

**Guidelines for the
Development of
Policies and Procedures
for
Managing
Student Behaviors
In Emergency
Situations
in Virginia Public Schools
Focusing on Physical Restraint and Seclusion**

Prepared by the Virginia Department of Education,
Office of Special Education and Student Services
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PREFACE

This document, *Guidelines for the Development of Policies and Procedures for Managing Student Behaviors in Emergency Situations*, is designed to provide assistance to school divisions¹ and public school programs in Virginia regarding the writing of policies and procedures for physical restraint and seclusion of students in emergency situations. This initiative, though spearheaded by the State Special Education Advisory Committee (SSEAC) in 2005, is pertinent to the management of all children's violent behavior in emergency situations in Virginia's public schools. Recent testimony before the U.S. Congressional Committee on Education and Labor has shed new light on this critical issue.² The guidelines are intended to provide helpful and easily accessible information for those divisions that are developing or reviewing their policies for managing student behaviors. These guidelines are informational and are not mandated. However, a school division may choose to use this information at its discretion in developing procedures that will help in situations involving the management of challenging student behaviors.³

¹The term "school division" as used herein refers to Virginia school divisions, charter schools, state operated programs, special education programs, and any alternative education setting under the auspices of a school division.

²The full text is available in the GAO document, GAO-09-719T, <http://www.gao.gov/new.items/d09719t.pdf>.

³The development or revision of local policies and procedures on physical restraint and seclusion should be reviewed with the school division's school board attorney.

ACKNOWLEDGEMENTS

The Virginia Department of Education (VDOE) first issued these Guidelines in 2005 to assist school divisions in handling emergency situations involving the use of physical restraint and seclusion of children in Virginia's public schools. At that time, the VDOE expressed its appreciation to the SSEAC for its insight, collaboration, cooperation, and leadership in promoting the study on physical restraint and seclusion. Appendix E identifies the membership of the SSEAC's sub-committee in 2005 that assisted in the completion of the Guidelines. The VDOE also acknowledged the administration and staff with VDOE and special educators in school divisions who assisted with the project through research, policy analysis, program coordination, support, and editing. This acknowledgement was also extended to VDOE's administrative support staff and consultants who assisted in ensuring timely and efficient development of the Guidelines.

The VDOE expresses its appreciation again to the members of the SSEAC for supporting the reissuance of these Guidelines, and to the VDOE staff and consultants who assisted in updating this document.

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PHILOSOPHY

Each child is valued as a contributor in the education process and schools must ensure that children are treated with respect and dignity and that the learning environment is safe for all students and staff. When there is a need to manage aggressive or violent behavior of students in emergency situations, there must be a balance between maintaining an effective and safe learning environment for children and school staff and safeguarding the rights and protections of students. Each school division should have policies and procedures to address behaviors that may disrupt the education process.

A school division should ensure that any behavior management techniques used are appropriate. **Where possible, less restrictive measures should be used initially and no intervention should remove a student from the learning environment for unreasonable or unnecessary periods.** When the behaviors have been addressed, returning the student to the learning environment is paramount.

BACKGROUND

The purpose of these guidelines for policy and procedure development is to provide information to school divisions that will help them ensure that each student participating in a Virginia public education program is educated in a safe environment. Also, local policies should ensure that when behaviors need special intervention, students are free from the unreasonable use of physical restraint and seclusion. **Physical restraint and seclusion should only be used in emergency situations, when other less intrusive alternatives have failed.** Corporal punishment and abusive techniques are not authorized, permitted or condoned in Virginia's public schools. Corporal punishment is expressly prohibited by the *Code of Virginia*, §22.1-279.1.⁴

Seclusion and restraint refer to safety procedures in which a student is isolated from others (seclusion) or physically held (restraint) in response to serious problem behavior that places the student or others at risk of injury or harm. Concern exists that these procedures are prone to misapplication and abuse, placing students at equal or more risk than their problem behavior when one or more of the following situations occur:

1. Seclusion and restraint procedures are inappropriately selected and implemented as "treatment" or "behavioral intervention," rather than as a safety procedure.
2. Seclusion and restraint are inappropriately used for behaviors that do not place the student or others at risk of harm or injury (e.g., noncompliance, threats, disruption).
3. Students, peers, and/or staff may be physically hurt or injured during attempts to conduct seclusion and restraint procedures.
4. Risk of injury and harm is increased because seclusion and restraint are implemented by staff who are not adequately trained.
5. Use of seclusion and restraint may inadvertently result in reinforcement or strengthening of the problem behavior.

⁴See terminology section of this document. Also, see the full text of the definition of corporal punishment in Appendix D relative to public schools. Also, see the regulations of Behavioral Health and Developmental Services at 12VAC35-105 relative to prohibited actions that include corporal punishment, deprivation of appropriate services, and application of aversive stimuli, and 12VAC105-20 for related definitions.

6. Seclusion and restraint are implemented independent of comprehensive, function-based behavioral intervention plans.⁵

School divisions must ensure that any action taken does not violate constitutional protections, especially in terms of an individual's due process rights, and that policies contain assurances of students' rights. All federal and state statutes, and any implementing regulations, must be considered when setting forth requirements for using physical restraint and seclusion. Virginia's public schools are guided by the *Code of Virginia* relative to discipline in Section 22.1-276 et seq. and by regulations set forth by the Board of Education in 8VAC20-81-10 relative to students with disabilities. Neither the statutes nor the regulations authorize the use of any abusive techniques or interventions with students in Virginia's public schools. Relevant statutes and regulations are provided in Appendix D.

Several Virginia school divisions have already addressed the legal requirements and ramifications of using procedures to manage student behavior and have written policies, local regulations, and best practice documents. However, a survey conducted in January 2004, by the Virginia Department of Education, in collaboration with the State Special Education Advisory Committee (SSEAC), suggested a need for assistance in writing policies and procedures on physical restraint and seclusion.⁶ More recently, the VDOE issued two reports, April 2009 and July 2009, to the SSEAC and special education administrators on the use of physical restraint and seclusion in Virginia's public schools. The reports included a survey of Virginia's school divisions as to whether each division had policies and procedures on the use of restraint and seclusion, and if training is provided to administrators and staff on the subject.⁷ The data from these reports and concern that a number of school divisions lack policies and training programs on the use of restraint and seclusion prompted the SSEAC to support the VDOE updating and reissuing the 2005 Guidelines.

⁵See the full text of *Considerations for Seclusion and Restraint Use in School-wide Positive Behavior Supports*, Horner, R., & Sugai, G. Available at:

http://www.pbis.org/common/pbisresources/publications/Seclusion_Restraint_inBehaviorSupport.pdf

⁶This survey focused specifically on whether or not the divisions had policies and procedures regarding the use of physical restraint and seclusion, the frequency and prevalence of the use of these interventions, and the training in behavioral techniques provided to personnel.

⁷See the full text of the Reports, Virginia Department of Education, April 2009 and July 8, 2009, in Appendices F and G.

RELEVANT TERMINOLOGY

For the purposes of this document, the following terms and definitions are provided. These terms and definitions may be useful in reviewing, developing, or revising local school division policies and procedures for managing student behaviors. Where available, definitions are cited from existing laws, regulations, and technical assistance resources. Accordingly, the majority of the definitions in this section are cited in the glossary section of a Virginia Department of Education technical assistance resource document entitled *Discipline of Students with Disabilities*.

“Abused or neglected child” means any child less than 18 years of age whose parents or other person responsible for his care creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon such child a physical or mental injury by other than accidental means, or creates a substantial risk of death, disfigurement, or impairment of bodily or mental functions...; or whose parent or other person responsible for his care neglects or refuses to provide care necessary for his health...; or whose parents or other person responsible for his care abandons such child; or whose parents or other person responsible for his care commits or allows to be committed any act of sexual exploitation or any sexual act upon a child in violation of the law; or who is without parental care or guardianship caused by the unreasonable absence or the mental or physical incapacity of the child's parent or guardian, legal custodian or other person standing in loco parentis. (See §63.2-100 of the *Code of Virginia* for the full text of the definition of the term "abused or neglected child.")

“Aversive intervention” means any action used to punish a student or to eliminate, reduce, or discourage the problem behavior by use of any of the following, many of which are prohibited by the *Code of Virginia*:

1. Noxious odors and tastes;
2. Water and other mists or sprays;
3. Blasts of air;
4. Corporal punishment as defined in Section 22.1-279 of the *Code of Virginia*;
5. Verbal and mental abuse;
6. Placement of a student alone in a room, where the door is locked or held shut and the student is prevented from leaving the room;

7. Forced exercise where

- a. the student's behavior is related to his/her disability;
- b. the exercise would have a harmful effect on the student's health, or
- c. the student's disability prevents participation in activities; and

8. Deprivation of necessities, including

- a. food or liquid at a time when it is customarily served;
- b. medication, or
- c. use of restroom.

“Behavioral Intervention Plan (BIP)” means a plan that utilizes positive behavioral interventions and supports to address behaviors that interfere with the learning of a student, the learning of others, or require disciplinary action. A Behavioral Intervention Plan is the product of a Functional Behavioral Assessment (see definition of Functional Behavioral Assessment).

“Business day” means Monday through Friday, 12 months of the year, exclusive of federal and state holidays (unless holidays are specifically included in the designation of business days).

“Calendar day” means consecutive days, inclusive of Saturdays, Sundays, and officially designated holidays at the school division level. Whenever any period of time expires on Saturday, Sunday, or school holiday, the period of time for taking such action is extended to the next day, that is not Saturday, Sunday, or school holiday.

“Corporal punishment” means the infliction of, or causing the infliction of, physical pain on a student as a means of discipline. (A full definition can be found in Appendix D.)

“Emergency” means a situation that requires a person(s) to take immediate action to avoid harm, injury, or death to a student or to others.

“Exclusion” means the removal of a student to a supervised area for a limited period of time during which the student has an opportunity to regain self-control and is not receiving instruction including special education, related services, or support.

“Functional Behavioral Assessment (FBA)” means the systematic process of gathering information to guide the development of a positive, effective, and efficient behavioral intervention plan for a problem behavior. The process includes:

1. a description of the problem behavior;
2. the identification of environmental and other factors and settings that contribute to or predict the occurrence, nonoccurrence, and maintenance of the behavior over time; and
3. the determination of the underlying cause or functions of a student's behavior that impede the learning of the student with a disability or the learning of the student's peers.

A Functional Behavioral Assessment may include a review of existing data or new testing or evaluation as determined by the IEP team.

“General curriculum” means the curriculum adopted by a school division, schools within the school division, or where applicable the Virginia Department of Education, for all students from preschool through secondary school. The term relates to the content of the curriculum and not to the setting in which it is taught. It includes career and technical education. Courses in the general curriculum maintain their curriculum integrity even when provided to students with disabilities.

“Long-term removal” means suspension of a student with a disability to an alternative setting for more than 10 consecutive school days in a school year; or, when the student is subjected to a series of removals that constitute a pattern because they cumulate to more than 10 school days in a school year.

“Physical restraint” means the use of any physical method of restricting an individual’s freedom of movement, physical activity, or to prevent a student from moving his/her body to engage in a behavior that places him/her or others at risk of physical harm. Physical restraint does not include:

1. briefly holding a student in order to calm or comfort the student; or
2. holding a student's hand or arm to escort the student safely from one area to another.

“Removal” means excluding the student from the place where current educational services are provided.

“School day” means any day, including a partial day, in which students are in attendance at school for instructional purposes. The term has the same meaning for all students in school, including students with and without disabilities.

“Seclusion” means the confinement of a student alone in a room from which the student is physically prevented from leaving.

“Short-term removal” means suspending a student with a disability to an alternative setting for 10 school days or less in a school year. It also applies to removals when the cumulative amount is 10 school days, but not consecutive, and does not constitute a pattern or change of placement.

“Time-out” means assisting a student to regain control by removing the student from his immediate environment to a different, open location until the student is calm or the problem behavior has subsided.

LOCAL POLICY ANALYSIS AND DEVELOPMENT PROCESS

Each school division should begin the policy analysis process by examining all existing local policies that govern behavioral management techniques. In some instances, a division may have policies in place to address the policy content discussed herein. However, some divisions may desire to revise or extend their policies.⁸ A policy review process will allow the division to update information and clarify matters as necessary.

While policy review and development at the local level is based on local discretion, input from stakeholders may be useful. As a method of gaining input, the division could convene a stakeholders' committee to discuss the management of student behavior.⁹ This committee may provide information, and help design and review procedures for the implementation of the policy requirements. Its composition could include, but not be limited to:

- Parents
- Student representatives
- Special education directors
- Crisis intervention staff
- School safety/resource officers
- Central office administrators, including discipline coordinators
- Building principals
- Regular and special education teachers
- Psychologists
- Social workers
- Guidance counselors

⁸The results from the survey conducted by the VDOE regarding the extent to which divisions had policies that addressed physical restraint and seclusion indicated that several divisions were without such policies.

⁹This stakeholders committee would be strictly for the purpose of reviewing [not developing] division policy and assisting by communicating to appropriate administrators any issues that would impact the use of physical restraint and seclusion. This committee is different from the review committee that would receive and investigate complaints and incident reports when the policy is actually implemented.

In analyzing local policies and procedures, a school division could consider some of the issues that arise through frequently asked questions, such as the following:

1. What if the usual behavioral/discipline measures do not seem effective?
2. What if the behaviors of a few students interfere with the entire learning process and the classroom procedures?
3. What if extremely inappropriate behaviors are exhibited?
4. What if a student exhibits behavior that endangers himself/herself or others?
5. How does an administrator, teacher, or support person address these matters?
6. How does a teacher or other staff intervene?
7. When and how does a teacher or staff person learn how to intervene?
8. What are the legal limits and parameters of interventions?
9. What policy sections are relevant to certain behaviors?
10. If a new or revised policy is necessary, what is the process for development?
11. How long would it take for a school board to review or revise its policy on physical restraint and/or seclusion?

LOCAL DIVISION POLICIES AND PROCEDURES¹⁰

School divisions should have written policies and procedures that include, but are not limited to:

1. Methods for preventing student violence, self-injurious behavior, and suicide, including de-escalation of potentially dangerous behavior occurring among groups of students or with an individual student;
2. Methods for identifying child abuse and/or neglect and the reporting requirements for such occurrences;
3. A policy clearly stating that corporal punishment and abusive techniques and interventions are not authorized, permitted, or condoned in Virginia's public schools;
4. A policy stating that corporal punishment is prohibited by state law, as well as the identification of the consequences prescribed by law;
5. A policy regarding physical restraint provides:
 - a. a determination of the behavior management program adopted by the school division and advising parents and students of the program;¹¹
 - b. a description and explanation of the school division's or program's criteria for the use of physical restraint;
 - c. a statement that the use of physical restraint is allowed only in emergency situations;
 - d. the conditions under which physical restraint is allowed;¹²
 - e. training and certification requirements;
 - f. incident reporting requirements;

¹⁰See Appendix C for a sample format for a policy. This sample format is not considered a model to be duplicated without considering the particular needs of the school division. It is not intended to supplant or replace any existing policy, but rather to provide a structure for divisions that will be developing new or revised policies.

¹¹No particular behavior management program is recommended or endorsed by the Virginia Department of Education. The selection of a behavior management program is a school division decision.

¹²Examples of severe behavior requiring interventions are provided for training purposes, in various behavior management programs.

- a. follow-up procedures after each incident;
 - b. a procedure for receiving and investigating complaints regarding the use of physical restraint; and
 - c. a statement of how and when the parents will be informed of each occurrence of physical restraint.
6. A policy regarding the use of seclusion that provides:
- a. a description and explanation of the school division's or program's criteria for the use of seclusion;
 - b. a statement that the use of seclusion is allowed only in emergency situations;
 - c. the conditions under which seclusion is allowed;¹³
 - d. training requirements;
 - e. room and monitoring requirements;
 - f. incident reporting requirements;
 - g. follow-up procedures after each incident;
 - h. a procedure for receiving and investigating complaints regarding the use of seclusion; and
 - i. a statement of how and when the parents will be informed of each occurrence of seclusion.
7. A policy identifying corrective measures to be followed when a review reveals improper implementation procedures;
8. A policy statement assuring the provision of students' rights.

¹³Examples of severe behavior requiring interventions are provided for training purposes, in various behavior management programs.

POLICY ADOPTION

If a stakeholders' committee is proposing an addition to or a change in a policy, the committee should be aware of the local policy adoption process, the timelines needed to complete all phases of the adoption process, and the steps involved.

TRAINING AND STAFF DEVELOPMENT

Each principal or program administrator should determine a time and method to ensure that all staff, personnel, parents, and students are familiar with the school division's policies and procedures regarding the use of behavior management techniques, physical restraint, and seclusion in emergency situations.

The school division should ensure that everyone concerned has information on these interventions and should decide who needs to receive specific training. Training should occur within the first month of each school year for all staff and, for employees hired after the school year begins, within one month of their employment. Periodic in-service training should be scheduled to update information and to give staff an opportunity to practice and enhance skills. Attendance at each training should be documented.

At a minimum, training should include information on the following:

1. the identification and implementation of the behavior management program(s) adopted by the school division;
2. procedures to be followed when informing students and parents of the adopted program and the implementation procedures;
3. the local policies on the use of behavior management techniques, physical restraint, and seclusion;
4. interventions and alternatives that may preclude the need for physical restraint and seclusion (e.g., de-escalation of problematic behavior);
5. procedures to be followed when physical restraint or seclusion is necessary;
6. related safety considerations, including information regarding the increased risk of injury to a student when physical restraint is implemented or a student is secluded;

7. administering physical restraint and implementing seclusion procedures in accordance with established medical or psychological limitations and when applicable, as specified in a student's Behavioral Intervention Plan (BIP);
8. identification of staff who have received training and are certified to administer procedures in the use of physical restraint and seclusion; and
9. procedures to be followed when documenting and reporting incidents of physical restraint or seclusion to parents and school administration.

According to the Virginia Department of Education Supplemental Report dated July 8, 2009 (see Appendix G), 61.4 percent of school divisions in Virginia provide training on the use of restraints and seclusion, while 38.6 percent do not. As a result, school divisions are strongly encouraged to develop policies and procedures regarding the amount of training that identified staff will need to administer physical restraint and seclusion effectively and safely, while also protecting and respecting the dignity and rights of the individual student involved.

The training should include, but not be limited to:

1. specific instruction to meet licensure/certification requirements of individual behavior management programs;
2. strategies and techniques for de-escalation;
3. clearly identifiable conditions under which physical restraint and seclusion are allowed;
4. procedures to be followed when physical restraint and seclusion are implemented;
5. opportunities to practice through simulations, prior to actual use;
6. demonstrations of proficiency in administering physical restraint and implementing seclusion procedures;
7. instruction on the effects of physical restraint and seclusion on the student involved, monitoring for physical signs of distress, and procedures for obtaining medical assistance;
8. instruction regarding incident documentation and reporting requirements, and the procedures for investigating injuries and complaints; and
9. annual and periodic in-service training scheduled to update, practice, and enhance skills.

POLICY IMPLEMENTATION AND MONITORING

When a policy has been drafted and approved, whether existing, revised, or new, that policy is implemented through the division's procedures and any related methods for monitoring the use of those procedures.¹⁴ Essential to this process are:

1. ensuring that proper documentation exists;
2. ensuring that reporting requirements are in place and are properly used;
3. ensuring training of building and program staff on the policies and procedures;
4. investigating incidents; and
5. resolving complaints.

Documentation

In the documentation process, each incident report would require at a minimum:¹⁵

1. the circumstances under which physical restraint or seclusion occurred;
2. a description of the incident, including the date, time, location of incident, persons involved partially and fully, and other relevant details;
3. a justification statement setting forth why physical restraint, seclusion, or other behavioral interventions were necessary;
4. a substantial explanation why less intrusive interventions were deemed inappropriate or inadequate; and¹⁶
5. a comprehensive list of persons who must be informed or notified of the incident.

¹⁴The school division should consult the school board attorney for a review of its implementation and monitoring procedures.

¹⁵Multiple behavioral interventions should not be merged into a single report.

¹⁶See Appendices A and B for sample reporting forms that include the required elements of an incident report.

Reporting Requirements

In the reporting process the procedures would include at a minimum:

1. the procedures for informing school/program administration;
2. the procedures for informing parents; and
3. the procedures for transmitting the report to a review committee where a determination would be made on whether the school division's policies and procedures have been followed.

Investigation of Injuries and Complaints

School divisions should develop policies and procedures that detail the process by which injuries and/or complaints are investigated and reported to local authorities, if required by law. The policies and procedures should address injuries and complaints filed by all parties, including educational professionals, parents, and students. It is essential that all injuries, incidents, accidents, or other related activities be fully documented at the time they occur. In any complaint process, it is essential that all parties involved be identified, the time of actions be recorded fully, the events and behaviors preceding the incident be investigated, and any other relevant data or evidence be documented. Copies of documentation of incidents should be maintained in the appropriate records and provided to the school and the central administration as set forth in division policy or as otherwise required by the school division or by law. School administration should ensure that any incidents with special reporting requirements are promptly reported and appropriately documented.

ADDITIONAL RESOURCES

- Congressional Research Service (2009, May 21). *The Use of Seclusion and Restraint in Public Schools: The Legal Issues* [Online] Available at: <http://www.spannj.org>
- Council for Children with Behavioral Disorders (2009, May 17). *CCBD's Position Summary on the Use of Physical Restraint Procedures in School Settings and CCBD's Position Summary on the Use of Seclusion in School Settings* [Online] Available at: <http://www.ccc.sped.org>
- Duncan, Arne. (2009, July 31). U.S. Secretary of Education's letter on the use of restraint and seclusion [Online] Available at: <http://www.ed.gov/policy/elsec/guid/secletter/090731.html>
- National Association of State Mental Health Program Directors National Technical Assistance Center (2005, October 31). *A Snapshot of Six Core Strategies for the Reduction of S/R* [Online] Available at: <http://www.hogg.utexas.edu>
- National Disabilities Rights Network (2009, January). *Schools is Not Supposed to Hurt: Investigative Report on Abusive Restraint and Seclusion in Schools* [Online] Available at: <http://www.napas.org>