



What
Parents
Should
Know
about the use of

Restraints Seclusion



*NEW JERSEY COUNCIL ON
DEVELOPMENTAL DISABILITIES*



What
Parents
Should
Know
about the use of

Restraints & Seclusion



WHY IS CONGRESS PREPARING TO REGULATE THESE PRACTICES?

In May 2009, the United States Government Accountability Office (GAO) presented a detailed report to Congress about restrictive practices being utilized by schools and programs that provide education and services to children and teens.

THE REPORT USED THE FOLLOWING DEFINITIONS:

RESTRAINT is *“any manual method, physical or mechanical device, material, or equipment that immobilizes or reduces the ability of an individual to move his or her arms, legs, body, or head freely.”*

SECLUSION is *“the involuntary confinement of an individual alone in a room or area from which the individual is physically prevented from leaving.”*

The GAO concluded, **“these techniques can be dangerous because they may involve physical struggling, pressure on the chest, or other interruptions in breathing ... Even if no physical injury is sustained ... individuals can be severely traumatized during restraint.”**

The GAO also highlighted the need for further data collection and regulation of the use of unsafe restraint techniques that can result in death and abuse.



WHAT OTHER WAYS CAN SCHOOLS AND PROGRAMS RESPOND TO UNWANTED BEHAVIOR?

POSITIVE BEHAVIOR SUPPORTS

There are well documented safe, positive methods of changing, replacing and redirecting behavior that have been shown to be successful regardless of the child's diagnostic label, skill level and age, or the severity of the child's unwanted or dangerous behaviors.

Effective positive behavior supports are developed with the people who interact with the child after an appropriately trained professional conducts a Functional Behavioral Assessment (FBA). A FBA involves observing a child's behavior through a variety of methods and asking questions such as:

- **What is the child communicating?**
- **What is the child feeling?**
- **What happened before the unwanted behavior occurred?**
- **What happened after the unwanted behavior occurred?**
- **What are the times of the day or activities during which the behavior occurs?**
- **What are the times of the day or activities during which the child engages in desirable behavior?**
- **Who is present during desirable and unwanted behavior?**
- **What does the child achieve through this behavior?**
- **How can we teach the child more desirable behaviors and skills that will allow the child to achieve the same results in a more socially acceptable way?**



EFFECTIVE POSITIVE BEHAVIOR SUPPORTS:

- Focus on understanding the cause and purpose of the behavior.
- Help a child learn and use better ways to make feelings, needs, and choices understood by others.
- Help a child replace unwanted behaviors with more appropriate and effective behaviors.

EFFECTIVE POSITIVE BEHAVIOR SUPPORTS INVOLVE:

- Observing everything in a child's physical environment
- Changing the things or events that are overwhelming or stressful (such as loud noises, crowded situations, unstructured time, inappropriate instructional strategies or lack of adaptations in curriculum)
- A commitment by the school to exchange information with all the adults who interact with the child and to learn from them about the child.

FOR MORE INFORMATION ON PBS:

- USDOE Office on Special Education Programs, Positive Behavioral Supports and Interventions
www.pbis.org
<http://www.pbis.org/links/default.aspx>
- Association for the Prevention of Restraints, Aversive Interventions and Seclusion
www.aprais.org
- NJ Positive Behavior Support in Schools
www.njpbs.org

WHAT ABOUT EMERGENCIES?

Most restraints and seclusion are not appropriate even in a safety emergency. However, brief physical intervention may occasionally be needed to prevent a child or people around the child from immediate physical danger. For example, every parent respects the need to stop a child from darting into traffic.

It is also commonly understood that no child should endlessly repeat harmful behaviors and endlessly experience restrictive practices. Instead we must learn from emergencies so that they become extremely rare.

The use of restrictive techniques, or even a request from the child's program for permission to use them, should immediately suggest that the student's programming is not effective. After an emergency use of restraints or seclusion, parents, guardians and educators should ask:

- **What happened before the situation started?**
- **How did the situation progress to an emergency?**
- **What was the unacceptable risk of harm to the child or others?**
- **Could this risk have been avoided without the use of restrictive practices?**
- **How could teachers or staff have avoided, de-escalated or diffused the situation?**
- **Is a risk to property used as an excuse for an emergency restraint?**



WHAT RIGHTS DO PARENTS HAVE?

A special education program developed without parental input may be a violation of the requirements of the Individuals with Disabilities Education Act (IDEA). A parent or guardian has to the right to ask questions about a child's behavioral support program. In particular, parents and guardians have the right to:

- **Ask for a new IEP meeting.**
- **Require the school to review the student's IEP and behavior support plan.**
- **Ask the school to conduct or obtain a Functional Behavioral Assessment (FBA).**
- **Ask the school to develop or review a behavior plan.**
- **Ask the school to obtain a new and/or independent evaluation of the student.**
- **Review their child's records – including the contents of the IEP, the contents of any behavior or treatment plan, and any "incident reports" in the child's files.**

Most laws and regulations covering children's services say that aversive or restrictive techniques may not be used as coercion, punishment, or retaliation. Remember, although schools and providers may say they cannot implement positive behavior supports because they do not have enough staff, these laws also prohibit the use of restrictive practices for staff convenience.

Federally funded facilities: The United States Centers for Medicaid and Medicare Services (CMS) and the federal Children's Health Act of 2000 prohibit non-emergency restraint use in all facilities that use CMS funding, such as residential treatment facilities. However, most children attend schools that are not covered by these protections.

Public Schools: The IDEA supports positive approaches for all students and creates a presumption in favor of positive methods. The IDEA requires an Individual Education Plan (IEP) team to consider positive behavior interventions and strategies when addressing a child's dangerous or unwanted behavior.

WHAT ELSE CAN PARENTS DO TO PROTECT THEIR CHILDREN?

- Make visits to carefully observe all aspects of the child's day
- Keep careful records
- Write down and date anything the child says or does that concerns you
- Take and date photographs of any suspicious injuries
- Share your concerns with your child's physician, psychologist, or other health care provider

PARENTS MAY WISH TO ASK:

- What training has staff received in positive means of behavior support?
- Has staff been trained in techniques of prevention, de-escalation, and redirection in the face of a challenging situation?
- Has staff been involved in a professionally conducted functional behavioral assessment?
- If restraint is being used, how was staff trained?
- Are adequate numbers of trained staff always on duty?
- Is medical oversight of restrictive practices adequate and readily available?
- Has staff tried all proposed restrictive interventions on themselves first?
- Does staff fully understand the laws, regulations, and ethics that govern their actions?
- Is staff fully aware of both the general and specific physical and psychological risks to your child if they resort to the use of restraint or seclusion?
- Is staff fully aware of the legal risks to themselves if they resort to the use of restraint or seclusion?

WHAT IF A SCHOOL ASKS A PARENT TO CONSENT TO THE USE OF RESTRAINTS AND SECLUSION?

Restrictive practices present a safety risk. Therefore, schools and programs wishing to use them must have the “informed consent” of a child’s parent or guardian.

WHAT IS INFORMED CONSENT?

“**Informed consent**” means that parents and guardians have the right to get full information about how their child is treated and have the right to refuse to consent to the use of restraints and seclusion.

INFORMED CONSENT MEANS THAT AGREEMENT IS GIVEN:

- **Freely and voluntarily, without pressure, threats, tricks or bribes**
- **With full understanding of the risks and benefits and of other options**
- **After having a real and meaningful chance to think about the risks and benefits and about other options**

The person asking for consent should present the information in a way that is understood, and should offer to answer questions. It is important that the person asking for a parent’s consent also explain that the parent has the right to refuse or withhold consent and that the parent has the right to change their mind and withdraw or take back consent and end permission at anytime.



CAN A SCHOOL OR PROGRAM REFUSE TO SERVE MY CHILD IF I REFUSE TO CONSENT TO RESTRICTIVE PRACTICES?

A school district is required to continue providing a free and appropriate public education to your child even if you refuse to consent to the use of restraints.

Parents have reported that some programs or schools threaten to stop serving their child or allowing the child to come to school unless the parent or guardian signs a consent form allowing the use of restraints and/or seclusion.

If you are faced with this situation, it is important to get information from a knowledgeable source. Your child may have a legal right to stay in his or her school or program under his or her IEP, or under the contracts, laws or regulations that cover the school or program see the resources at the end of this booklet.

Behavior that challenges us is a symptom of a problem, not the problem itself.

It tells us to look closer and listen harder, because something is wrong. Behavior is a message about what is happening in someone's life. By enhancing communication, rather than shutting it down, we can identify the problem and find positive solutions.



A SAMPLE LETTER TO SCHOOL DISTRICTS GIVING NOTICE THAT YOU DO NOT CONSENT TO THE USE OF RESTRAINTS OR SECLUSION:

(Your name and address)

(Your telephone number)

(Date)

(School District Name and Address)

Re: (child's name and birth date)

Dear (Principal, Program Director, or IEP Team Leader):

My child, (child's full name), is a _____ grade student at _____ school. (Child's name) has a disability (or insert diagnostic label) and is receiving special education services.

I am writing to formally notify you that if, at any time, the school feels that my child's behavior is so challenging that seclusion, involuntary time out, physical management, restraint or similar restrictive or aversive practices are being considered or used:

- I direct that none of these techniques be used with my child.
- I have not authorized and will not consent to any activity that involves the use of any of these procedures at school or while my child is transported to or from school.
- If any of these techniques are currently being used, or have in the past been used, I wish to exercise my right to require you to notify me of this and to require you to terminate any use of such procedures immediately.
- I request that a behavior support team meeting be convened to:
 - (1) discuss these challenges;
 - (2) plan for a Functional Behavioral Assessment (FBA) across environments;
 - (3) evaluate any existing behavioral plans; and
 - (4) begin to develop and implement an effective

Positive Behavior Support (PBS) plan to address my child's specific needs and behavior challenges.

- I also wish to exercise my right to participate in all such meetings. This includes, but is not limited to, the FBA and the development of a PBS plan for my child.**
- If an incident should arise in which school staff members feel unable to respond in a safe and non-restrictive way to my child, I ask that the school immediately contact the family members listed below. Please do not escalate the situation through the use of restraint, seclusion, or by calling the police:**

NAME / RELATIONSHIP TO CHILD

PHONE NUMBER

I am ready to work with school administrators, teachers, staff and professionals to be sure that my child learns to develop positive behavioral skills in an environment that is safe for my child, for my child's peers, and for school personnel. I share your desire to ensure that my child's school is a safe and secure environment where all students can be at ease and learn. I want to work with you to help create that environment. Thank you.

Sincerely,

(Your name)

(Your telephone number)





**THE COUNCIL WISHES TO ACKNOWLEDGE
THE INFORMATION CONTRIBUTED BY
WWW.APRAIS.ORG**

**THE COUNCIL ALSO WISHES TO THANK THE
MEMBERS OF THE NJCDD EDUCATION
SUBCOMMITTEE FOR THEIR ONGOING
CONTRIBUTIONS TO OUR WORK.**

SUBCOMMITTEE MEMBERS INCLUDE:

Coalition of Child Study Teams

www.njasp.org/cocst.html

Disability Rights New Jersey

www.drnj.org

Education Law Center

www.edlawcenter.org

Family Support Center of NJ

www.fscnj.org

NJ Association of School Psychologists

www.njasp.org

NJ Coalition for Inclusive Education

www.njcie.net

NJ Coalition for Special Education Funding Reform

www.specialedfundingnj.org

Statewide Parent Advocacy Network

www.spannj.org

The Arc of New Jersey

www.arcnj.org

The Elizabeth M. Boggs Center on Developmental Disabilities

www.rwjms.umdnj.edu/boggscenter

REPORT ABUSIVE PRACTICES TO:

**NJ Department of Children and Family Services,
Institutional Abuse Investigation Unit**

609-777-1887 <http://www.nj.gov/dcf/contact/iaiu.html>

**CMS, Regional Office, Region 2, Survey and Certification
Operations, Associate Regional Administrator**

215-861-4287 ROPHIDSC@cms.hhs.gov

Disability Rights New Jersey

(609) 292-9742 or (800) 922-7233 in NJ only

www.drnj.org

Education Law Center

(973) 624-1815

www.edlawcenter.org



*NEW JERSEY COUNCIL ON
DEVELOPMENTAL DISABILITIES*

Advocate · Collaborate · Participate

(609) 292-3745
www.njcdd.org



P.O. Box 700 ,Trenton,
New Jersey 08625-0700
(609) 292-3745
www.njcdd.org