

MADSEC

**Maine
Administrators of
Services for
Children with
Disabilities**



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May 4, 2021

To: Senator Rafferty, Representative Brennan, and members of the Education and Cultural Affairs Committee

My name is Jill Adams, and I am the Executive Director of the Maine Administrators of Services for Children with Disabilities, MADSEC. MADSEC is a membership association for the special education administrators across the state of Maine

MADSEC is offering testimony neither for nor against LD 1373, An Act To Keep All Maine Students Safe by Restricting the Use of Seclusion and Restraint in Schools.

MADSEC's understanding of this bill is that it adds language about seclusion and restraint to Title 20-A, the Maine Education Statutes. We appreciate that Representative Millett's amendment that this would be for all student in Title 20-A. Currently there is no language in Title 20-A covering Restraint and Seclusion but instead all requirements reside in the Maine Department of Education Chapter 33 Rule Governing Restraint and Seclusion last amended on April 29, 2013.

MADSEC understands that there are two bills at the Federal Level, one in the Senate, 4924 and another in the House, 8782. Both bills are named, Keeping All Students Safe Act and appear to have nearly the same wording if not the same wording. It appears the language, in LD 1373 comes from these two bills. These bills have not passed, they were introduced to the House and Senate in November 2020 and have been sent to their respective Committees, but I see that nothing else has occurred. MADSEC is not sure why the definitions that are in Chapter 33 need to change. Chapter 33 definitions are very close to those that are being proposed. We are certainly willing to listen to why those changes are necessary. If the definitions are changed there will be a need to revise Chapter 33 and once this is done training for the field on those changes. We do not believe the definitions will change any behaviors in the field.

The change of most concern is the prohibition on seclusion. This was not a concern of all special education administrators as some do not use seclusion as an intervention. Others were very concerned as it is used for those students when there is an immediate danger but with the certain student restraint causes an escalation. MADSEC would like to make it very clear all of us would prefer to not to have to do a restraint or a seclusion. For some students it has been necessary if there is an immediate physical danger to themselves or others.

This is a comment from one of the Special Education Administrators about seclusion.

“We use seclusion with our children who have trauma backgrounds to avoid any hands on and it is only if they are in imminent danger to self or others.

Whenever we have to use either we are providing staff with brief refreshers and problem solve as a school team.”

I have included with the MADSEC’s testimony the Council for Exceptional Children’s Position on Restraint and Seclusion Procedures in School Settings. This is a national association on the education of Children with Disabilities and MADSEC closely follows their lead on many of these national areas.

The goal of all educators and policy makers should be to reduce the use of restraints and seclusion and to develop and implement positive educational strategies that respect the dignity and safety of children and youth with disabilities. In order, to move in this direction, MADSEC would beg the education committee to look closely at number 6 in this proposed bill and put your efforts in this direction, Technical Assistance. We are not sure how this is going to occur within the existing resources. For this to happen, there is a need for ongoing training for administrators, teachers, educational technicians, bus drivers, etc., the whole school community. It will take a cultural change of looking at and fulfilling students’ needs rather than using punishment. What is causing a child to escalate? How do you work toward that understanding? This takes additional staff. If a child is having difficulty, there needs to be staff available to give the child one on one time to intervene before the child escalates. There needs to be staff time to set up a plan for and with the child. Children, just as we do as adults, will find a way to escape something they don’t want to do or feel uncomfortable doing. Many have not learned to do this in a socially acceptable way. The schools need more school psychologists and counselors so there can be more preventative interventions. This includes services for the 3- to 5-year-olds as well. It is much easier to teach these skills at a young age. Teaching a child to be able to identify their feelings and how to respond in an appropriate way is not a one-shot deal. It takes time, patience, and skill. All educators in all settings need training in positive evidence-based approaches.



Approved
November 2020

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POSITION STATEMENT

Position on Restraint and Seclusion Procedures in School Settings

CEC maintains that it should be the goal of all educators and policy makers to eliminate the use of restraints and seclusion and to develop and implement positive educational strategies that respect the dignity and safety of children and youth with exceptionalities.

As advocates for children and youth with exceptionalities, the members of the Council for Exceptional Children (CEC) are committed to ensuring a safe and positive climate in school and community settings. This requires elimination of any inherent biases school leaders, teachers, and other school personnel may hold and investing in policies and practices that build community, such as developing comprehensive safety plans that emphasize proactive approaches to reducing unwanted behavior and providing access to a full continuum of positive behavioral interventions and supports for all children and youth. We find the use of practices such as restraint and seclusion to be in sharp contrast to these ideals, especially because data indicate that children and youth with exceptionalities are subjected to restraint and seclusion at significantly higher rates than their typically developing peers; and this is especially true for African American and Hispanic students with disabilities (US Department of Education/Office of Civil Rights [December 28, 2016]). The negative effects of seclusion and restraint limits the ability of education personnel to provide children and youth with exceptionalities access to a free appropriate public education (FAPE).

CEC maintains that it should be the goal of all educators and policy makers to eliminate the use of restraints and seclusion and to develop and implement positive educational strategies that respect the dignity and safety of children and youth with exceptionalities. We contend that the disciplinary practice of restraining and secluding children and youth are not behavior change strategies and therefore should never be included within Behavior Intervention Plans (BIPs) or Individualized Education

Programs (IEPs), nor should they be identified in individualized safety or emergency plans. Moreover, we recognize the acute impact restraint and seclusion may have on children and youth who have experienced trauma related to previous abuse and how medications or health problems might affect the physical well-being of the student during restraint procedures or seclusion. Therefore, CEC believes that restraint and seclusion should only be used as a last resort and in extremely rare instances when a child's behavior poses an imminent threat of physical harm to him/herself or others.

Guiding the actions of administrators, teachers, and staff members should be the Functional Behavioral Assessment (FBA), the BIP, and the IEP. Core components of planning for children and youth with significant behavioral, emotional, or social challenges, these documents should be data-driven, focused on teaching age- and developmentally-appropriate behaviors and social skills, and incorporate the commitment of all team members, including families/guardians. Because the BIP should focus on plans to teach appropriate skills and responses, the use of restraints or seclusion should never be included as a planned intervention.

Throughout this document, CEC has adopted definitions provided by the Office for Civil Rights (OCR) at the US Department of Education (December 28, 2016) in considering these positions. The only federal definitions available, the OCR terminology informs reporting requirements at the school, local education agency, and state levels and thus, are currently accepted as standard reporting definitions.

Definitions

The following definitions for restraints and seclusion are taken from the December 28, 2016 Dear Colleague Letter issued by OSEP/DOE <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201612-504-restraint-seclusion-ps.pdf>.

In general, OCR defines three categories of restraints: Mechanical, Physical and Chemical. In educational settings the use of physical and mechanical restraints are the primary concerns. The OCR uses the following definitions for mechanical restraint and physical restraint:

The Council for Exceptional Children is the largest international professional organization dedicated to improving the educational success of children and youth with disabilities and/or gifts and talents.

Mechanical Restraint	Mechanical restraint refers to the use of any device or equipment to restrict a student's freedom of movement. The term does not include devices implemented by trained school personnel, or utilized by a student that have been prescribed by an appropriate medical or related services professional and are used for the specific and approved purposes for which such devices were designed (e.g., devices or mechanical supports used to achieve proper body position, balance, or alignment to allow greater freedom of mobility; vehicle safety restraints; restraints for medical immobilization; or orthopedically prescribed devices that permit a student to participate in activities without risk of harm.
Physical Restraint	Physical restraint refers to a personal restriction that immobilizes or reduces the ability of a student to move his or her torso, arms, legs, or head freely. 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.
Seclusion	Seclusion refers to 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.

Parameters and Beliefs

Given these definitions and our commitment to safe and positive school and community settings, CEC supports the following principles and practices related to the use of restraints and seclusion in all educational settings:

1. All children and youth should receive necessary behavioral, social, emotional, and mental health screenings, support, and programming in a safe and least-restrictive environment. Further, schools and districts should include regular school-wide behavioral screenings to identify those children and youth who are at greater risk for developing behavioral disorders.
2. The FBA and the BIP should be a core component of planning for children and youth with significant behavioral, emotional, or social challenges and the use of restraints or time out should never be a planned intervention for any child or youth. By using this process, the educational team will ensure that people with a significant level of knowledge of the child or youth, including the parents/guardians, will make decisions about how best to support the student in the school.
3. Restraint should only be used in situations where a child or youth has demonstrated that s/he is an *imminent physical danger* to himself/herself or others and all other least restrictive supports have been exhausted. Moreover, when restraint is used, it should end when the child or youth demonstrates that s/he is no longer a danger to him/herself or others or demonstrates signs of medical distress. *Restraint should never be used as a means of discipline or coercion, nor should restraint ever be used as a primary method for de-escalating a child's behavior.*
4. Seclusion, which has no known therapeutic benefits, should be used only in the extremely rare situations when a child or youth has demonstrated that s/he is an *imminent physical danger to himself/herself or others* and all other least restrictive supports have been exhausted. Additionally, seclusion should only be considered where there is no medical or psychological (e.g., the impact on children and youth who have experienced trauma related to previous abuse) contraindications and must be time-limited, ending when the child or youth demonstrates that s/he is no longer a danger to himself/herself or others or demonstrates signs of medical distress. *Seclusion should never be used as a means of disciplining a student nor should it ever be used as a primary method for de-escalating behavior.*
5. The following practices should *never* be used in educational settings (including by school, contract, or non-school staff):
 - a. The use of prone restraint (with the child or youth face down on his/her stomach).
 - b. Any restraint or maneuver, including supine restraint, that places pressure or weight on the chest, lungs, sternum, diaphragm, back, neck, or throat or that is administered in such a manner that prevents a child or youth from breathing, communicating, or speaking.
 - c. The use of mechanical restraint (i.e., use of devices as a means of restricting freedom of movement including handcuffs, rope, duct tape, etc.). However, prescribed assistive devices such as standing tables and chairs with restraints are not considered mechanical restraints, neither are vehicle restraints (i.e., seat belts and harnesses).
 - d. The use of any practice related to restraint or seclusion as a form of discipline, to force compliance, as a convenience for staff (i.e., placing a child or youth in seclusion while staff is working on other issues), or as a substitute for appropriate positive educational supports.
6. Policies and procedures should provide preference for safe, effective, evidence-based strategies to support children and youth who display challenging behaviors in educational settings over the use of restraints or seclusions. Such strategies include schoolwide positive behavior interventions and supports, trauma-informed care practices, and high

leverage/evidence-based practices. The policies should be clearly articulated in the policies of school districts and individual schools and communicated to all parents and families prior to any use of the supports.

7. Policies and procedures related to the use of restraints and seclusion must make clear that they will not employ any of the practices noted in 5. above and will only be used by adequately trained individuals. Staff training should include current evidence-based programs and techniques and approaches to supporting students with significant behavioral challenges. (For a list of suggested peer reviewed programs, visit <https://ies.ed.gov/ncee/wwc/FWW/Results?filters=.Behavior,Children-Youth-with-Disabilities>.)
8. State education agencies, in partnership with local education agencies and other educational settings, must develop clear and consistent reporting systems to ensure incidents of restraint and seclusion are reported to parents/guardians immediately following the incident. Further, a series of several incidents leading to the use of restraint and/or seclusion of a child or youth should result in a review of the child or youth's programming and the BIP to determine if the incidents constitute a pattern of behaviors that should be addressed through the BIP.
9. All PK-12 educational settings should accurately report data on the use of restraint and seclusion to state and federal agencies in compliance with all applicable state and federal reporting requirements. At minimum, all schools should accurately and in a timely manner report data required under the Civil Rights Data Collection (CRDC) and any other required state reports related to the use of restraint and seclusion and these reports should be publicly available subject to the protection of individual students' identities.
10. State and local education agencies should regularly examine data surrounding restraint and seclusion to determine data accuracy and look for trends and patterns related to racial disproportionality, age, disability category, and other relevant information that can improve oversight and the safety of children and youth.
11. Only staff members trained on the use of evidence-based, safe approaches when using restraint and seclusion should be permitted to implement these disciplinary practices. Training curriculum should follow uniform, national guidelines aligned to standards established by professional organizations and result in a certificate or other document that recognizes the successful completion of the training program. Training should occur at least annually and include content and skill development on crisis prevention, de-escalation, conflict management, and evaluation of risks of challenging behavior. Additionally, training must include methods for monitoring a child or youth's well-being, including making trainees aware of the potential psychological harm of the use of restraint and seclusion and how medications or health problems might affect the physical well-being of the child or youth during restraint procedures or seclusion. Training should also include any staff members who may deliver services in other settings (e.g., in the home or on a school bus).
12. School districts should annually inspect rooms and/or spaces that might be used in the event of a need to seclude a child or youth. Further, such spaces must be examined prior to each use to ensure they are physically and emotionally safe and humane, and free from potential danger. Additionally, while these rooms are being used with children and youth, locking mechanisms should only be engaged in a situation where the lock is activated or engaged by a human being and can be disengaged quickly in the case of an emergency. Children and youth must be continuously monitored to ensure their physical safety and their human rights must be respected.
13. Federal laws, state laws, and proactive technical assistance provided by the OCR and the Office for Special Education Programs (OSEP) should move to eliminate the incidence of restraint and seclusion and ensure that personnel in all educational settings understand the parameters of using and reporting uses of restraint or seclusion.
14. Researchers are encouraged to use existing sources of data to identify school districts, schools, and other educational settings that have significantly reduced the use of restraint and seclusion to identify additional proactive methods of supporting student behaviors.
15. Full funding of IDEA 2004, that promotes the use of FBA and BIP when a student has demonstrated behavior that impedes their learning or the learning of others, is necessary to fully support children and youth with disabilities.

The IDEA requires school districts to provide a FAPE in the least restrictive environment (LRE) to eligible students with disabilities, including those with significantly challenging and sometimes dangerous behaviors. It is clear school district personnel cannot meet this burden alone. CEC will partner with sponsors of legislation to ensure clear language and reporting requirements consistent with evidence and accountability to guarantee the safety of children and youth.

Preventing Restraint and Seclusion in Schools

Brandi Simonsen, George Sugai, Heather P. George, Jennifer Freeman, & Lauren Evanovich

Restraint and seclusion are crisis or emergency responses, which should only be used in extreme situations (e.g., a student engaging in repeated forceful physical aggression toward self or others) when risk of **serious and imminent physical harm or injury** is high and when an emergency response may reduce that risk. Restraint and seclusion are not planned or therapeutic interventions and should never be a routine part of a behavior support plan or used as a consequence for behavior.

Prevalence & Definition of Restraint & Seclusion

Estimating exactly how often restraint and seclusion occur is challenging because the definitions and reporting requirements vary by state, and sometimes by district. Using the Civil Rights Data Collection (CRDC), which includes reported data from almost every public school in the USA, the Office of Civil Rights (OCR, 2018a) reported that **122,000 students (approximately 0.2% of all students enrolled)** experienced a restraint or seclusion during the last data collection period (2015-2016), and approximately **71% of the students restrained** and **66% of students secluded** were identified **with disabilities** under the Individuals with Disabilities Education Act (IDEA, 2004).

OCR (2018b) defines physical restraint* and seclusion in the following ways.

- **Physical restraint:** “a personal restriction that immobilizes or reduces the ability of a student to move his or her torso, arms, legs, or head freely. 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.”
- **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.”

*Other forms of restraint, such as mechanical or chemical, should never be used in schools (US DOE, 2012).

Reporting & Reviewing Restraint & Seclusion

The use of restraint or seclusion should always be documented and reported to the family, district, and state according to district and state procedures and policies. Documentation should include:

- Specific procedure used (e.g., standing restraint);
- Time of day, duration, and location of the event; and a
- Detailed account of the events that occurred before, during, and after use of a restraint or seclusion procedure.

The use of restraint or seclusion should be regularly reviewed and monitored to ensure these crisis procedures are used in accordance with district and state procedures. These data should be examined at district, state, and federal levels to understand whether supporting students and reducing behavioral crises at each level has been successful.

Alternatives to Restraint & Seclusion

Prevention is the best alternative. When a severe crisis occurs, educators must focus on ensuring that everyone is safe from injury AND de-escalating the crisis situation. In some cases, a response may be necessary to maintain safety and prevent serious injury; however, injury also is a concern when using restraint or seclusion. Therefore, the best alternative to restraint and seclusion is to prevent a crisis situation from occurring. Here are some prevention considerations:

Behavior Intervention Practices are Critical

Universal, positive, and preventive behavior intervention practices are critical to support all students, including students with disabilities and those with a history of challenging behaviors. Having positive expectations for students, explicitly teaching social and emotional skills, providing

positive specific feedback, and reinforcing accomplishments create an environment that functions as a “protective factor” for students with a history of challenging behavior. Within a multi-tiered system of support, like PBIS, these are “Tier 1” practices.

Behavior is a Form of Communication

Educators must understand that behavior is a form of communication and that all behavior serves a function. Students use their behavior to communicate that they want to get something (like attention or an activity) or avoid something (like escape an unpleasant or undesired situation). Therefore, when implementing more targeted (Tier 2) or intensive (Tier 3) prevention supports, educators must (a) teach students a replacement skill (i.e., more appropriate behavior) that effectively results in similar consequences and (b) make individualized adjustments to the classroom and school environment to set students up for success. For example, some evidence-based strategies include providing reminders, establishing predictable routines, adjusting academic instruction and tasks, and arranging the environment so the replacement skills “work” for the student. Increasing the likelihood of student success reduces the likelihood of a crisis situation.

Training and Support for Educators

Educators need training and ongoing support to effectively implement this continuum or tiers of behavior support practices. The US DOE (2012) recommends providing ongoing professional development on the use of effective alternatives to restraint and seclusion, such as PBIS.

Data are Critical

Educators need access to meaningful and readily summarized data to (a) determine if Tier 1 supports are working, (b) identify the function of student behavior, (c) select implementable and function-based interventions, (d) evaluate accuracy of intervention implementation, (e) assess if interventions are working, and (f) determine whether school-wide goals of reducing crisis incidents are being met.



Work as a Team

If crisis-level behaviors occur, trained educators must work as a coordinated team to calmly implement de-escalation strategies and, if necessary, implement crisis response strategies. To minimize the risks of moving a student in crisis, restraint may be preferable to seclusion. As soon as the emergency dissipates and the student is no longer in serious physical harm to self or others, restraint or seclusion should be discontinued and educators should support the student's return to typical routines (e.g., review expectations, practice replacement skills, remove triggers in the environment).

Any crisis occurrence should be viewed as a prevention failure and trigger a debrief of the event with review and enhancement of the prevention plan, including (a) prevention practice components, (b) risk screening and function-based data collection procedures, (c) personnel preparation and coaching, (d) implementation accuracy and fluency, and (e) integrity of the positive behavior supports available to all students. The ultimate goal is to make informed adjustments to prevent future crises.

Policy & Guidance Implications

Because states provide variable guidance to districts and schools with respect to policy, practices, data collection, and personnel preparation, guidance from the federal government may be helpful. For example, the US DOE developed the [Restraint and Seclusion Resource Document](#)¹, which highlighted the conditions under which crisis responses may become necessary and emphasized the importance of prevention. In addition, proposed legislation, such as the Keeping All Students Safe Act, provide further guidance to states. The benefits and cautions related to this issue were reflected in the [testimony of Dr. George Sugai](#)² during the U.S. House of Representatives Subcommittee Hearing on Early Childhood, Elementary, and Secondary Education on “[Classrooms in Crisis: Examining the Inappropriate Use of Seclusion and Restraint Practices](#).”³

The Bottom Line

Every student and educator has the right to a safe, respectful, effective, and constructive learning environment, especially students who are at risk for developing challenging behavior or have histories of such behavior. Prevention is the key to how we (a) arrange and operate our schools and classrooms, (b) develop interventions to support students with a history of challenging behavior, and (c) respond after a crisis to ensure that all students and educators are more likely to be successful the next time.

1. <https://www2.ed.gov/policy/seclusion/restraint-and-seclusion-resource-document.html>

2. <https://www.pbis.org/Common/Cms/files/pbisresources/SugaiTestimony022719.pdf>

3. <https://www.youtube.com/watch?v=uM19qJPdkA0>



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Suggested Citation for this Publication

Simonsen, B., Sugai, G., George, H.P., Freeman, J., & Evanovich, L. (May, 2019). *Preventing Restraint and Seclusion in Schools*. Eugene, OR: OSEP TA Center on PBIS, University of Oregon. Retrieved from www.pbis.org.

This document was supported from funds provided by the Center on Positive Behavioral Interventions and Supports cooperative grant supported by the Office of Special Education Programs (OSEP) of the U.S. Department of Education (H326S180001). Dr. Renee Bradley served as the project officer. The views expressed herein do not necessarily represent the positions or policies of the U.S. Department of Education. No official endorsement by the U.S. Department of Education of any product, commodity, or enterprise mentioned in this document is intended or should be inferred.