

Regulating Restraint and Seclusion



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PoAC Presentation February 27, 2021

The new VA Policy is great. But there was a prior protection for your student.

8 VAC 20-671-660 passed in 2015, [Managing Student Behavior in Emergency Situations](#)

“Each school shall have written policies and procedures made available annually to students, parents, and placing agencies.”

Restraint and seclusion is only allowed in an “emergency situation; when necessary to protect another person from “imminent danger of serious physical harm.”

“Repeated use for an individual child, multiple uses within the same classroom, or multiple uses by the same individual shall trigger a review”

“Physical restraint or seclusion shall not be used for disciplinary reasons, as a punishment, or retaliation, or for staff’s convenience.”

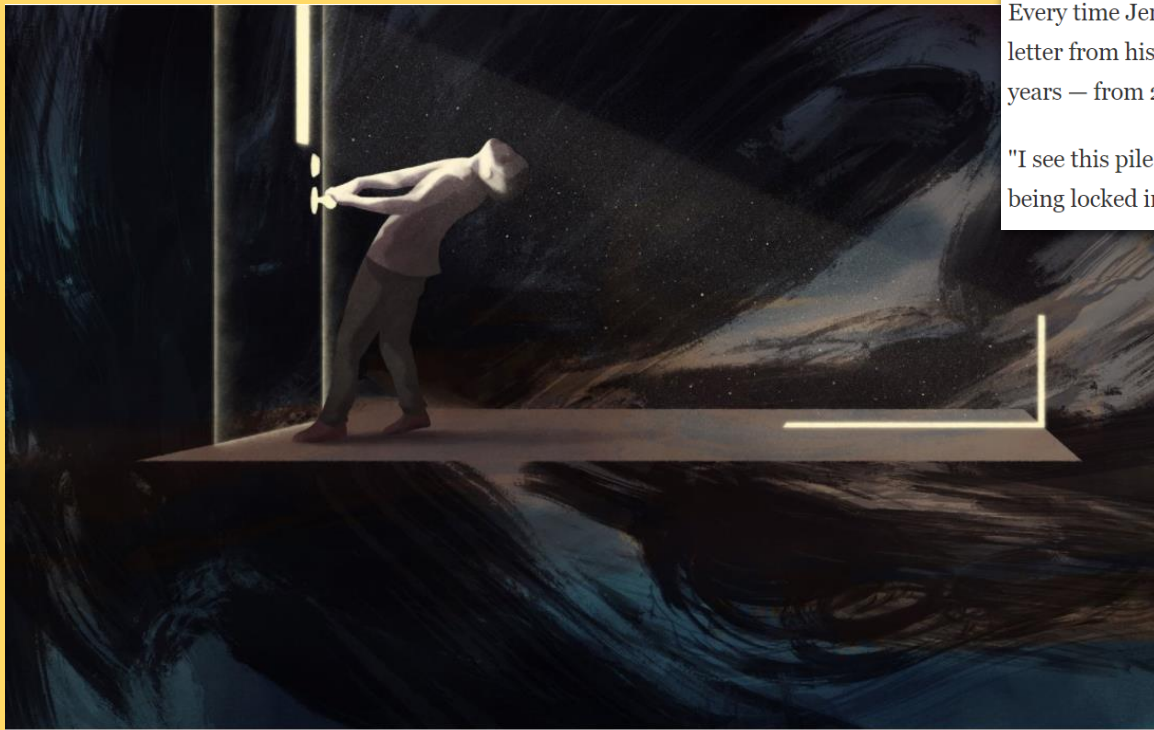
“Physical restraint may only be implemented, monitored, or discontinued by staff who have received proper training”

“The door to any room in which as student is secluded may be held shut only when a staff member is personally securing it. The door must immediately disengage when the staff member steps away from it.”

“Parent shall be informed on the day of each incident of physical restraint and seclusion”

“Each application of physical restraint or seclusion shall be fully documented in the student’s record.”

Data must be reported annually; data which “shall be disaggregated by students and number of occurrences”



Leonardo Santamaria for NPR

Tidd's son is 13 now, and Fairfax County pays for him to attend a private school for students with disabilities.

Every time Jennifer Tidd's son was secluded or restrained at school, she received a letter from his teachers. Her son has autism and behavioral issues, and over three years — from 2013 to 2016 — Tidd got 437 of those letters.

"I see this pile of documents that's 5 inches tall that represents hundreds of hours of being locked into a room, and I feel, you know, horrible," Tidd says.



Tidd knows she is lucky. Not all parents would be able to hire a lawyer and have their child transferred to a private school.

As a matter of fact, concerns with the practice of restraint and seclusion have been known for decades.

- The Hartford Courant reports on 142 seclusion and restraint-related deaths over 10-year period in 1990s (33% were caused by asphyxia) in a [1998 article](#).
- Child Welfare League of America produces a Fact Sheet in 2000 that estimates 8-10 deaths occur yearly due to restraint procedures.
- [GAO study - 2009](#) Seclusions and Restraints: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers. [Abstract](#) [Full Report](#)
- National Disability Rights Network enumerates injuries and death from restraint and seclusion in a 2009 report entitled [School Is Not Supposed to Hurt](#).
- Equip for Equality in IL conducts a national review on restraint of children and adults with disabilities and releases the 2011 report [The Lethal Consequences of Restraint](#).

This has resulted in oversight and guidance at the Federal level

- Reporting has been required for restraint and seclusion to the USDOE Office of Civil Rights since 2010
- The original [Keep All Students Safe Act \(KASSA\), H.R. 4247](#), passes the House in 2010, gets stuck in committee in the Senate
- In 2012, the USDOE publishes its “Fifteen Principles” to consider when developing and implementing policies and procedures on restraint and seclusion, appearing in its [Restraint and Seclusion Resource Document](#)
- The USDOE OCR’s 2016 [“Dear Colleague Letter”](#) -R&S has been used discriminatorily on students with disabilities, and has denied these students FAPE
- But alas, there is no legislation, solely guidance, on the federal level to protect your student. Or, no legislation YET (more on that later!)

Increased Visibility

- **March 13, 2019** - WAMU reporting of overuse, misuse, and failure of reporting of restraint and seclusion in FCPS. This story was also carried nationally.
 - [Children are Repeatedly Isolated in some Fairfax County Schools. The District Did Not Report It](#)
 - Follow up stories: [March 15](#), [March 21](#), [May 24](#), [June 15](#), [July 2](#), [October 9](#),
- **November 19, 2019** - Excellent reporting by collaborating reporters from ProPublica and the Chicago Tribune about misuse across the state of Illinois
 - [The Quiet Rooms](#) by Jennifer Smith Richards, Jodi S. Cohen and Lakeidra Chavis
 - **OVER ONE-THIRD** of the TWELVE THOUSAND cases of seclusion they investigated had guidelines **NOT MET** for the procedure to have been used in the first place.
 - There's now a series of 25 articles and counting. Find them here: <https://www.propublica.org/series/illinois-school-seclusions-timeouts-restraints>

What happened as a result of the IL reporting?

- IL enacts and emergency moratorium on seclusion the day after the release of The Quiet Rooms. -November 20, 2019
- Legislation filed by State Representative Jonathan Carroll to ban seclusion and prone restraints in IL. Mr. Carroll was a former special education teacher who himself had been secluded. -November 21st, 2019
- Ten congressmen and two senators, the all but one from IL, send a letter to Betsy DeVos urging her to put out national guidance to ban seclusion and restraints that restrict breathing. The Quiet Rooms is cited in the letter. -January 15, 2020
- Sadly, IL has not made much progress. The bill to end seclusion, prone and supine restraints “ran out of time” in a January 2020 legislative hearing.
- KASSA is re-introduced in the House on November 17, 2020. This is exactly one year since the publication of The Quiet Rooms.

THE QUIET ROOMS

Children are being locked away, alone and terrified, in schools across Illinois. Often, it's against the law.

“Please someone respond to me. ... I’m sorry I ripped the paper. I overreacted. ... Please just let me out. Is anyone out there?”

11:58 a.m., Jan. 11, 2018

Fresh Start Treatment and Learning Center, Effingham

TLC Restrictive Intervention Incident Report

(EW) 11:42 Crying - "let me out of here, I'm crying alone"
Walking in circles around room.

11:44 Crying in front of door. Spitting in middle of room crying.

11:45 Crying - "I don't want the door closed, it won't open please!"
Trying to open door. "I don't want it closed!" (Morgan told him it needs to stay closed, because he was crying out loud)

11:47 Crying - "I want to go home get me out of here"

(SW) 11:49 Crying by the door Morgan told him to sit against the back wall for 5min and then had be given his next direction.

11:51 sitting quietly against back wall w/ head on his knees.

(EW) Morgan told him to continue this - 1 min.

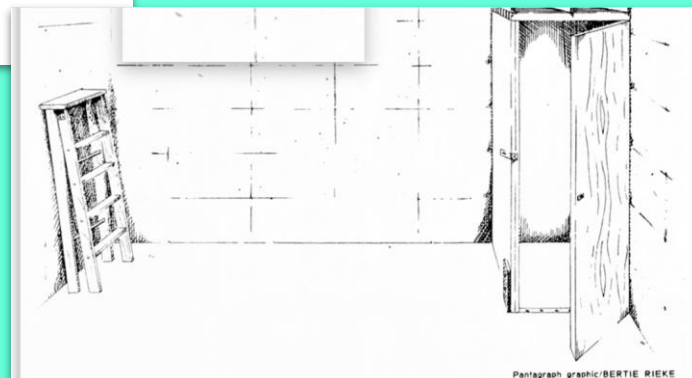
Children were sent to isolation after refusing to do classwork, for swearing, for spilling milk, for throwing Legos. School employees use isolated timeout for convenience, out of frustration or as punishment, sometimes referring to it as “serving time.”

The students, most of them with disabilities, scratch the windows or tear at the padded walls. They throw their bodies against locked doors. They wet their pants. Some children spend hours inside these rooms, missing class time. Through it all, adults stay outside the door, writing down what happens.



A Boy in a Plywood Box

THE PLYWOOD BOX in the middle of Ted Meckley's special-education classroom was 3 feet wide, 3 feet deep and 7 feet tall. The schools around Pontiac had been using boxes to seclude students for years, and Ted, a nonverbal 16-year-old with developmental disabilities, was routinely shut inside.



Pantagraph graphic/BERTIE RIEKE

Artist's rendering of the "time-out box" used in the Pontiac Grade School District.

Time-out box compared to phone booth

PONTIAC — A time-out box at Washington Elementary School in Pontiac has been described as similar to a telephone booth by teachers, but an advocacy group has said photographs can be misleading and they would not be in the best interests of the district's students. The 7-foot-high wooden box is tucked in the back corner of a classroom. The box is bolted to the floor and remains in the box, which is usually for five to 15 minutes depending on how long it takes the individual to calm down.

What happened in FCPS as a result of the FCPS reporting?

- Well, there were actually a few things.
 - Behavior Intervention Teachers (BITs) were increased to one per pyramid
 - Reporting: Every instance of restraint and seclusion shall have the report copied to the Director of Special Education Instruction. A report copy goes to the parent, and other to the student file.
 - Every staff member, including general education and paraprofessionals, shall get restraint and seclusion training and they shall refresh the training annually.
 - All schools are required to institute a crisis support team.
 - CSS sites and public day schools are required to create an annual training plan for crisis and behavior management.
- But mostly, “Wait for the VA regulations.” No new policy or guidance.

New VA Regulations: 8 VAC 750-5 through 750-150

- Regulations Governing the Use of Seclusion and Restraint in Public Elementary and Secondary Schools in Virginia
- Developed over FIVE YEARS. Subsequent to the 2014 Virginia Commission on Youth Study of Seclusion and Restraint in Schools
- Regulations were originally to include a ban on seclusion; however this lost support after lobbying by school administrator's organizations.
- **Finalized July 2020**, when most Virginians didn't notice due to the pandemic.
- Many good new things in the policy to safeguard students.
- Real opportunity came from the VA regulation that each school division was to create their own policy on restraint and seclusion to meet or exceed what was in the VA regulations. VA regulations made it very clear each school division was actually deciding themselves if they will utilize restraint and seclusion.

VA Regulations 8VAC20-750. Regulations Governing the Use of Seclusion and Restraint in Public Elementary and Secondary Schools in Virginia

- Regulates any space to be used for seclusion with specific structural and physical standards.
- Specific requirements for the mandatory reporting of each instance, to be prepared within 48 hours, with parent notification.
- Prone restraints prohibited (those are face-down restraints), and any restraints that restrict breathing.
- “Level-one” prevention training for ALL school staff, to include bus drivers, and the requirement that all staff likely to restrain or seclude receive advance training. The advanced training to be used must be specified.
- Each school division’s policy must list positive behavioral interventions and alternatives to seclusion and restraint, **IF** the school division decides to utilize restraint and seclusion.
- The policy must state the circumstances in which restraint and seclusion may be employed, which shall be no less restrictive than that set forth in 8VAC20-750-40 and 8VAC20-750-50.

“The Opportunity”

The VA Regulations have required each school division to have a **POLICY** on restraint and seclusion. (FCPS had never before had a policy governing restraint and seclusion, only a set of 2012 guidelines, revised in 2019.)

School boards set policy. The school division, with ultimate responsibility on the Superintendent, creates regulations to match the policy.

We had just elected a fairly progressive school board, a few of whom had ran on a platform including a ban on seclusion.

Plan: Lobby school board members. We felt we could get a majority of school board members to say *“I am not voting for a policy that does not include a ban on seclusion.”*



WINNER WINNER WINNER WINNER WINNER



**ABRAR
OMEISH**

**FAIRFAX COUNTY
SCHOOL BOARDMEMBER
AT-LARGE
VIRGINIA**



FAIRFAX COUNTY SCHOOL BOARD



Work through SEPTA

- SEPTA President requests a public hearing on restraint and seclusion.
- Meetings are held with Dr. Boyd with SEPTA leadership.
- SEPTA Advocacy Committee forms a subcommittee for restraint and seclusion. Members write multiple emails to their school board members and give public testimony at school board meetings, ACSD, and finally the public hearing.
- SEPTA leadership also engages in phone calls to school board members who have not yet made their position clear
- SEPTA releases position statement which is signed Formed Families Forward and the ARC of Northern Virginia. It was adopted by the FCCPTA. It has been submitted for adoption for the Virginia and National PTAs.
- SEPTA releases a response to the first draft: SEPTA Concerns re: Proposed FCPS Restraint & Seclusion Policy.

Work through the ACSD

- Luckily, we were offered a meeting by Jane Strong to review the policy they were just beginning to draft. This is pursuant to 8 VAC 80-20-90.
- The Policies and Regulations Subcommittee of the ACSD, co-chaired by Brianne and myself, was ready at this meeting to offer recommendations. We offered a presentation of recommendations from last years' Policies and Regulations Subcommittee report that applied, and had six new recommendations.
- At the next ACSD meeting in November, we were happy to have The Committee of the Whole adopt these recommendations. They were presented to Dr. Brabrand for transmission to the school board (pursuant, again, to 8 VAC-20-90).

First Draft of the Policy

- Did not fully incorporate ANY of the ACSD's recommendations. They did release a document explaining how stakeholder recommendations were utilized, but this document was misleading.
- No stakeholder input was utilized fully.

Try, Try Again!

SEPTA releases a their document with recommendations, appended with supporting research studies and reporting.

ACSD creates recommendations, with references

Email campaigns and testimony continues

In the second draft we gain:

- A ban on supine restraints
- The requirement for same-day notification for parents with the full report of the incident.
- Parents also must be notified immediately when the imminent threat of harm from their student persists, which may result in further and prolonged restraint and/or seclusion.

ACSD Meeting and the Third and Final Draft

An ACSD meeting was called on Dec. 7, 2020 to review the second draft.

The Policies and Regulations subcommittee had ready 8 recommendations for the second draft, which were adopted to become recommendations from the Committee of the Whole by a consensus vote.

A third and final draft is prepared in the school board which incorporates six of the eight of ACSD's Dec. 7th recommendations.

The school board approves the final draft in an unanimous vote, with many members praising a process that included hearing the voices of the ACSD and stakeholders.

Policy 2022: The Current FCPS Policy on Restraint and Seclusion

- Bans both prone and supine restraints. Only sitting and standing restraints remain. (Students may not be taken down to the floor.)
- A list of interventions prior to restraint/seclusion is clearly stated in the policy, so a failure to try evidence-based de-escalation strategies first is a violation of policy.
- Seclusion is already banned in all FCPS schools (as of January 1, 2021) with the exceptions of Key and Kilmer Center, and the Burke School.
- There is a clear statement that seclusion will be banned in ALL FCPS schools by School Year 2022-2023.
- Data analysis shall be reported quarterly and include, disaggregated by school: Frequency of use and affected students' primary disability category, age, gender, race, and ethnicity.
- The school board shall receive a report of the data analysis annually.

The work has only just begun...

We started this presentation with notes how students always had a number of protections as a result of federal guidelines and former VA regulations.

The reporting from WAMU on FCPS, and the reporting from IL showed that **FOLLOWING one's policy is the real problem**. Recall that of 12,000 reports in IL, in over $\frac{1}{3}$ of them seclusion had been used in a violation of policy.

There is a [2020 GAO report](#) that shows proper reporting is a significant problem across the US, making it impossible for USDOE to investigate for overuse/improper use.

A ban on seclusion without increasing teacher and staff proficiency in methods to prevent escalation and promote de-escalation would likely result in seclusion continuing in a violation of the new policy--and therefore without reporting. Which would be clearly worse for students.

The work has only just begun...

How do we help FCPS make sure their ban is successful?

- PoAC has recommended increasing ABA staff in October 2019 letter.
- Increase SLPs and ATS services to help students increase their communication skills. Maladaptive behaviors occur when students don't have another way to communicate their unmet needs and problems.
- Ukeru by Grafton Integrated Health Network- Plans to pilot at Burke
- Ross Greene- Plan to pilot his Collaborative and Proactive Solutions model (CPS) at the Burke School, with plans to consider for CSS sites +/- general education settings, Quander and Cedar Lane. (CPS has evidence to reduce R&S; PBIS does not)*
- Ensure parents know the policy. ?Advocate for its distribution at IEPs (translated as appropriate) for students with behavior plans or in certain placements??

The secret in education lies in respecting the student.

- Ralph Waldo Emerson

"I don't think anyone can grow unless he's loved exactly as he is now, appreciated for what he is rather than what he will be." - Fred Rogers

"Treat a child as though he already is the person he's capable of becoming." - Haim Ginott

"Behaviorally challenging kids are challenging because they're lacking the skills to not be challenging." - Ross W. Greene