

Improving Education Policy and Stopping the Use of Restraints and Seclusion

Moderator

James Thompson, President, American
Association on Intellectual and
Developmental Disabilities (AIDD)



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Panelists

- Barbara Trader, Executive Director, TASH
- Cindy Smith, Policy Counsel, National Disability Rights Network
- Jessica Butler, Congressional Affairs Coordinator, Autism National Committee
- Karen Blake, Parent & New Hampshire DD Council Member





Restraint and Seclusion Prevention in Public Schools

Barb Trader

April 8, 2014

Disability Policy Summit



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Education Inequity Indicators

Kids with disabilities and kids of color are much more likely to be subjected to:

- Corporal punishment, harsh discipline, suspension and expulsion from an early age
- Early drop-out; involvement with juvenile justice system
- Restraint and seclusion
- Low expectations
- Segregation



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What is Restraint?

- A personal restriction that immobilizes or reduces the ability of a student to move his or her torso, arms, legs, or head freely.
- Can be mechanical or chemical
- The term physical restraint does not include a physical escort.
- Physical escort means a temporary touching or holding of the hand, wrist, arm, shoulder, or back for the purpose of inducing a student who is acting out to walk to a safe location.



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Prone Restraint



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What is Seclusion?

- The involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving.
- It does not include a timeout, which is a behavior management technique that is part of an approved program, involves the monitored separation of the student in a non-locked setting, and is implemented for the purpose of calming.



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Seclusion Room



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In the headlines:

- Georgia 8th-grader's suicide in seclusion room spurs lawsuit
- Lee County Florida - 9-year-old arrested at school
- "Scream rooms" in Connecticut
- Special ed student taped to chair (Ohio)
- Yonkers student dies while restrained by 6 staff members
- Pittsburgh teacher accused of abusing special needs student
- 6 year old dies in restraint after blowing bubbles in her milk (Wisconsin)
- Hundreds of media stories



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Who is Restrained or Secluded?

- **70%:** students with disabilities (12% of overall student population)
- **70%:** boys
- **69%:** 6-10 years old
- **65%:** Segregated classroom setting
- **50%:** Non-verbal or difficult to understand (Westling, et. Al.)
- **44%** of all students mechanically restrained are African Americans (21% of students with disabilities)
- **42%** of all students secluded are Hispanic (24% of students with disabilities)
- In Connecticut: **40% have autism**



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What is the Rationale?

- Keeps students safe
- Some students need it (therapeutic)
- Teachers need all the tools in the toolbox



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What is the Reality?

- A problem of EQUITY –
 - **70%: students with disabilities** (12% of overall student population)
 - **65%: Segregated** classroom setting
 - **50%: Non-verbal** or difficult to understand
 - **44%** of all students mechanically restrained are **African Americans** (21% of students with disabilities)
 - **42%** of all students secluded are **Hispanic** (24% of students with disabilities)



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What is the Reality?

- The “Safety” argument:
 - Kids die each year in public schools as a result of restraint and seclusion
 - Kids are physically injured
 - Staff are physically injured: worker’s comp cases decline by 95%+ when eliminated
 - Kids are emotionally traumatized
 - OTHER kids are emotionally traumatized
 - Most often used for issues OTHER than safety!
 - Parents don’t know it’s happening!



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What is the Reality?

- The “students need it” argument:
 - Restraint and seclusion have no therapeutic benefit
 - Behaviors escalate (“fight-flight”) when its used
 - Most often used for compliance/convenience
 - The difference in schools that use/don’t use is administrator attitude, not needs of students



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What is the Reality?

- The “teachers need all the tools in the toolbox” argument:
 - The use of restraint and seclusion increases the likelihood of injury to teachers and sets up a cycle of fear and distrust
 - Teachers need support and training to handle tough situations
 - Schools need to be safe and supportive (not punitive) environments so students can learn



What Works?

Change the Culture!

Positive Behavior Supports, Trauma Informed Care

- **Example: Centennial School**
 - AY 1997-98
 - 1,064 restraints
 - No data on seclusion
 - AY 1998-99
 - 327 restraints
 - 15,744 minutes of seclusion
 - AY 1999-2000 to 2011
 - 0 restraints
 - 0 minutes of seclusion



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Bottom Line

- Faulty Beliefs + Lack of Training = Danger for students and families



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Family Activism



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APRAIS: Alliance for the Prevention of Restraint, Aversive Interventions and Seclusion

28 national advocacy organizations
working together!



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APRAIS Members

AAPD

ACLU

AUCD

AUTCOM

Autism Society

ASAN

Bazelon Center

CHADD

COPAA

DDNA

DREDF

Epilepsy Foundation

FACT

FARS

Family Alliance

Gamaliel Foundation

NAMI

NACDD

NASMHPD

NAA

NCIL

NDRN

NDSC

NDSS

NFXF

Parent 2 Parent USA

RespectAbility Law Center

TASH



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What About States?

- 30 states have laws/regs
- 4 states ban seclusion
- 19 states ban restraint that restricts breathing
- 16 states limit restraint to emergencies
- 17 states require constant monitoring of students in seclusion
- 20 states require parental notification within 24 hours



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Find out About YOUR State

- <http://stophurtingkids.com/resources/>
 - [How Safe is the Schoolhouse? An Analysis of State Seclusion and Restraint Laws and Policies](#)
 - [US Department of Education Resource Document on Restraint and Seclusion](#)
 - [Model State Legislation](#) – being considered in Mississippi now!



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HR 1893 and S 2036?

- Bans the use of seclusion (Senate only), mechanical and chemical restraints, physical restraints that restrict breathing (Senate only) and aversive interventions that compromise health and safety;
- Limits the use of R(&S) to emergency circumstances in which student behavior poses an imminent danger of physical harm and less restrictive interventions would not be effective.
- Requires school personnel who implement R (&S) to be trained and certified, and requires that they continuously monitor students
- Requires schools to establish procedures to be followed after R (&S) is used, including parental notification and (Senate only) a debriefing session to discover what went wrong as a way to further prevention efforts.
- Requires states to report the yearly number of restraint and seclusion incidents; and
- Creates a discretionary grant program to assist states, districts and schools to establish, implement and enforce the minimum standards



Current Status

House

- Introduced May 8, 2013 by Rep. Miller (D-CA) and Harper (R-MS)
- 29 co-sponsors: 27 Dems, 2 Rs

Senate

- Introduced Feb. 24, 2014 by Senators Harkin (D-IO) and Murphy (D-CN)
- 3 co-sponsors (all Dems)



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Join the National Campaign!

- <http://stophurtingkids.com>
 - Join the campaign
 - “Like” us on Facebook
 - Tell your Congressman to sponsor HR 1893
 - Tell your Senator to sponsor S. 2036



Next steps

*What can
we do?*



- THANK YOU FOR YOUR ADVOCACY!



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Policy Update on Progress Made to Prevent and Reduce the Use of Restraint and Seclusion in Schools

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**Disability Policy Seminar
April 8, 2014**



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National Disability Rights Network

- NDRN is the nonprofit membership organization for the federally mandated Protection and Advocacy (P&A) System and Client Assistance Programs (CAP) for individuals with disabilities.
- Collectively, the P&A/CAP network is the largest provider of legally based advocacy services to people with disabilities in the United States and territories.
- Directory of P&A /CAP programs is at:
<http://www.ndrn.org/en/ndrn-member-agencies.html>



National Disability Rights Network

- NDRN has eight programs that are funded within the P&A/CAP network, including the Protection and Advocacy for Individuals with Developmental Disabilities Program (PADDD), created as part of the DD Act in 1975.
- Training and Technical assistance provider for the P&A / CAP network under federal grants (Technical Assistance Support Center).



How did NDRN get involved in this effort?

- (CA) Restraint and Seclusion in California Schools – A Failing Grade (June 2007) <http://www.disabilityrightsca.org/pubs/702301.htm>
- (CO) Colorado Public Report of an Investigation into the Improper Use of Restraint and Seclusion of Students with Disabilities at Will Rogers Elementary School, (2007) http://www.ndrn.org/issues/an/rs/Colorado_public_investigation_report_022807.pdf



In the late-2000s, NDRN began to see an increase in the incidents related to restraint and seclusion in the annual program performance reports submitted by each P&A to each of the federal funding entities.

NDRN started to see the increase was not in psychiatric hospitals or other facilities but instead in schools.

NDRN issued report on January 19, 2009 at a press conference held on Capitol Hill.

January 2009



Wisconsin girl, age 7, killed while physically restrained and secluded.

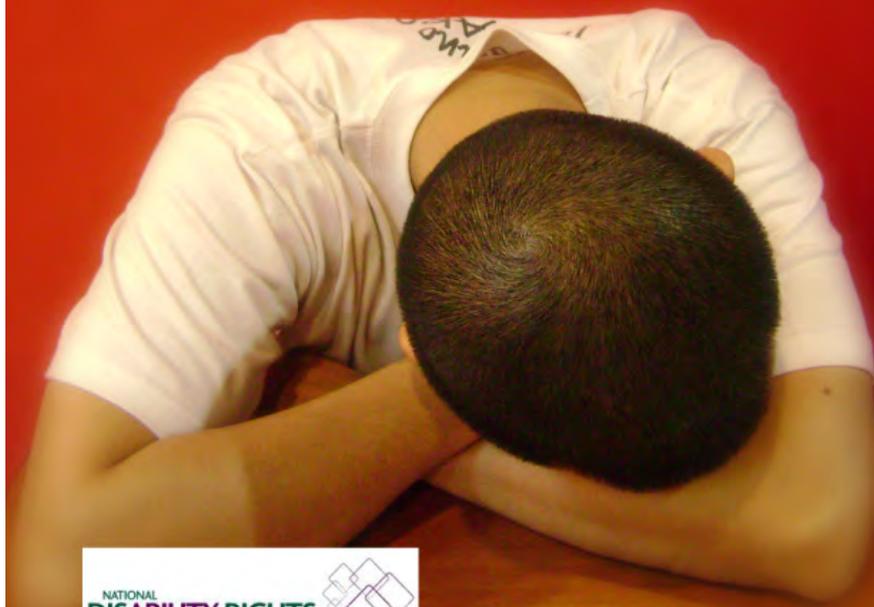
School is Not Supposed to Hurt:
Investigative Report on Abusive Restraint and Seclusion in Schools

NATIONAL
DISABILITY RIGHTS
NETWORK
Protection & Advocacy for Individuals with Disabilities



SCHOOL IS NOT SUPPOSED TO HURT

Update on Progress in 2009 to Prevent and Reduce Restraint and Seclusion in Schools



January 2010



School Is Not Supposed to Hurt

The U.S. Department of Education Must Do More to Protect School Children from Restraint and Seclusion

March 2012



www.ndrn.org



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Protections in Other Types of Facilities

- The Children’s Health Act of 2000 protects children from restraint and seclusion practices in facilities receiving Medicaid and other federal funding, such as hospitals, residential treatment centers and residential group homes.
- In addition, the Substance Abuse and Mental Health Services Administration (“SAMHSA”) has developed a national action plan to reduce the use of restraint and seclusion in response to the deaths, injuries, and psychological trauma of adults, youth, and children caused by restraint and seclusion use in institutional and community-based mental health settings.



Beginning of Federal Effort

- On May 19, 2009, the House of Representatives Education and Labor Committee held a hearing, *Examining the Abusive and Deadly Use of Seclusion and Restraint in Schools*.
- The hearing complemented a Government Accountability Office (GAO) report, *Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers* that was also issued on May 19, 2009.
 - The GAO report validates the facts and circumstances surrounding ten selected cases of restraint and seclusion in U.S. schools.



Beginning of Federal Effort

- On December 9, 2009, both the House of Representatives and the Senate introduced bills in their respective chambers to protect all students from the unnecessary use of restraints and seclusion in schools.
- The House version was introduced by Chairman George Miller (D-CA).
 - On March 3, 2010, by a vote of 262-153, the House of Representatives passed the Keeping All Students Safe Act.
- The Senate version was introduced by Senator Chris Dodd (D-CT).
 - Time ran out for Senate consideration before the end of the 111th Congress.



U.S. Department of Education

- Two main efforts to prevent and reduce the use of restraint and seclusion in schools:
 - May 2012: Restraint and Seclusion Resource Document was published by the U.S. Department Of Education.
 - Office of Civil Rights announced on Dec. 2, 2009 that it will begin to collect data on the use of restraint and seclusion using the definitions in the Children's Health Act.



Civil Rights Data Collection (CRDC)

- First set of data was collected in 2009-2010, but was incomplete given it was the first time the data was collected.
- The CRDC in 2011-2012 documented that over 70,000 students were physically restrained and over 37,000 students were secluded.
- Over 4,000 students served by the Individuals with Disabilities Education Act were mechanically restrained.



Civil Rights Data Collection (CRDC)

- The CRDC also confirmed that these practices are being used disproportionately on students with disabilities. Students with disabilities represented nearly 75% of the students who were physically restrained in their schools.
- Practices are also disproportionally used on students who are racial/ethnic minorities.



Status of Keeping All Students Safe Act in 113th Congress

- H.R. 1873 was introduced by Rep. Miller (CA) on May 8, 2013 with Rep. Gregg Harper (MS) as an original co-sponsor. Co-sponsored by 29 members.
- S. 2036 was introduced by Senator Harkin (IA) on Feb. 24, 2014 with Senator Murphy (CT) as an original co-sponsor. It is currently co-sponsored by Senator Hirono (HI) and Senator Baldwin (WI).



Report from the Health, Oversight and Investigations Subcommittee of the Senate Health, Education, Labor and Pensions Committee

- On Feb. 12, 2014, Senator Harkin and Senator Murphy at a press briefing issued a report titled *Dangerous Use of Seclusion and Restraints in Schools Remains Widespread and Difficult to Remedy: A Review of Ten Cases*.
- The report reviewed cases in 10 different states and is an update to the 2009 GAO study. It finds that families have little or no recourse to address the issue either individually or systemically through the school or court system.



Content of the Keeping All Students Safe Act

- Prohibitions on the use of mechanical restraints, chemical restraint, aversive interventions that compromise health and safety, physical restraints that restrict breathing, seclusion (Senate only), and restraints contraindicated by health (Senate only).
- Physical restraint and seclusion (Senate only) can only be used when a student's behavior causes imminent danger of physical harm to self or others and less restrictive interventions would be ineffective.
- If a child must be restrained or secluded:
 - Continuously monitored
 - School personnel must be certified and trained
 - End upon end of danger



Content of Keeping All Students Safe Act

- Restraint and seclusion (Senate only) cannot be written as a planned intervention in a child's education or safety plan.
- After the use of restraint or seclusion (Senate only) a parent must be informed of use the same day, and written notification within 24 hours.
- After an incident, the Senate bill requires a debriefing session within 5 days.
- Protection and Advocacy agencies are given authority to enforce the Act, and receive reports of serious physical injury. State education agencies and local law enforcement also receive reports in Senate version.



Content of Keeping All Students Safe Act

- Reporting of use of restraint and seclusion by school districts.
- Enforcement options:
 - Withhold payments to education agencies
 - Corrective action plan
 - Complaint through state education agency
 - Refer to DoJ or ED OCR for investigation (Senate only)
- Senate bill also includes the right for a student to file a civil action without having to exhaust due process rights under IDEA.



Restraint & Seclusion:
The States
Disability Policy Seminar (2014)

Jess Butler,
Congressional Affairs Coordinator
Autism National Committee

www.autcom.org
jessica@jnba.net

220+ Orgs Endorse KSSA

- 60 National Organizations
- 120 State/Local Orgs and Groups, including parent coffee clubs
- Letter to Majority Leader, HELP Committee seeking action now on bill in light of CRDC
- Letter to Congressman Miller

51 “States” (DC too)

How Safe Is The Schoolhouse?
An Analysis of State Seclusion and
Restraint Laws and Policies

(Jan. 2014)

www.autcom.org

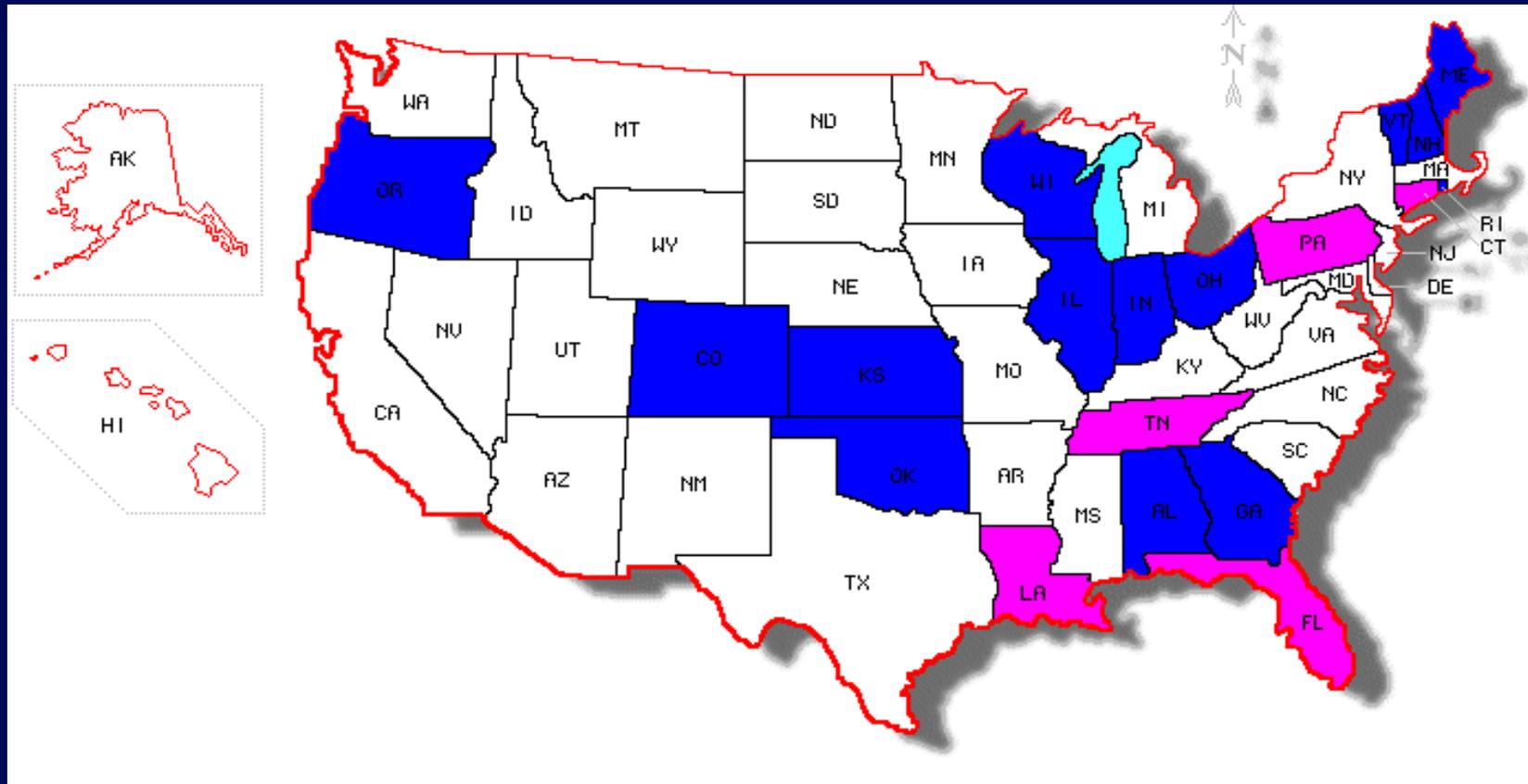
Issue is not “Does State Have a Policy?””

- Does State Have Statute/Regulation?
 - Binding & Must Obey; enforceable
- State Policies, nonbinding guidelines
 - Not enforceable
 - Often only factors & ideas to consider
- If laws, what do they say? Often patchwork, lacking protections

Meaningful Protections from R&S?

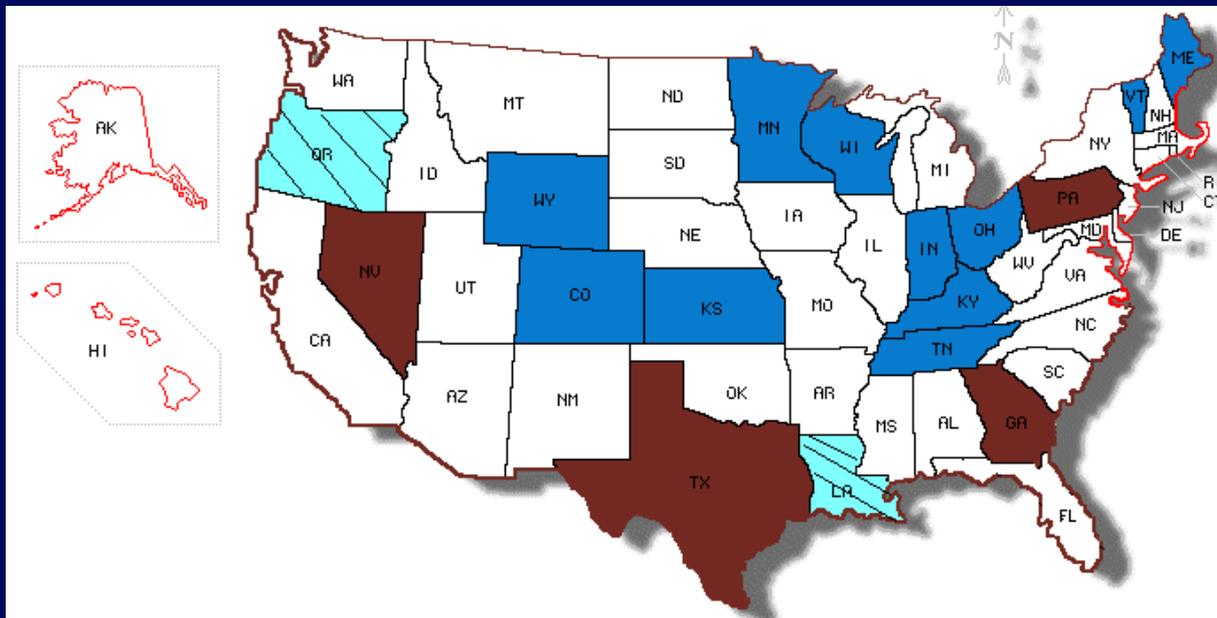
- 19 states laws meaningful protection all kids
- 32 states, SwDs
- Often missing important safeguards
- 3 states protect from 1 and not the other
- 7 States weak laws (e.g. districts must write a policy)

14 states: restraint only emergencies protect from physical danger; 18 SwDs



11 States Protect Non-Emergency Seclusion; 17 SwDs

- 10: emergencies phys danger (14 SwDs)
- Includes 2 (Cyan) serious/substantial harm
- 1 bans Seclusion (4 SwDs)



Few limit to EMERGENCY



- 17 States: Less Restrictive Ineffective (Positive Behavioral Supports)
- Only 15 ban use after emergency ends
- Several extended restraint incidents
 - IA: 23 hours; Alaska: P&A reports several hours day, repeatedly.
 - Require sit still, be calm, nothing to do w/ harm; very difficult for students w/DD

Too Many States Don't Require Emergency

- MN: face down restraint for throwing a tantrum over puzzle
- NY Child secluded 75 times, slouching & whistling, hands blistered tried open door
- KY: not putting things away, disliking class baking activity
- OH: 4 of 42 seclusions in Youngstown involved any threats; one child pouted, another turned off music

Loopholes

- S/R for educ disruption, prop. destructn
- MA, MD, CT, TN: limited to emergency, or as provided for in IEP. **Wide discretion, swallows emergency limit.**
- States without laws also allow S/R in IEP for any reason.
- Define S/R to exclude activities (holds shorter than X minutes, staff “access,” only “unobserved” seclusion regulated)

Other Limits on S/R

Seclusion Any Blocked Exit

- 34 states: law or guidance: room or space a child cannot exit
 - Door locked
 - Door blocked by furniture, equipment, child-proofing
 - Staff holding door closed
- Blocked is often a fire code/building code violation. Codes may require sprinklers, room size, etc.

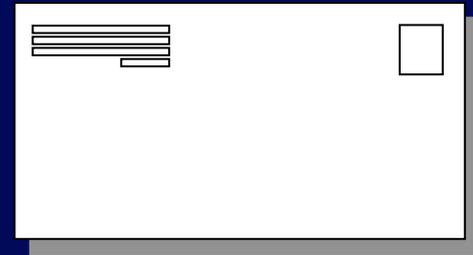
Seclusion Conditions

- 38 states allow seclusion w/o continual observation; 28 states SwDs
- Children Died, Attempted Suicide
- 15-17 states lighting, heating, ventilation, no dangerous objects/furniture
- 7 states: bathroom access. Many children urinated in selves in seclusion. 2 states food and water.

Restraint Limits

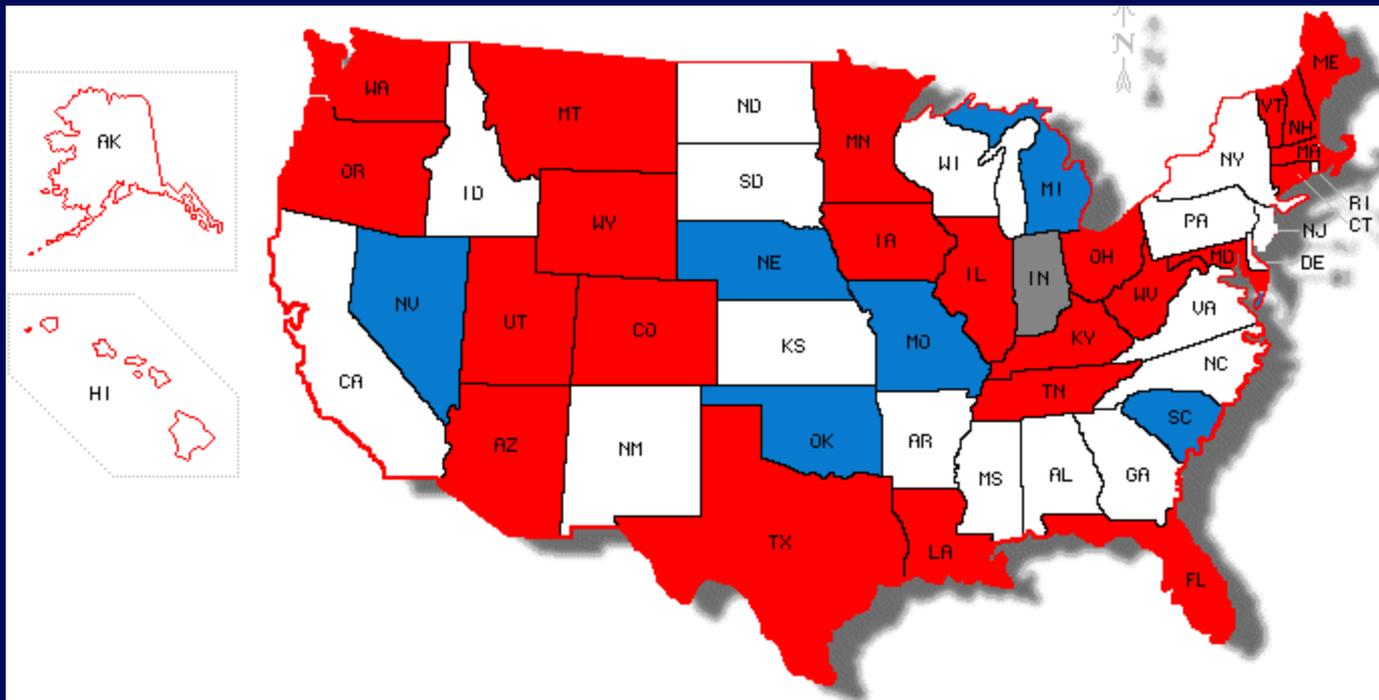
- 21 states ban restraint impeding breathing/threaten life all kids; 28, SwD.
- 15: ban mechanical restraint, 17 SwD
 - Straps, locking chairs, duct tape, ties; some secluded & put into locking chairs. Ala child flipped chair over in bathrm.
- 15 ban dangerous chemical restraint

Parental notification?



	All Kids	SwDs
Must notify parents of both S & R by law (statute/reg)	20	32
Same day notice required	8	13
Same day or 1 calendar day/24 hour notice	12	21
1-2 school/business days (delay holiday/wknd)	5	6
Other notification period	3	5

Majority states favor 1 day or less in statutes, regs, & policy advocacy (Red: Law, Blue: Policy, IN: ASAP)



Data Collection?

- Sunshine: no longer hidden
- Oversight: work with schools improve
- Scream Rooms -> CT strengthen collectn
- Fla: collection -> Stronger law, anecdotal evi of reduction S/R collection & pub reports

State Data Collection

- Only 12 require for all students
- Often do not disclose publicly at state level
- But not burdensome; many states require data reporting at LEA or school level now
- Federal bill: mandatory data collection and broken down into subgroups so can see disproportionate impact

The message from the States?



Impact of Absent Limits?

- 70,000 Students Restrained, 37,000 in isolated seclusion (CRPD, 2011-12)
- GAO: 20 students killed; other students died in seclusion and afterwards
- State reports: significant impact. AK P&A: 60 students secluded 42 cum days in single elementary school
- Some staff engage in harmful bad acts; others unaware they shouldn't do it

Impact Federal Bills on States

- 2009: Only 9 states meaningful protection S and R for all students; Today, 19 all students, 32 SwDs
- 11 ban non-emergency R, 10, S
- Majority mech/chem bans after Congressl bills
- States adopt ban R impede communication; use only least amount force necessary; ban when medical/psych contraindications

Cannot Just Leave it Up to States

- Many allow for non-emergencies, like tantrums, prop destruction
- Loopholes: used any reason if in IEP, limits definition R or S
- Fail to include important provisions (mech/chem ban, monitoring, data, 24 hour notice)
- **PATCHWORK: move and lose**

Nor are weaker national bill protections appropriate

- The dangers and harms we've discussed
- Weakening federal bills will cause state bills to weaken
 - lose momentum limiting R and S to emergencies/physical harm, 24 hour notice, etc.

Improving Education Policy and Stopping the Use of Restraints and Seclusion

Questions



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