behavior no longer presents an imminent risk of bodily harm to the student or others;
- i. The physical restraint is within the scope of force authorized by § 468 of Title 11; and
- j. The physical restraint conforms to applicable regulations promulgated by the Department of Education.

(c) *Department of Education role; regulations.* — (1) The Department of Education shall promulgate regulations implementing this section. Such regulations shall include, but not be limited to, the following:

- a. Requirement of uniform public school data collection on each use of physical restraint, by school, which includes demographic information on affected students such as age, gender, race, ethnicity, and disability category, if any;
- b. Requirement of timely parental notice in event of use of physical restraint;
- c. Special procedures and safeguards applicable to use of physical restraint for students with disabilities as defined in Chapter 31 of this title or 34 C.F.R. Part 104; and
- d. Recommended or required training of public school personnel in implementing this section.

(2) To facilitate data collection and analysis, the Department of Education may adopt a uniform reporting document and may require reporting of data in a standardized electronic or nonelectronic format.

(3) The Department of Education shall issue an annual report on use of physical restraint which includes rates of usage by school and by subcategories identified in paragraph (c)(1)a. of this section, identifies trends, and analyzes significant results.

(4) Unless proscribed by federal law, the Secretary of Education may issue a waiver of the prohibition on mechanical restraint and seclusion for an individual student based on compelling justification and subject to specific conditions and safeguards which must include a requirement of continuous visual staff monitoring and parental notice of each use of mechanical restraint or seclusion.

(d) *School resource officer training.* —

Training and reporting related to employees, contractors, or subcontractors excluded from the definition of “public school personnel” under paragraph (a)(4) of this section shall be governed by this subsection. This subsection shall be limited to those employees, contractors, or subcontractors who will assist with or independently intervene with students with disabilities, which shall include all students eligible to be identified as students with disabilities under Individuals with Disabilities Education Act (IDEA) [20 U.S.C. § 1401 et seq.], § 504 of the Rehabilitation Act of 1973 [29 U.S.C. § 794] and The Americans with Disabilities Act (ADA) [42 U.S.C. § 12101 et seq.].

(1) Employees, contractors, and subcontractors governed by this subsection shall annually receive the following awareness training from their school district or charter school:

- a. Training which is consistent with that which is required of other public school personnel for disability awareness and behaviors that may manifest as a result of disabilities.
- b. Best practices for de-escalation techniques in a school setting.
- c. Information on intervention decisions and techniques used by school personnel in a school setting.
- d. Such other training as is necessary to protect the health and well-being of students with disabilities as promulgated in implementing regulation, which shall include basic awareness training specific to individualized education programs (IEP), functional behavior assessments and behavior support plans.
- e. This training shall include references as to how it relates to school resource officer (SRO) duties and responsibilities outlined in their employment contract and school district or charter school memorandum of agreement (MOA). This training shall be consistent with the annual training already provided to school district or charter school educators.

(2) Employees, contractors, and subcontractors, governed by this subsection shall annually participate in the SRO training provided by the State Police or equivalent training provided by the police department employing the SRO in the school district or charter.

(3) Prior to the start of each school year, or as soon as practical, an SRO shall meet with a representative of each building in which they are assigned to be familiarized with behaviors related to disabilities that may occur in the school and typical responses that may be taken by school personnel in that school.

(4) Reporting and notification practices for incidents involving employees, contractors, or subcontractors covered by this subsection shall be consistent with reporting and notification requirements for school personnel, and shall include a police report identification number where a police report exists.

(5) Each school district or charter school which contracts with SROs shall have a MOA consistent with the MOA template as required by Department of Education regulation with the agency which employs or manages those sworn officers.

(6) School districts or charter schools shall not contract with or employ individuals who are covered by this subsection, but do not comply with the training requirements set out herein.

(7) *Department of Education role and regulations.* —

a. The Department of Education shall develop, promulgate, and update regulations for this subsection in collaboration with the Governor's Advisory Council for Exceptional Citizens (GACEC).

b. Timelines for implementation and training shall be primarily based on protecting the health and welfare of children with disabilities.

c. To the greatest extent practical and appropriate, such regulations shall be consistent with and integrated with the regulations for the remainder of this section.

(8) Funding for training and implementation shall be derived from existing resources.

(9) Nothing in this subsection shall be interpreted as creating any additional restriction on the sworn authority of law-enforcement officers or their ability to carry out their required sworn duty.

(e) *Effect on other laws.* — The limitations and prohibitions described in this section are in addition to, and not in derogation of, any other constitutional, statutory, or regulatory rights otherwise conferred by federal or state law or regulation.

(79 Del. Laws, c. 54, § 2; 81 Del. Laws, c. 122, § 2; 81 Del. Laws, c. 189, § 1.)

§ 4113. Authority of school crossing guards to ensure safety of pupils.

Where school crossing guards are employed by a school district, the guards shall have the right to stop, control and guide vehicular traffic near any pedestrian crosswalk in order to permit children to cross streets or highways safely. In instances where the driver of a motor vehicle fails to comply with the lawful directions or signals of a school crossing guard, or otherwise violates a lawful ordinance or statute, the school crossing guard may report such driver to the appropriate police authorities. If the identity of the driver is not otherwise apparent, it shall be a rebuttable presumption that the person in whose name the vehicle is registered, to whom a rental vehicle is leased or whose name appears on a company's records as driving a company car is responsible for the violation.

(63 Del. Laws, c. 402, § 2; 81 Del. Laws, c. 122, § 2.)

§ 4114. Right of State to transcribe and reproduce instructional material in braille and other media for handicapped minors.

Each contract executed for the procurement of instructional materials shall include the right of the State to transcribe and reproduce the material in braille, large print, recordings or other media for the use of handicapped minors, including the visually handicapped, unable to use the book in conventional print and form. Such right shall include those corrections, revisions and other modifications as may be necessary.

(64 Del. Laws, c. 298, § 1; 81 Del. Laws, c. 122, § 2.)

**DEPARTMENT OF EDUCATION
OFFICE OF THE SECRETARY
600 School Climate and Discipline**

610 Limitations on Use of Seclusion and Restraint

1.0 Purpose and Authority

- 1.1 The purpose of this regulation is to establish standards and procedures for the use of physical restraint, chemical restraint, mechanical restraint, and seclusion to provide safety for all individuals. The regulations set forth permitted and prohibited uses of restraint and seclusion, required training for public school, private program, or alternative program personnel, required documentation and reporting of incidents of restraint and seclusion, required notification to parents, and waiver procedures for individual students.
- 1.2 These regulations are promulgated in accordance with 14 **Del.C.** §4112F.
26 DE Reg. 472 (12/01/22)

2.0 Definitions

The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

“Alternative program” means a program established pursuant to 14 **Del.C.** Ch. 16.

“Chemical restraint” means a drug or medication used on a student to control behavior or restrict freedom of movement that is either not medically prescribed for the standard treatment of a student’s medical or psychiatric condition or not administered as prescribed. (Authority: 14 **Del.C.** §4112F(a)(1)).

“Individualized Education Program” or **“IEP”** means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with Sections 7.0 through 11.0 of 14 **DE Admin. Code** 925.

“Mechanical restraint” means the application of any device or object that restricts a student’s freedom of movement or normal access to a portion of the body that the student cannot easily remove. “Mechanical restraint” does not include devices or objects used by trained school personnel, or used by a student, for the specific and approved therapeutic or safety purposes for which they were designed and, if applicable, prescribed, including the following:

- Restraints for medical immobilization;
- Adaptive devices or mechanical supports used to allow greater freedom of movement stability than would be possible without use of such devices or mechanical supports;
- Vehicle safety restraints when used as intended during the transport of a student in a moving vehicle;
- Instruction and use of restraints as part of a criminal justice or other course; or
- Notwithstanding their design for other purposes, adaptive use of benign devices or objects, including mittens and caps, to deter self-injury.

(Authority: 14 **Del.C.** §4112F(a)(2))

“Parent” means:

- A biological or adoptive parent of a child;
- A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State);
- An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives and for whom a Relative Caregiver’s School Authorization executed in compliance with 14 **Del.C.** §202(f)(1) is on file;
- An individual who is otherwise legally responsible for the child's welfare; or
- A surrogate parent who has been appointed in accordance with Section 19.0 of 14 **DE Admin. Code** 926.

The biological or adoptive parent, when attempting to act as the parent under these regulations, and when more than one party is qualified under this definition to act as a parent, must be presumed to be the parent for purposes of this definition unless the biological or adoptive parent does not have legal authority to make educational decisions for the child. If a judicial decree or order identifies a specific person or persons

TITLE 14 EDUCATION

DELAWARE ADMINISTRATIVE CODE

to act as the "parent" of a child, or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the "parent" for purposes of this definition.

(Authority: 20 U.S.C. 1401(23); 14 **Del.C.** §3110)

"Physical restraint" means a restriction imposed by a person that immobilizes or reduces the ability of a student to freely move arms, legs, body, or head. "Physical restraint" does not include physical contact that:

- Helps a student respond or complete a task;
- Is needed to administer an authorized health-related service or procedure; or
- Is needed to physically escort a student when the student does not resist or the student's resistance is minimal.

(Authority: 14 **Del.C.** §4112F(a)(3))

"Principal" means the building principal, or the equivalent of the building principal, of any public school or charter school, or the building principal's designee.

"Private program" means a non-public school or program contracted by a school district or charter school.

"Public school personnel" means an employee or contractor of a public school district or charter school.

"Public school personnel" does not include the following:

- A law enforcement officer as defined in § 9200(b) of Title 11; unless the law enforcement officer meets the definition of a School Resource Officer/SRO; or
- An employee or contractor providing educational services within a Department of Correction or Division of Youth Rehabilitative Services facility. (Authority: 14 **Del.C.** §4112F(a)(4))

"School Resource Officer" or **"SRO"** means a contractor, subcontractor or employee of a public school district or charter school who is a sworn law enforcement officer as defined in 11 **Del.C.** §9200.

"Seclusion" means the involuntary confinement of a student alone in a room, enclosure, or space that is either locked or, while unlocked, physically disallows egress. The use of a "timeout" procedure during which a staff member remains accessible to the student shall not be considered "seclusion." (Authority: 14 **Del.C.** §4112F(a)(5))

"Student" means any individual enrolled in a Delaware public school or charter school, an alternative program pursuant to 14 **Del.C.** Ch. 16, or a private program pursuant to Title 14 **Del.C.** Chapter 31, Section 3124.

"Timeout" means a behavior management technique in which, to provide a student with the opportunity to reflect or regain self-control, a student is separated from others for a limited period in a setting that is not locked and the exit is not physically blocked by furniture, closed door held shut from outside, or other inanimate object. (Authority: 14 **Del.C.** §4112F(a)(6))

"Written report" means printed paper filings and electronic filings that can be printed.

22 DE Reg. 55 (07/01/18)

26 DE Reg. 472 (12/01/22)

3.0 Use of Restraints

3.1 Public school personnel, private program personnel, and alternative program personnel are prohibited from imposing on any student:

3.1.1 Chemical restraint; and

3.1.2 Subject to waiver authorized by 14 **Del.C.** §4112F(c)(4) and Section 8.0, mechanical restraint and seclusion.

3.2 Such personnel may impose physical restraint only in conformity with all of the following standards:

3.2.1 The student's behavior presents a significant and imminent risk of bodily harm to self or others;

3.2.2 The physical restraint does not interfere with the student's ability to communicate in the student's primary language or mode of communication;

3.2.3 The physical restraint does not interfere with the student's ability to breathe or place weight or pressure on the student's head, throat, or neck;

3.2.4 The physical restraint does not recklessly exacerbate a medical or physical condition of the student;

3.2.5 Less restrictive interventions have been ineffective in stopping the imminent risk of bodily harm to the student or others, except in case of a rare and clearly unavoidable emergency circumstance posing imminent risk of bodily harm, including, without limitation, intervening in a student initiated physical assault or altercation;

TITLE 14 EDUCATION
DELAWARE ADMINISTRATIVE CODE

3

- 3.2.6 For a student with a disability as defined in 14 **Del.C.**, Chapter 31 or 34 C.F.R. Part 104, the physical restraint does not contravene provisions in an IEP, behavior intervention plan, accommodation plan, or any other planning document for the individual student;
- 3.2.7 Personnel use only the amount of force necessary to protect the student or others from the threatened harm;
- 3.2.8 The physical restraint ends when a medical condition occurs putting the student at risk of harm or the student's behavior no longer presents an imminent risk of bodily harm to the student or others;
- 3.2.9 The physical restraint is within the scope of force authorized by 11 **Del.C.** §468.

(Authority: 14 **Del.C.** §4112F(b))

26 DE Reg. 472 (12/01/22)

4.0 Training of Personnel

- 4.1 Except as provided in 14 **Del.C.** §702(c), a student may be physically restrained only by public school personnel, private program personnel, or alternative program personnel who have completed training in physical restraint procedures.
 - 4.1.1 Such personnel shall receive annual training in the use of crisis prevention and intervention techniques consistent with nationally-recognized training programs, which shall meet the following minimum requirements:
 - 4.1.1.1 The training shall address prevention techniques, de-escalation techniques, and positive behavioral intervention strategies and supports;
 - 4.1.1.2 The training shall be designed to meet the needs of such personnel consistent with their duties and the potential need for emergency safety interventions; and
 - 4.1.2 Each public school, private program, and alternative program shall maintain written or electronic documentation of each training provided, which shall include a list of all personnel who participated in the training.
- 4.2 Any public school personnel responsible for reporting the physical restraint of a student to the Department of Education shall complete training on the reporting process approved by the Department of Education and any additional training that the Department of Education may prescribe.
 - 4.2.1 The approved training shall be provided using a web-based platform through the Department of Education's Professional Development Management System (PDMS) or similar system. The training will be provided on an annual basis and made available throughout each school year.
 - 4.2.2 Such personnel responsible for reporting the physical restraint of a student shall complete the approved training at least once every 3 years and during any year in which reporting procedures were changed from the previous year as indicated by the Department of Education.

26 DE Reg. 472 (12/01/22)

5.0 Parental Notification of Use of Physical Restraint

- 5.1 Except as provided in subsection 5.1.1, if a student is physically restrained, a reasonable attempt shall be made to notify the parent on the same day, but in no event later than twenty-four hours after, the physical restraint is used. Such notification shall be made in person, by phone or by voicemail, or by e-mail. The school shall maintain written documentation of successful and unsuccessful attempts to notify the parent.
 - 5.1.1 Where physical restraint is included in the student's IEP or Section 504 Plan, the IEP Team or Section 504 Team, including the parent, shall determine a timeframe and manner of notification of each incident of physical restraint.
- 5.2 The parent shall be provided a copy of a final written report no later than the date on which such report is filed with the Department of Education. The written report shall contain, at a minimum, the information required under Section 6.0.

26 DE Reg. 472 (12/01/22)

6.0 Uniform Data Collection

- 6.1 When an incident of physical restraint of a student by public school personnel, private program personnel, and charter school personnel occurs:

TITLE 14 EDUCATION

DELAWARE ADMINISTRATIVE CODE

- 6.1.1 As soon as practicable thereafter, a reasonable attempt shall be made to interview the student regarding the incident; and
- 6.1.2 The school principal or charter school leader must provide a written report, in a uniform format as determined by the Department of Education, of the restraint to the Department of Education within 72 hours of the restraint, or within 72 hours of the time in which the student's district or charter school of residence receives notice of the restraint from the contracted private program or alternative program, whichever the case may be; and
- 6.1.3 The written report shall include, at a minimum:
 - 6.1.3.1 Details of the restraint incident, including, but not limited to, the student behavior and description of events leading to the use of physical restraint; de-escalation techniques utilized by school personnel prior to the restraint; a description of the student's behavior during the restraint; a summary of witness interviews, if applicable; any injury caused to the student, staff members, or other students; and any related treatment deemed necessary as a result of the restraint.
 - 6.1.3.2 Demographic information on affected students to include age, race, ethnicity, and disability category;
 - 6.1.3.3 A description of the interview conducted with the student, if applicable; and
 - 6.1.3.4 If applicable, a description of changes to any or all of the following that resulted from the restraint incident:
 - 6.1.3.4.1 For a student with a disability as defined in 14 **Del.C.**, Chapter 31 or 34 C.F.R. Part 104, the student's IEP, behavioral support, crisis intervention plan, accommodation plan, or any other planning document for the individual student;
 - 6.1.3.4.2 School or local educational agency policy or procedure; or
 - 6.1.3.4.3 Additional staff training.

26 DE Reg. 472 (12/01/22)

7.0 Annual Reporting Requirement

The Department of Education shall issue an annual report on the use of physical restraint, which shall include rates of usage by school and by subcategories identified pursuant to Section 6.0, identify trends, and analyze significant results. The report shall be posted on the Department of Education's website.

26 DE Reg. 472 (12/01/22)

8.0 Waiver

- 8.1 Any public school, private program, or alternative program applicant for a waiver of the prohibition on the use of mechanical restraints or seclusion for an individual student must deliver the request in writing, in a uniform format developed by the Department of Education, to the Secretary or Secretary's designee setting forth the grounds for the request.
 - 8.1.1 The request shall be based on compelling justification supported by documentation, including, but not limited to, educational records, reporting of incidents, and the student's functional behavioral assessment and behavioral intervention plan, including implementation data, and medical documentation, if applicable.
 - 8.1.2 The request shall contain a description of the conditions and safeguards that the applicant will utilize in connection with the waiver, including, but not limited to:
 - 8.1.2.1 A detailed description of the proposed continual visual staff monitoring of student;
 - 8.1.2.2 A requirement that the parent be notified of each use of mechanical restraint or seclusion which conforms to the procedure set forth in Section 5.0 for reporting physical restraint except that the provisions of subsection 5.1.1 shall not apply herein; and
 - 8.1.2.3 A detailed description of the physical space within which the seclusion will occur, or of the type of mechanical restraints to be utilized, whichever is applicable.
 - 8.1.3 The request shall include a written authorization signed by the parent agreeing to the issuance of a waiver on the prohibition of the use of mechanical restraints or seclusion for that student and a signed written consent for release of information to the Department of Education and the waiver review committee.
 - 8.1.4 All privileged documentation shall be maintained confidentially by the Department of Education and the waiver review committee to the extent permitted by law.

TITLE 14 EDUCATION
DELAWARE ADMINISTRATIVE CODE

- 8.2 All requests shall be considered by a waiver review committee appointed by the Secretary. A decision by the waiver review committee shall be rendered no later than 60 calendar days of receipt of the waiver request.
- 8.3 The committee shall make a written recommendation to the Secretary, which shall include:
- 8.3.1 A summary of the compelling justification based on the documentation submitted in support of the waiver requested;
 - 8.3.2 Recommendations to include any specific conditions and safeguards, and a brief statement of the reasons therefore;
 - 8.3.3 A requirement that, where a waiver is issued, there be continual visual monitoring, parental notice of each use of mechanical restraint or seclusion, and collection of data to include the number of times the student was subject to mechanical restraint or seclusion, the duration of each mechanical restraint or seclusion, and any other data as required by the Department of Education;
 - 8.3.4 A statement as to the duration of the waiver, not to exceed a period of one calendar year.
- 8.4 The Secretary shall consider the entire record of the case and the committee's recommendations in reaching a final decision. The Secretary's decision shall be issued in writing and mailed to the applicant and the parent by certified mail no later than 10 calendar days from receipt of the recommendation of the waiver review committee.
- 8.5 The Secretary's decision shall be final.
- 18 DE Reg. 130 (08/01/14)**
26 DE Reg. 472 (12/01/22)

9.0 School Resource Officer (SRO) Training

- 9.1 SROs shall annually receive the following awareness level training from the school district or charter school in which they are assigned:
- 9.1.1 Training which is consistent with that which is required of other public school personnel within their school district or charter school for disability awareness and behaviors that may manifest as a result of disabilities;
 - 9.1.2 Best practices for de-escalation techniques utilized in the school setting;
 - 9.1.3 Current information on the intervention decisions and techniques used by school personnel within the school setting;
 - 9.1.4 Such other training as is necessary to protect the health and well-being of students with disabilities, including students with an IEP who enroll after the beginning of the school year, which shall include basic awareness training specific to IEPs, functional behavior assessments and behavioral intervention plans;
 - 9.1.5 SROs shall participate in the annual SRO training provided by the Delaware State Police or equivalent training provided by the police agency employing the SRO.
- 9.2 The training outline in this regulation shall include reference to how it relates to the duties and responsibilities of the SRO as outlined in the Memorandum of Agreement between the school district or charter school and the police agency employing the SRO as required under 14 **DE Admin. Code** 601.
- 9.3 Prior to the start of each school year, or as soon as practical, but no later than 30 calendar days after the first student day of school, a representative of each school building shall meet with the SRO assigned to that school in order to be familiarized with behaviors related to disabilities that may occur in the school and typical responsive actions that may be taken by school personnel in that school.
- 9.4 Nothing within this regulation or contained within 14 **Del.C.** §4112F shall be interpreted as creating any additional restrictions on the sworn authority of law enforcement officers or their ability to carry out their required sworn duty.
- 18 DE Reg. 130 (08/01/14)**
22 DE Reg. 55 (07/01/18)
26 DE Reg. 472 (12/01/22)