

November 2009



# Safe and Protected?

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Restraint and Seclusion Remain Unregulated  
and Underreported in Michigan Schools

**MICHIGAN**

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*"Protecting the Rights of  
Persons With Disabilities"*

**PROTECTION & ADVOCACY  
SERVICE, INC.**



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## Restraint and Seclusion Remain Unregulated and Underreported in Michigan Schools

A Public Report by  
Michigan Protection and Advocacy Service, Inc.  
November 2009

## **ACKNOWLEDGEMENTS**

The authors of this report would like to extend their sincere appreciation to the parents who shared their personal stories in the hope of educating Michigan legislators, other policy makers and the public at large about the harmful effects of seclusion on school children.

MPAS staff members contributing to this report were Janet Feldpausch, Tom Masseur, Mark McWilliams, Andrea Risor, and Rhonda K. Smith.

Michigan Protection and Advocacy Service (MPAS) is Michigan's protection and advocacy agency, mandated by federal and state law to advocate for individuals with disabilities. MPAS receives part of its funding from the Administration on Developmental Disabilities, the Center for Mental Health Services-Substance Abuse and Mental Health Services Administration, the Rehabilitation Services Administration and the Social Security Administration.

This report is funded 100% with federal appropriations and grants at a cost of \$2321.96.

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## Executive Summary

- ◆ *Emily, a seven-year-old girl with an emotional impairment attending school in east central Michigan, was shut in a room from 25 minutes to five hours per day for non-compliant behavior such as being too loud and not paying attention. Because Emily wasn't allowed to leave the seclusion room, she would take off all of her clothes to avoid wetting them when she had to urinate in the room.*
- ◆ *Carl is a ten-year-old with autism. His west central Michigan school has a time-out room available for him to use for respite if needed. This room has now become part of his nightmares as he has been forced into this room and restrained in a chair multiple times.*

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In 2003, two students died while being restrained in Michigan schools.

In 2006, Michigan's State Board of Education passed a voluntary policy (the "voluntary Board policy") limiting the use of restraint and seclusion in schools. The voluntary Board policy recommended banning some practices, limiting others to emergency situations involving harm to self or others, and requiring training and reporting of individual and aggregate data.

In 2009, U.S. Secretary of Education Arne Duncan wrote to state superintendents about the "abusive and potentially deadly misapplication of seclusion and restraint techniques in schools." He urged each state to "review its current policies and guidelines regarding the use of restraints and seclusion in schools *to ensure every student is safe and protected.*"

This is a report on the use of restraint and seclusion in schools throughout Michigan. It concludes that, while some intermediate school districts (ISDs) have tried to apply the voluntary Board policy, most have not. It concludes further that the Michigan Department of Education and the state of Michigan have taken few actions to make the policy mandatory or effective, or to even gather and report information about restraint, seclusion, or use of the policy. This inaction means that Michigan schools remain the one service sector in the state where restraint and seclusion are virtually unregulated and are not subject to any reporting requirements. As a result, children remain at risk.

The current voluntary Board policy is not adequate to protect children from restraint and seclusion. For this reason, Michigan Protection and Advocacy Service (MPAS) and its partners make recommendations for change, to be enacted through legislation or other mandatory policy action, included at the end of this report. The time to stop these dangerous practices - the time to ensure that our children are

“safe and protected” - is now.

In mid 2009, MPAS asked for stories from the public and received over 50 responses from parents living in 32 different counties in all parts of the state. Reports came from parents of Michigan children with attention deficit hyperactivity disorder (ADHD), autism, bipolar disorder, cerebral palsy, Down syndrome, emotional impairment, visual impairment, mental illness, traumatic brain injury, speech and language impairment, and others.

In addition to collecting the stories described above, MPAS surveyed intermediate school districts in the spring and summer of 2009 and received information from nearly all of them. The ISDs surveyed serve over 4,900 students directly and serve many more children indirectly through provision of support services to local districts.

The survey revealed that almost all ISDs make reference to a restraint and seclusion policy, with 35 of 57 making reference to the voluntary Board policy. Many fewer ISDs reported taking formal action to make their policies effective; for example, only 22 of 57 ISDs have demonstrated adherence to a policy by collecting data on the use of restraint and seclusion.

The survey results indicate that, while some ISDs are making a serious effort to implement the voluntary Board policy, adoption of the policy has been uneven at best. The results indicate further that the Michigan Department of Education has not taken steps necessary to make the voluntary Board policy binding upon school districts or even to learn whether or not the policy is being used anywhere. Finally, the results show that even if the voluntary Board policy is implemented, the standards set in the policy still allow for the use of restraint and seclusion, putting children at risk of harm.

Mandatory changes are needed to reduce and eliminate the use of restraint and seclusion in schools. Specifically, MPAS and its partners urge the adoption of mandatory policy, through legislation or other means, which:

- ◆ Applies to all students.
- ◆ Bans seclusion.
- ◆ Limits use of force to unforeseeable emergencies involving significant risk of substantial harm to self or others, not as a behavior support.
- ◆ Prohibits dangerous practices and encourages training.
- ◆ Requires public reporting of aggregate use.
- ◆ Integrates state policy on use of school-wide positive behavior support.

“I learned of seclusion and restraint being used in the school system and fought with everything I had to keep it from happening not only to my child but to others in his class.”

“One day the principal called and asked that I pick up my stepson immediately,” says Sara. “He had wet himself and needed a change of clothes.”

What Sara discovered when she arrived at school was more than a first grader who couldn’t “hold” it. What she found was her son, Sam, in a time-out room – alone, frightened, and humiliated.

“I was stunned,” says Sara. “They had him in a closet-sized room with the windows blacked out. There was no door handle on the inside for him to get out to use the restroom or to rejoin the classroom.”

This was the first Sara knew of the time-out room. But apparently, it had been used on many other occasions. After returning with her camera to take pictures of the room, she requested a meeting with the teacher, special education director, principal, and superintendent. After extensive negotiation, it was agreed that Sam would not be placed in the time-out room again. Several weeks later, however, Sara learned that Sam had been secluded once again – only this time he had been moved to a different room.

To make matters worse, Sam, who was diagnosed with bipolar disorder, post-traumatic stress disorder and attention deficit hyperactivity disorder, had experienced abuse and neglect when he was very young. Sara was convinced that the seclusion and restraint procedures being used at school were exacerbating Sam’s feelings of pain and abandonment.



Although Sara had suggested alternative procedures for monitoring and de-escalating Sam’s behavior, school personnel were unresponsive.

“I had done tons of research on my son’s disabilities and ways to implement positive behavioral supports,” says Sara. “I had passed along a lot of the

materials to the school staff at multiple Individualized Education Program (IEP) meetings. I also explained the techniques I used at home to keep Sam's behavior from escalating, but they weren't interested. They were using seclusion and restraint as part of his behavior plan instead of as a technique of last resort."

After her efforts with school administrators failed, Sara filed an official complaint with the Michigan Department of Education (MDE). MDE stated that it was not their responsibility to monitor such use and directed her to the Office of Civil Rights (OCR). OCR stated that it was not their responsibility to monitor and directed her to Child Protective Services.

"At this point I became discouraged and dropped the issue," says Sara. "But it still weighs on my heart and my mind that so many children are being subjected to these practices everyday."

It was finally decided that Sam leave the school. He is now adjusting well in another school district in a nearby city.

## Closet-sized Room used to Seclude Children in a Michigan Public School



Window blocked with black paper.

Light switch needs a special key to be turned on or off.



Holes show where placement of handle is on inside of door.



Window blocked off with papers.

Tile floor & walls.

## Restraint and Seclusion Hurts Children

- ◆ *Brandon was seven years old when his mother found him at his metropolitan Detroit area school in prone restraint with an adult on top of him. He was struggling to breathe. Brandon's mother homeschooled him for the next few years and when he returned to public school, he was restrained and injured to the point that emergency medical treatment had to be sought. Throughout his entire time at school, he was also secluded.*
- ◆ *Neil is an eight-year-old boy with learning disabilities and emotional impairment living in northeast Michigan. He has been restrained at school at least 20 different times, once for 50 minutes. He comes home with bruises on his arms, under his arms, and on his abdomen. Recently his school began using a new restraint technique called "hanging."*

.....

Article 19 of the United Nations Convention on the Rights of the Child protects children from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation. In Michigan schools, as in many schools across the nation, the basic human rights of children are at risk because of the dangerous and unregulated practice of restraint and seclusion.

### **Definitions**

"Seclusion" has been defined by the Michigan State Board of Education as the confinement of a student in a room or other space from which the student is physically prevented from leaving and which provides for continuous adult observation of the student.<sup>1</sup> It includes confinement enforced mechanically (by locking the door) and physically (through intimidation or other threat of force). It does not include "time out" which implies volition both in entering and in leaving a confined space.

"Restraint" has been defined by the Michigan State Board of Education as direct physical contact that prevents or significantly restricts a student's movement. "Mechanical restraint" is the use of any device or material attached to or adjacent to a student's body that restricts normal freedom of movement and which cannot be easily removed by a student. "Chemical restraint" is the administration of medication for the purpose of restraint.

### **How often do restraint and seclusion occur?**

The *Hartford Courant* first reported on the nationwide extent of restraint and seclusion of children in 1998, reporting at least 142 deaths due to the use of restraint and seclusion in psychiatric hospitals and developmental centers over a

10 year period. In 1998, the Harvard Center for Risk Analysis estimated deaths due to such practices at 150 each year across the nation. Children were noted to be at especially high risk for death and serious injury.

In 2009, the Government Accountability Office (GAO) reported to Congress that there were “hundreds of cases of alleged abuse and death related to the use of these methods on school children during the past two decades.”<sup>2</sup> Only a few states require reporting of incidents in schools and have data on how often children are restrained and secluded in school. Texas and California, two states that together contain more than 20 percent of the nation’s children, reported over 33,000 restraint or seclusion incidents in the 2007-8 school year. The GAO concluded that “we could not locate a single Web site, federal agency, or other entity that collects comprehensive information on this issue.”

### ***How does restraint and seclusion harm children?***

The dangers of restraint and seclusion are well reported by government agencies and private health care experts. The Joint Commission, a national standards-setting, accrediting health care organization, wrote in their 2006 standards that the “use of restraint or seclusion poses an inherent risk to the physical safety and psychological well-being of the [individual being restrained] and the staff.”<sup>3</sup> The GAO also reported that some of the dangers of restraint and seclusion include injury from physical struggle, pressure on the chest or interruption in breathing, severe psychological trauma, and risk of injury or death from the use of unsafe techniques. Both the GAO and the federal Center for Mental Health Services recognize that children are particularly vulnerable to death, physical injury, and psychological trauma.

The American Psychological Association, the American Psychiatric Nurses Association, and National Association of Psychiatric Health Systems have issued a joint statement calling for strict limits on the use of restraint and seclusion.<sup>4</sup> The National Education Association has issued guidelines that discuss restraint or seclusion of “violent” students, stating that “physical restraint should be used with a student only when there is an imminent risk either of harm to a person or property damage.”<sup>5</sup> The Council for Exceptional Children issued a position statement in September 2009 calling for strict mandatory limitations on the use of restraint and seclusion, a ban on certain forms of restraint such as prone restraint and mechanical restraint, and nationwide reporting on the incidence of restraint and seclusion.<sup>6</sup> The National Association of State Mental Health Directors concluded in 2007:

The use of restraint and seclusion creates significant risks for people with psychiatric disabilities. These risks include serious injury or death, retraumatization of people who have a history of trauma, and loss of dignity and other psychological harm. In light of these potential serious consequences, seclusion and restraint should be used only

when there exists an imminent risk of danger to the individual or others and no other safe and effective intervention is possible.<sup>7</sup>

National advocacy groups, including the National Disability Rights Network (NDRN) and the Council of Parent Attorneys and Advocates (COPAA), issued reports in 2009 detailing the extent and harm of restraint and seclusion in schools. Many of these groups work together as part of the Alliance to Prevent Restraint, Aversive Interventions, and Seclusion (APRAIS).<sup>8</sup>

### ***Two deaths in Michigan schools***

In 2003, two students died while being restrained in Michigan schools. The first case involved a 15 year-old young man who had autism and attended a southwest Michigan school. According to the GAO report, the young man experienced a seizure, lost control of his extremities and bladder, and later became uncooperative. The school's assistant principal and other staff did not provide medical attention for the seizure and instead placed the young man in a prone restraint for approximately an hour, where he died. The young man's death was ruled an accident, and no criminal charges were filed. However, his mother settled a civil suit with the school district and the assistant principal is now a principal at another school in the district. MPAS investigated and brought suit to compel the district to adopt a policy on the use of restraint and seclusion in Michigan schools, which it eventually did.

The second case involved a 12-year-old young man who had Prader-Willi syndrome and attended a special education center in east central Michigan. This young man had a history of behavior issues and had several versions of a behavior support plan in his file. According to MPAS' investigative report, school staff restrained the young man after he threw objects and would not settle down in the bathroom. He stopped breathing and vomited. Staff called for emergency help and tried to resuscitate him, but he died. No known civil or criminal charges were brought.

Since Michigan law requires no reporting of incidents in school, the actual number of incidents is unknown. The next section will describe what Michigan law does provide in the way of regulation of the use of restraint and seclusion in schools.

## “It’s happening because people don’t know how to deal with children with these types of disabilities. I consider it child abuse.”

It was the holiday season and Nicole planned a surprise visit to her three-year-old son’s *Early On* classroom party. What she discovered when she arrived both surprised and angered her. “Ethan was strapped in a high chair throughout the entire party,” Nicole says. “When I asked a staff person if this was normal practice, she said that he was restrained in the chair the entire time he was there so that they can keep track of him.”

Nicole was especially angry because, prior to enrolling Ethan in the school, she and her husband had specifically asked that Ethan not be restrained under any circumstances. “We gave explicit instructions to call us to come and get him if it ever got to the point where they felt they needed to restrain him,” says Nicole.

It was reported to Nicole that, at times, when Ethan wanted to join in with the other children that he would drag the chair along with him. On several occasions, the



chair tipped over on him. “When he came home with bruises, I just believed what they had told me – that he had gotten them on the playground,” says Nicole.

Although Ethan now attends a school that he loves, the damage he experienced through months of restraint still remains. Besides being delayed in some of his skills, he now must take anti-anxiety medication before school starts each morning.

Nicole later learned that techniques like the one used on Ethan are like torture to children with autism spectrum disorder. Since he is nonverbal, he could not express what was happening so that she could put a stop to it.

“I would like to see what happened to Ethan completely stopped,” says Nicole. “It’s happening because people don’t know how to deal with children with these types of disabilities. I consider it child abuse.”

## The State of the Law and Current Policy

- ◆ *Simone, a six-year-old mid-Michigan girl with a mild cognitive impairment and epilepsy, was found at school by a community mental health worker strapped to a chair in a room by herself. A paraprofessional had been assigned to watch her but was sitting out in the hall. The worker was told this had been going on for approximately three weeks. Simone had a behavior support plan but restraint and seclusion were not included as interventions.*
- ◆ *George was eleven years old, had a mild cognitive impairment, and attended school in the Upper Peninsula, Michigan. He was suspended for 23 days for hitting a teacher while being restrained. The school used restraint and seclusion on a regular basis as a “behavior deterrent” but finally concluded it did not work.*

.....

The *Hartford Courant* stories about seclusion, restraint, and death triggered action in Congress. The Children’s Health Act of 2000 and its implementing regulations limited the use of restraints and seclusion on residents of certain hospitals, health care facilities, residential non-medical facilities and other programs that serve children under Medicaid or Medicare. These regulations do not cover schools, even though schools bill Medicaid for billions of dollars each year. There are no other federal laws restricting the use of restraint and seclusion in schools.

Nearly every other service system in Michigan – including hospitals, child caring institutions, community mental health programs, juvenile detention programs, jails, and even prisons – are subject to regulation in their use of restraint and seclusion. See, for example, MCLA 330.1740 (residents of mental health facilities), MCLA 333.20201 (residents of health care facilities), MCLA 722.112c (children who receive community mental health services and live in child caring institutions), MAC R400.4137 (child caring institutions, including juvenile detention and juvenile justice facilities), MAC R791.706 (jails and use of force), and Michigan Department of Corrections (MDOC) Policy Directive 04.06.182 (6/29/09) (prison administrative segregation).

### ***Michigan’s corporal punishment law***

In Michigan, the only law limiting the use of restraint in school is the state corporal punishment law, which allows the use of reasonable force to maintain order and in other circumstances. Section 380.1312(4) of the Michigan Compiled Laws states:

- (4) A person employed by or engaged as a volunteer or contractor by a local or intermediate school board or public school academy may use reasonable physical force upon a pupil as necessary to

maintain order and control in a school or school-related setting for the purpose of providing an environment conducive to safety and learning. In maintaining that order and control, the person may use physical force upon a pupil as may be necessary for one or more of the following:

- (a) To restrain or remove a pupil whose behavior is interfering with the orderly exercise and performance of school district or public school academy functions within a school or at a school-related activity, if that pupil has refused to comply with a request to refrain from further disruptive acts.
- (b) For self-defense or the defense of another.
- (c) To prevent a pupil from inflicting harm on himself or herself.
- (d) To quell a disturbance that threatens physical injury to any person.
- (e) To obtain possession of a weapon or other dangerous object upon or within the control of a pupil.
- (f) To protect property.

Michigan courts have issued three reported opinions on the breadth of the corporal punishment law. In each case, the court upheld the use of force as reasonable and absolved the school staff and district of responsibility for harm to the children involved. In the most recent case, *Widdoes v. Detroit Public Schools*, 242 Mich. App. 403 (2000), the Michigan Court of Appeals concluded:

The general rule allowing teachers to impose reasonable force on students predates the American Revolution. ... Numerous are the forces that intrude on the classroom to disturb the learning environment, and teachers must be able to deal with such problems promptly and decisively.

Without commenting on the individual circumstances of those cases, the trend in interpreting and enforcing the state law is clear: the corporal punishment law creates a broad license to restrain children and makes no distinction, other than requiring that force be “reasonable”, among types of force including prone restraint or other especially dangerous actions.

***Do civil rights or special education laws provide any protection?***

Some parents of children with disabilities have challenged the use of restraint or seclusion as a violation of federal and state civil rights laws. In most cases, federal courts require parents in these situations to seek relief through special

education if they do not like the use of these practices. Yet, challenges brought through the special education system face an uphill battle, as the U.S. Department of Education concluded in a letter to the field that restraint and seclusion are not barred by the federal Individuals with Disabilities Education Act (IDEA).

Michigan's special education complaint system will not even acknowledge that restraint and seclusion are special education issues. In one complaint, a young child with autism was allegedly placed in a box. After outside advocates intervened, the box was destroyed, but the parent filed a state complaint alleging use of physical restraint (arm twisting) and use of the box. The complaint finding characterized the complaints of arm twisting and use of the box as allegations of abuse and found no violations of the law because "allegations of abuse are not within the definition of a complaint and not under the jurisdiction or purview of the special education complaint process."

In another recent complaint, an eight-year-old girl was placed in a seclusion room as a part of an everyday classroom management system for being "rude," "disrespectful," "argumentative," and "disruptive". She was physically prevented from leaving seclusion until she could remain quiet for five minutes. At times she was confined so long she would urinate in the room. The conclusion of the complaint found that: "Both IDEA and the Michigan Rules are silent with regard to the use of restraint and seclusion. ... while a State Board policy does exist, a policy does not carry the weight of law."

### ***The voluntary Board policy***

The Michigan Department of Education (MDE) adopted a policy on "behavior intervention" in 1993. After the two student deaths in 2003, MDE agreed to update the behavior intervention policy and convened a referent group in 2004. The referent group met for over a year and eventually recommended a policy with directives that the policy be written into law.

In December 2006, after months of testimony and several editions, the State Board of Education adopted its current voluntary Board policy.<sup>9</sup> The voluntary Board policy suggests new limits on the use of restraint and seclusion. It rejects the notion held by some professionals that restraint and seclusion have therapeutic or programmatic value, describing them as "last resort emergency safety interventions" rather than as elements of an appropriate education or behavior support system. The voluntary Board policy suggests limiting use of restraint and seclusion to situations involving imminent danger of harm to self or others, and suggests an outright ban on certain forms of restraint, including mechanical and chemical restraint and so-called aversive interventions. The voluntary Board policy suggests time limits and additional actions which must occur if those limits are exceeded. It requires reporting of individual incidents and consultation with families to obtain informed consent for use. It suggests that training be made

available on the dangers of restraint and seclusion as well as positive behavior supports and other alternatives.

While the voluntary Board policy was an improvement over the 1993 behavior intervention policy, it still left room for dangerous activity. Seclusion was still allowed, and the informed consent requirement suggested that a parent could consent to the regular use of restraint and seclusion in non-emergency situations. Most importantly, however, the legislative directive agreed to by the referent group was stripped out. The voluntary Board policy's language sets forth that it does not override the state corporal punishment law, leaving the field open to ignore the restrictions and use force as before, virtually without limitation, to maintain order or to meet other school interests.

Since passage of the voluntary Board policy, there have been no further known concrete actions to implement it or even measure its impact. In July 2007, the State Board of Education received a status report from the MDE Superintendent:

The Department is working collaboratively with staff of Intermediate School Districts to collect and disseminate models and guidance for training on the Board policy and models and guidance for collecting, reporting and use of data. These will be available in print and electronically through the Department website. This includes a powerpoint presentation that can be downloaded and used for annual training on the policy. Many Intermediate Districts/Service Agencies have already been engaged in the development and delivery of training and guidance to districts, have piloted data collection and reporting models, and have shared these resources across districts. The Department is building upon this foundation.<sup>10</sup>

In 2008 the MDE publication "Focus on Results" included an article on the voluntary Board policy including frequently asked questions about it.<sup>11</sup> The frequently asked questions have been incorporated into a newly formatted version of the policy which appears on MDE's website. The article does not suggest any further action by any entity and does not describe any planned or actual state action to further the policy or to make its requirements binding. An answer to one frequently asked question states that it is the "intent" of the State Board of Education that schools should follow the policy. In the same document, the policy directly states that it does not alter the permissive use of force allowed under the state corporal punishment law.

On October 8, 2009, MPAS made a request under the state Freedom of Information Act for MDE's response to Secretary Duncan's July 31 letter on restraint and seclusion in schools and for any data reported to MDE within the past three years on the incidence of restraint or seclusion in schools. MDE replied on October 16, 2009 that it did not have the information requested, and further stated:

“Upon receipt of Secretary Duncan’s letter of July 31, 2009, a review of the letter’s contents and the Secretary’s requests indicated that no direct action was required [by MDE]. ... [MDE] has no record of contact from the regional Comprehensive Centers as discussed in the Secretary’s letter and, therefore, have no records documenting such contact.”

As a result of the lack of action by the Michigan Department of Education to further the voluntary Board policy or examine its implementation, MPAS conducted its own survey in 2009 to learn more about the impact of the policy on local practices.

“One of the most shocking examples of abuse caught on videotape is of Jacob folded into a gymnastics mat in an attempt to calm him,” says Cherine.

When Jacob, a seven-year-old with learning and language disabilities, came home from school one day with the hood and sleeves torn from his jacket, his mom knew exactly what had happened.

She knew because it wasn't the first time he had come home with torn, disheveled clothing.



“Through past experience with the school, I had discovered that staff members were manhandling my son in an effort to get him to do what they wanted,” says Cherine, Jacob’s mother.

After similar incidents, Cherine decided to videotape the class, hoping to come up with a behavior plan that would work for Jacob.

The school staff seemed unconcerned with this and even moved the video camera around the room so a complete view of their interaction with Jacob could be observed. What the video showed was school staff rarely speaking to Jacob when they wanted him to do something. Instead, they just picked him up and moved him. When cartoons were viewed by other students, the television was turned away from Jacob while he remained in the quiet area.

“One of the most shocking examples of abuse caught on videotape is of my son folded into a gymnastics mat in an attempt to calm him,” says Cherine.

Although the school staff never bothered to view the videotape until due process hearings began four years later, Cherine gave the videotape to the local community mental health agency to review. “The psychiatrist said that the way Jacob had been treated was damaging to him,” says Cherine.

When the behavioralist saw the tape, his reaction was even more urgent. “He said that I had to get Jacob out of that classroom,” says Cherine.

Jacob is now twelve years old and attending the same school district. According to his mom, he has learned over the past five years at school that if he acts out, he will get what he wants – which is essentially time by himself and isolation from the other children.

“At home he gets time-out for three or four minutes every four or five months,” says Cherine. “I don’t need to manhandle or scream at him to get him to comply. That tells me that something isn’t right at school.”

## The MPAS Restraint and Seclusion Survey

- ◆ *Pam is a freshman in a western Michigan high school. She is very bright and attends general education classes. One day she refused to follow directions and was taken by the male school police officer to a room, forced into the room, chased around the table, and physically restrained either upright against the wall or facedown on the floor. When Pam's father arrived at school, the table in the room was overturned and there was a hole in the plaster wall.*
- ◆ *During a daytime event in his metropolitan Detroit school, Joel got into an argument with school staff. He was taken to the school office and restrained facedown by five staff members. Joel was charged with assault.*

.....

### ***How the survey was conducted***

The MPAS survey included (1) a call for parent input on the use of restraint and seclusion in Michigan schools, and (2) a survey of ISDs to learn about their efforts to implement the voluntary Board policy.

### ***Reports from the community***

In early 2009, MPAS asked for stories from the public and received over 50 responses, all from Michigan parents, living in 32 different counties in all parts of the state. (See map on page 25) Reports came from parents of children with various disabilities - ADHD, autism, bipolar disorder, cerebral palsy, Down syndrome, emotional impairment, visual impairment, mental illness, traumatic brain injury, speech and language impairment, and other disabilities – and regarding children both in ISD and local programs. Many of these parent stories are included in this report, though the names of many of the children involved have been changed. MPAS has investigated or become involved in some, but not all, of the cases in this report; they are reported not as numerical proof of the extent of the problem but rather as an informal indication of what Michigan parents report happens to their children in their schools. Although the circumstances and locations were different, parents universally expressed frustration and disbelief that their children could be subjected to restraint and seclusion and that they had little or no recourse to stop it.

### ***The ISD survey***

MPAS also surveyed the state's 57 ISDs in the spring and summer of 2009. The ISDs surveyed serve over 4,900 students directly (according to the September 2008 child count) and serve many more children indirectly through provision of support services to local districts. Just over a quarter of the individual parent stories reported involved ISD programs, and the ISDs were active participants in the debate over adoption of the voluntary Board policy.

MPAS conducted the ISD survey in several steps. First, staff reviewed each ISD’s Web site to see if any policy on restraint or seclusion was posted. One of 57 had such a policy posted on its Web site; ironically, this ISD later stated in response to a Freedom of Information Act (FOIA) request for data that it did not have a policy.

Second, MPAS contacted all 57 ISDs informally to ask about their policies. Thirty four ISDs responded to MPAS’ informal query by providing information about their policies and data. MPAS sent FOIA requests to the remaining 23 ISDs that either asked for a FOIA request or did not respond to multiple phone calls. As of this writing, 56 of 57 ISDs have responded either voluntarily or subject to their FOIA obligations. (One ISD has not responded to any MPAS inquiries, and another required a FOIA request to issue a one-sentence letter stating the ISD had no policy.)

***Do the ISDs know about the state policy?***

The results from this step of the survey showed that passage of the voluntary Board policy had some effect, at least in the number of ISDs stating that they make reference to the policy.

<b>Policy</b>	<b># of ISDs making reference</b>	<b>Students within ISD</b>
Voluntary Board Policy	35	91,396 (38%)
Other Policy	17	116,794 (48%)
No Policy/No Response	5	31,553 (14%)
Total	57	239,743 (100%)

The numbers of students within each ISD’s geographic region are taken from the December 2008 Michigan Compliance Information System (MI-CIS) special education child count.<sup>12</sup>

According to these responses, at least 52 ISDs make reference to some sort of policy, and the majority of those make reference to the voluntary Board policy. About 38% of students are potentially affected by the voluntary Board policy; 48% live under some other policy; and 14% (over 31,000 students) live in an area where there is no apparent policy guidance from their ISD regarding the use of restraint and seclusion.

### ***Do the ISDs actually use the policy?***

Third, MPAS asked ISDs to share any data on the overall use of restraint and seclusion. The voluntary Board policy includes a provision for data reporting in its sections limiting the use of restraint and seclusion. Sections V.D.10 of the voluntary Board policy on seclusion and VI.D.9 on restraint state:

**Data Collection** – The school district shall develop a system of data collection regarding the use of seclusion [restraint]. The data should:

- ◆ be analyzed to determine the efficacy of the school's school-wide system of behavioral support;
- ◆ be analyzed in the context of suspension, expulsion, and dropout data;
- ◆ be analyzed for the purposes of continuous improvement of training and technical assistance toward the reduction or elimination of seclusion;
- ◆ be analyzed on a schedule determined by the [Michigan Department of Education] MDE; [and]
- ◆ be reported to the MDE.<sup>13</sup>

Furthermore, the state's policy on positive behavior support states that "a positive behavior support system is a *data-based effort* [emphasis added] that concentrates on adjusting the system that supports the student."<sup>14</sup> One would expect, then, that a district using or following the voluntary Board policy would collect data to meet the goals set forth in the policy and to improve its efforts in implementing positive behavior support for individual students.

### ***Most ISDs do not collect data***

Thirty-four ISDs reported that they do not collect data. These ISDs have 185,182 students in their geographic regions. Of the 34 ISDs that do not collect data, 21 report that they follow the voluntary Board policy (which presumably includes the data collection requirements in Parts V and VI). In other words, those ISDs claim to follow the policy but are not actually implementing it.

### ***Some ISDs collect data***

Twenty-two ISDs covering 54,561 students forwarded data collected under their policies. Because there are no laws requiring ISDs to report, it is not clear how many of them collect and report the data on a regular basis or if they created the data report in response to our request.

The 22 ISDs that collected data reported a total of **3,222** incidents of restraint or seclusion in Michigan in 2008-9, with the reported numbers ranging between 0 and 1,265 per ISD. Six of the 22 ISDs reported no incidents of restraint or seclusion

during the year. Nine ISDs reported higher numbers than prior years while seven reported lower numbers.

What can be concluded from this information?

- ◆ *Some ISDs are making a serious effort to implement the voluntary Board policy and collect information.* This is an important first step in developing approaches to reducing and eventually eliminating the use of restraint and seclusion. Such collection comes at the risk of admitting that restraint and seclusion are being used in their programs.
- ◆ *Local adoption of the voluntary Board policy has been uneven at best.* The 22 ISDs that collect data do so under several different policies without common definitions. Some ISDs, for example, refer to use of time-out rooms and delineate door open vs. closed, a distinction not made in the voluntary Board policy since seclusion can occur with a door either open or closed. The reports from ISDs reporting no incidents of restraint or seclusion reflect either fantastic success at eliminating these practices, success which begs to be replicated, or incomplete data collection and reporting.
- ◆ *Most ISDs have not implemented a meaningful policy.* A majority of ISDs do not collect or report data, and there are no consequences for failing to do so. There is also no information on the extent to which the voluntary Board policy is used by local districts, though at least three large ISDs defer to those districts. As a result, although a majority of ISDs state that they have adopted a policy, there is no way to tell if their policies are being followed or are having any effect on the use of restraint and seclusion.
- ◆ *MDE has taken no apparent action to strengthen or evaluate the voluntary Board policy.* There are no apparent state efforts to collect consistent information from ISDs, let alone local districts where the vast majority of students are enrolled. Other than the posting of information about the voluntary Board policy and a vague statement in 2007 that “the Department is building on the foundation” of local efforts, there are no signs of state activity implementing the policy. What has happened in the field, inconsistent as it is, has apparently happened on its own, which is unfortunate for the students who live in ISDs and local districts that have not decided to implement a policy to reduce or eliminate the use of restraint and seclusion.
- ◆ *Even when the voluntary Board policy is followed, restraint and seclusion can still be overused to the detriment of students.* What the survey did not show is that the voluntary Board policy, even if adopted

and implemented by every ISD and local school district in Michigan, is fundamentally flawed because it allows the use of seclusion and subordinates the restraint limitations to the much broader language set forth in the state corporal punishment law. The broad language allows overuse of restraint and seclusion, placing children at risk of harm.

For all of these reasons, the current voluntary Board policy is not adequate to protect children from restraint and seclusion. MPAS and its partners make recommendations for change, to be enacted through legislation or other mandatory policy action, in the next section.



“The principal came right out and told me that Caleb was just a little brat and a bully,” says his mom, Kim. “They refused to try and understand Caleb’s disability.”

The school’s own experts confirmed that Caleb had Asperger’s syndrome, a high functioning type of autism. But because Caleb is smart and functions quite well in many situations, school administrators refused to accept the diagnosis, preferring to believe that Caleb’s challenges were simply bad behavior. They also failed to provide the supports and services he needed to function successfully in the classroom.



“The principal came right out and told me that Caleb was just a little brat and a bully,” says his mom, Kim. “They refused to try and understand Caleb’s disability.”

Caleb acts out physically when he is overwhelmed, and Kim explained the warning signs to school staff. His voice may become whiney, he may become fidgety and run his hands through his hair, or he may verbalize that he needs to leave the area. When he exhibits these warning signals, it’s a sign that he needs time away to regain composure. If he is refused, a meltdown ensues.

That’s what happened one day when Caleb stayed after school for tutoring. He became overwhelmed and began banging his head on the table. When the principal came to the room, Caleb ran into the hallway and knocked over several science exhibits. The principal then grabbed the eleven-year-old boy, slung him over his shoulder, carried him across the parking lot to another building, and threw him into a chair commanding him to sit down. The incident, which was uncontrolled, produced scratches and bruises on Caleb’s arms and neck.

Caleb now attends a school where he is in a classroom for children with emotional impairments for all classes except art and gym. The teachers accept and understand Caleb’s disabilities and provide him the supports and services he needs to be successful.

“Caleb really likes his new school,” says Kim. “The lights are dim, there are only 10-11 students per class, there is a sensory room, and he receives an hour of occupational therapy per day.”

The school also provides a big ball and trampoline for bouncing. And students are allowed to eat their lunch in the classroom which keeps them from being over stimulated in the lunchroom.

What’s most important, however, is that Caleb has found success. Although he was facing failure in the previous school he had attended, Caleb has now finished the fifth grade and was promoted to sixth grade.

“Bottom line,” says Kim, “is that educators need to be educated. With the push for inclusion of children with disabilities into the general education classroom, it is imperative that school personnel be properly trained and armed with the skills and knowledge of how to create a supportive and educationally successful environment for all abilities.”

## Recommendations for Change

- ◆ *Deanna is an 11-year-old girl with a disability who is nonverbal and works with a paraprofessional in a southwest Michigan school. She spends the majority of her special education time in a small room that has a kitchen and is used to store equipment.*
- ◆ *Schuyler is a 14-year-old boy living in west central Michigan with a variety of disabilities including Asperger's syndrome, ADHD, depression, and anxiety. He was often secluded in a tiny concrete room with a locked door, sometimes with staff present, and was also restrained. One time, while being restrained he was pushed into a wall so hard his foot went through it; after that, he was restrained facedown on the floor with his hands behind his back.*

.....

Mandatory changes are needed to reduce and eliminate the use of restraint and seclusion in schools. As stated by the Council for Exceptional Children in its September 15, 2009, position statement:

Guidelines or technical assistance documents are generally not adequate to regulate the use of these procedures, since abuses continue to occur in states or provinces where guidelines are in place and these guidelines have few mechanisms for providing oversight or correction of abuses. Policy is needed in the form of legislation or regulation.<sup>15</sup>

In the cases in which MPAS has been involved, one common thread is the relative inability to hold schools accountable for their practices when the standards of practice are suggested rather than required.

MPAS and its community partners urge the passage of mandatory policy which:

- ◆ Applies to all students.
- ◆ Bans seclusion.
- ◆ Limits use of force to unforeseeable emergencies involving significant risk of substantial harm to self or others, not as a behavior support.
- ◆ Prohibits dangerous practices and encourages training.
- ◆ Requires public reporting of aggregate use.
- ◆ Integrates state policy on use of school-wide positive behavior support.

### ***Apply to all students***

The 2009 GAO report concluded that the vast majority of restraint and seclusion incidents involve students with disabilities. Nonetheless, the use of force is always a threat against any student, and the logic of limiting such use applies to all students. Both the Council for Exceptional Children's policy and the laws limiting use of restraint and seclusion in Illinois apply to all students.

### ***Ban seclusion***

There is no research suggesting that seclusion is an effective educational or therapeutic method. As mentioned earlier in the report, there is information suggesting that seclusion is harmful, especially to children at risk of suicide or with other mental illness or emotional impairment. "Seclusion" as defined is inherently forceful and involuntary, suggesting that it cannot be used without the accompanying use of physical force. Other methods, such as the use of voluntary time-out, may have value; these methods are not restricted or affected by MPAS' recommendations.

### ***Limit use of force to unforeseeable emergencies involving significant risk of substantial harm to self or others, not as a behavior support***

Most policies suggest that "restraint" is a technique that needs to be regulated as if it were a treatment methodology. MPAS simply views restraint as a use of physical force which currently is limited in state law and needs to be limited much further to protect students. According to the Council for Exceptional Children, "while some have proposed physical restraint as a therapeutic procedure for some children and youth, this view has no scientific basis and is generally discredited."<sup>16</sup> Policies should create a standard where school staff can use common sense to react to true emergencies when there is a risk of serious physical injury to someone. They also should require schools to examine incidents after the fact, and find other ways to address them should they occur again.

### ***Prohibit dangerous practices; encourage training to protect safety of students***

Even if there is an unforeseen emergency, there are some types of physical force that are so harmful they should never be used. Examples include "prone" restraint, "basket hold" restraint, and other modes of force that restrict breathing or speaking. They are dangerous to any person but are especially dangerous to fragile children who have seizures, heart or breathing conditions.

### ***Require public reporting of aggregate use***

Restraint and seclusion have been largely unreported. It is apparent from the limited reporting that occurs in Michigan and throughout the nation that restraint and seclusion happen. No system improvement can occur until there is information about the extent of the problem and the root causes that drive it.

### ***Integrate Board policy on use of positive behavior support***

The State Board of Education has defined positive behavior support as follows:

A positive behavior support system is a data-based effort that concentrates on adjusting the system that supports the student. Such a system is implemented by collaborative, school-based teams using person-centered planning. ... Positive interventions that support adaptive and pro-social behavior and build on the strengths of the student lead to an improved learning environment. Students are offered a continuum of methods that help them learn and maintain appropriate behavior and discourage violation of codes of student conduct.<sup>17</sup>

The voluntary Board policy endorses the use of school-wide positive behavior support as an alternative to restraint and seclusion, stating in Section II:

It is the policy of the [State Board of Education] that each school district in Michigan implement a system of school-wide positive behavior support (PBS) strategies. ... The use of positive interventions support adaptive and pro-social behavior and foster dignity and self-esteem in students. Implementation of a school-wide systematic approach will ensure that seclusion and restraint are used only as a last resort method.<sup>18</sup>

Many schools are using positive behavior support to address behavior and learning issues already. Studies cited by the National Disability Rights Network show that schools and other service providers have successfully used positive behavior support strategies to reduce or even eliminate the use of restraint and seclusion.<sup>19</sup> According to Dr. Horner and Dr. Sugai, co-directors of the U.S. Department of Education's Positive Behavior Interventions and Support (PBIS) technical assistance center, more than 9,000 schools nationwide use school-wide positive behavior support (SWPBS). They conclude that "schools that implement SWPBS demonstrate reductions in problem behavior and improved academic outcomes" and that "evaluation (but not experimental) data indicate that implementation of SWPBS is associated with reduction in the number of instances in which intensive interventions (including seclusion and/or restraint) are perceived as needed, increases the effectiveness of comprehensive interventions, and improvement in the maintenance of behavior support gains."<sup>20</sup>

### ***Success in Illinois***

Some states have adopted mandatory restrictions on the use of restraint and seclusion, with promising results. For example, Illinois adopted statewide restrictions on the use of restraint and seclusion through legislation and regulation in 2001-2002. The Illinois law applies to all students, bans chemical and mechanical restraint, and limits restraint and seclusion only to situations when necessary

to prevent physical injury to self or others. The law also requires staff training and incident reporting. In the years since the standards were adopted, Illinois has also pushed to implement school-wide positive behavior support and reports that over 1,000 schools use it. As a result, Elizabeth Hanselman, assistant superintendent of the Illinois Department of Education, testified to Congress in May 2009 that:

Illinois schools which have achieved full implementation of PBIS also show greater capacity to support students with the most complex emotional/behavioral needs. Data indicates that these schools have a reduction in the number of instances which require intensive interventions (including seclusion and restraint), increased effectiveness of individual behavior support plans, and improvement in the maintenance of behavior support gains achieved through these individual support plans.

Illinois data shows that implementation of school-wide PBIS can have a positive impact in all programs, including reduction of the use of restraint in a separate facility for students with emotional disorders by more than 50% in the first year of implementing PBIS, and reduction in the occurrence of critical incidents by more than 60% following implementation in a youth correctional center.<sup>21</sup>

### ***Objections and responses***

With demonstrated success in Illinois and in other states, why would Michigan not move to adopt mandatory restrictions on restraint and seclusion? Here are some potential objections to MPAS' recommendations and the responses.

*"The state lacks the authority to order schools to adopt policy."* This objection is simply untrue, as state efforts to regulate corporal punishment, high school graduation standards, teacher qualifications, funding equity, discipline, and countless other topics demonstrate. The state corporal punishment statute itself was amended in 1988, 1992, and 1995. What is lacking is the will to create and advocate for statutory or regulatory authority to act.

*"Schools will become more dangerous."* MPAS does not deny that school violence is a very real problem. It is curious, given these very real concerns, that the 2009 GAO report concluded that reported restraint and seclusion incidents almost always involve students with disabilities and are almost never reported against other students who presumably could also create dangerous situations at school. Putting that question aside, the use of restraint and seclusion makes schools more dangerous, both to students and to staff, by perpetuating a culture that encourages staff to physically handle students in lieu of other less aggravating alternatives. In fact, the recommended policies do not limit school staff from intervening in unforeseen emergencies, nor do they require staff to consult plans or obtain approval before doing so. The policies **do not** stop staff from using force to:

- ◆ Stop a fight.
- ◆ Get a weapon away from a student.
- ◆ Calm or comfort a student.
- ◆ Escort a student from one place to another.
- ◆ Help a student do something with minimal resistance.
- ◆ Stop dangerous impulsive behavior such as running into the street.

The policies do require that schools stop using restraint and seclusion as default or planned actions to maintain order or enforce compliance with school directives.

*“Students with disabilities will lose the ability to be included in general education settings.”* Since there is no required data collection, there is no way to know how much restraint and seclusion occurs in general education settings as opposed to segregated settings. Anecdotal evidence suggests that the use of restraint and seclusion as behavior supports can be found just as often, if not more often, in segregated settings. MPAS suggests that, if a student with a disability can only function in general education by being restrained and secluded, the individualized education program (IEP) team needs more evaluation information to find alternative means to making general education accessible and successful for that student.

*“Schools will be forced to call the police or to suspend students.”* This argument is eerily reminiscent of opposition to restrictions on corporal punishment and ignores the large and growing body of research showing the effectiveness of positive behavior supports and other strategies to support successful student behavior detailed earlier in this report. Increased police involvement or discipline will only happen if schools refuse to embrace alternative approaches which have been shown to work.

*“It’s too expensive.”* Changes in practice and culture cost nothing. Under MPAS’ recommendations, schools are free to use whatever methods or approaches they choose to implement the law. Training or other methods are not mandated, but are made available for schools to use if they see fit. What would be required is that schools must meet the standards set forth in the proposed law. Many schools have crisis response plans and can include planning and training for how to address dangerous situations giving rise to the use of force within their crisis response.

Nor would reporting necessarily cost more money, since information about restraint and seclusion can be added to existing reporting requirements on school safety and discipline or on civil rights. Schools using school-wide positive behavior support already collect data about student conduct using the School-Wide Information System (SWIS) or other recording tool.

“I don’t feel that totally humiliating a little boy in front of his peers and other adults is acceptable behavior for anyone, let alone school administrators,” says Cheryl.

The school that five-year-old Michael attended never tried to hide the fact that they were practicing dangerous restraint procedures on him regularly. In fact, oftentimes, they did so right in front of his mother.

“The worst example I have is when I witnessed the school superintendent force Michael to the floor facedown and then proceed to press his hand into the middle of my son’s back,” says Cheryl, Michael’s mother.

Cheryl is describing the type of restraint known as prone restraint. Not only is it extremely dangerous because it can interfere with a child’s breathing, but due to its dangerous nature, many Michigan facilities have discontinued its use.

Cheryl also witnessed her son being dragged to the middle of the hallway while restrained in a chair with two adults holding his arms and legs. This was done in full view of other students who were coming back from recess.

“I don’t feel that totally humiliating a little boy in front of his peers and other adults is acceptable behavior for anyone, let alone school administrators,” says Cheryl.

Although Michael was being treated through the local community mental health agency and had been diagnosed as having bipolar disorder and attention deficit hyperactivity disorder (ADHD), the school acknowledged Michael as having only a speech impairment related to articulation. Because his other disabilities were not recognized by the school, Michael’s actions were considered nothing more than “bad behavior.”

After an occupational evaluation, psychological evaluation, a complete speech and language evaluation and a functional behavior assessment, new information about previously unidentified disabilities surfaced, including sensory integration dysfunction, high impulsivity, and a significant split between verbal and nonverbal performance.

To address these issues, supports were added to Michael's Individualized Educational Program (IEP) and his school day was extended from the previous two hours a day. In addition, the school district agreed to train staff on the State Board of Education's voluntary Board policy to ensure that it would be followed in the future.

Although things are better for Michael now that he has the supports he needs, his mom regrets the many trials and tribulations leading up to the changes and says, "I think that it's a school's responsibility to do what it takes to help all children receive the education they need to be successful."

## Conclusion

The American Civil Liberties Union (ACLU) and Human Rights Watch released a report in 2009 describing the disproportionate use of corporal punishment and other violent discipline on students with disabilities:

Students with disabilities—who are entitled to appropriate, inclusive educational programs that give them the opportunity to thrive—are subjected to violent discipline at disproportionately high rates. Students with disabilities make up 19 percent of those who receive corporal punishment, yet just 14 percent of the nationwide student population. Human rights law protects students with disabilities from violence and cruel and inhuman treatment, and guarantees them non-discriminatory access to an inclusive education.<sup>22</sup>

In December 2006, the Detroit Free Press editorialized that “for too long, Michigan has left its public school students and teachers much too vulnerable by not adopting strict seclusion and restraint guidelines.” Nearly three years have passed since Michigan’s policy went into effect, and six years have passed since two students died while being restrained in school, yet we are still waiting to see that policy become a reality in most schools. Children have a universal human right to be free from physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation. In Michigan schools, as in many schools across the nation, the basic human rights of children are at risk because of the dangerous and unregulated practice of restraint and seclusion. The time to stop these dangerous practices – the time to ensure that our children are “safe and protected” – is now.

## Voluntary Board Policy Glossary of Terms<sup>23</sup>

The following definitions are taken from the State Board of Education Voluntary Board Policy.

**Behavior Intervention** is a systematic implementation of procedures that result in lasting positive changes in an individual's behavior. Interventions may include positive strategies, program or curricular modifications, and supplementary aids and supports required to address the disruptive behaviors in question. It is helpful to use data collected during a functional behavioral assessment to develop the plan and to determine the discrepancy between the student's actual and expected behavior. (Manual of Recommended Practice, Project REST, June 2004)

**De-Escalation Techniques** are strategically employed verbal or nonverbal interventions used to reduce the intensity of threatening behavior before a crisis situation occurs. (Manual of Recommended Practice, Project REST, June 2004)

**Emergency** is a situation in which a student's behavior poses imminent risk to the safety of an individual student or to the safety of others. An emergency requires an immediate intervention.

**Emergency Safety Intervention** is the use of seclusion or restraint to de-escalate student behavior that poses an imminent risk to the safety of an individual student and others.

**Functional Behavior Assessment** is a systematic process for identifying the events that trigger and maintain problem behavior in an educational setting. A Functional Behavior Assessment will describe specific problematic behaviors, report the frequency of the behaviors, assess environmental and other setting conditions where problematic behaviors occur, and identify the factors that are maintaining the behaviors over time. (Manual of Recommended Practice, Project REST, June 2004)

**Informed Consent** is when a parent or guardian has been fully informed of all information relevant to the activity for which consent is sought. The parent or guardian agrees in writing to the carrying out of the activity and that granting of consent is voluntary and may be revoked.

**Physical Escort** is the touching or holding a student with a minimum use of contact for the purpose of directing movement from one place to another.

**Positive Behavior Support** is a research-based system that addresses challenging behaviors in a collaborative, comprehensive, research-validated, and humane manner.

**Positive Behavior Support Plan** is the design, implementation, and evaluation of individual or group instructional and environmental modifications, including programs of behavioral instruction, to produce significant improvements in behavior through skill acquisition and the reduction of problematic behavior.

**Restraint:**

**Chemical** (restraint) is the administration of medication for the purpose of reducing or restricting an individual's freedom of movement.

**Physical Restraint** is the application of physical force by one or more individuals that reduces or restricts a student's freedom of movement.

**Mechanical Restraint** is the use of any device, article, garment, or material attached or adjacent to the student's body, which the student cannot easily remove, and that restricts freedom of movement.

**Prone Restraint** is the restraint of a person facedown.

**Restraints that negatively impact breathing** include floor restraints, facedown position, or any position in which a person is bent over in such a way that it is difficult to breathe. This includes a seated or kneeling position in which a person being restrained is bent over at the waist. Sitting or lying across a person's back or stomach can interfere with breathing. When a person is lying facedown, even pressure to the arms and legs can interfere with a person's ability to move their chest or abdomen in order to breathe effectively.

**Seclusion** means the confinement of a student alone in a secured room or other space from which the student is physically prevented from leaving.

**Timeout** means a behavior management technique in which a student, for a limited and specified time, is placed in an environment where access to positive reinforcement is unavailable. Timeout should not be confused with seclusion because in a timeout setting a student's movement is not physically restricted. (Manual of Recommended Practice, Project REST, June 2004)

## **Timeout Continuum:**

**Planned Ignoring** – is the systematic withdrawal of social attention for a predetermined time period upon the onset of mild levels of problem behavior.

**Withdrawal of Materials** – materials that the student is using are removed upon the occurrence of the inappropriate behavior.

**Contingent Observation** – student remains in a position to observe the group without participating or receiving reinforcement for a specified period of time.

**Exclusionary Timeout** – student is removed from the immediate instructional setting in response to behavior that requires immediate and direct cessation. This form of timeout can take place within the same classroom or in a nearby location that can be supervised by an adult. (Using Timeout in an Effective and Ethical Manner)

## Endnotes

- 1 Michigan Department of Education, "Supporting Student Behavior: Standards for the Emergency Use of Seclusion and Restraint," ("Voluntary Board Policy"), December 2006, [http://www.michigan.gov/documents/mde/Seclusion\\_and\\_Restraint\\_Standards\\_180715\\_7.pdf](http://www.michigan.gov/documents/mde/Seclusion_and_Restraint_Standards_180715_7.pdf).
- 2 Government Accountability Office, "Seclusion and Restraints: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers," ("GAO Report") No. GAO-09-719T (May 19, 2009), <http://edlabor.house.gov/documents/111/pdf/testimony/20090519GregKutzTestimony.pdf>.
- 3 Joint Commission, 2006 Hospitals Standards, cited in National Disability Rights Network, "School is Not Supposed to Hurt: Investigative Report on Abusive Restraint and Seclusion in Schools," ("NDRN Report"), <http://www.ndrn.org/sr/SR-Report.pdf>, January 2009, at p. 8.
- 4 <http://www.naphs.org/rscampaign/Learning.pdf>, at p.3, cited in NDRN Report, note 3, at p. 8.
- 5 National Education Association, Dealing with Violent Behavior, neatoday (February 2008) <http://www.nea.org/home/15453.htm> (last visited 8/24/09), cited in NDRN Report, note 3, at p. 9.
- 6 Council on Exceptional Children, "CEC's Policy on Physical Restraint and Seclusion Procedures in School Settings," ("CEC Policy"), September 2009, <http://www.cec.sped.org/AM/Template.cfm?Section=Home&CONTENTID=12996&TEMPLATE=/CM/HTMLDisplay.cfm>.
- 7 National Association of State Mental Health Program Directors (NASMHPD), Seclusion and Restraint Position Statement as Revised by NASMHPD Forensic Division (7/15/07) [http://www.nasmhpd.org/general\\_files/position\\_statement/S&R%20position%20statement.Forensic%20Div.%20prop.%20approved%20by%20NASMHPD.07.07.final.pdf](http://www.nasmhpd.org/general_files/position_statement/S&R%20position%20statement.Forensic%20Div.%20prop.%20approved%20by%20NASMHPD.07.07.final.pdf), cited in NDRN Report, note 3, at p. 8.
- 8 APRAIS includes: NDRN, [www.ndrn.org](http://www.ndrn.org); COPAA, [www.copaa.net](http://www.copaa.net); TASH, [www.tash.org](http://www.tash.org); Family Alliance to Stop Abuse and Neglect, [www.thefamilyalliance.net](http://www.thefamilyalliance.net); Bazelon Center for Mental Health Law, [www.bazelon.org](http://www.bazelon.org); Federation of Families for Children's Mental Health, [www.ffcmh.org](http://www.ffcmh.org); National Down Syndrome Congress; National Association of Councils on Developmental Disabilities, [www.naddc.org](http://www.naddc.org); National Down Syndrome Society, [www.ndss.org](http://www.ndss.org); Autism National Committee, [www.autcomm.org](http://www.autcomm.org); The Arc of the United States, [www.thearc.org](http://www.thearc.org); and the RespectABILITY Law Center.

- 9 Voluntary Board Policy, note 1.
- 10 [http://www.michigan.gov/documents/mde/Item\\_D\\_204531\\_7.pdf](http://www.michigan.gov/documents/mde/Item_D_204531_7.pdf)
- 11 [http://www.cenmi.org/Portals/0/FocusArticles/Volume6\\_Issue2\\_Article1.pdf](http://www.cenmi.org/Portals/0/FocusArticles/Volume6_Issue2_Article1.pdf).
- 12 See [www.micis.org](http://www.micis.org).
- 13 Voluntary Board Policy, note 1.
- 14 Michigan State Board of Education, Positive Behavior Support Policy (2006), [http://www.michigan.gov/documents/mde/Positivebehaviorsupportpolicy\\_172347\\_7.pdf](http://www.michigan.gov/documents/mde/Positivebehaviorsupportpolicy_172347_7.pdf)
- 15 CEC Policy, note 6.
- 16 Id.
- 17 Positive Behavior Support policy, note 14.
- 18 Voluntary Board Policy, note 1.
- 19 See NDRN Report, note 3, at pp. 35-37; Arthur, *Literature Review: Time-Out, Seclusion, and Restraint In Indiana Public Schools*, March 2008, [http://www.in.gov/ipas/files/SR\\_Lit\\_Review\\_Final\\_AA.pdf](http://www.in.gov/ipas/files/SR_Lit_Review_Final_AA.pdf); Miller, Jeffery A., Daniel P. Hunt and Megan A. Georges, *Reduction of Physical Restraints in Residential Treatment Facilities*, *Journal of Disability Related Policy Studies*, Vol. 16, No. 4 (2006); Miller, D. N., George, M. P., & Fogt, J. B. (2005), *Establishing and sustaining research-based practices at Centennial School: A descriptive case study of systemic change*, *Psychology in the Schools*, 42 (5), 553-567.
- 20 Horner and Sugai, "Considerations for Seclusion and Restraint Use in Schoolwide Positive Behavior Supports," (April 2009), <http://www.pbis.org/seclusion/restraint/default.aspx>.
- 21 Testimony of E. Hanselman, House Education and Labor Committee, 5/19/09, <http://edlabor.house.gov/documents/111/pdf/testimony/20090519ElizabethHanselmanTestimony.pdf>.
- 22 Human Rights Watch and ACLU, "Impairing Education: Corporal Punishment of Students with Disabilities in US Public Schools," August 2009 at p.2, <http://www.hrw.org/en/reports/2009/08/11/impairing-education>.
- 23 Voluntary Board Policy, note 1, Appendix C.



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