

**Restraint and Seclusion in American Public Schools: Developing Principles of
Appropriate Use and Identifying Corresponding Legal Provisions**

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Daniel John Stewart

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Dr. Susan Wells
Adviser
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Dedication

This study was completed to promote the healthy and positive development of children, especially those who have been and may be subject to restraint and seclusion in school. The study strives to provide information, ideas, and tools for policy makers, school administrators, school social workers, other school staff, and parents and children so that they can work collaboratively toward the goal of healthy youth development. In that pursuit, this study is dedicated.

Abstract

In the context of increasing numbers of children being subject to restraint and seclusion practices in school settings, this study proposes 14 principles of appropriate use for those practices. These principles were developed from the research literature and from the results of six interviews of school-based practitioners who have extensive experience with addressing restraint and seclusion use in their schools. The Principles are designed to ensure the appropriate use of these potentially dangerous interventions as well as to reduce the risks and other negative consequences to children, adults, and schools.

Additionally, this study examines how 23 state laws correspond to the proposed principles. A review of the proposed federal law is also provided. This study presents a checklist for reviewing state laws and school policies as well as a model state law designed to promote the appropriate use of restraint and seclusion.

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Introduction

There is compelling evidence demonstrating that restraint and seclusion use is common and frequent in American schools. In 2009 the United States Governmental Accountability Office's (GAO) report on "Seclusions and Restraints," stated that it obtained:

data showing that thousands of public and private school students were restrained or secluded during the last academic year. These data do not show the inappropriate use of restraints and seclusions, but rather the number of times the techniques were used during an academic year. Specifically, Texas and California, two states that together contain more than 20 percent of the nation's children, collect self-reported information from school officials on the use of these methods. Texas public school officials stated they restrained 4,202 students 18,741 times during the September 2007 through June 2008 academic year. During the same time period, California officials reported 14,354 instances of students being subjected to restraint, seclusion or other undefined "emergency interventions" in public and private schools.

Additionally, reflecting the widespread use of restraint and seclusion in schools, states have created statutes, regulations, and policy guidance documents on how, when, and in what ways those interventions are employed. As of December 2009, 21 states have specific laws that regulate the use of restraint and seclusion in schools. Two other states enacted laws in 2010. Other states have created policies or guidance materials to discuss how restraint and seclusion may be used in schools. The GAO (2009) report also concluded that these laws were widely divergent. The existence of state laws and policies, as well as the wide variety of approaches revealed by those laws and policies,

demonstrate both that there is frequent use of these practices and significant differences in how schools can or must address such use.

The widespread and persistent use of restraint and seclusion in schools comes at a great risk to students. There is a substantial number of reports of deaths and injuries of children in schools that are attributable to restraint and seclusion (Ferleger, 2008; Ryan, Peterson, & Rozalski, 2007). These reports follow the seminal 1998 *Hartford Courant* exposé on restraint and seclusion that estimated that there were 50 to 150 unreported deaths attributable to restraint and seclusion *per year* in therapeutic settings. In 2009, the National Disability Rights Network’s (NDRN) report, “School is Not Supposed to Hurt,” provided many examples of children who have died and who were physically and psychologically injured as a result of being restrained or placed in seclusion rooms in schools (National Disability Rights Network, 2009).¹

Adults who administer the interventions are also subject to emotional and physical risk (Ferleger, 2008; Fisher, 1994). In addition to the risk of death and injury to staff and students, parents are initiating legal actions to challenge restraint and seclusion use in increasing numbers (Yell, 1994; Zirkel, 2003; Zirkel, 2008). These legal proceedings result in significant emotional, time and resource costs to schools and parents of children.

In 2009 and 2010 the United States Congress began considering legislation to regulate the use of these interventions across American schools. As of October 2010, the United States House of Representatives passed the “Keeping All Students Safe” bill, H.R.

¹ NDRN is the membership organization for the local Protection and Advocacy (P&A) Systems in each state. The P&A are funded, in part, by federal funds designated to be used for legal advocacy for persons with disabilities. The author is employed by the Minnesota P&A, the Minnesota Disability Law Center.

4247, and the United States Senate was due to take up its companion version, S. 2860, of the proposed legislation. The United States Department of Education's Office for Civil Rights also committed to collecting data on the use of restraint and seclusion on children with and without disabilities as part of its routine data collecting process (United States Department of Education Office for Civil Rights, 2010). Additionally, there are many advocacy organizations that have responded to or raised attention to the use of restraint and seclusion in schools by issuing reports, announcing positions, or becoming involved in policy efforts. The widespread use, risks of harm, legal challenges, information gaps, and divergent state legal standards have led to efforts by national advocacy groups, including NDRN, and state and local organizations, to ensure the appropriate use of restraint and seclusion use in schools.

There is scant literature to draw from with regard to restraint and seclusion in schools. A search of academic and legal publications using, in various combinations, the terms aversive, deprivation, manual restraint, physical restraint, mechanical restraint, seclusion, isolation, time out, exclusion, children, youth, students, schools, K-12 schools, and pre-school resulted in a very high number of articles involving non-school facilities, and a sample of these articles over four decades (including literature reviews on the topic) is noted in the reference section (e.g. Bath, 1994; Delaney, 2006; Fisher, 1994; Garrison, 1984; Gutheil, 1978; LeBel, et al., 2004; Petti, Mohr, Somers, & Sims, 2001; Singh, Singh, Davis, Latham, & Ayers, 1999). In contrast, the same search revealed only three research-based articles on restraint and seclusion practices in K-12 schools (two of which involved the same school), (Fogt & Piripavel, 2002; Miller, George, & Fogt, 2005; Ryan,

et al., 2008), and three on state law comparison (McAfee, Schwilk, & Mitruski, 2006, Rozalski, Yell, & Boreson, 2006; Ryan, Peterson, & Rozalski, 2007).

Five articles discussed time out practices, which are not addressed in this thesis study (Gast & Nelson, 1977b; Nelson & Rutherford, 1983; Ryan, et al., 2007; Skiba & Raison; 1990; Yell, 1994). There were eight articles that raised issues and concerns about restraint and seclusion, but were not research studies (Costenbader & Reading-Brown, 1995; Gast & Nelson, 1977a; Grskovic, et al., 2004; Kaff, Zabel, & Milham, 2007; Magee & Ellis, 2001; Rutherford & Nelson, 1995; Ryan, 2004; Schloss & Smith, 1987). A search of legal research databases using the same terms noted above revealed five articles summarizing case law involving restraint and seclusion in schools or proposing changes to laws (Farrell, 2009; Seiden & Zirkel, 1989; Vital, Kajs & Alaniz, 2005; Zirkel, 2003; Zirkel, 2008).

In contrast, there is extensive literature that relates to the use of restraint and seclusion with adults and children in other settings (such as hospitals, large public and private institutions, residential facilities and other therapeutic settings). However, there are significant differences between schools and these other settings (including training and background of staff, availability of health providers, staff ratios, legal and policy related requirements, purpose of facilities, and whether the hospitalization is involuntary or voluntary), which partially limits the utility of that research as applied to school settings. Moreover, there are also documented barriers and concerns with how non-school and school organizations work together, especially in the area of children's mental health (Adelman & Taylor, 2000).

Focus of Study

In order to develop a research-based approach for ensuring the appropriate use of restraint and seclusion in schools and an instrument to analyze current state legal approaches regarding such use, this study examines the existing literature and presents the results of empirical research on the practical experiences of school administrators who have focused efforts on ensuring appropriate use. These two sources lead to the development of a set of research-based “Principles” of appropriate use. These Principles form the basis of an instrument or checklist that can reveal the strengths and weaknesses of existing state laws or policies and can guide the development of new laws and revision of existing ones. This checklist is included as Appendix 3. The Principles also form an alternative premise for using and regulating restraint and seclusion in schools.

The research literature review is divided into four sections: relevant historical roots, theoretical underpinnings, the risks associated with restraint and seclusion use, and restraint and seclusion reduction efforts. This review identifies conclusions from and gaps in the literature. These conclusions and gaps form the basis of the research questions and the qualitative methodology used to explore them.

Results of the qualitative research are presented along with a set of Principles of appropriate restraint and seclusion use, as discussed above. The Principles are used to formulate an instrument that may be used by school social workers, school staff, policy makers, parents, and parent advocates to understand the strengths and weaknesses of statutes, regulations, policies, and individual student plans relating to restraint and

seclusion. In so doing, this study will assist in promoting the healthy development of children who have been or are likely to be restrained or secluded in school.

Outcomes and Contribution to the Field

The main goals of this study include: 1. Assessing the applicability of the existing research literature to school settings; 2. Articulating Principles for the appropriate use of restraint and seclusion in schools; 3. Analyzing state laws and the proposed federal law with respect to the Principles, and; 4. Offering a model approach for laws on restraint and seclusion in schools.

The contribution of this study is threefold. First, it will bring together legal, research, and practice-based knowledge in order to develop a set of principles that may be used to guide and shape the appropriate use of restraint and seclusion in schools. Second, it will demonstrate a model to systematically analyze laws, policies, and guidelines with regard to restraint and seclusion in schools. And, third, it will serve as a model for a unified national policy approach to ensuring the appropriate use of restraint and seclusion in schools. Overall, this study endeavors to provide school social workers, public school administrators, school advocates, and public policy makers with research based principles that can be used protect and serve children and the adults who work with them.

Among school personnel who work with children with disabilities, school social workers in particular, are in unique positions to have positive impact on their individual work with children who have been or who are likely to be restrained or secluded. School social workers have opportunities to make this positive impact when they participate on

school teams that plan for a child's individual needs and when they exercise their judgment and skills to determine if restraint or seclusion of a child is needed in school.

Definitions and Key Terms

There are a variety of definitions for restraint and seclusion that are used in the literature and law. Restraint and seclusion have been defined as subsets of broader terms (such as “coercive interventions,” “human services restraint,” and “aversive and deprivation procedures”) (Amos, 2004; Ferleger, 2008) or in the context of the function of their use (such as whether use was voluntary or involuntary on the part of the person subject to the technique or whether the technique was a therapeutic response or a reactive response necessitated by an emergency) (Busch & Shore, 2000). These definitions are used mostly to explain the general concepts surrounding restraint and seclusion and their position with respect to other interventions.

There are also definitions found in law or practice standards that more specifically describe the actual procedure or practice of restraint and seclusion. Because this study focuses on restraint and seclusion specifically, rather than on the broader terms, it will use these more descriptive, operational definitions as follows:

Manual or physical restraints. These are techniques that involve a person or persons holding another person or restricting their movement by using bodily strength or positioning (Busch & Shore, 2000; Day, 2002; Ryan, et al., 2007). The techniques or positions may involve a supine hold (positioning on the back), prone hold (positioning on the front), basket holds, or other means to hold another.

Mechanical restraints. These can include devices, as opposed to personal or physical holds or positions, to control behavior. These devices include straps, cuffs, belts, soft splints, weighted vests, or strait jackets, or objects such as boards, chairs, and beds that have ties that can be used to secure a person to the object (Busch & Shore, 2000; Day, 2002; Ryan, et al., 2007).

Chemical restraints. These restraints involve the administration of medication or other chemical means that reduce a person's violent behavior. The type of medication typically includes antipsychotics and sedatives that are typically used acutely (such as lorazepam, thioridazine, chlorpromazine and haloperidol) or those medications used chronically (such as propranolol, atypical neuroleptics, and valporic acid) (Busch & Shore, 2000; Day, 2002). For the purposes of this study, this definition only concerns the administration of medication done pursuant to a physician's order. This study recognizes that appropriate medication prescribed and monitored by a physician can serve a critical treatment and prevention function. Involuntary administration of medication (e.g. administration without a valid physician directive) is not permitted in schools and is highly regulated in medical facilities.

Seclusion. This involves the involuntary restriction of a person to a specific area, typically by use of a lock or other mechanism or practice designed to prohibit the person from leaving the room and where the person is alone (Busch & Shore, 2000; Day, 2002; Ryan, et al., 2007). These specific rooms may have a variety of names such as quiet rooms, blue rooms, locked time out, and freedom rooms. This term does not include "time out" practices² which can be inclusionary or exclusionary (Ryan, et al., 2007).

Although restraint and seclusion are used on children with and without disabilities in school settings, this study focuses on the use of those practices with children with disabilities. As noted above, there are no clear nationwide statistics on the use of restraint and seclusion with children. However, children with disabilities appear to be subject to restraint and seclusion at higher rates than their non-disabled peers. For the purposes of this study, the term "children with disabilities" includes children who are eligible for special education services under the Individuals with Disabilities Education Act (IDEA) and under Section 504 of the Rehabilitation Act (Section 504) and, thus, includes those children with a range of disabilities that includes mental health and developmental disabilities.

² Seclusion should not be confused with time out from positive reinforcement. Seclusion has its historical origins from the 1700's as a procedure used to protect or prevent harm to self, others or property. In contrast, time out from positive reinforcement is a behaviorist approach developed in the 1950's and 1960's designed to reduce unwanted behavior by removing a person from a preferred/reinforcing environment to a space that is not preferred or reinforcing. The basic goal is to impose a less preferred consequence for an unwanted behavior as a way to reduce and eliminate that behavior (Skiba & Raison, 1990).

Amos (2004) discusses a number of particular differences, risks, effects, and considerations of restraint and seclusion use as those procedures are employed on children with mental health concerns and those with developmental disabilities. This study recognizes these differences, but will not address them further as they are beyond the scope of the topic at hand. Similarly, the study does not examine the extent to which children with untreated or inappropriately treated mental health or developmental concerns are subject to restraint or seclusion. The restraint and seclusion of these children are likely significant indicators about the lack of coordination, lack of funding, and failures in the delivery of and access to society's (both public and private) supportive services.

This study uses the phrase "appropriate use of restraint and seclusion." Because there is no clear consensus of what is "appropriate use," this term is not defined. However, this study proposes that the research-driven set of Principles presented herein constitutes "appropriate use."

For this study, which next provides a historical context for the use of these procedures, the term "restraint" refers to either manual or physical restraint (except where the terms mechanical or chemical restraint are specifically used). The term "seclusion" refers to the involuntary confinement of a child alone in a special room from which he or she cannot leave. Again, this study does not include the term "time out from positive reinforcement" in its use of the term "seclusion."

Literature Review

The literature regarding restraint and seclusion of children in schools can be organized around four central topics. First, the literature review will cover the early history of restraint and seclusion, the effect of de-institutionalization, the central legal decision in this area, and the persistency of restraint and seclusion. Second, it will address the two main justifications for restraint and seclusion use with children and criticisms of these justifications. Third, it will review risks to children, staff, and to schools that use restraint and seclusion. Lastly, the literature review will identify and describe how non-school organizations have attempted to reduce restraint and seclusion use and otherwise ensure their appropriate use.

The Historical Background of Restraint and Seclusion with Children in Schools

Although restraint and seclusion were not prevalent in American schools until the 1970's and 1980's (Ryan, et al., 2007), there is a long history of restraint and seclusion in other societal institutions such as hospitals, residential facilities, and other types of therapeutic settings (Masters, 2002; Soloff, 1984). Early documentation of the use of restraint and seclusion stems from the late 1700s in France and England (Fisher, 1994; Ozarin, 2001; Ozarin, 2005). Fisher (1994) reports that in the late 1700's, Philippe Pinel³ portrayed the decision to use restraint and seclusion in institutions in the context of needing to reach a balance between ensuring the safety of individuals (both the patient and staff alike) and not infringing upon patient rights of autonomy, respect and freedom

³ Pinel was a French physician who supervised wards and hospitals for people with mental illnesses and who promoted the concept of "moral treatment," which focused on treatment and pleasant surroundings instead of more punitive and restrictive measures to care for individuals with mental illness. (Weiner, 1992).

(Masters, 2008; Tovino, 2007). Pinel articulated this conceptualization to challenge what he saw as the unnecessary and unfortunate overuse of restraint and seclusion in institutions (Weiner, 1992).

In America, by the late 1800's, the sheer number of patients in large, state-run institutions overwhelmed staff capacity and resulted in "custodial care" and the routine and indiscriminate use of restraint and seclusion (Tovino, 2007). By the early 1900s, the appropriateness of large state-run institutions was called into question because of reports of widespread abuse of patients and a lack of positive outcomes.

Further, some trends altered the landscape of how society understood and dealt with people with disabilities who presented challenging and violent behavior. First, industrialization drew many people to the big city cores and away from the state institutions, which were located in primarily rural areas (Trattner, 1999). Second, military personnel who suffered disabling injuries returned to society and there was a general sense of moral responsibility to care for them in appropriate settings (Id.). Third, new psychotropic medications that significantly reduced behavioral problems were being created and put into practice (Krieg, 2001; Krieg, 2003). Fourth, community-based placements were seen as less costly alternatives to large, state-run institutions by state legislatures and local communities, especially when there was federal funding attached to the community placements (Krieg, 2001; Krieg, 2003; Parish, 2005).

Because of these changes, there was movement away from placing individuals in institutions and a push to finding places for them in community-based settings (Tovino,

2007). This de-institutionalization movement reached its peak in the 1960's through the 1980's (and continues today).

The 1960's and 1970's was the time of the civil rights movement and the passage of new federal laws and protections for people with disabilities. For example, Section 504 of the Rehabilitation Act, which prohibited discrimination on the basis of disability, was enacted in 1971, and the Education for Handicapped Children Act⁴ (later known as the Individuals with Disabilities Education Act or "IDEA"), which, in addition to many other protections, required schools to presumptively place children with disabilities in the regular or general education classroom to ensure they were educated in the "least restrictive environment" (or "LRE"), was enacted in 1975.

Because of de-institutionalization and these legal mandates, children with more severe disabilities were also placed in community-based settings, including schools. At that point, in the 1970's and 1980's, school staff began to restrain and seclude children in greater numbers (Ryan, et al., 2007).

During this de-institutionalization trend, in 1982, the United States Supreme Court, in *Youngberg v. Romeo*, determined the scope and standards of restraint used on a 33-year old man, who had the mental capacity of an 18-month old child and who was involuntarily committed to a state-run institution. Nicholas Romeo alleged that he had been repeatedly restrained and had been injured at least 63 times in a two and a half year period, in violation of the United States Constitution. In resolving the case, the United States Supreme Court concluded:

⁴ This law is currently codified as the Individuals with Disabilities Education Improvement Act, 20 U.S.C. § 1400, *et sec.* (2007).

The State also has the unquestioned duty to provide reasonable safety for all residents and personnel within the institution. And it may not restrain residents except when and to the extent professional judgment deems this necessary to assure such safety or to provide needed training (*Youngberg v. Romeo*, 1982: 457 U.S. 307, 325).

In essence, the U.S. Supreme Court resolved *Romeo's* claims on the very basis articulated by Pinel two hundred years earlier (a balance between societal and personal interests), but specifically premised the basis on the concept of professional judgment.

After the *Youngberg* decision, scrutiny of restraint and seclusion reached a critical stage in 1998 with a newspaper series on restraint and seclusion-related deaths in therapeutic settings conducted by the *Hartford Courant*. The *Courant* reported that there were 142 reported deaths attributable to restraint and seclusion in the past ten years and estimated that there were likely 50 to 150 unreported deaths attributable to restraint and seclusion *per year*. The *Courant* also noted that deaths of children in its study were at a higher rate than deaths of adults (Busch & Shore, 2000).

In the present day, restraint and seclusion use is still widespread in our societal institutions, including schools (Busch & Shore, 2000; Fischer, 1994; Masters, 2008; Ryan, et al., 2007; Tovino, 2007). In fact as of 2010, 23 states have specific sets of laws that regulate the restraint and seclusion of children in schools. While these laws typically have prohibitions, restrictions, and other procedural safeguards, they also explicitly permit the use of restraint and seclusion on children with disabilities. State laws constitute the public policy choices of the state, and it should be recognized that there could be a public policy choice to completely ban restraint and seclusion in schools.

However, the existence of state laws to regulate the use of restraint and seclusion demonstrates that restraint and seclusion use is permissible, and thus, tolerated.

Further, there is emerging research on the reasons *why* restraint and seclusion is permitted and tolerated, despite the risks and negative consequences of their use. Importantly, this emerging research suggests a number of factors that served to gradually and cumulatively mitigate prior efforts to eliminate the use of restraint and seclusion. For example, Masters (2002) suggests that these factors include improved restraint and seclusion procedures and facilities, lack of success with any other interventions or medical approaches, lack of adequate funding, the promise of future new interventions, and high turnover in staff. One additional reason that restraint and seclusion use has not been eliminated is that these practices are not seen as universally negative. Indeed, restraint and seclusion use has been justified on two primary grounds –they are necessary to contain an individual to preserve safety and those same interventions, if done correctly, can be therapeutic to the individual (Allen, 2002). Overall, restraint and seclusion reduction efforts have reached a level of stasis or complacency because of a sense that society has done enough to ensure safety and has done what can and should be done.

Just as the 1998 *Hartford Courant* report threatened the prior societal complacency, similar studies suggest our society is entering another period of debate on the level and extent of restraint and seclusion use.

The Research Bases for Justifying the Use of Restraint and Seclusion with Children

There are two main bases for the use of restraint and seclusion with children.⁵

One basis is that restraint and seclusion are needed on a containment or safety basis. This basis is largely acknowledged on the grounds that restraint and seclusion are an accepted part of a program that can be used to prevent harm, property damage, and/or undue disturbance a program (Allen, 2000).

The other main basis is that the use of restraint and seclusion can be therapeutic and beneficial for children (Cotton, 1989; Fischer, 1994; Gutheil, 1978; Tovino 2007). Acceptance of this basis is widely debated; some authors note that it can be used effectively as part of an overall plan (Cotton, 1989; Gutheil, 1978; Liberman & Wong, 1984), yet others believe that there is no demonstrated benefit to restraint and seclusion use and its use is an unwarranted infringement on dignity, autonomy and can constitute abuse (Garrison, 1984; Mohr, 2010; Steele, 1993).

Before reviewing each basis in turn, it is critical to recognize that individuals who are in position to decide whether to use restraint or seclusion sometimes must do so in response to a crisis or an emergency situation, where there is not much time to weigh options, check an individual's plan, consult with others, base the decision in research or theory, or review applicable policy and law. Literature reviewing police officer decisions to employ force (e.g. Lersch & Mieczkowski, 2004; Storch & Panzarella, 1996) and nursing staff to use restraints and seclusion (Hantikainen & Käppeli, 2000; Karlsson, Bucht, Rasmussen, & Sandman, 2000) in emergency situations discuss a wide range of

⁵ Again, it should be noted that most of the available literature on this topic is based in the practice of restraint and seclusion in hospitals or other types of therapeutic settings.

situational, individual, relational, and cultural factors that are difficult to change by training, policy, law, and research. This study acknowledges these factors and recognizes them as inherent limits once an emergency situation has occurred. It does so, however, also recognizing that restraint and seclusion is also used in non-emergency situations, and it is this type of non-emergency use that should be guided by principles of appropriate use and where there is little, if any, focus on prevention. Further discussion of the factors underlying professional or staff responses to emergency situations is critical, but beyond the scope of this study.

Safety or containment basis.

With regard to safety and containment, seclusion and restraint are seen as a primary means to prevent harm to a person (including self-injurious behavior), to prevent property damage, or to reduce disruption in an environment (Day, 2002). A main component underlying this safety rationale is that there are no other immediately effective strategies available that will work to prevent injury (Fisher, 1994; Persi & Pasquali, 1999). Similarly, if these options are removed, facilities (hospitals, schools, etc.) will not be able to attract and retain staff that is capable, willing, and will not seek alternative employment.

In the containment basis, a host of conditions of use exist to ensure that restraints and seclusion are used only when warranted. These conditions can be categorized in four main areas: 1. where preventative approaches use have been implemented and failed; 2. permissible and impermissible situations for use; 3. precautions to ensure safety of the approach; and 4. review procedures.

Prevention.

One suggested pre-condition for restraint and seclusion use is to require that the organization must attempt preventative, less intrusive strategies to avoid the need for restraint and seclusion in the first place and to permit restraint and seclusion only if prevention did not work. The preventative strategies can include: de-escalation strategies, training, comprehensive assessments to identify potential for violent behavior and need to respond, planning a response to specific behavior and needs, developing a therapeutic environment, ensuring policies are in place and implemented by staff, and identification of specific and consistent indicators for restraint and seclusion use. Restraint and seclusion are permitted after prevention efforts were ineffectual (Busch & Shore, 2000; Fisher, 1994; Masters, 2002; Mohr, 2008; Yell, 1994). This concept can be summarized as permitting restraint and seclusion at the end of a continuum of prevention-focused interventions or as a last resort. The focus on prevention can be characterized as both an ethical mandate (e.g. to prevent unnecessary intrusion on a person's liberty, as discussed in the *Youngberg* decision) and as a safety prerogative (e.g. less intrusive measures to de-escalate a situation do not trigger the same type of risks and harm to the individual subject to restraint or seclusion or to the person implementing those interventions) (Taxis, 2002).

Permissible and impermissible use.

The use of restraint and seclusion generally is based on the existence of at least one of the three following conditions: a. when an individual's behavior poses a bodily threat to the individual or others, b. when there is risk of serious property damage, and c.

when there is a significant disruption to the environment (Busch & Shore, 2000; Fisher, 1994; Gutheil, 1978; Masters, 2002; Mohr, 2008; Yell, 1994).

Just as there is some consensus on when restraint and seclusion can be used, there is also consensus on when they should not be used. Generally, there is agreement that these interventions are not justified when they are used, for example, as a disproportionate response, for programmatic failures or deficiencies, as disciplinary actions, or, when individuals subject to the restraint or seclusion practice view those interventions as a desirable outcome (that is, when restraint and seclusion reinforce the negative behavior). Similarly, there is acknowledgement that restraint or seclusion should not be used:

- As a substitute for overcrowding, providing staff attention, interactions with the individual, or treatment;
- For the convenience of staff or the punishment or retaliation of the individual;
- Because staff is anxious or fearful, and;
- As a response to more minor behaviors or as a response to refusing treatment or activities

(Cotton, 1989; Fisher, 1994; Gutheil, 1978; Masters, 2002; Mohr, 2008; Magee & Ellis, 2001).

Precautions when restraint or seclusion is used.

If restraint and seclusion is necessary, some guidelines may mitigate the risk of physical injury to the individual being restrained or secluded or to the staff who employ them. Such measures include: training of staff, constant monitoring of the individual during the procedure, allowing access to basic necessities (such as food, water, bodily waste elimination, hygiene), having calming environments, use only until the crisis has passed, time limitations, having safe seclusion rooms, and setting clear conditions for

release from the procedure. Similarly, other measures include banning techniques that obstruct airways or lungs and forbidding use on persons who have contraindications (such as certain medical conditions, histories of psychological trauma, or particular medications).

Lastly, restraint and seclusion methods that infringe on a person's dignity or basic rights are not condoned. For example, impermissible actions include restricting or denying a person's access to assistive technology devices or limiting a person's ability to hear, see, and communicate (Busch & Shore, 2000; Ferleger, 2008; Fisher, 1994; Gaskin, Elsom, & Happell, 2007; Greene, Ablon, & Martin, 2006; Masters, 2002; Mohr, 2008). There is general recognition that restraint and seclusion use can implicate ethical and moral considerations surrounding the individual's human rights and dignity as well as a need for safeguards to ensure restraint and seclusion does not infringe upon these rights or an individual's dignity (Taxis, 2002).

Review procedures.

If restraint or seclusion are used, there are a number of follow up steps supported by the literature. These steps include documenting the incident, reporting to parents and administration, reviewing the incident, discussing any needed changes, debriefing of staff and, where appropriate, the individual who was restrained, and, ensuring administrative oversight (Busch & Shore, 2000; Fisher, 1994; Gutheil, 1978; Masters, 2002; Petti, et al., 2001; Yell, 1994). These steps are recommended to ensure that the restraint and seclusion use may be avoided in the future. Similarly, functional behavioral assessments (FBA), which systematically inquire into an individual's behavior in order to prevent

future reoccurrences, are also highly recommended. IDEA specifically refers to, but does not define, FBA's (Turnbull, Wilcox, Turnbull, & Sailor, 2001).

Criticisms.

Antoinette, Iyengar, & Puig-Antich (1990) warn that restrictions on one strategy such as a ban on locked seclusion could lead to more use of another strategy such as chemical restraints or medications, which pose their own ethical and medical implications. They acknowledge that improved behavioral programming, changed medication regimes, or increased staff ratios could mitigate against the use of other potentially risky strategies.

Following the reasoning of these authors, a ban on restraint and seclusion in the school context could lead to more and longer suspensions, attempts to expel the student for disability-related behavior, requests to have the student medicated or allow the schools to administer medications (authorized by a physician) at school to prevent negative behavior, attempts to change the student's educational setting to a setting without any other non-disabled peers, referral to police for the behavior, or requests for medical professionals to intervene in a crisis situation. These alternative responses may implicate the student's educational rights under the IDEA (in particular, the rights to a free appropriate public education and to being educated in the least restrictive environment), as well as the possibility of juvenile criminal charges, removal from the home, and hospital bills.

Moreover, there is a concern of whether school staff, including school social workers, should even try to restrain or seclude a child as schools often lack trained staff,

an appropriate place to seclude children, and the overall financial resources needed to safely use the restraint or seclusion technique. School social workers, and most school staff, may not have the necessary training or expertise in restraining or secluding children as they enter the field leaving the necessary training to individual school districts, which vary in their available resources, access to training options, and commitments to training.

Therapeutic basis.

With regard to therapeutic uses of restraint and seclusion, there are two main premises to justify its use. They are primarily founded in a behaviorism approach and in a developmental/clinical rationale. In explaining the behaviorism approach, Liberman and Wong (1984) make a distinction between traditional uses of seclusion and restraint to respond to emergency reactions with an immediate objective to prevent injury or maintain order and “behavioral” uses, which are planned treatment programs for long term change and which are adjusted as necessary and are monitored to evaluate efficacy.

This behavioral use of restraint and seclusion is premised in “operant, respondent, and social learning, and capitalize on the causal relationships that exist between behavior and its environmental context” (Liberman & Wong, 1984, p. 36). The effectiveness of this type of use depends on understanding antecedents to behavior, restructuring of behavioral consequences (with either positive or negative strategies), removing reinforcements to the negative behavior, specification of target behaviors, modification of antecedents, and evaluation of treatment efficacy. Similarly, they note that reinforcing the absence of negative behavior, social skills training, effective teaching strategies, and

developing programming options for desired replacement behaviors are required elements of effective restraint and seclusion use.

Additionally, restraint and seclusion use has been premised on a developmental/clinical rationale, which proposes to assist children in developing their inner controls, mature defenses, coping skills, and interpersonal skills for relating to peers and adults (Cotton, 1989). This approach must be done within a carefully developed three step process that includes: 1. stopping the challenging behavior with appropriate techniques, including but not limited to restraint and seclusion; 2. developing adaptive and productive behavior; and 3. re-channeling “affect and impulses into adaptive, safe expressions” (Cotton, 1989, p. 446). Essentially, the use of seclusion is one step in “the process of learning control through the experience of control” (Id., p. 448). She maintains that:

For therapeutic use, seclusion must be: part of a process for supporting and developing a patient’s internal controls; defined in formalized policies and procedures; conducted in a consistent manner, for predictable reasons that are clinically indicated; explained to the child before and after its use; administered by well-trained, professionally – and humanistically-oriented staff; supervised and monitored by professionally-trained staff; in a safe, attractive, soothing space. Like all therapeutic interventions, it must be practiced under the proper clinical conditions for the appropriate clinical and, in the case of children, developmental reasons (Id., p. 449).

Cotton (1989) notes that her rationale is based on the work of Gutheil (1978) who posits three theoretical bases for seclusion: containment, isolation from relationships and mastery of space, and decrease in overall sensory input. Generally, he opines that seclusion use is permissible if a child demonstrates acute mania, delusional panic, and other similar conditions that manifest in dangerous behavior and is only permissible as a

last resort after verbal interaction, altering space and de-escalation fails. Seclusion, according to Gutheil, is an opportunity for the patient's internal control system to regain control and allow for appropriate behavior to start. He states seclusion use can be effective when it is a "part of an active treatment program involving close clinical assessment and monitoring of the patient by attentive, trained, and sensitive staff" (Gutheil, 1978, p.328). Although the therapeutic basis for permitting restraint and seclusion use is widely criticized, as discussed next, it should be recognized that many strategies noted with respect to therapeutic use are similar to the prevention steps noted above.

Criticisms.

There are three general areas of criticism of these therapeutic rationales for restraint and seclusion and one specific criticism of their use in schools. The predominant general criticism is that there is little research support to justify their use in any type of setting, school or otherwise (Busch & Shore, 2000; Day, 2002; Ferleger, 2008). Similarly, several organizations reject the premise of restraint and seclusion as therapeutic and instead recommend that these measures only be used in emergency situations (Busch & Shore, 2000; Ferleger, 2008). Others believe that their use is evidence of a "treatment failure" (Curie, 2005; Mohr, Hahon, & Noone, 1998) and that the use may simply continue and escalate the negative spiral of behavior (Amos, 2004; Hawkins, Allen, & Jenkins, 2005; Persi & Pasquali, 1999; Steele, 1999).

Second, Amos (2004) points out that although the use of restraints and seclusion is generally the same with individuals with developmental disabilities and with those with

mental health problems, there are important unrecognized distinctions of the effects and effectiveness on these different populations. That is, an individual with developmental disabilities may have an entirely different response to being secluded than would an individual with mental illness even though the seclusion procedure looks the same. Moreover, the purpose of using seclusion with individuals in either group may differ according to an individual's needs and capacity to understand.

Third, and in a different vein, Magee and Ellis (2001) challenge the underlying premise of behaviorism approaches by asserting that certain individuals may see the restraint or seclusion as positive reinforcement and actively seek it to avoid other activities or settings.

Specific to school settings, one concern is that schools are fundamentally not equipped to engage in ongoing and professionally-supervised therapy or treatment of children with violent behaviors in the first place. A second concern is that schools do not have the requisite staff, access to therapeutic or treatment knowledge and techniques nor do they have the overall necessary capacity (Amos, 2004). Further, school social workers typically do not have training in the therapeutic use of restraint or seclusion. Ryan, et al., (2007) raise a concern that schools may be overusing seclusion practices with children in schools who do not respond well to seclusion and, therefore, that such removals from the regular education class implicates IDEA requirements for a student to be educated in the least restrictive environment.

Additionally, there is a possibility that some children with more severe needs are being placed in less supportive environments, such as schools, and those with less severe

needs are being treated in more supportive environments, such as day treatment or residential programs. This is due to the limited availability of options, difficulty in accessing options that are available, internal restrictions imposed by the more supportive environments, and due to the limits and restrictions of insurance coverage. The placement of children with high needs in a setting with fewer resources and capacity create a mismatch of service provision and child needs, often to the detriment of both child and school (Persi & Pasquali, 1999).

Despite these significant concerns about the containment and therapeutic bases for restraint and seclusion, these practices are routinely employed in schools at sometimes great risk to children, staff and the school. The next section reviews the risks associated with restraint and seclusion of children.

The Established Risks of Restraint and Seclusion with Children in Schools

The same basic restraint and seclusions procedures that are used in hospitals, institutions and other treatment facilities are being used in schools. As such, school children are subject to the same types of risks they face in other settings and these risks, however justified, need to be weighed against the risks of using them in whatever setting they are employed (Ferleger, 2008). The risks of restraint and seclusion can be divided into four basic categories: harm to self or others; use influenced by improper factors; external or secondary effects; and risk of unwanted attention.

Harm.

In addition to deaths of individual children who have been restrained or secluded, there are a number of other types of physical and psychological harm resulting from

restraint and seclusion use on both the individual subjected to the technique and on those who perform it (Mohr, 2010). Children who have been restrained or secluded have reported feeling dehumanized, assaulted, and traumatized by the experience (Amos, 2004; Martinez, Grimm, & Adamson, 1999; Mayers, Keet, Winkler, & Flisher, 2010; Steckley & Kendrick, 2008). Further, if these individuals have been subjected to violence in the past, the restraint and seclusion use can create fear, a re-creation of the initial trauma and can exacerbate any Post Traumatic Stress Disorder (PTSD) symptoms (Masters, 2008; Steckley & Kendrick, 2008). Also, children with disabilities may be more vulnerable, less able to understand the justification for restraint or seclusion and process their use, and may have physical conditions that could be exacerbated by a restraint (Amos, 2004).

There is also a particular risk to children who have underlying medical conditions such as asthma, extreme allergic response, a weakened heart, or whose medication regimen may contraindicate the use of restraint or seclusion (Mohr, 2010). Moreover, with specific regard to seclusion, some children (especially those with developmental or cognitive disabilities) may engage in non-volitional self-injurious behavior and others (especially those with mental illnesses) may attempt suicide (Amos, 2004; Ferleger, 2008). Further, Ferleger (2008) points out that children are more likely to be injured because of their comparative age and size to those restraining them.

Staff who restrain or seclude children can be injured themselves in an effort to respond to violent behavior or such an intervention may trigger an escalated response to certain children (dosReis & Davarya, 2008; Petti, et al., 2001; Steckley & Kendrick,

2008). Further, Bath (1994) and Bigwood and Crowe (2008) discuss the emotional reactions of staff that employ restraint and seclusion on others. Bath (1994) notes that staff encounter substantial emotional stress because of the highly personal threats they receive as a part of their job and that they feel have distaste, discomfort, and guilt in needing to intervene physically. They also feel uncertain about whether or not they chose the correct option in responding to negative behavior (Id.).

Use influenced by improper factors.

A number of studies on restraint and seclusion reveal that the use of restraint and seclusion is characterized by a range of factors that undermines their legitimacy. First, restraint and seclusion has been criticized as only being legitimized because its prior and continuing use has been tolerated as a part of an organization's acceptable practice, rather than premised on a separate therapeutic or safety basis (Garrison, 1984; Gutheil, 1978). Second, Fisher's (1994) literature review found that an array of factors such as cultural bias, staff role perceptions, and leader attitudes were more prevalent indicators of restraint and seclusion use than any legitimate clinical factors. Third, the disproportionate use of restraint and seclusion according to race, gender, and culture has also been reported (Persi & Pasquali, 1994). Moreover, Bath (1994) pointed out that low staffing ratios, poor staff training, long hours, and other staffing problems can independently lead to more restraint and seclusion. Similarly, there are some indications that restraint and seclusion is more commonly used with younger children because staff are either fearful to engage with larger and stronger children or because it is simply more physically possible to do so with younger and smaller children (Ryan, et al., 2007).

External or secondary effects.

The use of restraint and seclusion has also been demonstrated to have negative effects beyond the individual or staff who experience or use restraint or seclusion. For example, LeBel and Goldstein (2005) found significant economic costs associated with restraint in the forms of staff sick time use, staff turnover, and worker's compensation claims in addition to the paperwork requirements triggered by a restraint or seclusion use incident. They showed that a reduction in restraint and seclusion use also reduced these secondary costs. Others note additional secondary effects such as high job stress, lower job satisfaction, and low pay often associated with positions that require restraint and seclusion use (Bath, 1994; Kaff, et al.; 2007; Masters, 2002).

Risk of negative attention, lawsuits, and public scrutiny.

Organizations such as schools, residential facilities, and hospitals must spend time and other resources responding to complaints, criticisms, and questions about restraint and seclusion use. These resources are not expended in direct services to an individual and constitute a separate burden on the organization, which have limited budgets and staffing. Three major categories of this negative attention include: media attention, advocacy organization involvement, and lawsuits.

Parents and advocates have turned to the media when they feel schools are not receptive to their concerns, when they feel aggrieved without appropriate remedy, or, among other reasons, when they want to call attention to the issue. This media attention is not usually welcomed by schools as it could, regardless of the truth or accuracy of the concerns, cause additional scrutiny on its operation. Examples of media attention include

nationwide press such as reports by CNN, (Fantz, 2008), and USA Today (Turner, 2008).

There are also local stories on restraint and seclusion on students in school in local media.

Families can also organize themselves and raise attention to questionable practices in schools. One such group is the Florida-based Families Against Restraint and Seclusion. Its website (<http://familiesagainstrestraintandseclusion.blogspot.com/>) has sections on current deaths of children attributable to restraint or seclusion, articles, links, resources, and a blog. There is also a website with a state-by-state listing of schools, (http://www.caica.org/LIST_OF_SCHOOLS_WITH_OVERUSE_OF_RESTRAINTS.htm), created by parents believe their children have been inappropriately restrained or secluded. Other advocacy groups can become involved, request meetings, review records, and otherwise open up the use of restraint and seclusion to additional scrutiny.

Yet another costly diversion comes in the form of growing numbers of threatened or actual lawsuits (Zirkel, 2003; Zirkel, 2008). These lawsuits, ultimately meritorious or not, require schools to spend much time and other resources to defend against them. Federal law also allows a process for attorneys for parents who prevail in lawsuits to recover attorney fees from the school district (Yell, 1994).

Essential Components of Efforts to Ensure the Appropriate Use of Restraint and Seclusion in Schools

There is an emerging body of academic research that analyzes efforts to reduce restraint and seclusion and ensure their appropriate use. As noted above, most of the academic research focuses on efforts in non-school settings. Delaney (2001) identifies six essential components for effective efforts to ensure appropriate restraint and seclusion use, including staffing; leadership and organizational culture; policy and legal

framework; processes and interventions, including accountability mechanisms; environmental changes; and patient/child involvement (Id.). These categories are supported by other authorizes as well and are summarized next.

Staffing.

The most common staffing variable likely to lead to appropriate use of restraint and seclusion is staff training (Busch & Shore, 2000; Dean, Duke, George, & Scott, 2007; Delaney, 2001; Gaskin, et al., 2007; Miller, et al., 2005; Miller, et al., 2006; LeBel et al., 2004; Ryan, et. al., 2008; Visali & McNasser, 2000). Sufficient staff training includes appropriate scope and depth of content, annual and ongoing sessions, and training of all needed staff, from new staff to supervisors. Other staffing variables include cross-disciplinary approaches, low staff-child ratios, and rotation of staff to prevent burnout (Gaskin, et al., 2007).

Leadership and organizational culture.

A number of authors contend that building or program leaders' belief in and prioritization of restraint and seclusion reduction efforts is critical to success. These leadership efforts include: establishing mission or value statements, identifying goals and principles, attending to the goals, committing resources, establishing and gaining consensus on the need for the task, and having accountability and review processes (Delaney, 2001; Gaskin, et al., 2007; Miller, et al., 2005; Miller, et al., 2006; LeBel, et al., 2004; Ryan, et al., 2008; Visali & McNasser, 2000). Additionally, Adelman and Taylor (2000) discuss the need for school leaders to have a systematic approach concerning mental health strategies.

Policy and legal framework.

Another critical feature of successful reduction efforts is having state or local level policies and/or laws that set standards for what constitutes the appropriate use of restraint and seclusion (Busch & Shore, 2000; Dean, et al., 2007; Delaney, 2001; Gaskin, et al., 2007; LeBel et al., 2004). These policies and laws can be a separate rationale for imposing the necessary requirements under threat of sanction. Overall, however, the central purpose of laws and policies is to have a common and consistent approach to what is and is not permitted with respect to restraint and seclusion practices. The common approach can serve as an organizational statement, be articulated in writing, be described in training, and used as a basis to evaluate implementation of the approach.

Implementing supporting processes and interventions.

This category can be subdivided into two subparts: structural processes and specific behavioral interventions. Structural processes are organizational structuring/restructuring efforts that include, for example, data collection, reviews of program strengths and weaknesses, protocols, case or incident review processes or teams with supervisors and peers, crisis or emergency response teams, and managing and using data systems (Busch & Shore, 2000; Dean, et al., 2007; Delaney, 2001; Gaskin, et al., 2007; Miller, et al., 2005; Miller, et al., 2006; LeBel, et al., 2004; Visali & McNasser, 2000). These processes reflect organizational priorities and attempt to ensure consistency of practices as well as review of practices and priorities.

Organizations also should be committed to a specified and consistent approach to behavior interventions. Organizations that identify and consistently implement evidence-

based practices (or at least agreed-upon consistent practices) tend to be successful in reducing restraint and seclusion use (Id.).

Currently, research support for institutionalizing positive behavior interventions and supports (PBIS) is gaining more credibility as more schools are implementing PBIS strategies with some evidence of success on social and academic indicators (Carr, et. al, 2002; Lewis, Jones, Horner, & Sugai, 2010; Turnbull, et al., 2001). As defined by the Office for Special Education Policy (OSEP) Technical Assistance Center on Positive Behavioral Supports and Interventions on its website, PBIS “is NOT a curriculum, intervention, or practice, but IS a decision making framework that guides selection, integration, and implementation of the best evidence-based academic and behavioral practices for improving important academic and behavior outcomes for all students” (OSEP, n.d.). Some state departments of education, such as Minnesota’s, have PBIS funds available for local school districts to apply for and participate in.⁶

Environmental changes.

A fifth essential component includes creation or modifications of an organization’s physical plant or building (Busch & Shore, 2000; Gaskin, et al., 2007). These efforts can be done on a small scale such as painting rooms in calming hues and organizing classroom furniture and materials to reduce clutter and potentially harmful materials which can reduce a child’s stress levels. The efforts can also be done on a larger scale when rooms and processes are being considered in new construction,

⁶ The Minnesota Department of Education website page on PBIS, http://education.state.mn.us/MDE/Learning_Support/Special_Education/Evaluation_Program_Planning_Supports/Positive_Behavioral_Interventions_Supports/index.html, includes a basic description of the state’s PBIS efforts as well as an application for school districts to use in applying for PBIS funding.

renovations, or program moving and reorganization. The basic goal is to consider the environment in light of the needs of children, the program, and staff.

Patient and child involvement.

For this component, a number of authors posit that organizations that have demonstrated success in reduction efforts involve patients/children in restraint and seclusion decision making prior to use and as part of debriefing after use (Busch & Shore, 2000; Delaney, 2001; Fisher, 1994; Gaskin, et al., 2007; Gutheil, 1978; Masters, 2002; Petti, et al., 2001). These authors acknowledge that some patients and children cannot fully or meaningfully be involved due to age or disability, but that there is a variety of ways for them to be involved. The involvement of children or patients prior to restraint and seclusion use can be used to establish a common understanding of what may happen in certain situations and to explain the reasons for restraint and seclusion use. Their involvement subsequent to use can be used to clarify reasons for use, identify any injury, discuss effectiveness of use, avoid future use, address concerns of or questions about misuse, and inform them about how to complain about use. This involvement is premised on acknowledging the central role of the patient/child in a restraint and seclusion incident and his or her status as a human being who has been subjected to an invasive intervention.

Data.

One consistent element among these categories is the necessity of data collection and review. Having the requisite data brings staff attention to the restraint and seclusion event, allows for analysis and review, informs evolving training or organizational change

needs, demonstrates patterns of use, shows increases and decreases of use, and is a critical component of holding staff responsible for accountable for failures and successes (Busch & Shore, 2000; Dean, et al., 2007; Delaney, 2001; Gaskin, et al., 2007; Miller, et al., 2005; Miller, et al., 2006; LeBel, et al., 2004; Visali & McNasser, 2000).

Conclusions

In reviewing the historical background of restraint and seclusion, the research-based premises for their use, the established risks of their use, and the essential components of ensuring appropriate restraint and seclusion use, five main conclusions may be derived.

First, the history of restraint and seclusion use is persistent in American society and, this use is present and widespread in public schools. Second, one of the two primary dominant theoretical bases for justifying the use of restraint and seclusion (the therapeutic rationale) is widely questioned, difficult to put into practice in a safe and consistent manner, and is not on solid empirical footing. The other basis, the safety rationale, is largely assumed and not well-defined in practice.

Third, and similarly, there is a lack of consensus on what constitutes permissible uses of restraint and seclusion. Existing legal standards for appropriate restraint and seclusion use depend on what constitutes “professional judgment,” as enunciated by a court or on what is permissible under state laws, which as will be shown below are widely divergent in scope and content. The overall lack of consensus in the literature and in the law on what constitutes appropriate use does not lend itself to clear practice parameters by staff in schools.

Fourth, there are significant risks and negative consequences for a school's use of restraint and seclusion. These risks and consequences range from death of and injuries to children and staff to additional administrative and financial burdens on schools. Schools, parents, staff and children will continue to be unnecessarily subjected to these risks unless schools can ensure the appropriate use of restraint and seclusion.

Fifth and lastly, the research literature shows that there are organizations that have been successful in ensuring the appropriate use of restraint and seclusion in non-school settings. The main elements of these successful systemic change efforts are having the right staff who are adequately trained, a committed leadership and organizational culture, a policy or legal structure that supports and reflects agreed-upon approaches, processes and interventions that are consistent with the policy/legal structure, a thoughtfully designed environment for staff and individuals subject to restraint and seclusion, involvement of the individual subject to restraint and seclusion and their family, and a data collection and review system.

Critical Gaps

The review of the literature reveals critical gaps in the research. The primary gap is that there is an absence of a solid research foundation on the extent of restraint and seclusion *in schools*⁷ and on what works to ensure appropriate use of those interventions in schools. While there is extensive literature that relates to the use of restraint and seclusion with adults and children in other settings (such as hospitals, large public and

⁷ As noted above, while it appears clear that restraint and seclusion use is widespread and increasing, there is a fundamental lack of understanding of how often and which children are subjected to restraint and seclusion in public schools.

private institutions, residential facilities and other therapeutic settings), it is not necessarily transferable to school settings because there are significant differences in training and background of staff, availability of health providers, required staff-ratios, legal and policy related requirements, purpose of facilities, and the sometimes involuntary nature of hospitalization.

Second, because of this lack of a solid research foundation, there is no clear comprehensive premise to justify and direct the use of restraint and seclusion in schools (Day, 2002). As a result, policy makers and school based practitioners are left without a clear standard to guide and judge the use of restraint and seclusion in schools. This gap is clearly shown by the widely divergent approaches in state laws and policies for restraint and seclusion practices in schools.

A third gap is a lack of comprehensive analysis of state laws on restraint and seclusion. These laws explicitly authorize or forbid certain practices, and, in doing so, articulate what constitutes appropriate restraint and seclusion in schools in a particular state. A comprehensive analysis would reveal areas of consensus and areas of strengths and weaknesses. Such an analysis would also reveal where law, research, and leadership strategies are particularly important to school-based efforts to ensure that the appropriate use of restraint and seclusion actually occurs in schools. Finally, there is no comprehensive school-specific model that identifies or conforms to principles of appropriate use that are based on research or successful practices.

Research Questions and Methodology

The conclusions and gaps from the literature lead to four main research questions.

1. Can the existing research literature on restraint and seclusion in non-school settings be applied to school settings?
2. What empirically and research-driven principles can be stated to guide school efforts to ensure appropriate use of restraint and seclusion?
3. In what ways are existing state laws and the proposed federal law consistent with the empirically and research-driven principles?
4. What would an empirically and research-driven model policy look like?

To address the first two questions, it is necessary to systematically explore and analyze the experiences of school-based efforts to ensure the appropriate use restraint and seclusion. This exploration is particularly timely as the nation's school policy makers and our elected officials debate federal policy efforts to address restraint and seclusion in schools – a debate that reveals significant differences of opinion on how to address the issue. The first two questions will lead to the presentation of specific principles of appropriate restraint and seclusion use in schools.

To address the second two questions, legal research will be used to identify the strength and weaknesses of existing state laws with respect to the Principles derived from the literature and the qualitative research. The legal research methodology, analysis, and results will be discussed after the qualitative research section.

Qualitative Research Methodology

To explore the first two research questions (1. Can the existing research literature on restraint and seclusion in non-school settings be applied to school settings? 2. What empirically and research-driven principles can be stated to guide school efforts to ensure appropriate use of restraint and seclusion?), qualitative research methods were selected to explore the gaps in this area and to develop school-specific principles to ensure the appropriate use of restraint and seclusion.

Qualitative research is particularly suited to areas where the topic is not well understood, controversial, subject to different understandings and beliefs, and ill-suited to an experimental, controlled research environment. In these areas, qualitative research generally can reveal how individuals perceive, understand, and give meaning to the topic being researched. By describing, categorizing, and comparing individuals' communicated meaning, the reporting of qualitative research can begin to fill in the research gaps about restraint and seclusion in schools.

Further, as the literature review has demonstrated, there is a lack of objective information on restraint and seclusion in schools, restraint and seclusion practices are not suited to experimental designs, and there is much and long-standing controversy over the use of restraint and seclusion generally and in school settings in particular. School-based practitioner insights are particularly important given the persistence of restraint and seclusion in schools, the known and developing understandings of the risks associated with restraint and seclusion use, the debates surrounding justifications for use, and the wide range of variability within state laws and policies on restraint and seclusion use.

Additionally, a qualitative approach is particularly suited to this area of study where there is a fundamental lack of theory and significant research gaps with regard to the appropriate use of restraint and seclusion in public school settings.

The qualitative interviews were conducted to ensure “trustworthiness,” as that concept is elucidated by Lincoln and Guba (1985). They describe how, as a part of a naturalistic inquiry, qualitative methods can be employed to ensure the qualitative equivalents of internal validity, external validity, reliability, and objectivity. For this study, these equivalents were addressed as follows:

Credibility (the qualitative equivalent for internal validity), was addressed by the use of “member checks,” in which findings and interpretations were shared with and confirmed by the interview subjects. The member checks were a critical piece especially because tape recordings of the interviews were deliberately not made. The member checks were done following the interview and after the initial analysis was completed. These checks consisted of giving the interviewees an opportunity to 1. agree, disagree or clarify the accuracy and context of any quotes used in the analysis and 2. validate a proposed set of appropriate use of restraint and seclusion principles identified by the author as themes from the interviews.

Applicability or “transferability” (the qualitative equivalent of external validity) was addressed by developing a “thick description” of the interview results and of the interpretations stemming from them (Bogdan, 1975). This description led to the analysis of the interviews section below.

“Dependability” and “confirmability” (the qualitative equivalents of reliability and objectivity) were addressed by creating an “audit trail” as well as by taking other steps suggested by Beeman (1995). These steps and the audit trail consisted of showing how interview subjects were selected, preparing an interview guide, taking steps to ensure neutrality, creating interview notes, creating investigator memos, and completing a “member check.” Each step will next be discussed in turn.

Selection

There appear to be only a few well-recognized restraint and seclusion reduction efforts in the school. The criteria for identifying sites and individuals included: inclusion in a formal, published research study, significant history of restraint and seclusion effort, or involvement in presentations or studies for larger audiences. The initial names were obtained via purposive sampling from a review of publications, internet searches, and contacts with advocates, school-based employees, professionals who train staff, and academicians in the field. Potential contacts were also obtained by attending conferences where such professionals and experts from around the country were likely to present or attend.

From this process, the names of ten potential interviewees from different states were obtained. Four of the ten declined to participate because they were concerned that, despite confidentiality assurances, their participation may negatively affect state-level policy discussions on this topic or their work in schools. The other six agreed to participate, and they form the interviewee group used in this study.⁸ These six were mid-

⁸ One other potential interviewee was considered but rejected because her work affiliation was at the state policy level, rather than at the school level where the other six interviewees were from.

to upper level administrators in public school districts who had responsibilities to work with teachers in classrooms as well as with other administrators and who were primarily responsible for creating, leading, or guiding the school's efforts to reduce restraint and seclusion use.

Background of Interviewees

The six interviewees came from schools in four different states. Three states are in the Midwest and the fourth is in the eastern part of the nation. Five of the six interviewees hold positions in traditional K-12 school districts that ranged in size from approximately 3,600 students to approximately 17,300 students. These five districts typically have multiple elementary schools, one or two middle schools, one or two high schools and, in two districts, an alternative learning center. The other interviewee holds a position in a special education specific school that accepts students from other surrounding schools and has approximately 100 students. The schools are located in rural, mid-size cities, and in urban areas.

Interview Guide

To obtain comparable types of information from the interviewees about different types of discrete, unrelated, programs as well as to facilitate interviewee responses about their personal experiences and perspectives in a limited amount of time, an interview guide was developed. The guide was based on sensitizing concepts from the literature and those concepts commonly present in state laws (Patton, 1987). The guide did not contain specific questions; it only noted the necessary topics, thus allowing for and requiring the interviewer to adapt the "wording and sequence of questions" as the

interview proceeded (Patton, 1987, p. 111). Care was taken to ensure that the questions and conversations employed during the interview were singular, open-ended, neutral, sensitive and clear, as those terms are discussed by Patton (1987).

Neutrality

Patton (1987) advises to interviewers to establish rapport with interview subjects but to remain neutral. Because of the author's background, a number of modifications to the interviews were employed. First, recognizing the potential of bias, the interview guide, along with a written description of the study, was shared with potential interviewees before the interview. This step, in addition to providing the University of Minnesota's Institutional Review Board's required informed consent form, served to inform potential interviewees. Second, two assurances of confidentiality were provided to the interviewees—they were informed that they or their schools would not be identified and they were advised that their responses would not be recorded. Although tape recording is a preferred method to have a clear and analyzable record of the interviews words, the decision to not conduct tape recording was intended to establish trust and informality in developing rapport and to decrease any potential fear of being questioned by an attorney or having their words recorded by one.

The third modification was that if an interview subject ever becomes involved in a legal proceeding in which the author is involved, the author will reject representation of an adverse party on the basis of conflict, decline to become involved, or segregate

himself from the case if another advocate or attorney can work on the case.⁹ Taking measures to avoid any ethical conflict is required by the applicable lawyer's code of professional responsibility.¹⁰

Interview Notes, Initial Codes and Analysis

The author of this study recorded notes during the interview and then, immediately upon completion of the interview, reviewed the notes and added clarity and context to them. Next, the author typed up notes one day later and again added any supplemental recollections and comments (Bogdan, 1982). Once all interviews were completed, all notes were reviewed and preliminary analytical codes were developed around the themes from the interview responses. In order to use the interviewees' words to highlight and describe the themes, a format suggested by Bogdan (1982, p. 187) was used. The analysis of the interviews was then written up around the major categories arising out of the interviews and, from those categories, Principles to ensure the appropriate use of restraint and seclusion in schools were proposed.

Member Checks

As described above, member checks were completed. These member checks were used to ensure credibility as well as "dependability" and "confirmability," as discussed by Lincoln and Guba (1985). The first member check asked the interviewees to confirm the accuracy of recorded quotes with the context of the response and to provide them with an opportunity to decline use of the quotation or to correct, amend or

⁹ Since the author is only licensed to practice in Minnesota and the interviewees all did not work or live in Minnesota, such a conflict is unlikely. However, since other attorneys in different states may contact the author, this step seemed prudent.

¹⁰ See Minnesota Rules of Professional Conduct 1.7 and 1.10. Retrieved from: www.mncourts.gov/lprb/mrpc.html.

elaborate on the quote. In the second check, the themes that emerged from the interviews were presented back to the interviewees and they were asked to verify them, reject them or modify them as they deemed fit. If the statements were verified by the interviewees and there was sufficient research based support for them, the statements were identified as a “Principle” of appropriate use.

Analysis of Data

Overall, the analysis employed in this study followed the procedure outlined by Beeman (1995), as adapted to the particular nature of this study. Beeman suggests five steps: prepare material, develop coding scheme, analyze subset, note similarities and differences, and analyze all cases. These steps needed to be adapted to the present study because of the small number of interviews (or cases).

1. Prepare material. In the present study, the material consisted of the notes from the interviews, interviewer notes, and the member checks. This material was collected, saved in a consistent electronic format, and reviewed for accuracy and completeness.
2. Develop coding scheme. Here, the coding scheme was created by assigning initial codes on a copy of the study’s material, refining the categories according to the prevalence and categorization of responses, and determining sub-codes as well as broader categories (Bogdan, 1982).
3. Analyze subset. In the present study, there were only six interviews so a subset was not employed. The material was read as a whole to ensure consistency of coding. Some codes were as refined as necessary to ensure consistency across

the interviews. A comprehensive coding list was created. Next, each interview notes were reviewed and coded twice to ensure accuracy and consistency of coding. Any differences in the coding in each interview were identified and reconciled.

4. Identify similarities and differences. The material from the six interviews was reviewed as a whole to gain an overview of what was similar and different among the interviews. The coding scheme led to content analysis (Weber, 1990). From this content analysis, a number of themes emerged concerning what the interviewees thought were the essential components of the appropriate use of restraint and seclusion in schools. These themes were reduced into specific statements of the components.

5. Verification. In this study, instead of adding additional cases as suggested by Beeman (1995) to verify the analysis, the themes (which were presented as statements of appropriate use) were presented to the interviewees and they were asked to verify them, reject them or modify them as they deemed fit. If the statements were verified by the interviewees and there was sufficient research based support for them, the statements were identified as a “Principle” of appropriate use. The member checks were also used to ensure accuracy of all quotations used.

Qualitative Research Results

This section discusses the analysis of the interviews. The interviewees discussed a range of elements they believed essential in their school's efforts to ensure the appropriate use of restraint and seclusion in schools. These elements are discussed in the context of the interviewees' own words and then presented as statements of appropriate use. Results from the member checks are also presented along with an identification of the Principles of appropriate use.

Recognizing the Need for Change and Leadership and Common Approach

The interviewees reported there were different reasons about why the school decided to change its approach to restraining and secluding children. Several interviewees described their school's primary motivation for the change as a "gradually" changing student body that exhibited more needs and more violent and dangerous behaviors. The interviewees linked the increases in these needs and behaviors to students and families having fewer resources, more foster care placements, increased mental health problems, higher poverty, more mobility, children suffering "early trauma" and less support services. Another interviewee noted a lawsuit over the use of restraint as the trigger for more attention to the topic.

In addition to recognizing the need for change, the interviewees agreed that school leadership was essential to identify and support the effort. Leadership was needed to effectuate a "culture change" with how the school approached decisions to restrain or seclude children. To do so, interviewees believed that the school's leadership needed to commit to and develop a common message about the effort. One interviewee said that

leadership team needed to “be on the same page and willing to change culture, commit resources, and take the training themselves.” This quote was typical and consistent with other interviewee responses. Another interviewee said she chose to apply for a job in a district where the “special education director was a champion of reducing restraint and seclusion.” Others noted the need for school principals and the management team to be involved and “to set course” for the appropriate use efforts. Overall, the school leadership team was essential in establishing and driving the school-based efforts. Without this leadership commitment, the efforts would not be successful; and without a common message, there would likely be inconsistent efforts.

Further, the interviewees noted the need for perseverance and a commitment to the change process from leadership and school staff. The interviewees agreed that process for change was slow and difficult. One interviewee noted that “it was a painfully slow transition at times,” while another reflected on the “painful days” where people “liked the old rules and became used to them.” The efforts to ensure appropriate use of restraint and seclusion were sustained by “data show(ing) that kids do improve with our help,” “pockets of success showed us that we were on the right track” and that “small successes kept the effort going.”

While the change was slow and painful at times, the interviewees discussed the great amount of change made between the past and the current. One said “we went from putting students in boxes with locks 14 years ago to reducing restraint and seclusion to nearly zero today.” Another emphasized that the school “went from a culture of punishment to a culture of growth and opportunity.” Others noted that “it’s been a sea

change from then to now” and that “now, we have the same message (about using restraint and seclusion) given all through the district – common language and consistent interventions.” Training materials from one interviewee also notes the need for a “shared vision/belief by all staff.” The interviewees agreed that in order for their schools to successfully implement their efforts, the school needed to have a common approach.

Accordingly, the role of leadership and commitment to a common approach were primary themes in the school-based efforts. These themes can be reflected in the following statements of appropriate restraint and seclusion use.

1. Schools must establish a common language, message, culture, or policy on restraint and seclusion use.
2. School leadership is necessary to support the common language, message, culture, or policy on restraint and seclusion use.

Each of the interviewees endorsed these statements in the member check process. Further, they are also supported by the research literature (Busch & Shore, 2000; Delaney 2001; Miller, et al., 2005; LeBel, et al., 2004). Given the endorsement and support, this study deems them Principles of appropriate use.

Belief in the Possibility of Positive Change for Children

The interviewees agreed that the need for and leadership’s commitment to change must be supported by an attitude that children with very challenging behaviors and difficult backgrounds *could* be helped and their behaviors *could* be reduced despite whatever challenges and conditions children, their families and the community face. For example, children who are subject to restraint and seclusion can repeatedly exhibit extreme and challenging behavior that at times seems impossible to control or improve.

These same kids may also have severe disabilities, significant skill deficits, and/or live in families and communities with high poverty and mobility, less social and familial infrastructure, and more violence. Yet, the interviewees believed that even those children could be helped so that their behaviors would be acceptable and safe.

One interviewee, who captured the perspective, tone, and feeling of this point, said the school staff understood the “need to overcome feelings of hopelessness that kids can’t get better – they can and they do.” Similarly, the interviewees expressed commitment to the children they served and confidence in their abilities to help. One said other agencies with different and more resources have tried to help kids, but where they failed, the school staff believed that “we can do it.”

The following statement was proposed to capture this perspective:

3. Most, if not all, children are able to reduce their challenging or dangerous behavior.

Each of the interviewees endorsed this statement in the member check process. One interviewee endorsed the statement by clarifying that children are able to reduce the challenging or difficult behavior “with adult support.” Additionally, this statement is supported by the research literature (Delaney, 2001; Miller, et al., 2005). Given the endorsement and support, this study deems it a Principle of appropriate use.

Moral or Ethical Foundation, Safety, and Prohibitions

Whatever the stated reason for change, each of the interviewees recognized a moral or ethical impetus for their school’s efforts. One said “it (restraint and seclusion) is not treatment, it only brutalizes kids, and we decided that we won’t do that here.”

Another interviewee stated that fundamentally using or not using restraint and seclusion

is an “ethical issue” and another said that using restraint or seclusion “is really about good and ethical moral judgment.” Other interviewees commented on the use of restraint and seclusion using similar terms. Additionally, training materials created and used by another interviewee frames the use of seclusion as “ethical seclusion timeout guidelines.”

The interviewees also discussed restraint and seclusion use in the context of school safety for both children and adults. One interviewee stated that there must be an overall “commitment to a safe environment.” One specifically said it was critical for schools to have an environment where “teachers must feel safe.” The interviewees agreed that having such an environment allowed both children and staff to take the necessary steps towards skill development and behavior change. In essence, they felt that school efforts to ensure appropriate use of restraint and seclusion were dependent on staff feeling safe. Furthermore, the interviewees indicated that staff needed to have sufficient training to ensure that they carried out restraint and seclusion interventions in a way to protect themselves and students.

Stemming from these interrelated themes, three statements were proposed. It is recognized that they have overlap in their concepts, but they are also discrete enough to warrant being separate. The interviewees’ placed their school-based efforts to ensure the appropriate use of restraint and seclusion within a moral and ethical framework as well as a safety context and this framing can be reflected in the following statements:

4. Restraint and seclusion use implicates moral and ethical considerations.

5. There are some types of aversive practices (actions that result in pain, using intense stimuli, etc.) and some types of restraint and seclusion practices (such as prone restraint or locked seclusion) that should be prohibited.

6. If restraint and seclusion must occur, they must be done with the safety and dignity of students and staff in mind.

During the member checks, five of the six interviewees agreed to Statement 4 and the other viewed restraint and seclusion as essentially an issue of “safety.” Statement 4’s moral focus also has support in the literature (Busch & Shore, 2000; Ferleger, 2008; Fisher, 1994; Gaskin, et al., 2007; Greene, et al., 2006; Masters, 2002; Mohr, 2008; Taxis, 2002).

Four of the six interviewees completely agreed with Statement 5 and the remaining two conditioned their verification on a couple of points. One stated that “I would agree that school personnel should not engage in these practices, I would not agree that these practices should be prohibited in schools with police officers.” The other stated that while she agreed that certain practices should be excluded but that she was “very cautious about using the word ‘prohibited’ in all settings. Under intense clinical and legal supervision I would not want to rule anything out 100% as the alternative may possibly be more aversive to the family. I would also want ‘locked seclusion’ to be defined. What about secured by a person such as holding the door shut?” Because Statement 5 was not rejected, but qualified in part by two of the six interviewees and still generally accepted by all six, this study includes it as a Principle. It is also significantly supported by the research literature (Busch & Shore, 2000; Fisher, 1994; Masters, 2002; Mohr, 2008; Yell, 1994).

Each of the interviewees endorsed Statement 6 in the member check process. It too is supported by the research literature (Busch & Shore, 2000; Ferleger, 2008; Fisher, 1994; Gaskin, et al., 2007; Greene, et al., 2006; Masters, 2002; Mohr, 2008; Yell, 1994).

Given the endorsement and support of each of these three statements, this study deems them Principles of appropriate use.

Permissible Use of Restraint and Seclusion

The interviewees all believed that, at certain times, restraint and seclusion was necessary and said that there were also times when it should not be used. However, they all noted a high standard for when their schools were allowed to use restraint or seclusion. This standard was described by several interviewees as use as “a last resort,” use in “dangerous situations where a person may be harmed,” or when there was a situation involving “weapons or severe assault.” The standard was set high to recognize the safety, ethical and moral consideration surrounding the use of restraint and seclusion in school.

The interviewees also indicated that there are situations where restraint and seclusion should *not* be used. The interviewees emphasized that restraint and seclusion are used to prevent harm and not as an instructional, disciplinary, or therapeutic tool. They believed that restraint and seclusion for the latter purposes were simply not justifiable and was obviously inappropriate as well as ineffectual. One interviewee stated that “we don’t restrain for non-compliance” and another said that restraint and seclusion was a “stop measure and not discipline.” The interviewees had a clear idea about when and for what purposes restraint and seclusion should and should not be used.

From these themes – high standard for use and impermissible use – two related statements were proposed. Again, it is recognized that these statements have some overlap, but they are also discrete enough to warrant being separate. One statement

discusses the standard for use and the nature of a continuum of responses. The other statement emphasizes restrictions on restraint and seclusion use for certain impermissible reasons.

7. Restraint and seclusion should only be used in schools at the most restrictive/intrusive end of a continuum of interventions to prevent harm to a person.

8. Restraint and seclusion should not be used for punishment, discipline, or as a substitute for lack of staffing, planning, or services.

Each of the interviewees endorsed these statements in the member check process. They are also supported by the research literature (Cotton, 1989; Fisher, 1994; Gutheil, 1978; Mohr, 2008; Magee & Ellis, 2001; Masters, 2002). Given the endorsement and support, they are both included as Principles.

Review Process and Use of Data

Each of the interviewees described some form of internalized school process to address situations where a student's behavior is increasingly dangerous or when a restraint or seclusion intervention has been used. The processes, which often had a specific name (e.g. "recovery protocol") or more general names (e.g. "student assistance team" or "problem solving process"), generally consisted of monitoring a student, involving parents, reviewing data, reviewing and revising the existing plan, determining the need for additional evaluation information, debriefing with staff and or the student, and discussing potential changes to the school environment.

Whatever the names for the processes, the interviewees emphasized the need for formally addressing, being attentive to, and learning from the incident that resulted in restraint or seclusion. One interviewee called this a "personalized plan for individual

students.” The tone and feeling of the interviewees’ responses indicated that the processes used were designed to do the hard work of getting to know and working with a child as an individual and not simply pushing the child through a pre-designed program.

The interviewees all were emphatic that a review process by itself was not enough and there needed to be a focus on data collection and reporting. The interviewees were consistent on the need to collect, review, and make decisions on data. The documentation of data, in the words of one interviewee, “must mean something more than just writing down what you did.” The interviewees agreed that data collection was central to their efforts and its use had many purposes such as monitoring how a child is responding to school’s efforts to assist, showing parents that things were working, showing staff that their efforts were helpful, being accountable to parents and leadership, communicating to the broader community about their goals and efforts, and by simply bringing attention to the issue by collecting data on it.

9. If restraint and seclusion occurs, the school must take steps to prevent or reduce future use of restraint or seclusion. (These steps typically include monitoring a student, recording data about the incident, involving parents, reviewing data, reviewing and revising the existing plan, determining the need for additional evaluation information, debriefing with staff and or the student, and discussing potential changes to the school environment.) .

10. Restraint and seclusion use must be documented, reported to others, and reviewed on a broader (not just individual student) level.

Each of the interviewees endorsed these statements in the member check process.

Each statement is also supported by the research literature (Cotton, 1989; Fisher, 1994;

Gutheil, 1978; Masters, 2002; Mohr 2008; Yell, 1994). Given the endorsement and support, this study deems them Principles of appropriate use.

Training and Having the Right Staff

Interviewees agreed that there was a clear need for basic and ongoing training of a critical number of staff to ensure the common approach was part of the school's culture and attitude toward restraint and seclusion practices. All interviewees agreed that training was critical to the effort, and that there must be the right length, type and content of training. The key components of training were "preventing" the need to restrain or seclude and to have "de-escalation" methods. One interviewee noted that training was the vehicle to ensure that there was a clear and consistent message throughout the school. Another discussed the importance of training by saying that:

being not well trained means seeing lots of fear and seeing danger everywhere. Their toolbox is empty. This often leads to restraining a child. Being well trained means seeing less danger and having less fear. Then, they have more competency and confidence.

All noted that training was limited by funding and time availability. Some dealt with this limitation by providing training to only some staff, that then were responsible for addressing difficult situations and for being resources to others.

While having a clear and consistent approach to using restraint and seclusion was essential, the interviewees stated that their schools also needed the right staff. The characteristics of these staff included at least one person or a team of people with sufficient specialized training and experience who could simultaneously work with parents, work with staff who would be open to critique and criticism, knew how to use

and understand data, and who were able to articulate a variety of different possible ways to address a child's behavior. The interviewees reported that these critical staff members were the "right person" for the job, had a "special personality" or "were those singular, unique, gifted people who care and could work wonders with students and staff."

Another noted the importance of having a "key" staff person who understood and knew how to use the data and to communicate new strategies based on that data. These staff typically had multiple roles – trainers, data reviewers, administrators, team members, etc. One interviewee stated that there needs to be someone with "expertise and training to make a difference, ask the right questions in the right way because sometimes teachers get defensive about what they do and this shows a lack of training and ability."

There are two main themes present in this subcategory. First, the interviewees believed that there needed to be a minimum level of training to staff. This training not only serves to provide the specific needed skills, but also serves to ensure a common and consistent approach. The second theme is focused on having experts on staff that has the necessary training, experiences, skill sets, and personal qualities that are essential to making a human driven process work well. These themes were presented as two separate statements as follows:

11. Schools must have the capacity (such as having staff with specialized expertise or experience) to understand, use, and communicate about data on restraint and seclusion.

12. Schools must have adequately trained staff who know when and how to appropriately use restraint and seclusion.

Each of the interviewees endorsed these statements in the member check process. One clarified that the training must "include training on ... prevention and de-escalation

techniques.” The statements are also supported by the research literature (Dean, et al., 2007; Delaney, 2001; Gaskin, et al., 2007; Miller, et al., 2005; Miller, et al., 2006; LeBel, et al., 2004; Ryan, Peterson, Tetreault, & van der Hagen, 2008; Visali & McNasser, 2000). Given the endorsement and support, this study classifies them as Principles of appropriate use.

Prevention and Positive Supports

All interviewees expressed a commitment to preventing situations from escalating into events where restraint and seclusion needed to be used. One interviewee captured this perspective by saying “once the student is out of control, we are in response mode. Our goal is to always be in the prevention mode.” The interviewees had a clear orientation towards preventing the need for restraint and seclusion. In addition to taking steps to learn about an individual child and take the necessary steps with that individual to prevent potential behavior from escalating to a point where restraint and seclusion would be used, the interviewees highlighted the school’s overall prevention activities.

Specifically, interviewees discussed necessary *school-wide* systems and processes that served to prevent the need for restraint and seclusion and this supported their efforts to ensure the appropriate use of restraint and seclusion. In other words, the specific restraint and seclusion effort was an essential component of broader efforts that focused on prevention and the development of a positive and safe school culture. Interviewees uniformly placed the school’s restraint and seclusion efforts as being part of a broader systemic effort and that it is “both a regular and special education issue.” Similarly, several interviewees discussed restraint and seclusion in the “broader context (of) PBIS”

and “school and class-wide PBIS model as part of overall restraint and seclusion reduction efforts.” Other interviewees referred to their emphases on addressing problems or concerns when they first become apparent or in trying to teach pro-social skills to young children through “early intervention” and “RTI” (response to intervention) efforts. The general theme, here, concerned the need for a school-wide strategy to positive approaches to dealing with negative behavior. The following statement was proposed to capture this theme.

13. Prevention efforts on a school-wide basis (such as PBIS or other evidence-based system) are critical to ensure the appropriate use of restraint and seclusion.

Each of the interviewees endorsed this statement in the member check process.

One interviewee clarified that “I would object to PBIS named specifically even if I personally support it. I would prefer just ‘evidence-based’ system.” This comment appears consistent with the statement and it is also supported by the research literature (Busch & Shore, 2000; Carr, et al 2002; Fisher, 1994; Lewis, et al., 2010; Mohr, 2008; Turnbull, et al., 2001; Yell, 1994). As such, it is retained as a Principle of appropriate use.

School Ability to Structurally Respond to Local Factors

While all interviewees discussed PBIS and other positive approaches to some extent, they also identified a wide range of strategies in describing how their schools worked to ensure the appropriate use of restraint and seclusion. There was not one uniform model. However, each of the interviewee’s description discussed their strategies in the broader context of what was present and needed in their particular situation.

Examples of district or school wide processes included creation of a day treatment

program within the school district (instead of it being in the broader community or not existing at all), creation of a “core academy” for children to learn and apply negative behavior replacement and coping skills, and development of “crisis intervention” or “emergency response” teams that were available if a student started to become or was exhibiting dangerous behaviors. Another interviewee discussed how her district used a “staffing for equity” model that accounts for not only the number of children on a caseload, but also the complexity of a child’s individual needs and intensity of assistance needed.

Recognizing the need for schools to be able to respond uniquely and for them to actually take the necessary steps, the following statement was proposed:

14. Schools must develop their own unique approaches (in terms of staffing, procedures and relationships with outside agencies, etc.) in order to support their efforts regarding ensuring the appropriate use of restraint and seclusion.

Five of the six interviewees endorsed this statement in the member check process. The one dissenter did not explain the rationale for the disagreement. However, this statement is supported by the research literature (Dean, et al., 2007; Delaney, 2001; Gaskin, et al., 2007; Miller, et al., 2005; Miller, et al., 2006; LeBel, et al., 2004; Ryan, et al., 2008; Visali & McNasser, 2000). Given the support of five of the six interviewees and the research support, it is retained as a Principle of appropriate use.

Identifying External Factors

Similar to Statement 13 above, the interviewees all noted that their school’s efforts were affected by external (non-school) entities such as families, outside providers, and laws as well as how the school responded to those entities. With regard to parents,

all interviewees expressed a clear and strong desire and need for parental involvement in general and in specific situations relating to a child's challenging behavior. The interviewees also discussed how "parents (were) under tremendous stress and pressure" and how they "depend on school systems." One characterized the relationship this way: "if not for us (the school), where would they go, how would they navigate through confusing systems and non-existent alternatives?" Another said that she viewed herself as the "biggest child advocate out there." Moreover, the interviewees recognized the importance of "trust" between schools and parents and the negative effects of if and when the trust is broken.

Second, interviewees discussed concerns about how other parts of the community's social support system functioned. One interviewee said that there was a lot of "passing around the problem" between the different systems. One example of this "passing" was the "juvenile justice cycle" or the "schoolhouse to jailhouse pipeline." This "passing" is characterized by a school referring a child for criminal prosecution for relatively minor behavior in school, which causes increased stress to the child and his or her family, and goes through some type of court adjudication that typically does not fundamentally address the reasons for the behavior. This part of the process is the "pipeline." The pipeline can turn into a "cycle" if the adjudication or disposition results in an ineffectual placement in a detention or residential treatment facility and the child returns to the school setting with more problems and significant distrust of the school's motivations and efforts.

Others noted deficiencies with and differences with residential treatment and mental health providers. One interviewee succinctly stated that “often other agencies are not typically helpful.” They attributed these problems to an ever declining number of facilities, quality of programming and staff in those facilities, restrictions imposed by insurance companies, and an overall lack of financial resources in the broader social service system. As such “wraparound services (that involve different agencies) are a big challenge.” Another noted that residential facilities and schools cannot coordinate services or work together well because they have fundamentally different “models” of working with children so that “one hurdle is a failure of different agencies to see the problem in the same way.” This interviewee believed that the residential and other mental health facilities viewed problems largely through a “medication lens” in which behavior would be controlled by a medication.

Third, when asked about the effect of laws on their efforts, the interviewees reported that some fear about how far they might go, but also saw the legal structure in pragmatic or positive terms. For example, one interviewee referred to them as the “rules of the game that we all play by” and another viewed the legal framework as “no miracle but it can increase motivation to be aware of restraint and seclusion use and reduce their use to the greatest extent possible.” Others noted the potential positive effect of laws saying “laws are a good thing ...they facilitate what we do” and that laws are an “opportunity to train staff.” Two interviewees were concerned that laws could reach too far. Both of them, in referring to the proposed federal legislation, expressed a fear that

“someone might say or mandate schools can never use restraint – we need prevention tools but also the ability to stop dangerous behavior that could hurt someone.”

The line between school and non-school responsibilities is not clear and is widely dependent on local factors. One interviewee described this situation as the “school ... being asked to wear more hats even in areas where school doesn’t have training or capacity.” One common strategy noted by all interviewees was a collection of efforts to involve parents. Other approaches were more structural. For example, interviewees reported the creation of day treatment programs or school-based mental health clinics within the schools. They could offer an internal immediate step without having to resort to non-school district day treatment programs or residential facilities. One interviewee discussed the school’s experience with police liaison officers. She said that previously the officers in schools huddled together, looked intimidating and reacted strongly and swiftly to problems. “Now,” she said, “we have training and a personal relationship with the officers” that meets security and safety needs but also is more positive for kids.

Some interviewees embraced the challenge of working with any student in their schools by asserting their control and ownership over the situation. Interviewees discussed children in their schools in a framework of “the school’s responsibility” and by making a long-lasting commitment to the children’s families to help them, follow them, and provide help to them. However, some interviewees believed school responsibility had to end at some point, especially where a child’s needs were too complex or challenging with respect to the school’s available resources.

From these themes, the following statement was proposed:

15. The school's efforts concerning restraint and seclusion use is significantly influenced by the limits and strengths of non-school organizations (such as county/social services, residential treatment, police departments) in the community.

Two of the six interviewees noted disagreement with this statement while the others agreed to it. The two dissenters did not explain the reasons for their disagreement. Additionally, the research literature does not include a significant focus concerning this statement. Given the disagreement and lack of research support, this study cannot fully endorse or recommend it as a Principle of appropriate restraint and seclusion use. Instead, given its endorsement by four of six interviewees, it will be offered as a proposed factor in school-based efforts to ensure appropriate use.

Summary and Listing of Principles and Factor

Altogether, there were 15 statements proposed as principles of appropriate use of restraint and seclusion in schools. Fourteen statements had sufficient member check verification and literature support to classify them as Principles. The remaining statement is not proposed as a Principle because of a relative lack of verification and support. However, given its limited support, it is presented as a Factor to consider. The 14 Principles and one Factor are presented below.

The Principles and Factor, which are derived from the interviewees' experiences and perspectives, do not differ significantly from what can be found throughout the research literature on restraint and seclusion in non-school settings. However, the interview findings added two critical components – a comprehensive and cohesive structure to view appropriate use efforts *in schools* and confirmation that the non-school setting based literature could be applied, as appropriate, to school settings. In essence,

the interview results show how the Principles, which have support in the research, were applied in real-life school-based settings. The Principles, in turn, provide a school setting-specific outline for future efforts.

Critically, the interview responses indicate what specific roles leadership, law and research can play when schools begin their own practical efforts by looking to the Principles to ensure the appropriate use of restraint and seclusion. As these Principles are applied to real life school settings, the responses show the importance of:

- a. *Leadership and school organization* with respect to setting common messages in policies (Principle 1), supporting the policies (Principle 2), promoting a school culture that believes children can improve their behavior with the assistance of school staff (Principle 3), hiring the right people for the right positions (Principle 11), implementing school-specific approaches (Principle 14), and recognizing the limits and strengths of non-school organizations (Factor 1);
- b. *Laws* created to set the necessary boundaries for appropriate use, especially with regard to establishing parameters of restraint and seclusion use that recognize the moral and ethical implications of use (Principle 4), bans on certain procedures (Principle 5), ensuring necessary safety components are in place with respect to training, contraindications and seclusion room use (Principle 6), setting high standards for using restraint and seclusion (Principle 7), prohibiting restraint and seclusion as substitutes for a lack of staffing or programming (Principle 8), and mandating overall training requirements (Principle 12), and;

- c. *Existing research* that be relied upon to implement effective follow up procedures designed to prevent future use of restraint and seclusion (Principle 9), use effective documentation processes (Principle 10), and develop school-wide prevention strategies (Principle 13).

The Principles and Factor

Principle 1. Schools must establish a common language, message, culture, or policy.

Principle 2. School leadership is necessary to support the common language, message, culture, or policy on restraint and seclusion use.

Principle 3. Most, if not all, children are able to reduce their challenging or dangerous behavior.

Principle 4. Restraint and seclusion use implicates moral and ethical considerations.

Principle 5. There are some types of aversive practices (actions that result in pain, using intense stimuli, etc.) and some types of restraint and seclusion practices (such as prone restraint or locked seclusion) that should be prohibited.

Principle 6. If restraint and seclusion must occur, they must be done with the safety and dignity of students and staff in mind.

Principle 7. Restraint and seclusion should only be used in schools at the most restrictive/intrusive end of a continuum of interventions to prevent harm to a person.

Principle 8. Restraint and seclusion should not be used for punishment, discipline, or as a substitute for lack of staffing, planning, or services.

Principle 9. If restraint and seclusion occurs, the school must take steps to prevent or reduce future use of restraint or seclusion. (These steps typically include monitoring a student, recording data about the incident, involving parents, reviewing data, reviewing and revising the existing plan, determining the need for additional evaluation information, debriefing with staff and or the student, and discussing potential changes to the school environment.).

Principle 10. Restraint and seclusion use must be documented, reported to others, and reviewed on a broader (not just individual student) level.

Principle 11. Schools must have the capacity (such as having staff with specialized expertise or experience) to understand, use, and communicate about data on restraint and seclusion.

Principle 12. Schools must have adequately trained staff who know when and how to appropriately use restraint and seclusion.

Principle 13. Prevention efforts on a school-wide basis (such as PBIS or other evidence-based system) are critical to ensure the appropriate use of restraint and seclusion.

Principle 14. Schools must develop their own unique approaches (in terms of staffing, procedures and relationships with outside agencies, etc.) in order to support their efforts regarding ensuring the appropriate use of restraint and seclusion.

Factor 1. The school's efforts concerning restraint and seclusion use is significantly influenced by the limits and strengths of non-school organizations (such as county/social services, residential treatment, police departments) in the community.

Legal Research Methodology

To analyze the second two research questions (3. In what ways are existing state laws and the proposed federal law consistent with the empirically and research-driven principles? 4. What would an empirically and research-driven model policy look like?), comparative legal research will show the differences and similarities in the states' underlying regulatory framework. This study will analyze how the laws reflect the Principles of appropriate use and how the laws compare to one another. From the comparison of laws with respect to the Principles of appropriate use, a model policy will be developed.

There is no uniform way to conduct legal research. However, typical legal research approaches are found in legal “pathfinders” or research guides¹¹ as well as legal research textbooks used by American law schools (Berring & Edinger, 2005; Cohen, Berring, & Olson, 1989). Preliminary steps in legal research include determining what terms are commonly used in the area under study, learning how those terms are commonly defined, locating the area under study in the relevant types of laws; accessing the current laws; and determining what actions are required, forbidden, or permissible, and identifying who or what entity is responsible for the actions (Id.).

As applied to this study, the following steps were taken.

1. Search of Law Journals and Publications. In addition to the review of literature noted above, a review of legal journals and publications was completed. Searches

¹¹See, e.g. research guides from the Harvard Law School, http://www.law.harvard.edu/library/research/guides/united_states/research-methodology.html and the University of Minnesota Law School, <http://local.law.umn.edu/library/pathfinders/statutes-guide.htm>.

of this legal literature employed key words including restraint, manual restraint, mechanical restraint, chemical restraint, physical holding, seclusion, isolation, time out for seclusion, school, child, and student. These terms came from the research literature review and from three research articles that examined parts of restraint and seclusion laws.

2. Identification of relevant laws current laws and policies. In this step, the main types of relevant law were considered to determine which were applicable to the study. There are four primary types of law in the United States: a. federal and state *constitutional* law; b. federal and state *statutory* law; c. Federal and state *regulatory* law; and d. federal and state *court decision or case* law. Each of these sources of law is binding on individuals and institutions, such as schools and their staff. In the context of the present study, there are no direct federal or state constitutional provisions and there is no federal statutory or regulatory law on restraint and seclusion of children in public schools.¹² The primary source of legal regulation in this area is state laws in the forms of statutes and rules (or regulations). And, as such, this study focuses on these existing state public policy pronouncements on restraint and seclusion as reflected in state statutes and regulations. *Statutes* are laws created by elected lawmakers through the legislative process. *Regulations (or rules)* are laws created by governmental administrative agencies through the administrative rulemaking process in

¹² As of October 2010, the proposed federal legislation on restraint and seclusion in schools has not been enacted.

accordance with the laws of the states. Statutes generally provide a framework for the regulated activities and rules or regulations give more direction on how the statutes should be followed.

Whether or not a state had laws or a policy was determined by electronically accessing and searching each state government's relevant website and that of its each state department of education. By accessing the law from the governmental websites, this study ensured that the law or policy was accurate and up-to-date. As of 2010, there were 23 states with statutes and/or rules. This study also confirmed that there were 23 states with such statutes or rules by examining the U.S. Department of Education (USDOE)'s compilation of the status of state laws or policies (U.S. Department of Education, 2010).¹³ This compilation was published after the initial search and it typically included a statute or rule legal citation for the states with laws and referred to a document without a legal citation if there was a policy. Only those 23 states with statutes and rules (as determined by accessing the state government website and examining the USDOE compilation) are included in this study. Those states with only policies or no policies or laws are excluded.

3. Initial coding. Since the state laws are in text, qualitative methods for content analysis were employed to discern prevalent themes and categories. Following the same process outlined by Beeman (1995) each set of laws was examined and

¹³ The USDOE compilation did not purport to *analyze* the states' laws and policies; it only was an attempt to show what the states indicated they had with respect to laws and policies. In contrast, this study conducts an in depth examination of the content of the state laws (but not the policies).

an initial coding scheme was developed according to the major categories and subcategories. Further, a study of statutory analysis was used as a model to develop the categories and comparison process (Daly & Jogerst, 2001).

Next, a random sample of five state laws was selected as a subset to test the coding scheme. A notation was made both on the coding sheet and on a copy of the state law. The coding of the subset led to revision of codes. The subset of state laws was then coded anew with the entire set. After one month of not reviewing the laws, a secondary coding process was completed and compared to the first coding step. Any differences between the first and secondary coding were reconciled. Lastly, the coding of each state was reviewed yet again before creating a final coding report on each state law.

4. Grouping and Ranking. In order to provide a comparison of the laws with respect to each other and to the Principles, this study placed the states into three categories concerning how significantly they reflect each Principle being analyzed. The first category includes those states with no or a “weaker” connection between the relevant laws and a Principle. The second category consists of states that have a “moderate” connection to the Principle. The “third” category is comprised of laws that have a “stronger” connection to the Principle. An overall ranking that shows how closely the states are consistent with the entire set of Principles is also presented.

This grouping and ranking process has limitations. The grouping and ranking is subjective in nature and readers may differ on how they would rank and group a particular law or state. To address the limitations and to provide analytical consistency, this study employees a number of guidelines.

First, this study attempted to have the three categories include roughly the same number of states, unless the content of the laws mandated a different number of states in the categories. The consequence of this decision is that the ranking is comparative and not against an objective standard. As such, the categories for ranking a particular state law (weak or weaker, moderate, strong or stronger) are used in reference to the other state laws in the same category. Second, the states were grouped according to the number of relevant provisions that reflected the Principle. This grouping was followed unless the substance of the law dictated a different result. In this case an explanation is provided. Third, this study did not make an attempt to assess the importance or strength of the Principles as compared to each other. Instead, the Principles are treated as having equal weight, although it is acknowledged that some legal provisions for have a larger effect than some legal provisions for another Principle. The overall purpose, here, is to provide a general ranking and grouping that can be used to further examine the relative strengths and weaknesses of laws or policies.

Proposed Federal Law

The proposed federal law, H.R. 4247 and S. 2860,¹⁴ is also analyzed with respect to the Principles and Factor. However, it is analyzed separately for three primary reasons. First, it has not been approved by US Congress and has not in any way been enacted into binding law. All other state laws are in effect and are binding. Second, the proposed federal law is of a different nature than state laws because of its national scope. The proposed federal law promotes a national purpose and perspective rather than only being limited to one state. Third, the proposed federal law sets a minimum standard that would preempt or render ineffective any state law that goes below that standard; state law provisions that are consistent with or go beyond the minimum of federal law would not be preempted. Because of these reasons, the proposed federal law is not directly compared to state laws. Noting these important differences and limitations, this study will assess how the proposed federal law compares to the Principles.

Legal Research Methodology Results

The initial analysis of the laws identified 23 states that had substantial statutes and/or rules (or regulations) that specifically related to restraint and seclusion. This analysis revealed that there was significant variety in the organization, scope and content of the state statutes and regulations. Despite these differences, the state statutes and regulations had some common characteristics. Not every state law had each characteristic and some laws had provisions that did not fit into the common ones. Moreover, since each state's law was created separately, each state law structure does not

¹⁴ As of September 2010, H.R. 4247 and S. 2860 have some differences. Since H.R. 4247 has been passed by the full U.S. House and S. 2860 has not been passed by the full US Senate, this study's examination of the proposed federal law is premised on H.R. 4247.

precisely fit the characteristics. Nonetheless, a description of the major characteristics, as summarized below, is useful to show the basic types of restraint and seclusion provisions.

Major Characteristics of State Law Provisions on Restraint and Seclusion

Definitions. State laws had some type of definitions of key terms. The definitions were either included in a separate definitions section or embodied in other parts of the law. This category covers how laws provide an operational description of what constitute restraint and seclusion practices. The definitions are critical because they also determine which actions are subject to regulation and that they may trigger certain legal requirements.

Overall School or District Requirements. These requirements consisted of school or district or state wide requirements related to policy, training or other universal steps. Some of these elements are required before a district's staff can use restraint or seclusion practices.

Prior to Use Requirements for Individual Students. These requirements generally consist of specific steps a school or district must take for individual students before restraint and seclusion can be used. For example, requirements for determining if there are any medical or other contraindications for a restraint or seclusion practice and for completing evaluations are included in this section.

Standard for Use. This section includes state law provisions that articulate what conditions, circumstances, or justifications must exist before a school can use restraints or seclusion.

Prohibitions. State laws commonly include a list of forbidden or prohibited actions by school staff. Some states ban locked seclusion practices and some forms of restraint. Most states also have a list of actions that include other procedures such as electric shock, actions that constitute abuse, etc.

Requirements During Use. Many state laws contain requirements on what must happen during a restraint or seclusion incident. Some of these requirements deal specifically with the use of seclusion rooms while others address the permissible extent of the restraint or seclusion (typically time or intensity parameters), staffing or monitoring of the child's health status.

Requirements After Use. State laws also focus on what must happen following a restraint. These laws, for example, address documentation, debriefing, and follow-up meeting provision.

Some Principles and Factor 1 are not Found in Laws

There are three Principles and one Factor that are treated together here because they do not translate easily or properly into a law or policy. The Principles and Factor included here and excluded from the legal research section below are:

Principle 2. School leadership is necessary to support the common language, message, culture or policy on restraint and seclusion use.

Principle 11. Schools must have the capacity (such as having staff with specialized expertise or experience) to understand, use, and communicate about data on restraint and seclusion.

Principle 14. Schools must develop their own unique approaches (in terms of staffing, procedures and relationships with outside agencies, etc.) in order to support their efforts regarding ensuring the appropriate use of restraint and seclusion.

Factor 1. The school's efforts concerning restraint and seclusion use is significantly influenced by the limits and strengths of non-school organizations (such as county or social services, residential treatment, police departments) in the community.

These Principles and the Factor are more the province of leadership, business, and human relations rather than embodied by static and uniform legal or policy approaches (Busch & Shore, 2000; Dean, et al., 2007; Delaney, 2001; Gaskin, et al., 2007; Miller, et al., 2005; Miller, et al., 2006; LeBel, et al., 2004; Visali & McNasser, 2000). This literature acknowledges the critical nature of these Principles and Factor, although they are not to be found in law or reported in detail here.

It is noted that Principle 11 and Factor 1 can be seen indirectly in the laws. With regard to Principle 11 (concerning having the right staff), the type of state law component

most related to it is a requirement for advanced training. Only three states have such a requirement and this provision is included in the analysis of Principle 12. Overall, Principle 11 discusses skills and levels of experience or expertise that do not readily appear in state law. It would be quite difficult if not impossible for states to mandate compliance with Principle 11. Instead, consistency with Principle 11 is more likely and more properly seen in school district hiring and staffing decisions rather than in state law.

The use of police in schools implicates Factor 1 in at least two main ways. First, if a student engages in extremely difficult and violent behavior that eventually results in a restraint or seclusion intervention, a police officer who is assigned to schools may witness the event and request prosecution on such charges as disorderly conduct, assault or property damage. Similarly, a school administrator may contact the police if there is a violent situation and ask for an investigation and arrest. Second, if student engages in behavior that either threatens or effectuates harm to a person or property damage, most school policies allow for or require a referral to the police.

Seven states contain specific provisions regarding police in their restraint and seclusion law frameworks. Georgia, Massachusetts, North Carolina and Tennessee essentially reflect the federal IDEA law in expressly allowing a district to report a crime to law enforcement. North Carolina, Tennessee and Massachusetts specifically allow police to arrest or otherwise exercise their law enforcement authority in schools. Tennessee allows a juvenile petition to be filed by the police only if the student's behavior in question is not a manifestation of the student's disability as determined by IDEA's requirement for a manifestation determination meeting. In contrast,

Pennsylvania and Minnesota require an IEP team meeting if the district refers a student's behavior to the police. Georgia directs schools to notify parents if law enforcement is involved. Pennsylvania takes the requirement a step further and mandates the IEP team to update the student's FBA and review and revise the student's behavior plan as needed. These laws reveal the state's policy decision on the interrelationship of school and police involvement with a child presenting challenging behaviors.

Comparison of Laws to the Principles

This section identifies each of the Principles that can be found in state law and, in turn, discusses in what categories, and how the state laws reflect the Principle. Examples of the state law provisions are provided throughout. Analysis of the proposed federal law is also included. Descriptive Tables are presented to show the distribution of Principles across the states. Some of these Tables contain an "other" category, which is used to note provisions that do not fit into existing categories and are unique. This study provides a further description of a state law if that law represents a unique, interesting or noteworthy approach that reflects a particular Principle. After reviewing all Principles, the states are grouped and ranked according to how closely they reflect the overall set of Principles.

Principle 1. Schools must establish a common language, message, culture, or policy on restraint and seclusion use.

Principle 1 speaks to the necessity of having articulated and shared parameters on the use of restraint and seclusion. State laws that reflect this Principle are commonly found in policy requirements. The policy requirements serve as a required common message. These requirements vary considerably across the states. An examination of the

state laws showed that 15 of the 23 states have some type of policy requirement.¹⁵

Within this group of 15, the policy requirements range from mandating a district to have a policy (and leaving the particular components to be developed by individual districts) to dictating the specific elements of the policy. The most common elements are requirements to a. conduct training; b. have school districts review their policies; c. have a policy in place; and d. have the plan or policy available to parents. Table 1 identifies these policy-related requirements.

States that have multiple and varied policy requirements strongly reflect Principle 1. The eight states with at least four provisions,¹⁶ and Colorado with its unique approach (discussed below), have a stronger connection to the Principle. The six states¹⁷ that have 1- 3 provisions have a moderate connection with Principle 1. The remaining eight states¹⁸ do not have any policy requirements and do not mirror this Principle.

Proposed federal law.

The proposed federal law requires states to have a description of the state's policies and procedures (including training), to have a monitoring and compliance mechanism, and to provide assurances to the federal government that the state is complying with the federal law. The proposed federal law has a limited number of provisions and has a moderate connection to the Principle.

¹⁵ This section focuses on a specific state requirement to have a policy. In the states without such a policy requirement, the state department of education or a local school district *may*, but is not required to, have a policy.

¹⁶ Massachusetts, Rhode Island, Minnesota, Georgia, Oregon, Maine, Connecticut, California.

¹⁷ Illinois, Florida, Pennsylvania, Iowa, New York, Maryland.

¹⁸ Arkansas, Montana, North Carolina, Nevada, Tennessee, Texas, New Hampshire, Washington.

Table 1

Policy Provisions by State – Principle 1

State	Training	Annual Review	Districts Must Have Policy	Districts Must Review Policy	Describe Restraint or Seclusion Used	Reporting and Documentation	Plan to Parents	Investigation	Training on Policies and Law	Other	Total
Arkansas											0
Montana											0
North Carolina											0
Nevada											0
Tennessee											0
Texas											0
New Hampshire											0
Washington											0
Colorado				1							1
Illinois									1		1
Florida			1			1					2
Pennsylvania										2	2
Iowa			1				1		1		3
Maryland			1	1					1		3
New York			1				1			1	3
California	1				1		1			1	4
Connecticut	1	1		1						1	4
Maine		1	1	1			1				4
Oregon		1		1		1		1			4
Georgia	1		1	1		1	1			1	6
Minnesota	1	1	1	1	1	1				1	7
Rhode Island	1	1		1	1	1		1		2	8
Massachusetts	1	1	1		1	1	1	1	1	2	10
Totals	6	6	8	8	4	6	6	3	4	11	62

Unique provisions.

Colorado goes beyond general requirements by mandating that the district review reports of use, training needs, child/staff ratios, and what can be changed in the school environment to reduce use.

Massachusetts and Rhode Island have very similar laws. Both states mandate that school district policies include: training, annual review, description of interventions that district may use, report or documentation requirements, an investigation process, description of prevention methods, and follow up procedures. Pennsylvania requires PBIS and parent consent as elements of a district's approach to restraint and seclusion. Pennsylvania also allows, but does not require, districts to develop a "human rights" committee as part of the district's overall plan. Four states (Iowa, Illinois, Massachusetts, and Maryland) reflect Principle 1 by including training on the provisions of state laws and policies. Only two states, Connecticut and Minnesota, have a requirement for local school districts to provide their plan or policy to the state department of education.

Oregon takes a somewhat different approach by requiring local school district policies to contain a detailed description of conditions of use. This description must state that restraint and seclusion interventions must be the least intrusive option selected, can be used when the student issues a threat or where there is an emergency and can be used only for the duration of the threat or emergency. With regard to seclusion, the policies must also include seclusion room requirements (such as tamper proof fixtures and continuous monitoring of the child), identification of training, use by trained staff only, parent notification, debriefing activities, documentation requirements, annual review of policies, and an investigation process. As such, Oregon leaves little room for districts to create their own policies.

Principle 3. Most, if not all, children are able to reduce their challenging or dangerous behavior.

Principle 3 reflects the idea that children can improve their behavior with the assistance of school staff. While relatively simple in notion, the interviewees emphasized that their school's efforts to ensure the appropriate use of restraint and seclusion depended on a belief that their actions were effectual. Without this belief, school staff (and students) would be apathetic toward the school's efforts. As such, the interviewees characterized this idea as a fundamental component of their school's efforts. Because of its hopeful and optimistic orientation, Principle 3 does not translate cleanly into a state law. However, certain state laws appear to be imbued with the notion of improvement and are thus similar in concept to Principle 3.

These laws include one particular provision found only in California to “phase out” use of restraint and seclusion¹⁹ and in two more general categories of law – “planned use” of restraint and seclusion and requirements imposed on schools prior to the use of restraint and seclusion. California's provision on phasing out restraint and seclusion must assume that a child's behavior can and will improve, otherwise such a provision would not make much sense and would endanger children and staff alike. Also, Colorado has a directive, at 1 Code Colo. Regs. § 2620-R-2.05 (1) (2009), to minimize use. Somewhat similarly, New Hampshire's regulation, N.H. Admin. Rules. Lab. § 1113.06(b) 5 (2008), has a provision that requires that a “description of the measurable

¹⁹ California's regulations at Cal. Admin. Code tit. 5 §3001 (g)6 (2010) requires the student's behavior intervention plan to have “criteria by which the procedure will be faded or phased-out, or less intense/frequent restrictive behavior intervention schedules or techniques will be used.”

criteria stating the expected change in the target behavior or behaviors is included in the IEP.”

The first more general category that relates to Principle 3 addresses the “planned use” of restraint and seclusion. The term planned use typically refers to a written plan developed through the special education IEP team process that includes the use of restraint and seclusion as an anticipated school response to a child’s behavior. At first glance, the planned use of restraint and seclusion appears counter to Principle 3 in the sense that the school is planning for restraint and seclusion response to bad behavior and not planning for the reduction of the need for such an intervention. Further, planned use may occur in a variety of other situations and represent a different, and perhaps lower, standard of use (such as those discussed with respect to Principle 7, below - when there is a danger to a person, property or the educational environment).

However, since IEPs and behavior goals have an educational (and aspirational) focus on improvement, inclusion of a planned use of restraint and seclusion may (depending how it is written in an individual’s plan and actually carried out) reflect Principle 3 and is included here. Fourteen of the 23 states specifically discuss “planned use” or use of restraint and seclusion that is documented in the child’s IEP or behavior plan.²⁰

The second general category includes requirements for the school to have before actually using restraint and seclusion on a child. These “prior to use” requirements relate to Principle 3 because they typically include specific steps that can assist schools in

²⁰ Iowa, Maine, Florida, Nevada, and Georgia do not contain a specific provision on planned use. Maine allows local school policies to refer the student to an appropriate intervention team and/or for the development of an individualized plan.

developing meaningful plans to help children improve their behavior. For example, laws in this category include requirements for completing evaluations designed to identify the reasons and types of student behavior, having specific goals and objectives to reduce the challenging behavior in the IEP or behavior plan, identifying target behaviors, and identifying positive approaches to the students' behaviors.²¹ Parent consent provisions are also included with respect to Principle 3 in recognition of the critical role parents play in developing a plan to appropriately address and prevent challenging behavior.

The most common provision, found in 14 states, is that the use of restraint and seclusion must be documented in the IEP, behavior plan or other similar type of plan.²² Requirements for a school to identify any contraindications for restraint and seclusion and for a school to obtain parent consent for restraint and seclusion are the next most common. Other requirements include requiring schools to use positive approaches or supports to the child's behavior before using restraint and seclusion and requiring schools to inform parents of restraint or seclusion use. Less common requirements include requiring goals or objectives regarding restraint and seclusion, target behaviors, and identifying or describing the specific procedures used or the conditions surrounding use. Table 2 below shows which requirements the states have.

²¹ One example can be found in Montana's administrative rule, Admin. R. Mont. 10.16.3346 (6) (2007).

²² It is noted that courts reviewing a challenged use of restraint and seclusion may give considerable deference to schools when and if restraint and seclusion appears in a child's IEP or behavior plan. In *C.J.N. v. Spec. Sch. Dist. No. 1*, 323 F.3d 630 (8th Cir. 2003), for example, the federal district court turned back a parental challenge to use of restraint and seclusion because the restraint and seclusion practice (even though perhaps misapplied) was specifically condoned and agreed upon by the parents and the school team as an effective and appropriate way to address the child's behavior, despite the risks of using it. As such, there is a legal disadvantage to have restraint and seclusion in an IEP or behavior if there is ever a challenge to the school's use of those practices.

States that have phase out requirements or allow planned use with a greater number of “prior to use” requirements more closely reflect Principle 3 than the others. These states include California, Colorado, New Hampshire, Minnesota, and Montana. Pennsylvania and Washington also closely reflect the Principle because their laws are more extensive and require more steps than other states. Five states (Arkansas, Connecticut, Maryland, New York, Massachusetts) have a moderate connection to Principle 3 as they have fewer and less intensive requirements overall but they impose a distinctly higher responsibility on schools to limit the need for use (suggesting children can improve). The remaining 11 states²³ have few provisions in this area and have a weaker connection to Principle 3.

Proposed federal law.

The proposed federal law prohibits schools from putting restraint and seclusion in an IEP or other individualized document. The rationale for this provision is found in the Congressional Findings section and states that there is no research-established therapeutic purpose to using restraint and seclusion and that they are ineffective in calming or teaching children. The Congressional Findings section also notes that “evidence based strategies are available to support children who display challenging behavior.” As such, the proposed federal law emphasizes other strategies besides restraint and seclusion to assist and support children. Additionally, the proposed federal law allows the potential for additional follow up procedures promulgated by the USDOE in the future. Because of these factors, the proposed federal law is strongly connected to Principle 3.

²³ Florida, Iowa, Georgia, Maine, North Carolina, Nevada, Oregon, Tennessee, Texas, Illinois, Rhode Island.

The federal provision is ranked high even though some states (Colorado, Florida, Iowa, Georgia, Maine, North Carolina) do not expressly permit restraint and seclusion as a planned use in an IEP or behavior plan and are ranked low. For purposes of this study, the salient difference is that the proposed federal law contains a specific ban, while the states noted above do not specifically express a clear intent indicate one way or another.

Table 2

Behavior Reduction Provisions by State – Principle 3

State	Must be in IEP or Behavior Plan	Positive Approaches	Functional Behavioral Assessment	Parent Consent	Specific Goals and Objectives	Target Behaviors	Other	Total
Florida								0
Iowa								0
Georgia								0
Maine								0
North Carolina								0
Nevada								0
Oregon	1							1
Tennessee	1							1
Texas	1							1
Illinois	1							1
Rhode Island	1							1
Colorado				1			1	2
Connecticut	1		1					2
Massachusetts	1			1				2
Arkansas	1	1		1				3
New York				1			2	3
Maryland	1			1			1	3
Pennsylvania	1	1					2	4
Washington					1		3	4
Minnesota	1	1	1		1	1		5
California	1	1	1		1	1	1	6
New Hampshire	1	1		1		1	2	6
Montana	1	1	1	1	1	1	3	9
Totals	14	6	4	7	4	4	14	53

Unique provisions.

California, Montana and Minnesota have similar provisions regarding the IEP or behavior plan's contents and foundation. All three states require that a FBA be completed and a plan (presumably based on the contents of the FBA) must be documented. In turn, the plan must include target behaviors and goals and objectives. New Hampshire, Montana and Minnesota additionally require that the plan document two positive interventions and the effectiveness of each of them. Montana and California also require a description of the interventions to be included in the plan. Minnesota requires the plan to be based on the student's present levels of performance and needs. Montana further requires specified criteria and a time limit for use in the plan. Somewhat similarly, Washington requires districts to have a plan that specifies the interventions to be used, objectives for use, positive interventions, circumstances for use, duration of use, any precautions, and an identification of who can employ the interventions.

Pennsylvania's and New York's provisions are also unique. Pennsylvania requires the plan to include an emphasis on teaching the student skills to avoid the negative behavior and on the elimination of restraint and seclusion procedures. New York requires schools to have plans for the use of a time out room and for use of aversive interventions. A New York school wanting to use an aversive intervention with a particular student must apply and justify that use to a "child specific exemption committee." This exemption process was only available for three years and only in subsequent years for children whose IEPs previously included that process.

Also, New Hampshire requires that all aversive behavioral interventions (including restraints) be expressly authorized by both a licensed physician and the IEP team. Additionally, New Hampshire has provisions on documenting target behaviors, measureable criteria, time limits and a system to track the use of the interventions.

Principle 4. Restraint and seclusion use implicates moral and ethical considerations.

Principle 4 came from interview results that framed the use of restraint and seclusion in moral or ethical terms – e.g. that restraint and seclusion is viewed as a significant intrusion into a person’s liberty and dignity and that they are viewed more broadly than just a reaction to a dangerous situation. This study identified state law provisions that specifically referred to ethical considerations such as dignity, limiting use to the extent necessary, and following relatively objective criteria for using restraint and seclusion as being related to this Principle. Provisions on monitoring of a child’s health during use, use for the duration only, and following established criteria are included in the analysis of this Principle because these provisions require objective standards or external monitoring, which serve to ensure that the restraint and seclusion intervention is done well and the child is not subject to abuse or improper uses of restraint and seclusion.

In the analysis of state law provisions, components of Principle 4 were commonly found in provisions that impose restrictions during use of restraint and seclusion and either specifically refer to moral terms (such as dignity, respect, etc.) or include objective standards for using restraint and seclusion. These provisions include: 1. requiring the

intervention that is *least intrusive or restrictive*;²⁴ 2. preserving the *dignity or respect* of the student to the extent possible during the intervention;²⁵ 3. *monitoring of a child's health* during the intervention;²⁶ 4. stopping the intervention after established *time limits*;²⁷ 5. using the intervention for the *duration of the emergency only*;²⁸ and 6. using *established criteria*²⁹ for ending the intervention.³⁰

The most common provisions were a. monitoring of the child's health, b. establishing and following prescribed time limits (as defined by the child's IEP or behavior plan or by state law), and c. only permitting the intervention for the duration of the emergency (e.g. the intervention must stop when the reason for starting it is no longer present). For the other three elements, using restraint and seclusion in the least intrusive manner and using restraint and seclusion in a manner to protect the child's dignity both appeared in eight states while having criteria for release appeared in six states. Table 3 shows the distribution of the provisions across the states.

²⁴ See, e.g. Rhode Island's regulation, Code R.I. R. 2.3 (2006) which states "Only the least intrusive physical interaction needed to adequately protect the child or others shall be used..."

²⁵ See e.g. Pennsylvania's statute, 13 Pa. Cons. Stat. §14.133 (e)(7) (2008), which prohibits "treatment of a demeaning nature" and Texas's administrative code on restraint and seclusion, Tex. Educ. Code §37.0021 (a) (2007) stating that "It is the policy of this state to treat with dignity and respect all students."

²⁶ See e.g. Washington's administrative code, Wash. Admin. Code 392-172A-01310 (2) (d) and (3)(d) (2007) requiring "an adult responsible for supervising the student shall remain in visual or auditory range of the student" who is subject to seclusion (isolation) or physical restraint.

²⁷ See e.g. Montana's administrative rule, Admin. R. Mont. 10.16.3346 (7) (2007) stating the student's IEP must "specify a time limit for the use of the [intervention] for any one instance" and Colorado's statute, Colo. Rev. Stat. § 26-20-104 (4) (2010), stating an "individual in physical restraint shall be released from such restraint within fifteen minutes after the initiation of physical restraint, except when precluded by safety reasons."

²⁸ See e.g. Illinois regulations at Ill. Admin. Code tit. 1 A § 1.285 (e) (2) (2002) stating a "student shall be released upon determination ... that the student is no longer in imminent danger of causing harm..." and Colorado statutes at Colo. Rev. Stat. § 26-20-103(2) (2010), stating restraint may be used only "for the period of time necessary to accomplish its purpose."

²⁹ See e.g. Minnesota rules, Minn. R. 3525.2900 (D)(1) (2009) stating that the procedures for seclusion must include "specific criteria for returning the pupil to the routine activities and regular education environment."

Overall, each state had at least one provision but no state had all six that refer to Principle 4. Six states³¹ had 4 or 5 of the provisions and have a strong connection to Principle 4. Fourteen states³² had zero, one or two provisions and thus have little connection to this Principle. The remaining states (Massachusetts, Minnesota, New York) have a moderate connection with their three related provisions.

Proposed federal law.

Principle 4 is reflected in the proposed federal law in a number of places. Primarily, the bill states that “Congress finds the following... Behavioral interventions for children must promote the right of all children to be treated with dignity.” It also has requirements that the intervention lasts until the dangerous situation has ended (“for duration only”) and for continuous monitoring of the student during the intervention. The proposed federal law has a strong connection to Principle 4.

³¹ Maryland, Colorado, Rhode Island, Maine, Illinois, Connecticut.

³² Florida, Arkansas, Georgia, Iowa, New Hampshire, Tennessee, California, Montana, Nevada, North Carolina, Oregon, Pennsylvania, Texas, Washington.

Table 3

Moral and Ethical Related Provisions by State – Principle 4

State	least restrictive/ intrusive	respect/dignity	for duration only	time limits	criteria for release	monitoring during use	TOTALS
Florida							0
Arkansas				1			1
Georgia			1				1
Iowa				1			1
New Hampshire				1			1
Tennessee						1	1
California		1	1				2
Nevada	1		1				2
North Carolina		1			1		2
Oregon			1			1	2
Texas		1		1			2
Washington				1		1	2
Montana				1	1		2
Pennsylvania	1	1					2
Massachusetts	1		1			1	3
Minnesota			1		1	1	3
New York		1	1	1			3
Connecticut	1			1	1	1	4
Illinois		1	1	1		1	4
Maine	1		1	1		1	4
Rhode Island	1	1	1			1	4
Colorado	1		1	1	1	1	5
Maryland	1	1	1	1	1		5
Totals	8	8	12	12	6	10	56

Unique provisions.

California's law explicitly establishes a conceptual moral framework in its laws for using restraint and seclusion practices. It states that when restraint and seclusion are

necessary, they must be used in consideration of the child’s “physical freedom and social interaction,” in a way that “respects human dignity and personal privacy,” and to ensure the student’s right to the “least restrictive environment.”³³ New York’s provisions are only applicable to time out room use and to the use of aversive interventions as permitted by a special committee.

Principle 5. There are some types of aversive practices (actions that result in pain, using intense stimuli, etc.) and some types of restraint and seclusion practices (such as prone restraint or locked seclusion) that should be prohibited.

Principle 5 reflects the position that certain actions should never be used on students because those actions imperil a student’s well-being (e.g. restraints that impair breathing) or because they are reprehensible or contrary to prevailing societal standards (e.g. skin shock). While there is clearly overlap with Principle 3’s moral focus, Principle 5 goes further to prohibit or ban some types of conduct on safety grounds. Principle 5 is also reflected in the research literature that discusses the need to prohibit certain practices on the grounds that they are simply too dangerous or that they are offensive as a matter of public policy or societal standards.

Accordingly, the laws that reflect Principle 5 include those that have a list of *prohibitions* on certain actions. There is a wide range to these prohibitions. Some states ban locked seclusion practices and some forms of restraint.³⁴ And, nearly all states³⁵

³³ California statutes, at Cal. Educ. Code § 56520 (b) (2009).

³⁴ See, e.g. Texas administrative code, Tex. Educ. Code §37.0021 (a) (2007), stating a student “may not be confined in a locked box, locked closet, or other specially designed locked space as either a discipline management practice or a behavior management technique” and Iowa administrative code, Iowa Admin. Code. r. 281-103.8(1) (2008) stating “No employee shall use any prone restraints” which “means those in which an individual is held face down on the floor.”

also have a list of actions that also may include other procedures but also extend to different concepts such as corporal punishment or so-called “aversive” procedures. Aversive practices are generally those that provide a negative reinforcement in response to a behavior in order to suppress that behavior.³⁶ While this definition of “aversives” is quite broad, that term is generally used to refer to actions that are painful or otherwise antithetical to societal standards.³⁷ Despite any conceptual or practical differences between restraint and seclusion practices and “aversives,” all prohibitions are analyzed here because the list of prohibitions appears within the sections of state law on restraint and seclusion.

The most common ban on specific types of interventions include locked seclusion, restraints that inhibit breathing, and using intense stimuli (such as the aversive presentation of sounds, lights, or smells) in response to misbehavior. Other common prohibitions include bans on corporal punishment, procedures that induce pain, practices that restrict a child’s senses (e.g. auditory, visual, communication), actions that interfere with basic hygiene and necessities (e.g. access to water, toilet and food), skin shock, and, chemical or mechanical restraints which are not medically authorized. Table 4 shows the prohibitions in each state.

³⁵ For one example, Rhode Island rules have the highest number of provisions in its list at Code. R.I. R. 3.2. (2006) which prohibits the following actions: noxious, painful, intrusive stimuli or activities that result in pain; any form of noxious, painful or intrusive spray or inhalant; electric shock; water spray to the face; pinches and deep muscle squeezes; shouting, screaming or using a loud, sharp harsh voice to frighten or threaten or the use of obscene language; withholding adequate sleep; withholding adequate shelter or bedding; withholding bathroom facilities; withholding meals, essential nutrition or hydration; removal of an individual’s personal property as punishment; unobserved time-out or room/area solely used for time out; facial or auditory screening devices; and use of chemical restraints instead of positive programs or medical treatments.

³⁶ See, e.g. Minnesota’s statute, Minn. Stat. §121A.66 (3) (2010).

³⁷ Parents may assert that these types of actions violate a child’s civil and constitutional rights. Courts are the ultimate arbiters of whether civil or constitutional rights are violated.

Overall, the states vary widely in this category. Six states³⁸ have 1 or 2 provisions and have a weak connection to Principle 5. The “strong” connection category includes the ten states with six or more provisions and Massachusetts and Georgia. Those two states are included in the strong connection category because Massachusetts has four provisions, including three bans, and because Georgia’s three provisions are all bans. Bans on locked seclusion or on interventions that restrict breathing are more restrictive and relevant than provisions on skin shock, which appears to be no longer or rarely used. The remaining five states (Colorado, Maryland, Texas, Maine and Tennessee) have three or four provisions and have a moderate connection.

Proposed federal law.

With respect to Principle 5, the proposed federal law contains a ban on procedures that restrict a student’s breathing and on “aversive behavioral interventions that compromise health and safety.” This term is not defined or delineated, but allows for subsequent federal rulemaking activities to develop the specific elements of the list. The proposed federal law is difficult to place as it refers to a ban on a general category of aversive interventions. Since it recognizes that category and has a ban on interventions that interfere with breathing, it has at least a moderate connection to Principle 5.

³⁸ Arkansas, Connecticut, Oregon, Florida, Iowa, Illinois.

Table 4

Restrictions on Aversive Procedures by State – Principle 5

State	Corporal Punishment	Pain	Intense Sounds/Etc. Noxious Spray	Skin shock	Restrict Aud/Comm/Visual	Withhold water, meals, toilet	Locked seclusion	Prone Restraint or Restrict Breathing	Chemical or Mechanical Restraint	Other	State Total
Arkansas							1				1
Connecticut								1			1
Oregon	1										1
Florida								1			1
Iowa					1			1			2
Illinois					1				1		2
Colorado					1			1		1	3
Maryland					1			1	1		3
Texas		1				1	1				3
Georgia							1	1	1		3
Massachusetts	1						1	1	1		4
Maine			1				1		1	1	4
Tennessee			1				1	1	1		4
Montana	1	1	1			1	1		1		6
North Carolina		1	1	1	1	1				1	6
Pennsylvania	1		1	1		1	1	1			6
New Hampshire		1	1	1		1	1		1		6
California		1	1		1		1	1		2	7
Minnesota	1	1	1	1	1	1				1	7
Nevada	1		1	1		1	1		1	1	7
New York	1	1	1	1		1	1		1		7
Washington	1	1	1	1		1		1		1	7
Rhode Island		1	1	1	1	1	1	1	1	2	10
Totals	8	9	12	8	8	10	13	12	11	10	91

Principle 6. If restraint and seclusion must occur, they must be done with the safety and dignity of students and staff in mind.

Principle 6 is relatively broad in its discussion of both safety and dignity of students and staff. For this study, the laws related to Principle 6 include those that were not addressed in Principle 4 or Principle 5 and are otherwise related to safety considerations. The Principle 6 provisions include training elements on safety, identifying contraindications, and seclusion room requirements. Due to the larger number of provisions related to Principle 6, this study divides it into two parts. The first part, Principle 6a, analyzes training elements on safety and contraindication provisions. The second part, Principle 6b, reviews seclusion room requirements. Principle 6a will be reviewed first.

Training.

A number of state provisions have a significant emphasis on ensuring staff and student safety through training. Some states have a relatively comprehensive set of training requirements focused on safety while other states have none at all. The training provisions related to safety include how to monitor a child's health and safety during the intervention, how to perform a specific restraint technique, training on crisis intervention approaches, a requirement to simulate the technique, a requirement to demonstrate the technique,³⁹ and provisions on advanced training.⁴⁰ Training on monitoring a child is the most common provision.

³⁹ It is unclear how simulation and demonstration are different. Because three states include both provisions, it appears that the provisions impose separate requirements.

Contraindications.

Principle 6 is also found in state laws that impose a requirement for the IEP team and the IEP itself to identify any health reason or other type of contraindication against use of a restraint or seclusion intervention. This provision typically but not exclusively appears in state law sections concerning the content of IEPs that include restraint and seclusion interventions.⁴¹ States with this type of provision are Connecticut, Illinois, Massachusetts, Georgia, New Hampshire, Maryland, Minnesota, New York, and Rhode Island.

Overall, almost half of the states, ten of them,⁴² do not have a specific training provision or contraindication provision related to safety considerations and they have no connection to Principle 6. Three states (Illinois, Rhode Island, Massachusetts) that have a strong connection to Principle 6 include five or six related provisions. The remaining ten states⁴³ have one to three provisions and have a moderate connection. New Hampshire's requirement to have a physician authorize the use of aversive behavioral interventions (including restraint) is characterized in Table 5 in the contraindication column. New York has a general training provision and a more specified provision for staff authorized to use aversive interventions. Table 5 summarizes the states' training and contraindication requirements.

⁴⁰ Advanced training refers to more training on particular aspects such as simulation, demonstration, instruction on documentation, reporting and investigation. See e.g. Massachusetts regulations, at 603 Code Mass. Rules § 46.03 (3) and (4) (2001).

⁴¹ See, e.g. Illinois regulations at Ill. Admin. Code tit. 1 A § 1.285 (d)1(B)(2002) physical restraint shall only be used where "there is no medical contraindication to its use."

⁴² Arkansas, Maine, Montana, Florida, North Carolina, Nevada, Pennsylvania, Tennessee, Texas, Washington.

⁴³ New York, Maryland, Connecticut, Minnesota, Oregon, Iowa, Colorado, California, Georgia, New Hampshire.

Proposed federal law.

The proposed federal law requires school staff that use restraint and seclusion to be trained and that the training include a certification process on, among other points, evidence-based techniques that are effective in prevention and are safely used, positive behavior supports, “safe escort,” and basic first aid and CPR. The proposed law also does not allow an IEP or behavior plan to include seclusion. Additionally, the Congressional Findings and Purpose sections emphasize the safety aspect of using restraint and seclusion in schools. The proposed federal law has a strong connection to Principle 6’s safety related training provisions and its contraindication requirements.

Table 5

General Training and Contraindication Provisions by State – Principle 6a

State	Monitor Child's Health and Safety	Restraint Technique	Crisis Intervention	Simulation	Demonstrate Technique	Advanced Training	Contraindications	Totals
Arkansas								0
Maine								0
Montana								0
Florida								0
North Carolina								0
Nevada								0
Pennsylvania								0
Tennessee								0
Texas								0
Washington								0
New Hampshire							1	1
Georgia							1	1
California						1		1
Colorado		1						1
Iowa			1					1
Oregon			1					1
Minnesota	1						1	2
Connecticut	1	1					1	3
Maryland	1	1					1	3
New York	1	1					1	3
Illinois	1	1		1	1		1	5
Massachusetts	1			1	1	1	1	5
Rhode Island	1		1	1	1	1	1	6
Totals	7	5	3	3	3	3	9	33

Seclusion room requirements.

Principle 6 is also evident in state law provisions concerning the dimensions, conditions, and use of seclusion rooms as these provisions relate to ensuring a safe

environment.⁴⁴ This study reviews seclusion room provisions as Principle 6b. These provisions range from bans on locked seclusion rooms in 13 states (Arkansas, California, Georgia, Maine, Massachusetts, Montana, New Hampshire, New York, Nevada, Pennsylvania, Rhode Island, Tennessee, Texas) to a variety of other restrictions in the remaining states.⁴⁵ Three states with bans on locked seclusion, Arkansas, Montana, and New York, specifically regulate “time out” rooms, which must be unlocked.

For the ten states that do not ban seclusion rooms, the most common requirements for seclusion room use includes mandating constant monitoring of a child, ensuring proper ventilation and lighting, ensuring that the room is safe with tamperproof fixtures or items (often requiring lighting and other controls outside the room) and having a minimum size. The least common requirements include meeting fire and building codes,⁴⁶ oversight of rooms, and restrictions on using locking mechanisms.

Four states (Connecticut, Iowa, Illinois, Minnesota) that permit the use of locked rooms or rooms from which egress is prohibited, have restrictions on the locking mechanism. These requirements typically consist of needing to have a lock that

⁴⁴ Most states have definitions of what constitutes seclusion or “isolation.” Some other states do not have a specific definition of seclusion or isolation, but they ban the practice. Among the states with definitions, there is a relatively common definition of seclusion or isolation. Many definitions focus on two main components: 1. a student is placed *alone* in a room and 2. The student’s *egress* is prevented. An example of a state’s definition that has both components is Massachusetts’ regulations, at 603 Code Mass. Rules §46.02 (5)(b) (2001) which defines the practice as “physically confining a student alone in a room or limited space without access to school staff.”

⁴⁵ Minnesota’s rule, Minn. R. 3525.2900 (5) (2009), has an extensive list of requirements for locked seclusion which include: a safe environment where fixtures are tamper proof; walls and floors are properly covered; control switches are located immediately outside of the room; an observation window; a space that is at least five feet by six feet or substantially equivalent; a room that is well-lighted, heated and ventilated and clean; and the room must comply with all fire and safety codes.

⁴⁶ The requirement for a seclusion room to meet fire, safety or building codes may be redundant and school rooms and buildings must meet these codes in any event. However, inclusion of such a requirement in a specific state law may be another source of a legal violation and may allow a department of education jurisdiction to investigate and impose necessary corrective steps.

automatically disengages in the event of a fire or other emergency or an immediate disengagement if someone is not holding a door lock button. Locked rooms in the remaining six states are apparently permitted without regulation, although state or local building, fire or safety codes that are not referenced in the state laws on seclusion may have requirements for locking mechanisms.⁴⁷

The states that more strongly reflect Principle 6b include those that have bans on locked seclusion and have additional restrictions on unlocked seclusion. These states are Arkansas, Maine, Montana, and New York. States that have bans and no other restrictions (California, Georgia, Massachusetts, New Hampshire, Nevada, Pennsylvania, Rhode Island, Tennessee, Texas) or that have comparatively more restrictions overall (Connecticut, Iowa, Illinois, North Carolina, Minnesota) moderately reflect Principle 6. The states that are less consistent with Principle 6 are those with no restrictions or with generally fewer restrictions. They include Colorado, Florida, Maryland, Oregon, and Washington.

Table 6 shows the range of restrictions placed on seclusion rooms among the states. In the ten states without a ban on locked seclusion, Colorado, Maryland, Oregon, and Washington have three or fewer requirements⁴⁸ and Connecticut, Iowa, Illinois, Minnesota, and North Carolina have more than four separate restrictions.

⁴⁷ Examining these state or local codes is beyond the scope of this study. This study noted which states chose to specifically reference these codes in their restraint and seclusion laws.

⁴⁸ Arkansas, Montana, and New York, for example, all have a ban on *locked* seclusion but each permits use of unlocked seclusion, and are included in the analysis here.

Proposed federal law.

The proposed federal law does not have any seclusion room requirements. It is unlikely that federal law would impose certain restrictions on the size and details of seclusion rooms in the states because seclusion rooms are typically required to comply with state building, fire and safety codes. As such, analysis of the proposed federal law's consistency with Principle 6b is not applicable.

Table 6

Seclusion Room Provisions by State – Principle 6b

State	Minimum Size	Must Comply with Fire and Building Codes	Ventilation, Lighting, etc., Requirements	Room and Fixtures Must Be Tamper Proof	Monitoring Requirement	Locking Mechanism Requirements	Ban on Locked Seclusion	District or State Department Oversight	TOTALS
Florida		1							1
California							1		1
Georgia							1		1
Massachusetts							1		1
Nevada							1		1
Pennsylvania							1		1
Rhode Island							1		1
Tennessee							1		1
Texas							1		1
New Hampshire							1		1
Montana					1		1		2
Colorado			1	1					2
Maryland			1		1				2
Oregon				1	1				2
Washington			1		1				2
Illinois	1			1	1	1			4
Maine	1		1		1		1		4
North Carolina			1	1	1			1	4
Connecticut	1		1	1	1	1			5
Iowa	1		1	1	1	1			5
Arkansas	1	1	1	1	1		1		6
New York	1	1	1	1	1		1		6
Minnesota	1	1	1	1	1	1		1	7
Totals	7	4	10	9	12	4	13	2	61

Unique provisions.

Minnesota's law, Minn. Stat. § 121A.67 1(7) (2010), requires school districts to register locked rooms with the state department of education and requires that department to make announced and unannounced visits to schools with locked rooms. North Carolina's law, N.C. Gen. Stat. §115C-391.1 (e)(1) (e) 3 (2009), requires local school districts to specifically approve use of a room for seclusion purposes.

Principle 7. Restraint and seclusion should only be used in schools at the most restrictive/intrusive end of a continuum of interventions to prevent harm to a person.

Principle 7 has two interrelated parts – standard for use and exceptions to definitions.

Standard of use.

First, state laws commonly focus on three basic standards for use: where there is danger to a person; to prevent property damage; and to prevent a substantial disruption of the classroom environment.⁴⁹ Some laws have a provision that allows restraint and seclusion in an “emergency” situation, which is typically tied to one or more of the three basic standards.

In addition to these standards, some state laws specifically indicate that restraint and seclusion can only be used as a last resort or if other interventions failed or where deemed not appropriate.⁵⁰ These provisions capture the premise that restraint and

⁴⁹The term planned use (e.g. restraint or seclusion use permitted by an IEP) may also be considered a standard of use. However, in this paper, planned use is treated as a state law permitting restraint and seclusion use according to the terms of an IEP or behavior plan and is addressed with respect to Principle 3.

⁵⁰ See, e.g. Pennsylvania regulations, at 22 Pa. Code § 14.133 (a) (2008) stating that the “ use of restraints is considered a measure of last resort, only to be used after less restrictive measures, including de-escalation techniques” and Maine rules, Code Me. R. 33 § 1.1 (2002), stating restraint and seclusion may be used after “other less intrusive interventions have failed.”

seclusion use is part of a continuum of available options and should only be used after other approaches were either tried as preventative measures or deemed inappropriate given a particular situation (for example, verbal de-escalation may not be warranted when immediate intervention is needed to stop harm to a person). Table 7 shows the distribution of standards of use across the states.

The standard of use provisions should be viewed in the context of state “reasonable force.” Most, if not all states across the nation, allow school staff to use reasonable force to protect themselves. One typical example of a “reasonable force” law is Minnesota’s statute, Minn. Stat. §121A.582 (1)(a) (2010), which reads:

A teacher or school principal, in exercising the person’s lawful authority, may use reasonable force when it is necessary under the circumstances to correct or restrain a student or prevent bodily harm or death to another.

As such, while restraint and seclusion laws specify when a restraint or seclusion intervention may be used, the reasonable force laws may permit school staff to use those interventions in other circumstances.

With respect to the 23 states with restraint and seclusion laws, and in addition to whatever existing reasonable force law exists, all states allow restraint and seclusion in order to prevent danger to a person.⁵¹ Thirteen states additionally allow restraint and seclusion use to prevent damage to property. Ten additionally allow the interventions to prevent disruption to the environment. Five states identify other circumstances when restraint and seclusion can be used. California allows restraint and seclusion when a student demonstrates behavior that was not previously observed or when the behavior

⁵¹Florida does not have a specified standard for restraint and seclusion use. This study assumes that Florida allows restraint or seclusion in order to prevent danger to a person.

was unanticipated. Iowa allows these interventions to obtain a weapon or other dangerous object, for self-defense, or to remove a disruptive pupil. Similarly, Montana allows restraint for self-protection, obtaining a weapon or other dangerous object and to maintain orderly conduct. North Carolina allows restraint for self-defense and teaching a skill.

Table 7

Standards of Restraint and Seclusion Use by State – Principle 7

State	Danger to Person	Danger to Property	Disruption	Emergency	Other	Last Resort/After Other Interventions Failed or Inappropriate
Arkansas	1	1	1			1
California	1			1	1	1
Colorado	1	1				1
Connecticut	1			1		1
Florida						
Iowa	1	1	1		1	
Illinois	1	1	1			
Georgia	1					1
Massachusetts	1			1		1
Maryland	1			1		1
Maine	1	1	1	1		1
Minnesota	1	1		1		1
Montana	1	1	1		1	1
North Carolina	1	1	1		1	
Nevada	1	1				
New Hampshire	1					
New York	1	1	1	1	1	1
Oregon	1	1	1	1		1
Pennsylvania	1					1
Rhode Island	1					1
Tennessee	1			1		
Texas	1	1		1		
Washington	1	1	1			1
Totals	22	13	9	10	5	15

Definitions and exemptions.

Second, state law definitions of restraint and seclusion may exclude certain actions or activities in their definitions and thus implicate Principle 7. The states have considerable differences in what actions are included in and excluded from the definition. A number of states have a very broad definition of what is included, but two states, Arkansas and Iowa,⁵² do not define or specifically regulate restraint. The other states have a range of exceptions to the definitions. For example, some states exclude “physical escorts” from their definitions of restraint. As such, in these states, even if the “physical escort” involved one or two staff members holding and carrying a student to a different place, that action would not be considered a “restraint” because it is exempted from the definition.

Eight states⁵³ have broad definitions and no exempted actions and are therefore more consistent with Principle 7, provided that the standard for use is also high. An example of a broad restraint definition is Minnesota’s rule, Minn. R. 3525.0210, subpt. 29 (2009), which states a restraint “means physical intervention intended to hold a pupil immobile or limit a pupil’s movement by using body contact as the only source of physical restraint.” New York and California do not have specific definitions of restraint, but treat it under a broader umbrella term such as emergency procedures or interventions. However, New York and California do not exempt restraint-related actions from their

⁵²Arkansas and Iowa do not have definitions of restraint. Restraint or seclusion that occurs in states that do not have laws on restraint or seclusion is likely governed by the reasonable force laws.

⁵³ California, Massachusetts, Minnesota, Maine, Maryland, Montana, New York, Rhode Island, Washington.

definitions and for the purposes of this study are included with the states that have broad definitions.

Eleven states, as shown in Table 8, contain a number of exceptions to the definition of restraint. The exceptions are typically premised on the extent of the hold or the purpose of the hold. The extent of hold provision typically exempt holds or contacts that are short in duration or minimal in contact. The “purpose” exceptions typically include restraints or contact between staff and child that are designed to calm or comfort a child, to assist a child in completing a task, to escort a child, or contact involved in a medical procedure or with adaptive equipment. The more exceptions there are in law, the more permissive the state is in allowing a restraint practice with a child.

The two most common exemptions are: a. actions that constitute brief or insignificant contact between a staff member and child (e.g. physically guiding a student for a short period of time) and b. actions intended to calm or comfort a child (e.g. a hug or a calming touch or pat). Other common exemptions include assistance to complete a task (e.g. hand over hand assistance) and “escorting” a student. Escorting can include a broad range of conduct and contact. As such, states with this exemption do not consider that action a restraint and thus do not regulate it. The least common exemption is a restraint needed for medical attention or to use or place adaptive equipment (e.g. standers, support chairs, etc.).

Table 8

Exceptions from Restraint Definitions by State – Principle 7

State	Brief or Minor Contact	Assist to Complete Task	Calm or Comfort	Escort	Medical Attention or Adaptive Equipment
Colorado	1	1	1	1	1
Connecticut	1		1	1	1
Illinois	1				
Georgia	1	1	1	1	1
Maryland	1		1	1	
North Carolina		1	1	1	
Nevada	1	1	1	1	1
Oregon	1	1			
Pennsylvania	1	1	1	1	1
Tennessee	1	1	1	1	
Texas	1	1	1		1

As noted above, the definitions should be viewed in the context of when restraint use is permitted. For example, states that have broad definitions may either prohibit use of restraint only when there is a danger to a person (which would constitute a more restrictive approach to use because a wide variety of holds in only one type of situation) or when there is a substantial disruption to the environment (which is a comparatively permissive standard).

Table 9 shows how the states’ permissible standards of use compare with the states’ definitions and exemptions. States that have restrictive standards of use and broad definitions (and no exemptions) include: California, Massachusetts, and Rhode Island. In these states, a wide range of staff contact with children triggers additional legal requirements and are thus strongly consistent with Principle 7. Minnesota is included

here as well given its moderate standard of use and broad definition as is New Hampshire with its high standard, but no definition or exemptions.

In contrast, states that are permissive according to both the standard of use and the definitions include Arkansas and Iowa (permissive standards and no definitions) as well as North Carolina (permissive standards and many exemptions). Florida's law does not discuss either a definition or a standard and thus is permissive. These four states allow a wide range of staff contact with children that does not trigger additional legal responsibilities and therefore have a weak connection with Principle 7.

The states that have a moderate connection with the Principle include the states with 1. restrictive standards of use and more exceptions to the definitions (Connecticut, Georgia, Maryland, Pennsylvania, and Tennessee); 2. the most permissive standards of use and broad definitions (Maine, Montana, New York, and Washington); 3. a moderate standard of use and many exemptions (Colorado, Nevada, and Texas), and; 4. those states with permissive standards and few exemptions (Illinois, and Oregon). In these states, restraint use is either more widely permitted or there are more exceptions to the definitions. These states also impose more stringent restrictions and duties than the states with a weak connection to Principle 7.

Table 9

Comparison of Standards of Use with Types of Definitions by State – Principle 7

Standard of Use Categories	Definitions Categories
<u>Restrictive Standard of Use</u> <i>Restraint is only permitted when there is a danger to a person</i>	<u>Broad Definition, No Exceptions</u>
California, Connecticut, Georgia, Maryland, Massachusetts, New Hampshire, Pennsylvania, Rhode Island, Tennessee	California, Massachusetts, Minnesota, Maine, Montana, New York, Rhode Island, Washington
<u>Medium Level of Standard of Use</u> <i>Restraint is permitted when there is a danger to a person or to property</i>	<u>Few exceptions</u> <i>Two or three exemptions and no exemption for escort</i>
Colorado, Minnesota, Nevada, Texas	Illinois, Oregon
<u>More Permissive Standard of Use</u> <i>Restraint is permitted when there is a danger to a person, to property or to prevent disruption to the school environment</i>	<u>Many exceptions</u> <i>Three or more exemptions and/or an exemption for escort</i>
Arkansas, Georgia, Iowa, Illinois, Maine, Montana, New York, North Carolina, Oregon, Washington	Colorado, Connecticut, Georgia, Maryland, North Carolina, Nevada, Pennsylvania, Tennessee, Texas
<u>No Specified Standard</u>	<u>No Definitions</u>
Florida	Arkansas, Iowa, Florida, New Hampshire

Proposed federal law.

The proposed federal law contains a provision restricting restraint and seclusion use to situations where there is a danger to a person. It also has a broad definition of restraint. The proposed federal law has a definition of physical escort that is an exception to the restraint definition, but that definition is limited to “temporary touching or holding of the hand, wrist, arm, shoulder or back for the purpose of inducing a student who is

acting out to walk to a safe location.” Accordingly, given the relatively limited nature of the escort exemption, it is similar to California, Massachusetts, and Rhode Island’s laws and is strongly consistent with Principle 7.

Principle 8. Restraint and seclusion should not be used for punishment, discipline, or as a substitute for lack of staffing, planning, or services.

Principle 8 focuses on the intent or purpose of the intervention. With respect to the state laws, there were comparatively fewer provisions that reflect Principle 8. The provisions related to Principle 8 often used the same words and concepts in the law’s text and were thus easy to identify. The most common laws in this category are bans on restraint and seclusion practices that are used for staff convenience or that are used to punish.⁵⁴ Three states have bans on substituting restraint and seclusion for staffing, planning or services.⁵⁵ Three other states have unique provisions that are related to Principle 8. Massachusetts does not allow restraint or seclusion for violations of school code or a failure to comply with directions and Maine forbids these interventions for minor misbehavior. Rhode Island forbids restraint to be used for changing behavior.

Although there are a limited number of provisions related to Principle 8, eight states⁵⁶ have at least two provisions and thus have strong focuses on the Principle. Five states⁵⁷ have one provision and a moderate connection. The remaining ten states have no

⁵⁴ See, e.g. Connecticut statutes, at Conn. Gen. Stat. §46a-152 (2010), an intervention may be used “provided the restraint is not used for discipline or convenience and is not used as a substitute for a less restrictive alternative.”

⁵⁵ As slight variations on the substitution category, Montana specifies that restraint and seclusion cannot be a substitute for PBIS efforts. New York does not allow restraint and seclusion to substitute for systemic behavioral interventions and Pennsylvania forbids restraint and seclusion as a substitute for the regular education program.

⁵⁶ Connecticut, Pennsylvania, Montana, Maine, New York, Rhode Island, Massachusetts, Tennessee.

⁵⁷ Iowa, Georgia, Illinois, North Carolina, Colorado.

provisions and a weak connection.⁵⁸ Table 10 shows the distribution of these provisions across the states.

Proposed federal law.

With respect to these elements, the proposed federal law disallows interventions imposed “solely for purposes of discipline or convenience.” It has a moderate connection to Principle 8.

⁵⁸ Nevada, Texas, Florida, California, Maryland, Minnesota, Oregon, Washington, Arkansas, New Hampshire.

Table 10

Restrictions of Restraint and Seclusion Use Provisions by State – Principle 8

State	Cannot be Used To Punish	Cannot Be Used For Convenience	Not as a Substitute	Other	TOTALS
Nevada					0
Texas					0
Florida					0
California					0
Maryland					0
Minnesota					0
Oregon					0
Washington					0
Arkansas					0
New Hampshire					0
Iowa	1				1
Georgia	1				1
Illinois	1				1
North Carolina	1				1
Colorado	1				1
New York	1		1		2
Connecticut	1	1			2
Tennessee	1	1			2
Massachusetts	1			1	2
Rhode Island	1			1	2
Maine	1	1		1	3
Montana	1	1	1		3
Pennsylvania	1	1	1		3
Totals	13	5	3	3	24

Principle 9. If restraint and seclusion occurs, the school must take steps to prevent or reduce future use of restraint or seclusion. (These steps typically include monitoring a student, recording data about the incident, involving parents, reviewing data, reviewing and revising the existing plan, determining the need for additional evaluation information, debriefing with staff and or the student, and discussing potential changes to the school environment.) .

Principle 9 discusses what must happen following a restraint or seclusion incident.

The interviewees believed that it is critical to prevent the need for restraint and seclusion, but that when restraint and seclusion occurred, it was necessary to take a number of steps to examine the incident leading to the restraint and seclusion. The examination of the incident could lead to better decision making and better programming as well as reducing the need for future restraint and seclusion incidents. Principle 9 is seen in states that discuss, for example, follow-up meetings, evaluations, debriefing, and documentation.⁵⁹

Most states have some type of provision to review the use of restraint and seclusion. The two most common provisions are an IEP team or administrator review of the use of restraint or seclusion. Other more common provisions include a district review of incidents, debriefing, a requirement to hold an IEP team meeting, and a requirement to revise the IEP or behavior plan to address prevention and the future potential use of restraint or seclusion. Two other provisions have requirements for notification or a meeting with the student's parents and for the district to review its policy on restraint and seclusion. Table 11 shows the distribution of these provisions across the states.

⁵⁹ Although documentation can be considered a component of Principle 10, the next Principle specifically addresses documentation and relevant state laws will be addressed there.

California, Colorado, Nevada, and Maryland have the strongest connection to Principle 9 with four or more provisions. Seven states have only one provision and have little connection to Principle 9. New Hampshire has no provisions in this area and also has little connection. The remaining eleven states⁶⁰ have a moderate connection to the Principle as indicated by having two or three provisions.

Proposed federal law.

The proposed federal law requires notification of parents and contains the potential (but no specificity) of additional follow up requirements. Although there may be federal regulations on follow up requirements created by the USDOE if and when the proposed federal law is passed, the proposed federal law, as it stands, has a weak connection to Principle 9.

⁶⁰ Arkansas, Connecticut, Florida, Georgia, Montana, North Carolina, Oregon, Rhode Island, Washington, Texas, Illinois.

Table 11

Follow Up Procedures by State – Principle 9

State	Review of Use	IEP Team Meeting	Notify/Meet Family	Administrator Review	District Review	Debriefing	Revision of Plan	Policy Review	Other	Total
New Hampshire										0
Iowa									1	1
Massachusetts						1				1
Maine								1		1
Minnesota								1		1
New York				1						1
Pennsylvania				1						1
Tennessee	1									1
Arkansas	1								1	2
Connecticut	1				1					2
Florida				1	1					2
Georgia				1	1					2
Montana	1						1			2
North Carolina			1	1						2
Oregon	1					1				2
Rhode Island						1		1		2
Texas	1			1						2
Washington	1			1						2
Illinois			1	1					1	3
Nevada		1		1	1		1			4
Maryland	1	1					1	1	1	5
Colorado	1	1	1	1	1	1	1		1	8
California	1	1		1			1		5	9
Totals	10	4	3	11	5	4	5	4	10	56

Unique provisions.

Massachusetts, Oregon, and Rhode Island mandate debriefing the restraint and seclusion incident with staff and with the child who was restrained or secluded (Colorado mandates debriefing with staff, but not students.). Arkansas and Montana require discontinuance of use if data show ineffectiveness. Other states go further in a number of ways. California, New Hampshire, and Colorado have requirements for the IEP team to revise the IEP/BIP as needed and for the IEP team to determine how to phase out or minimize use. These states also require review of use by administrators or other staff. California and New Hampshire also require IEP teams to develop a schedule or timeline for the child to replace the negative or unwanted behaviors with more desired responses or behaviors.

Colorado goes beyond these more general requirements by mandating that the review address reports of use, training needs, child/staff ratios, and discusses what can be changed in the school environment to minimize use. Its administrative regulation, at 1 Code Colo. Regs. § 2620-R-2.05(1) (2009), reads:

Each public education program shall ensure that a review process is established and conducted for each incident of restraint used. The purpose of this review shall be to ascertain that appropriate procedures are followed and to minimize future use of restraint.

Other states with unique provisions include New York, Nevada and Maryland. New York requires that any use of an aversive intervention (not a restraint or seclusion/time out) be approved by a special exemption committee. If approved, that

committee also reviews any permitted use on an ongoing basis. Pennsylvania permits but does not require a similar type of human rights committee.

Nevada mandates that school officials review the use of restraint and seclusion, to determine whether any violation occurred, and if so, to take corrective action. This provision places responsibility and authority for addressing and resolving improper use primarily in the individual school district. The provision does not prohibit the parent from taking legal action outside of this internal process. Nevada has additional requirements if the number of restraints in one school year accumulates to three or five (or more) incidents.

Maryland includes two separate processes. One process triggers a special education eligibility evaluation for children without IEPs and the other process for children with IEPs that requires an IEP meeting to determine need for an FBA, behavior interventions, and/or behavior plan. Additionally, Maryland directs the IEP team to review and discuss any contraindications for use, relevant parent information, staff observations, whether a change to the student's placement should be considered.

Principle 10. Restraint and seclusion use must be documented, reported to others, and reviewed on a broader (not just individual student) level.

Each of the 23 states has some form of documentation requirements that reflect Principle 10. The state laws, however, as shown by Table 12, vary considerably in scope and depth. Given the variety, only the most common requirements are addressed and identified here. The most common reporting elements are the duration of the intervention, intervention used, description of the situation or incident, behavior of the child, staff name, identification of alternatives to de-escalate the behavior or to avoid the

intervention, location of incident and whether there was an injury. Having more narrative elements creates a heavier administrative burden, but also allows for more description and understanding of why and how the incident occurred, what was done to avoid the situation, and what could be done to avoid future use.

Nine states have some requirements to document the safety of the intervention used. A common provision is to record any injury. Illinois, Massachusetts, Maryland and Nevada require documentation concerning the response of the child to the intervention. Massachusetts and Rhode Island require documentation of any medical care provided.

Overall, seven states⁶¹ have relatively minimal (one or two) and/or general requirements and thus do not reflect Principle 10. Eight other states⁶² have a moderate range of requirements (between three and eight) in relation to Principle 10. Those states that have a strong connection to this Principle include Florida, Iowa, Massachusetts, Rhode Island, Illinois, Oregon, New York and Texas, which all have more than nine separate reporting elements.

Proposed federal law.

The proposed federal law on data collection requires that states collect and report the number of uses of restraint and seclusion in each school. The reports must include the student's age and disability status, information on any deaths or injuries and on the number of restraint and seclusion interventions imposed by staff that were not trained and certified. Analyzed by itself, the proposed federal law has a moderate connection to

⁶¹ Georgia, New Hampshire, Montana, Pennsylvania, Minnesota, Tennessee, Washington.

⁶² Arkansas, Nevada, Colorado, Connecticut, California, Maryland, Maine, North Carolina.

Principle 10. However, where there is such a lack of available data, imposing a data collection requirement on all states constitutes a broad, significant, and national change that is strongly consistent with the Principle.

Table 12

Documentation Requirements by State – Principle 10

State	Incident	Broader Situation	Intervention used	Duration	Date and Time	Staff names	Location	Injury	Alternatives	Number of Other	Total
Georgia										1	1
Montana										1	1
Pennsylvania										1	1
New Hampshire				1						1	2
Minnesota				1						1	2
Tennessee		1								1	2
Washington		1		1						0	2
Arkansas	1			1						1	3
Nevada										3	3
Connecticut	1		1	1					1	1	5
Colorado	1		1	1		1		1	1	1	7
California	1		1			1	1	1		2	7
Maryland	1	1	1	1					1	3	8
Maine	1	1	1	1	1	1	1			1	8
North Carolina		1	1	1	1		1	1		2	8
Florida	1		1	1		1	1	1	1	2	9
Iowa	1			1	1	1		1	1	3	9
New York	1		1	1		1	1	1		4	10
Texas	1	1	1	1	1	1	1		1	2	10
Oregon	1	1	1	1	1	1	1	1	1	2	11
Illinois		1	1	1	1	1		1	1	6	13
Rhode Island	1	1	1	1	1			1	1	8	15
Massachusetts	1	1	1	1				1	1	10	16
Total	13	10	13	17	7	9	7	10	10	57	153

Unique provisions.

The documentation provisions in three states, Connecticut, Iowa, and Illinois, require consideration of new approaches needed with the student or the effect of the

restraint or seclusion on the child. Massachusetts and Rhode Island laws are nearly the same and both represent a comprehensive model of reporting. These states require reporting on the student's behavior, duration, intervention used, injury, situation, observers, which administrator was informed, justification for use, how the incident ended, medical care, other actions (such as suspensions) imposed and whether the parent was given an opportunity to discuss the incident.

A number of states have some form of reporting requirements to a state department of education (California, Connecticut, Florida, Massachusetts, Pennsylvania, Rhode Island, and Texas). Minnesota does not have a requirement for districts to report to its department of education, but it does require districts to register any locked time out room with that department.

Some states have requirements for the state department to issue a report. Massachusetts, Florida, Pennsylvania, Connecticut, Tennessee and Rhode Island all have some form of requirement but they were not available for review at the time of this study. The state departments of education in California and Texas have issued reports.⁶³ Only Connecticut and Pennsylvania specifically require their state departments of education to *review* the documentation.

Principle 12. Schools must have adequately trained staff who know when and how to appropriately use restraint and seclusion.

Principle 12 directly discusses the need for adequate training. State law components on training have been included with respect to other relevant Principles.

⁶³ Kansas, which does not have a restraint and seclusion law, but does have guidelines and a requirement for its state department of education to issue reports on the use of seclusion.

This section discusses the overall comprehensiveness of state training provisions. As shown by Table 13, 21 of the 23 states have some form of training requirements. They range from a very general and broad requirement for staff to be trained (in Arkansas, Maine, Montana, Pennsylvania, Tennessee, and Georgia) to specific requirements (in Illinois, Minnesota, Maryland, and Rhode Island). One example of a general training requirement is Montana's, Admin. R. Mont. Code, 10.16.3346 (6) B (2007), stating "a student's IEP team must include someone trained and knowledgeable about best practices." Others have more specific requirements that include staff training on de-escalation or alternatives to restraint and seclusion,⁶⁴ documentation and reporting requirements, monitoring a child's health status or being aware of contraindications, and having a specific schedule for when staff must be trained (e.g. annually or periodically, or within the first month of employment).

Still other requirements include training on PBIS,⁶⁵ the specific restraint technique, laws and policies, and on identifying situations that lead to restraint and seclusion use. A few states have "advanced training" or "in-depth" options or requirements and several others have unique provisions that did not fall into other more common categories present in other states.

With respect to Principle 12, the states can be categorized according to the scope and extent of their training requirements. Only North Carolina and Florida do not have

⁶⁴ A number of states included training requirements such as relationship building, etc. For the purposes of this study, these requirements were included in the more general terms of de-escalation and alternatives instead of counting them separately.

⁶⁵ PBIS may be categorized under the broader category of de-escalation and alternatives, but for the purposes of this study, it is listed separate because it is a term of art used in many restraint and seclusion laws and refers to a broader school programmatic level response to a child's behavior.

any provisions of training specifically in its restraint and seclusion laws. Arkansas, Georgia, Maine, Montana, Pennsylvania, Tennessee, and Washington have a general requirement that staff is trained. These nine states have a weak connection to Principle 12. California, Connecticut, Minnesota, New Hampshire, Nevada, New York, Oregon, and Texas have a moderate connection with their three to six separate requirements. Six states (Colorado, Iowa, Illinois, Massachusetts, Maryland, Rhode Island) have at least seven separate substantial training requirements, and have the strongest connection with Principle 12.⁶⁶

Proposed federal law.

The proposed federal law requires school staff that use restraint and seclusion to be trained and that the training include a certification process on, among other points, evidence-based techniques that are effective in prevention and are safely used, positive behavior supports, “safe escort,” and basic first aid and CPR. Because of the certification process and its other provisions, the proposed federal law has a strong connection to Principle 12.

⁶⁶ For the purpose of analysis in this study, some separate elements were combined if the elements appeared to express the same or similar concept.

Table 13

Training provisions by State – Principle 12

State	General Requirement	De-escalation	Documentation/ Reporting	Monitor Child's Health	Scheduled Training	Laws and Policies	PBIS	Restraint Technique	Identify Situations	Crisis Intervention	Simulation/Demonstrate	Advanced Training	Other	Totals
Florida														0
N. Carolina														0
Georgia	1													1
Maine	1													1
Montana	1													1
Pennsylvania	1													1
Washington													1	1
Arkansas	1												1	2
Tennessee	1												1	2
New Hamp.		1					1	1						3
California	1						1					1		3
Nevada							1						2	3
Oregon	1	1								1				3
Texas	1	1	1		1									4
Minnesota	1			1	1		1						1	5
New York	1		1	1				1					1	5
Connecticut	1	1	1	1				1					1	6
Colorado	1	1	1		1			1					2	7
Iowa	1	1			1	1	1			1			2	8
Illinois	1	1	1	1	1	1		1	1		1			9
Rhode Island		1	1	1	1				1	1	1	1	1	9
Maryland	1	1	1	1	1	1	1	1	1				1	10
Massachusetts	1	1	1	1	1	1			1		1	1	1	10
Total	17	10	8	7	8	4	6	6	4	3	3	3	15	94

Unique provisions.

Unique provisions include Colorado’s requirement for training on environmental management, Nevada and New York’s mandate to train on alternative or replacement skills to students, Iowa’s debriefing training requirement, and Maryland and Texas’ requirement to comply with “professional standards.” A few states require staff to demonstrate or simulate use of the restraint and seclusion intervention. Three states have definitions for advanced training on restraint and seclusion use. Illinois includes a provision for a properly certified evaluator to complete a report on restraint or seclusion incidents and include the report in the student’s file.

Principle 13. Prevention efforts on a school-wide basis (such as PBIS or other evidence-based system) are critical to ensure the appropriate use of restraint and seclusion.

Principle 13 focuses on the need for prevention to be included on a school-wide basis or instilled in a school’s approach to challenging behavior. This Principle deals with systemic efforts with a school population rather than on efforts regarding a particular student. Principle 13’s emphasis on prevention can be seen in state laws on training, policy, necessary steps prior to use of restraint and seclusion, and emphasizing PBIS. In many cases, the laws specifically discuss prevention, and PBIS and thus the connection between those laws and Principle 13 is self-evident. In other cases, the connection can be seen in state law provisions that discuss de-escalation strategies, the identification of situations that may potentially escalate towards the need for restraint and seclusion, and provisions requiring IEP teams to identify positive approaches to dealing with behavior.

Other common state provisions that reflect Principle 13 include those that specifically discuss PBIS. Seventeen of the 23 states with restraint and seclusion laws specifically note PBIS in some form. Only Arkansas, Illinois, Massachusetts, Maine, North Carolina and Oregon make no mention of PBIS in their laws.⁶⁷ In the states that mention PBIS, the most common provision is that training on restraint and seclusion must include PBIS. Six states require the identification of PBIS in a student's IEP or behavior plan. Table 14 shows the distribution of PBIS provisions.

Seven states (Pennsylvania, Connecticut, California, Maryland, Minnesota, Massachusetts, Rhode Island) that strongly reflect Principle 13 include those with three to five prevention and PBIS provisions. Eight states (Nevada, Washington, Colorado, Montana, Texas, Iowa, Illinois, New Hampshire) moderately reflect Principle 13 because they have two provisions. Seven states (Maine, Georgia, Tennessee, Arkansas, Florida, Oregon, New York, and North Carolina) have either no or one relevant provision and have a weak connection to Principle 13. New York, which has two provisions but one of them only re-states the federal PBIS provision, is also included in this weak connection group.

Proposed federal law.

The proposed federal law contains a definition of positive behavior supports. The training provision has a number of references to prevention concepts including positive behavior supports, conflict prevention, de-escalation and conflict management. The same types of references are also found in the Congressional Findings and Purposes sections.

⁶⁷ It is acknowledged that states may have laws concerning PBIS that appear in other places. This study focuses on those states that have specifically included PBIS into the structural framework of their restraint and seclusion laws.

Additionally, PBIS is the only specific type of approach or process that is specifically named in federal law. As such, it has a strong connection to Principle 13.

Table 14

PBIS Provisions by State – Principle 13

State	Training - De-escalation PBIS Provisions	Training-Identify Situations	Policy - Training	Policy - Prevention Methods	IEP Must Include Positive Approaches	Total	
Maine						0	
North Carolina						0	
Georgia	1					1	
Tennessee	1					1	
Arkansas					1	1	
Florida	1					1	
Oregon	1					1	
Nevada	1				1	2	
Washington	2					2	
Colorado	1	1				2	
Montana	1				1	2	
New York	1		1			2	
Texas	1	1				2	
Iowa	1	1				2	
Illinois	1		1			2	
New Hampshire	1	1				2	
Pennsylvania	2				1	3	
Connecticut	1	1	1			3	
California	1		1		1	3	
Maryland	1	1	1			3	
Minnesota	1		1		1	3	
Massachusetts	1		1	1	1	4	
Rhode Island	1	1	1	1		5	
Totals	10	19	4	6	2	6	47

Unique provisions.

A number of states have formulated PBIS into their restraint and seclusion laws in unique ways. Montana identifies PBIS as a “foundation” for schools considering the use of aversives (which include but are not limited to restraint and seclusion practices) and

then attempts to distinguish use of PBIS from use of aversives by stating that aversives used in PBIS practices are not effective and may not be used as a substitute for situations where PBIS may be effective. New Hampshire also identifies PBIS as a critical component to behavioral approaches.

California integrates PBIS into its overall approach with respect to provisions related to measuring and reviewing the use of emergency interventions. California mandates IEP teams to review the effectiveness of emergency interventions and PBIS approaches.

Summary of State and Proposed Federal law Consistency with the Principles

In order to compare and rank the states according to how strong of a connection they have to the individual Principles and to the overall set of Principles, each state was assigned a “1” if it had little or no connection to a Principle, a “2” if it had a moderate connection, and a “3” for a strong connection.

Tables 15 -17 identify the numerical assignments for each state and category. Totals and averages are provided for each state (in the rows) to show the degree of connection the state has with the overall set of Principles. Table 15 lists the states with a comparatively weaker connection to the overall set of Principles. Table 16 includes the states with a moderate connection and Table 17 identifies those with a stronger connection.

Table 18 includes the averages provided for each Principle (which is average of the states’ grouping in that Principle). The averages serve to demonstrate the degree of connection between the Principle and the overall set of states. Table 18 also includes how the proposed federal law compared to the overall averages and to each Principle. This Table gives a sense of how much and where the proposed federal law stands to change state laws.

Table 15

States with Weaker Connection to All Principles

State	Prin. 1 (common policy)	Prin. 3 (can reduce behavior)	Prin. 4 (moral and ethical)	Prin. 5 (ban on aversives)	Prin. 6a (safety: training and contra.)	Prin. 6b (safety: seclusion rooms)	Prin. 7 (standard and continuum)	Prin. 8 (not for punish, etc.)	Prin. 9 (follow up requirements)	Prin. 10 (documentation)	Prin. 12 (trained staff)	Prin. 13 (prevention)	Average	Total
FL	2	1	1	1	1	1	1	1	2	3	1	1	1.33	16
NC	1	1	1	3	1	2	1	2	2	2	1	1	1.46	16
AR	1	2	1	1	1	3	1	1	2	2	1	1	1.42	17
TN	1	1	1	2	1	2	2	3	1	1	1	1	1.42	17
WA	1	3	1	3	1	1	2	1	2	1	1	2	1.6	19
TX	1	1	1	2	1	2	2	1	2	3	2	2	1.67	20
OR	3	1	1	1	2	1	2	1	2	3	2	1	1.67	20

Table 16

States with Moderate Connection to All Principles

State	Prin. 1 (common policy)	Prin. 3 (can reduce behavior)	Prin. 4 (moral and ethical)	Prin. 5 (ban on aversives)	Prin. 6a (safety: training and contra.)	Prin. 6b (safety: seclusion rooms)	Prin. 7 (standard and continuum)	Prin. 8 (not for punish, etc.)	Prin. 9 (follow up requirements)	Prin. 10 (documentation)	Prin. 12 (trained staff)	Prin. 13 (prevention)	Average	Total
NV	1	1	1	3	1	2	2	1	3	2	2	2	1.75	21
IA	2	1	1	1	2	2	1	2	1	3	3	2	1.75	21
GA	3	1	1	3	2	2	2	2	2	1	1	1	1.75	21
NH	1	3	1	3	2	2	3	1	1	1	2	2	1.83	22
PA	2	3	1	3	1	2	2	3	1	1	1	3	1.92	23
ME	3	1	3	2	1	3	2	3	1	2	1	1	1.92	23
MT	1	3	1	3	1	3	2	3	2	1	1	2	1.92	23

Table 17

States with Stronger Connection to All Principles

State	Prin. 1 (common policy)	Prin. 3 (can reduce behavior)	Prin. 4 (moral and ethical)	Prin. 5 (ban on aversives)	Prin. 6a (safety: training and contra.)	Prin. 6b (safety: seclusion rooms)	Prin. 7 (standard and continuum)	Prin. 8 (not for punish, etc.)	Prin. 9 (follow up requirements)	Prin. 10 (documentation)	Prin. 12 (trained staff)	Prin. 13 (prevention)	Average	Total
MD	2	2	3	2	2	1	1	1	3	2	3	3	2.08	25
IL	2	1	3	1	3	2	2	2	2	3	3	2	2.17	26
MN	3	3	2	3	2	2	3	1	1	1	2	3	2.17	26
NY	2	2	2	3	2	3	2	3	1	3	2	1	2.17	26
CT	3	2	3	1	2	2	2	3	2	2	2	3	2.25	27
CA	3	3	1	3	2	2	3	1	3	2	2	3	2.33	28
CO	3	3	3	2	2	1	2	2	3	2	3	2	2.33	28
MA	3	2	2	3	3	2	3	3	1	3	3	3	2.58	31
RI	3	1	3	3	3	2	3	3	2	3	3	3	2.67	32

Table 18

Total State Averages According to the Principles and Proposed Federal Law

	Prin. 1 (common policy)	Prin. 3 (can reduce behavior)	Prin. 4 (moral and ethical)	Prin. 5 (ban on aversives)	Prin. 6a (safety: training and contra.)	Prin. 6b (safety: seclusion rooms)	Prin. 7 (standard and continuum)	Prin. 8 (not for punish, etc.)	Prin. 9 (follow up requirements)	Prin. 10 (documentation)	Prin. 12 (trained staff)	Prin. 13 (prevention)	Total	Average
Average	2.04	1.83	1.65	2.26	1.7	1.97	2.07	1.87	1.83	2.07	1.87	1.97		
Rank of Principles	4	9	12	1	11	5	2	7	9	2	7	5		
Proposed Federal Law	2	3	3	2	3	N/A	3	2	1	2	3	3	27	2.45

Ranking of States and the Proposed Federal Law

The 23 states were divided into groups of states with the strongest connection to the Principle (nine states- averages between 2.08 and 2.67); with a moderate connection (seven states - averages between 1.75 and 1.92); and with a weak connection (seven states - averages between 1.33 and 1.67). The proposed federal law, if included into one of these groups, would be in the “strong” connection group with a 2.45 average. Since

there were a number of states that were on the cusp of each category (e.g. Oregon is placed into the weaker group with a total of 20 and Nevada is placed in the moderate connection group with 21), these groupings and rankings are more appropriately seen as a continuum from weaker to stronger rather than suggesting that a one or two point difference represents significant differences between the states.

The states in the “strong connection” group include Rhode Island, Massachusetts, New York, California, Colorado, Connecticut, Minnesota, Maryland, and Illinois. Their “totals” have a range of seven points between the states, which is the largest spread in the three overall groups and suggests some significant differences within this group. Rhode Island, Massachusetts, and Maryland have mostly uniform high ranks across the Principles with a few low ranks. Minnesota and Illinois, for example, have more high ranks but also more low ranks in comparison to other members of the strong group.

The states in the moderate connection group are similar to each other in the “totals” category, with a spread of three between the states. The totals have roughly equal numbers of high, moderate, and low ranks, which indicate significant areas of weaknesses and strengths but less uniformity. These states include Nevada, Iowa, Pennsylvania, Georgia, Montana, New Hampshire, and Maine. With relatively few changes, these states could more strongly reflect the overall set of Principles for appropriate use of restraint and seclusion.

The states with relatively less connection with the overall Principles include Florida, Arkansas, Tennessee, North Carolina, Texas, Washington, and Oregon. There is a spread of four points among these states in their “totals” category. These states rank

uniformly low across the Principles and have only a few areas of strengths or strong connections to the Principles. The states in this group would have to undertake substantial revisions to their laws in order to be strongly consistent with the Principles.

Analysis of Principles

This study examined which individual Principles are more evident throughout the 23 states. Principle 5 (bans on aversives), Principle 7 (standard, continuum), Principle 10 (documentation) and Principle 1 (policy requirements) were the most evident in the state laws. The Principles that were moderately reflected in the state laws include Principle 6b (seclusion room requirements), Principle 13 (prevention), Principle 8 (not for punishment), and Principle 12 (general training). The Principles least evident in the overall set of state laws include Principle 9 (follow up requirements), Principle 3 (improve behavior), Principle 4 (moral and ethical) and Principle 6a (safety in training and contraindication provisions).

Overall, the states appear to be more focused on banning specific actions, having policy and documentation requirements, and setting a moderate standard for the use of restraint and seclusion. In contrast, training and prevention provisions have less emphasis. As such, there are stronger protections concerning the actual use of restraint and seclusion practices as opposed to preventing the need for those interventions. Additionally, there are relatively fewer state provisions on following up on the use of restraint and seclusion. As such, taken as a whole, state laws tend to emphasize safe use of the interventions rather than taking steps to prevent such use or following up on the use of restraint and seclusion. This reflects an implied public policy position that

restraint and seclusion is justifiable in schools but there is little emphasis on efforts to prevent or follow up on use of these interventions.

The proposed federal law contains several significant provisions related to Principles concerning training, prevention, documentation and follow up requirements that would considerably change the legal landscape in those states that do not have a similar emphasis.

Checklist and Model Law

Appendix 3 is a checklist of items that can be used to analyze how a law or policy (or a particular IEP) comports with the Principles (except for the Principles and Factor that are not amenable to law or policy). This checklist offers a set of questions for each Principle to guide an analysis. Schools and parents can use the checklist as a starting point to evaluate efforts with respect to ensuring the appropriate use of restraint and seclusion.

Appendix 4 is a model law for restraint and seclusion practices that is consistent with the Principles (again excepting the Principles and Factor that are not amenable to law or policy). This model set of laws can be used by states to analyze their own law and consider examples of provisions that may address the weaknesses in their laws. Further, it can serve as a guide for states without corresponding laws, policies, or implementation guidelines.

Limitations of Study

This study has a number of limitations and potential limitations. The study does not address several areas related to the use of certain types of restraint and seclusion-

related practice in schools, such as the use of time out practices, mechanical restraint or chemical restraint. Another limitation is that state and federal laws will change over time; this study's review of state law is therefore restricted to those laws in effect as of late 2010. Moreover, the analysis and conclusions of the state law is based on what the text of the law says and not on how the laws are actually implemented.

The study is also limited by the lack of existing data that would show a more accurate picture of how often children are restrained and secluded in schools, whether there are any trends or discrepancies according the child's age, gender, race, disability type, and geographic location. This information would provide a more clear identification of the existing problems as well as potential solutions to prevent and reduce the inappropriate use of restraint and seclusion.

Additionally, as discussed in the legal research methodology section, the analysis of state laws was completed on a largely subjective basis. Although methodological steps were taken to ensure and explain a sound rationale for the grouping and ranking of states, others may come to different interpretations of the laws, and this would result in a different grouping and ranking. This study explains the rationale for the grouping and ranking decisions and is offered as one way of analysis. The importance of the grouping and ranking is not found in this study's efforts to group and rank, but in the exercise to group and rank according to the Principles. Policy makers, researchers, administrators, parents and school staff are encouraged to view and weigh their interpretations with those presented here.

Finally, this study has a number of limitations due to the research methods employed. First, the study's interview sample is small (six interviewees in six different schools), geographically limited (four states, mostly in the Midwest region), and is not representative of all types of school districts (notably very large and high poverty urban districts are not included nor are very small rural districts). This study is best conceptualized as a sample of well-versed and experienced practitioners' perspectives in the context of the research literature and of the existing state laws. The rigorous application of the research methodologies served to ensure the study's overall trustworthiness.

Conclusion and Contributions

In reviewing the historical background of restraint and seclusion, the research-based premises for their use, the established risks of their use, and the essential components of ensuring appropriate restraint and seclusion use, this study identified five main conclusions.

1. Restraint and seclusion use is persistent in American society and, this use is present and widespread in public schools.
2. One of the two primary dominant theoretical bases for justifying the use of restraint and seclusion (the therapeutic rationale) is widely questioned, difficult to put into practice in a safe and consistent manner, and is not on solid empirical footing. The other basis, the safety rationale, is largely assumed and not well-defined.

3. There is a lack of consensus on what constitutes permissible or appropriate uses of restraint and seclusion.
4. There are significant risks and negative consequences for a school's use of restraint and seclusion.
5. Organizations, including schools, have and can successfully work towards ensuring the appropriate use of restraint and seclusion.

This study also revealed critical gaps in the research including absences of school-specific research, a clear theoretical premise to justify and direct the use of restraint and seclusion in schools, and of a lack of comprehensive analysis of state laws on restraint and seclusion.

The conclusions and gaps from the literature led to this study's four main research questions:

1. Can the existing research literature on restraint and seclusion in non-school settings be applied to school settings?
2. What empirically and research-driven principles can be stated to guide school efforts to ensure appropriate use of restraint and seclusion?
3. In what ways are existing state laws and the proposed federal law consistent with the empirically and research-driven principles?
4. What would an empirically and research-driven model policy look like?

Conclusions for the First Two Qualitative Research Questions

For the first two questions, qualitative research methods determined that the concepts and strategies used in the non-school setting literature, for the most part, could be applied to school settings. In particular, this study demonstrated that the experiences and observations of school-based practitioners who were interviewed for this study largely reflected the literature with respect to the ethical and moral nature of restraint and seclusion interventions, identified safety concerns and risks, standards and conditions for using the interventions, the necessary training and policy components, the needed staff and leadership in place, and to have appropriate follow-up and documentation procedures when restraint and seclusion had to be used.

One critical area of difference acknowledged by the literature and by the interviewees was the limited purpose, nature, staffing, resources and environment of the school setting as compared to hospitals, residential treatment centers and other health care settings. The school-based practitioner interviewees noted these differences and limitations, but for the most part still believed that their efforts and strategies effectively helped students and limited the use of restraint and seclusion.

In applying the literature and the interviewee responses to this study's qualitative research method, 15 statements of appropriate use emerged. These statements were proposed back to the interviewees as a "member check" on the overall adequacy of the research findings. The interviewees verified 14 of them and this study identified those as being "Principles of appropriate use" of restraint and seclusion in schools. The full

list of Principles as well as one statement that did not garner sufficient validation from the interviewees or the literature is included on page 66.

There are four noteworthy findings. First, the interviewees strongly emphasized the resiliency and potential of even the most challenging children as well as the efficaciousness of school staff's efforts. This finding is noteworthy because it demonstrates a clear and demonstrated hope that the challenging situation can improve. Without this hope, no law or policy would serve to ensure the appropriate use of restraint and seclusion in schools.

Second, the interviewees were adamant that their school's efforts were not limited to children with disabilities or to a sole focus on restraint and seclusion practices. Rather, the interviewees consistently repeated their beliefs and experiences that there must be a school-wide *cultural* effort that applies to all children and all staff in the program, school, building or district. This finding posits that isolated efforts on just restraint or seclusion or just children with disabilities stand less of a chance to ensure the appropriate use of restraint and seclusion in schools.

Third, this study anticipated the efforts of non-school organizations that serve children would have a stronger effect on what the interviewees believed the role and limitations of their schools should be. In contrast, the interviewees appeared to explore, coordinate, and use what was available from those other organizations, but were prepared to take on the challenges alone if necessary. This finding reflects the challenges that school and non-school organizations face in their respective mandated

roles, available funding, ability to coordinate and collaborate, and with the different types of children and populations they serve.

Finally, and critically, the interview findings added two critical components – a comprehensive and cohesive structure to view appropriate use efforts *in schools* and confirmation that the non-school setting based literature could be applied, as appropriate, to school settings. The 14 Principles and 1 Factor show the complexity, interrelatedness and distinct areas of efforts required to ensure the appropriate use of restraint and seclusion in schools.

Conclusions for the Second Two Legal Research on Laws Questions

For the second two questions, this study examined all existing 23 state laws on restraint and seclusion in schools as well as the proposed federal law to show how the Principles could be seen in those laws. This study demonstrated that states took a wide variety of approaches in their laws and some state laws were aligned with the set of Principles much more closely than other states. While there were a common set of types of laws, the laws in Arkansas and Florida, for example, are greatly different from the laws in Rhode Island and Massachusetts. The core of common types of provisions does also suggest, however, that there is a sufficient basis to amend or replicate laws so that they can more strongly conform to the Principles.

This study also found that the proposed federal law was much more consistent with the set of Principles than the far majority of states and thus potentially represents a significant change in the nation's legal landscape in this area. The core common provisions of state law can serve as a foundation to align individual state efforts with the

federal legislation, if it is enacted. As such, the proposed federal law was used as a starting point for the proposed model law, which appears in Appendix 4.

One critical finding of this study was that the state laws taken as a whole reflect some Principles more than others and this reveals some key deficiencies. The analysis presented in this study showed that the states are much more focused on ensuring the safety of the restraint and seclusion procedure and having a policy than on having prevention activities, training mandates, and having schools take steps to follow-up on the use of restraint and. This critical finding stands as a call to the states to examine their own state laws and consider ways to fill in the gaps of their own laws. The checklist and model policy, which are both derived from the Principles outlined above and are provided in Appendices 3 and 4, are tools for the states to use in improving their laws. Moreover, these Principles and tools can be used not only on a state policy level, but also for individual school policies as well as planning for an individual student.

A second critical finding is that the state laws nearly uniformly have provisions allowing the planned use of restraint and seclusion. This planned use, on its own, is directly contrary to the widely challenged “treatment” rationale for using restraint and seclusion. If the treatment rationale for using restraint and seclusion is not justified, the states’ planned use provisions are questionable (to the degree they do not conform to the “safety” or “containment” basis and related Principles). This study acknowledges that there is research support for highly intensive treatment protocols that involve a system-wide approach to prevention, prevention strategies for an individual student, standards for ensuring safe use, follow-up processes designed to assist with prevention steps, and

accountability (documentation and review) steps. These protocols comprise a full set of inseparable steps that need to be comprehensively followed. The state laws on planned use as a whole, however, do not have the required full set of inseparable steps. It may also be the case that the full depth required in treatment plans may be outside the scope of a school's mission and responsibilities and beyond the capacity and training of school staff. The inclusion of planned use provisions in state laws also implicates the possibility of limiting a child's legal claims and remedies for his or her injuries resulting from an improper application of restraint or seclusion.

Lastly, this study demonstrated that laws can be adapted to a state's particular needs and particularities. This finding is shown by the ways in which states have reached a balance of competing concerns. For example, some states have broad definitions of restraints but a lower standard for using them. Other states have more requirements on accountability, documentation and follow up as opposed to having more restrictions on the use of restraint or seclusion. Still others have very extensive requirements, such as California, which appears to impose significant administrative burdens and those with very minimal statutes, such as New Hampshire, that still rank relatively high according to the Principles. In states that impose a high level of administrative burden, there is the possibility that the administrative burden may detract from prevention or educative strategies, but they also may serve as a clear disincentive to use a restraint or seclusion unless those interventions are truly necessary. Even if the federal law is enacted, states will have some discretion to tailor their laws to create an appropriate balance between competing considerations.

Future Considerations and Needed Research

This study has proposed a set of research and practitioner based “Principles” to guide and ensure the appropriate use of restraint and seclusion and has examined existing state laws to show which state laws are closest to those Principles. Once the USDOE Office for Civil Rights begins its data collection on restraint and seclusion across the nation’s schools, empirical research can be done to assess rights of those interventions with respect to state laws. This research would provide critical data on whether the proposed Principles, which are reflected in state laws in various degrees, are likely to have the desired effect of reducing and otherwise ensuring the appropriate use of restraint and seclusion.

Another key area of research needed is in the identification, documentation and analysis of school-based efforts to ensure the appropriate use of restraint and seclusion. Studies of these schools in the United States and in other countries can further validate or amend the proposed Principles.

Next, if the proposed federal law is enacted, research can be conducted to determine the effects of the federal law on restraint and seclusion use both with respect to states that have laws and those that do not. Such an analysis can be used to demonstrate the validity and expected impact of the Principles.

While additional research is crucial in these and other areas, this study can be used now in several ways. First, it can be used in the creation of amendments to existing state laws, changes to the proposed federal law, and development of new laws or policies in states that do not have current laws or policies. Legislative hearings and debates on

that state and national level can use the Principles and legal analysis to guide discussion and formulate concrete proposals.

Second, parents, schools and advocates for children can use this study to guide and focus their efforts to ensure the appropriate use of restraint and seclusion on an individual-student level. The Principles can be used as a checklist or guide to develop appropriate plans.

Third, the study can be used by schools to develop systems, policies and processes to ensure appropriate use around the Principles of appropriate use. More specifically, this study asserts that there is an important interrelationship between leadership, law, and research in practice, and that each of those areas has a particular role and strength to play in that interrelationship to ensure the appropriate use of restraint and seclusion in schools. Specifically, this study concludes that:

- a. Leadership and school organization skills and strategies are particularly important with respect to setting common messages in policies (Principle 1), supporting the policies (Principle 2), promoting a school culture that believes children can improve their behavior with the assistance of school staff (Principle 3), hiring the right people for the right positions (Principle 11), implementing school-specific approaches (Principle 14), and recognizing the limits and strengths of non-school organizations (Factor 1).
- b. Laws are more suited to setting the necessary boundaries for appropriate use, especially with regard to establishing parameters of restraint and seclusion use

that recognize the moral and ethical implications of use (Principle 4), bans on certain procedures (Principle 5), ensuring necessary safety components are in place with respect to training, contraindications and seclusion room use (Principle 6), setting high standards for using restraint and seclusion (Principle 7), prohibiting restraint and seclusion as substitutes for a lack of staffing or programming (Principle 8), and mandating overall training requirements (Principle 12); and

- c. Research is already available for schools to rely on in the selection and implementation of effective follow up procedures (or feedback loops) that are designed to prevent future use of restraint and seclusion (Principle 9), in the use of effective documentation processes (Principle 10), and in the development of school-wide prevention strategies (Principle 13).

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Appendix 1

Interview Guide

Introduction

How I learned about you
Consent Form, Read and Review
My background
Purpose of dissertation

Internal Practical/Structural

Program philosophy about appropriate restraints/seclusion use; Staff attitude
What policies/practices exist? (prior to use of restraint or seclusion on individual or system level, definitions of terms, standards for use, during use, follow up procedures)
How is decision made to use restraint or seclusion?
How do you monitor? Keep Records? Review use?
What staffing is critical?
What administrative structure supports your efforts?
What are the most significant distractions or barriers to your efforts?
What training is provided to staff? Any to children? Any to parents?
Are costs of this effort identified?

External Practical/Structural

What contact do you have with other programs, researchers, network, etc.?
Which partners are critical?
How does the availability of non-school district placement options affect your work? (County, outside agency involvement/payment)
How are police used in your program? In others? (Law enforcement use, parameters, policies on r/s, police, force)

Laws

How do state laws and policies effect what you do? In what ways?
How does the LRE concept play into this topic?
Could laws positively impact your work and schools that want to do something similar?
Can law be used for good?
What barriers or impositions do laws pose for your efforts?

Research

What role does research have in your program? Not research you conduct, but research from the literature?
Reduction concepts?
What research do you use in your program? How?
How do you justify/explain use of restraint or seclusion to others?

Parents

What is the role of parents?
Individualized programs? FBA, IEP, BIP, outside evaluations

Summary

What drives your program's efforts
What would you tell schools that are thinking about doing something similar?
Others I should talk to or know about?

Appendix 2

List of Websites for State Laws:

Arkansas	http://arksped.k12.ar.us/documents/policy/rulesandregulations/20.00.pdf
California	http://law.justia.com/california/codes/2009/edc/56520-56525.html http://weblinks.westlaw.com/result/default.aspx?cite=5CAADCS3001&db=1000937&findtype=L&fn=%5Ftop&ifm=NotSet&pb=4BF3FCBE&rlt=CLID%5FFQRLT4530342459209&rp=%2FSearch%2Fdefault%2Ewl&rs=WEBL10%2E08&service=Find&spa=CCR%2D1000&sr=TC&vr=2%2E0
Colorado	http://www.sos.state.co.us/CCR/SearchRuleDisplay.do?getEntireRule=yes&pageNumber=3&totalNumberOfResults=894&keyword=restraint&type=keywordSearch&contentId=714888 http://www.michie.com/colorado/lpext.dll?f=templates&fn=main-h.htm&cp
Connecticut	http://www.ct.gov/opapd/cwp/view.asp?a=1758&q=448866 http://law.justia.com/connecticut/codes/title46a/chap814e.html
Florida	http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=h1073er.docx&DocumentType=Bill&BillNumber=1073&Session=2010
Georgia	http://www.gadoe.org/documents/doe/legalservices/160-5-1-.35.pdf
Illinois	http://www.isbe.net/rules/archive/pdfs/oneark.pdf (23 Il.Admin. Code A I a 1 B 1.285)
Iowa	http://www.legis.state.ia.us/asp/ACODOCS/DOCS/281.103.pdf
Maine	http://www.maine.gov/sos/cec/rules/05/071/071c033.doc
Maryland	http://www.dsd.state.md.us/comar/comarhtml/13a/13a.08.04.02.htm
Massachusetts	http://www.doe.mass.edu/lawsregs/603cmr46.html?section=all http://www.malegislature.gov/Laws/GeneralLaws/PartI/TitleXII/Chapter71/Section37g
Minnesota	https://www.revisor.mn.gov/statutes/?id=125A https://www.revisor.mn.gov/rules/?id=3525
Montana	http://www.mtrules.org/gateway/RuleNo.asp?RN=10.16.3346
Nevada	http://www.leg.state.nv.us/NRS/NRS-388.html#NRS388Sec521
New Hampshire	http://www.gencourt.state.nh.us/rules/state_agencies/ed1100-1200.html

New York	http://weblinks.westlaw.com/result/default.aspx?cnt=Document&db=NY%2DCRR%2DF%2DTOC%3BTOCDUMMY&docname=341834165&findtype=W&fn=%5Ftop&ifm=NotSet&pb=4BF3FCBE&rlt=CLID%5FFQRLT6017463911209&rp=%2FSearch%2Fdefault%2Ew1&rs=W EBL10%2E08&service=Find&spa=nycrr%2D1000&vr=2%2E0
	http://weblinks.westlaw.com/result/default.aspx?cnt=Document&db=NY%2DCRR%2DF%2DTOC%3BTOCDUMMY&docname=341833842&findtype=W&fn=%5Ftop&ifm=NotSet&pb=4BF3FCBE&rlt=CLID%5FFQRLT5692174111209&rp=%2FSearch%2Fdefault%2Ew1&rs=W EBL10%2E08&service=Find&spa=nycrr%2D1000&vr=2%2E0
North Carolina	http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/ByChapter/Chapter_115C.html
Oregon	http://arcweb.sos.state.or.us/rules/OARS_500/OAR_581/581_021.html
Pennsylvania	http://www.pacode.com/secure/data/022/chapter14/s14.133.html
Rhode Island	http://www.rules.state.ri.us/rules/released/pdf/DESE/DESE_3826.pdf
Tennessee	http://www.state.tn.us/sos/acts/105/pub/pc1063.pdf
Texas	http://ritter.tea.state.tx.us/rules/tac/chapter089/ch089aa.html
	http://www.statutes.legis.state.tx.us/Docs/ED/htm/ED.37.htm
Washington	http://apps.leg.wa.gov/WAC/default.aspx?cite=392-172A-03120

Appendix 3

**Analytical Instrument:
A Checklist to Examine the Connection between Laws, Policies and Individual
Student Plans and the Principles of Appropriate Use**

Principle 1. Schools must establish a common language, message, culture, or policy.

<u>Principle 1 Elements</u>	<u>Yes</u>	<u>No</u>
Is there a policy?		
Does the policy have the following elements:		
• Annual review of policy by unit, school or district?		
• Training provisions?		
• Description of what restraint and seclusion interventions are used and when they are used?		
• Reporting and documentation provisions?		
• A focus on prevention activities?		
• A focus on follow-up requirements?		
• A requirement that the state or other external entity reviews the policy?		

Principle 2. School leadership is necessary to support the common language, message, culture, or policy on restraint and seclusion use.

<u>Principle 2 Elements</u>	<u>Yes</u>	<u>No</u>
**No law or policy elements		
Does the school leadership team have an ongoing commitment to assist staff in ensuring the appropriate use of restraint and seclusion?		
• <School list here>		

Principle 3. Most, if not all, children are able to reduce their challenging or dangerous behavior.

<u>Principle 3 Elements</u>	<u>Yes</u>	<u>No</u>
Are there requirements or provisions dedicated to helping children improve their behavior?		
• Reduction of behaviors in child’s IEP or other written plan		
• Specific goals and objectives		
• Positive behavioral interventions and supports and prevention		
• Functional behavioral assessments		
• Contraindications identified		
• Target behaviors identified		
• Phasing out or strategies to minimize behavior		
• Teaching skills and replacement behaviors		
• Descriptions of interventions, when and for what purpose		

Principle 4. Restraint and seclusion use implicates moral and ethical considerations.

<u>Principle 4 Elements</u>	<u>Yes</u>	<u>No</u>
Are there requirements or provisions that limit use of restraint and seclusion?		
• Only the least intrusive or restrictive interventions are used		
• If interventions are used, they are employed with consideration of the child’s dignity and individual rights		
• If interventions are used, they are employed for the duration of the dangerous incident only		
• There are specified and communicated objective criteria for ending the restraint		
• Use of restraint and seclusion on a child is monitored by other adults		

Principle 5. There are some types of aversive practices (actions that result in pain, using intense stimuli, etc.) and some types of restraint and seclusion practices (such as prone restraint or locked seclusion) that should be prohibited.

<u>Principle 5 Elements</u>	<u>Yes</u>	<u>No</u>
Are there bans on certain interventions?		
• Corporal punishment		
• Interventions that cause pain		

- Adverse, noxious, harmful stimuli
- Restricting a child’s assistive technology or their auditory, visual or communication means
- Withholding access to meals, drink, or essential facilities
- Chemical restraints (medication), except as allowed by medical professionals
- Mechanical restraints, except as allowed by medical professionals
- Locked seclusion
- Prone restraints or other restraints that interfere with a child’s breathing

Principle 6. If restraint and seclusion must occur, they must be done with the safety and dignity of students and staff in mind.

Principle 6 Elements	Yes	No
Is training focused on safety of techniques used?		
• Monitoring a child’s health		
• Risks and use of technique		
• Crisis intervention strategies		
• Simulation and demonstration of technique		
• Reporting and documentation		
Is there a requirement to identify contraindications for use of restraint and seclusion (such as health factors, medication, etc.)?		
If seclusion rooms are used, are there restrictions on what they look like and how they are used?		
• Size		
• Comply with fire, building, and safety codes		
• Properly ventilated, lit, heated and cooled		
• Tamper proof fixtures and environment		
• Constant monitoring of child in room		
• Automatic release of locking mechanisms		
• Oversight by external entity		

Principle 7. Restraint and seclusion should only be used in schools at the most restrictive/intrusive end of a continuum of interventions to prevent harm to a person.

Principle 7 Elements	Yes	No
What are the standards for use?		
• Danger to person only?		

Are there any conditions on use?

- As a last resort
- After other interventions have failed or deemed inappropriate

What are the definitions of restraint and seclusion?

- Broad definition
- Broad definition with few exceptions
- Physical escort is included in definition and is not exempted

Principle 8. Restraint and seclusion should not be used for punishment, discipline, or as a substitute for lack of staffing, planning, or services.

Principle 8 Elements	Yes	No
Are there restrictions on the purpose of using restraint and seclusion?		
• For punishment		
• For discipline		
• As a substitute for other factors such as adequate staffing, programming, prevention activities or environment		

Principle 9. If restraint and seclusion occurs, the school must take steps to prevent or reduce future use of restraint or seclusion. (These steps typically include monitoring a student, recording data about the incident, involving parents, reviewing data, reviewing and revising the existing plan, determining the need for additional evaluation information, debriefing with staff and or the student, and discussing potential changes to the school environment.)

Principle 9 Elements	Yes	No
If restraint or seclusion is used, is there a follow-up process?		
If yes, does it include a(n)...		
• Review of incident		
• IEP team meeting		
• Notification to parents		
• Notification to administration		
• Debriefing of student, if appropriate		
• Debriefing of staff involved in incident		
• Revision of plan to include prevention, teaching of skills and replacement behaviors		
• Goal to phase out or minimize future use of intervention		

- Administrative review of incident and overall uses of restraint and seclusion

Principle 10. Restraint and seclusion use must be documented, reported to others, and reviewed on a broader (not just individual student) level.

<u>Principle 10 Elements</u>	<u>Yes</u>	<u>No</u>
Are there documentation requirements for restraint and seclusion uses?		
• Incident		
• Broader situation and factors		
• Interventions used and rationale for their use, and any other alternative interventions used or considered		
• Duration and location of incident		
• Identification of staff involved and witnesses		
• Injury to staff or student		
• Other elements specific to school		
Is documentation used on the individual student level and on a policy or school level to prevent future uses of restraint and seclusion?		

Principle 11. Schools must have the capacity (such as having staff with specialized expertise or experience) to understand, use, and communicate about data on restraint and seclusion.

<u>Principle 11 Elements</u>	<u>Yes</u>	<u>No</u>
**No law or policy elements		
Does the school have key staff with specialized experience or expertise to effectively implement strategies to ensure the appropriate use of restraint and seclusion?		
• <School list here>		

Principle 12. Schools must have adequately trained staff who know when and how to appropriately use restraint and seclusion.

<u>Principle 12 Elements</u>	<u>Yes</u>	<u>No</u>
Are there any training requirements?		
• General		
• Prevention, de-escalation, PBIS		
• Documentation and reporting		
• Duration and schedule of training (sufficient number of		

hours, annual, refresher, etc.)

- Laws and policies
- Identification of situations and factors that precipitate restraint and seclusion use
- Risks and uses of interventions
- Simulation and demonstration
- Advanced training for key staff

Principle 13. Prevention efforts on a school-wide basis (such as PBIS or other evidence-based system) are critical to ensure the appropriate use of restraint and seclusion.

<u>Principle 13 Elements</u>	<u>Yes</u>	<u>No</u>
Are there prevention or PBIS activities required?		
• PBIS or other evidence based strategies included in school-wide basis		
• As part of training		
• As part of policies		
• In IEPs or other individualized plans		

Principle 14. Schools must develop their own unique approaches (in terms of staffing, procedures and relationships with outside agencies, etc.) in order to support their efforts regarding ensuring the appropriate use of restraint and seclusion.

<u>Principle 14 Elements</u>	<u>Yes</u>	<u>No</u>
**No law or policy elements		
Does the school have their own identified strategies and approaches to ensure the appropriate use of restraint and seclusion?		
• <School list here>		

Factor 1. The school's efforts concerning restraint and seclusion use is significantly influenced by the limits and strengths of non-school organizations (such as county/social services, residential treatment, police departments) in the community.

<u>Factor 1 Elements</u>	<u>Yes</u>	<u>No</u>
**No law or policy elements		
Does the school work with other entities to collaborate in ways to ensure the appropriate use of restraint and seclusion?		
• <School list here>		

Model Law

SECTION 1. SHORT TITLE.

This Act may be cited as the ‘ _____ Act’.

SEC. 2. FINDINGS.

The State finds the following:

(1) Physical restraint and seclusion have resulted in physical injury, psychological trauma, and death to children in public and private schools. National research shows students have been subjected to physical restraint and seclusion in schools as a means of discipline, to force compliance, or as a substitute for appropriate educational support.

(2) Behavioral interventions for children must promote the right of all children to be treated with dignity. All children have the right to be free from physical or mental abuse, aversive behavioral interventions that compromise health and safety, and any physical restraint or seclusion imposed solely for purposes of discipline or convenience. **(Principle 4,5,8)**

(3) Safe, effective, evidence-based strategies are available to support children who display challenging behaviors in school settings. Staff training focused on the dangers of physical restraint and seclusion as well as training in evidence-based positive behavior supports, de-escalation techniques, and physical restraint and seclusion prevention, can reduce the incidence of injury, trauma, and death **(Principle 3,6,12)**

(4) School personnel have the right to work in a safe environment and should be provided training and support to prevent injury and trauma to themselves and others.

(5) Despite the widely recognized risks of physical restraint and seclusion, a substantial disparity exists among many states and localities with regard to the protection and oversight of the rights of children and school personnel to a safe learning environment. **(Principle 6,12)**

(6) Children are subjected to physical restraint and seclusion at higher rates than adults. Physical restraint which restricts breathing or causes other body trauma, as well as seclusion in the absence of continuous face-to-face monitoring, have resulted in the deaths of children in schools. **(Principle 4,5)**

(7) Children are protected from inappropriate physical restraint and seclusion in other settings, such as hospitals, health facilities, and non-medical community-based facilities. Similar protections are needed in

schools, yet such protections must acknowledge the differences of the school environment.

(8) Research confirms that physical restraint and seclusion are not therapeutic, nor are these practices effective means to calm or teach children, and may have an opposite effect while simultaneously decreasing a child's ability to learn. **(Principle 3)**

(9) The effective implementation of school-wide positive behavior supports is linked to greater academic achievement, significantly fewer disciplinary problems, increased instruction time, and staff perception of a safer teaching environment. **(Principle 13)**

SEC. 3. PURPOSES.

The purposes of this Act are to--

(1) prevent and reduce the use of physical restraint and seclusion in schools; **(Principle 3,9,13)**

(2) ensure the safety of all students and school personnel in schools and promote a positive school culture and climate; **(Principle 4)**

(3) assist and support students with complex and intensive behavioral needs; **(Principle 3,9)**

(3) protect students from physical or mental abuse; aversive behavioral interventions that compromise health and safety; and any physical restraint or seclusion imposed solely for purposes of discipline or convenience; **(Principle 4,5,6,8)**

(4) ensure that physical restraint and seclusion are imposed in school only when a student's behavior poses an imminent danger of physical injury to the student, school personnel, or others; **(Principle 7)**

(5) establish policies and procedures to keep all students, including students with the most complex and intensive behavioral needs, and school personnel safe; **(Principle 1,4,6)**

(6) provide school personnel with the necessary tools, training, and support to ensure the safety of all students and school personnel; **(Principle 12)**

(7) collect and analyze data on physical restraint and seclusion in schools; **(Principle 10)** and

(8) identify and implement effective evidence-based models to prevent and reduce physical restraint and seclusion in schools. **(Principle 3,13)**

Sec. 4. Rule of Construction.

Nothing in this section shall be construed to authorize the department of education to promulgate regulations prohibiting the use of--

(1) time out (as defined in section 4(20)); or

(2) devices implemented by trained school personnel, or utilized by a student, for the specific and approved therapeutic or safety purposes for

which such devices were designed and, if applicable, prescribed, including--

- (A) restraints for medical immobilization;
- (B) adaptive devices or mechanical supports used to achieve proper body position, balance, or alignment to allow greater freedom of mobility than would be possible without the use of such devices or mechanical supports; or
- (C) vehicle safety restraints when used as intended during the transport of a student in a moving vehicle.

SEC. 4 . DEFINITIONS.

In this Act:

- (1) **CHEMICAL RESTRAINT**- The term ‘chemical restraint’ means a drug or medication used on a student to control behavior or restrict freedom of movement that is not (A) prescribed by a licensed physician, or other qualified health professional acting under the scope of the professional’s authority under State law, for the standard treatment of a student’s medical or psychiatric condition; and (B) administered as prescribed by the licensed physician or other qualified health professional acting under the scope of the professional’s authority under State law.
- (2) **MECHANICAL RESTRAINT**- The term ‘mechanical restraint’ means the use of devices as a means of restricting a student’s freedom of movement.
- (3) **PHYSICAL ESCORT**- The term ‘physical escort’ means the temporary touching or holding of the hand, wrist, arm, shoulder or back for the purpose of inducing a student who is acting out to a safe location and where the student’s resistance is minimal.
- (4) **PHYSICAL RESTRAINT**- The term ‘physical restraint’ means a personal restriction that immobilizes or reduces the ability of an individual to move his or her arms, legs, or head freely.
- (5) **POSITIVE BEHAVIOR SUPPORTS**- The term ‘positive behavior supports’ means a systematic approach to embed evidence-based practices and data-driven decisionmaking to improve school climate and culture, including a range of systemic and individualized strategies to reinforce desired behaviors and diminish reoccurrence of problem behaviors, in order to achieve improved academic and social outcomes and increase learning for all students, including those with the most complex and intensive behavioral needs. **(Principle 13)**
- (6) **SCHOOL**- The term ‘school’ means an entity that is a public or private (A) day or residential elementary school or secondary school; or (B) early childhood, elementary school, or secondary school program that is under the jurisdiction of a school, local educational agency, educational service agency, or other educational institution or program.

(7) SECLUSION- The term ‘seclusion’ means an intervention that places a student alone in a room from which the student is not allowed to leave. Such term does not include a time out.

(8) STATE-APPROVED CRISIS INTERVENTION TRAINING PROGRAM- The term ‘State-approved crisis intervention training program’ means a training program approved by a State and the Secretary that, at a minimum, provides--

(A) training in evidence-based techniques shown to be effective in the prevention of physical restraint and seclusion;

(B) training in evidence-based techniques shown to be effective in keeping both school personnel and students safe when imposing physical restraint or seclusion;

(C) evidence-based skills training related to positive behavior supports, safe physical escort, conflict prevention, understanding antecedents, de-escalation, and conflict management;

(D) training in first aid and cardiopulmonary resuscitation;

(E) information describing State policies and procedures that meet the minimum standards established by regulations promulgated pursuant to section 5(a); and

(F) certification for school personnel in the techniques and skills described in subparagraphs (A) through (D), which shall be required to be renewed on a periodic basis.

(Principle 1,6,12,13)

(9) STUDENT- The term ‘student’ means a student enrolled in a school, except that in the case of a private school or private program, such term means a student enrolled in such school or program who receives support in any form from any program supported, in whole or in part, with funds appropriated from the U.S. Department of Education.

(10) TIME OUT- The term ‘time out’ means a behavior management technique that is part of an approved treatment program and may involve the separation of the student from the group, in a non-locked setting, for the purpose of calming. Time out is not seclusion.

(11) AVERSIVE BEHAVIORAL INTERVENTIONS THAT COMPROMISE HEALTH AND SAFETY – This term includes those interventions that (a) are used a means of punishment; (b) are designed to or used in a way that is likely to cause physical pain; (c) denies adequate sleep, food, water, shelter, bedding or access to bathroom facilities; (d) subject, or likely to subject, a student to verbal abuse, ridicule or humiliation, physical pain, or that can be expected to cause excessive emotional trauma; (e) employs a device or material or objects that simultaneously immobilize two or more extremities; (f) constitutes locked seclusion, (g) precludes adequate supervision of the child; (h) restricts breathing; and (h) deprives a student of one or more of his or her senses

(Principle 4,5,6)

SEC. 5. MINIMUM STANDARDS

(a) Minimum Standards- Not later than ____ days after the date of the enactment of this Act, in order to protect each student from physical or mental abuse, aversive behavioral interventions that compromise student health and safety, or any physical restraint or seclusion imposed solely for purposes of discipline or convenience or in a manner otherwise inconsistent with this Act, schools shall comply with the following minimum standards:

(1) School personnel shall be prohibited from imposing on any student the following: Mechanical restraints; Chemical restraints; Physical restraint or physical escort that restricts breathing and Aversive behavioral interventions that compromise health and safety **(Principle 4,5,8)**

(2) School personnel shall be prohibited from imposing physical restraint or seclusion on a student unless--

(A) the student's behavior poses an imminent danger of physical injury to the student, school personnel, or others; **(Principle 7)**

(B) less restrictive interventions would be ineffective in stopping such imminent danger of physical injury; **(Principle 7)**

(C) such physical restraint or seclusion is imposed by school personnel who continuously monitor the student face-to-face; or, if school personnel safety is significantly compromised by such face-to-face monitoring, are in continuous direct visual contact with the student; **(Principle 7)**

(D) such physical restraint or seclusion is imposed by--

(i) school personnel trained and certified by a State-approved crisis intervention training program or

(ii) other school personnel in the case of a rare and clearly unavoidable emergency circumstance when school personnel trained and certified as described in clause (i) are not immediately available due to the unforeseeable nature of the emergency circumstance; **(Principle 6,12)**and

(E) such physical restraint or seclusion end immediately upon the cessation of the conditions described in subparagraphs (A) and (B). **(Principle 4)**

(3) The school shall ensure that a sufficient number of personnel are trained and certified by a State-approved crisis intervention training program to meet the needs of the specific student population in each school. **(Principle 6)**

(4) The use of physical restraint or seclusion as a planned intervention shall not be written into a student's education plan, individual safety plan, behavioral plan, or individualized education program. Schools may establish policies and procedures for use of physical restraint or seclusion

in school safety or crisis plans, provided that such school plans are not specific to any individual student (**Principle 1,3**)

(5) Schools shall establish procedures to be followed after each incident involving the use of physical restraint or seclusion upon a student, including--

(A) procedures to provide to the parent of the student, with respect to each such incident an immediate verbal or electronic communication on the same day as each such incident; and within 24 hours of each such incident, written notification; (**Principle 10**)

(B) a review process is established and conducted for each incident of restraint or seclusion used. The purpose of this review shall be to ascertain that appropriate procedures were followed and to minimize future use of seclusion or restraint. The review shall include, but is not limited to: (1) Staff review and debriefing of the incident; (2) Follow up communication and debriefing, if appropriate, with the student and his/her family; (3) Review of the documentation to ensure use of alternative strategies; (4) Recommendations for adjustment of procedures, if appropriate; and (5) A meeting, if requested by the school or the parent(s) of the student; (**Principle 9**)

(C) an inquiry as to whether there are any known medical or psychological conditions that would be directly and adversely impacted by the use of seclusion or restraint A student shall not be placed in seclusion if they are known to have any medical or psychological condition that be directly and adversely impacted by the use of seclusion or restraint; (**Principle 6**)

(D) documentation of any restraint or seclusion that includes (1) the student's name; (2) the date of the incident; (3) the beginning and ending times of the incident; (4) a description of any relevant events leading up to the incident; (5) a description of any interventions used prior to the implementation of isolated time out or physical restraint; (6) a description of the incident and/or student behavior that resulted in seclusion or restraint; (7) a log of the student's behavior in seclusion or during restraint, including a description of the restraint technique(s) used and any other interaction between the student and staff; (8) a description of any injuries (whether to students, staff, or others) or property damage; (9) a description of any planned approach to dealing with the student's behavior in the future; (10) a list of the school personnel who participated in the implementation, monitoring, and supervision of seclusion or physical restraint; and (11) the date on which parental notification took place. (**Principle 10**)

(6) Schools shall develop Positive Behavior Support plans for those students who have been subjected to restraint or seclusion or who are

likely to be subject to them. The plan shall include the following: (a) a summary of relevant and determinative information gathered from a functional behavioral assessment; (b) an objective and measurable description of the targeted maladaptive behavior(s) and replacement positive behavior(s); (c) the individual's goals and objectives specific to the plan; (d) a detailed description of the interventions to be used and the circumstances for their use; (e) specific schedules for recording the frequency of the use of the interventions and the frequency of the targeted and replacement behaviors; including specific criteria for discontinuing the use of the intervention for lack of effectiveness or replacing it with an identified and specified alternative; (f) criteria by which the procedure will be faded or phased-out, or less intense/frequent restrictive intervention schedules or techniques will be used; and (g) specific dates for periodic review by the IEP team of the efficacy of the program. **(Principle 3)**

SEC. 6. STATE PLAN AND REPORT REQUIREMENTS, ASSESSMENT, AND ENFORCEMENT.

(a) State Plan- The state will create and publish a plan to effectively monitor and enforce the minimum standards of this Act. The plan will include a description of the State standards, including a description of the State-approved crisis intervention training programs in such State; and a description of the State plans to ensure school personnel and parents, including private school personnel and parents, are aware of the State's policies and procedures. **(Principle 10)**

(b) Reporting-

(1) The state department of education will prepare and make available to the public, a report with respect to each local educational agency, and each school not under the jurisdiction of a local educational agency, located in the State that includes the information described in paragraph (2).

(2) INFORMATION REQUIREMENTS-

(A) GENERAL INFORMATION REQUIREMENTS- The report described in paragraph (1) shall include information on the total number of incidents in the preceding full-academic year in which physical restraint or seclusion was imposed upon a student; and

(B) DISAGGREGATION- The information described in subparagraph (A) shall be disaggregated by the total number of incidents in which physical restraint or seclusion was imposed upon a student that resulted in injury or death and in which the school personnel imposing physical restraint or seclusion were not trained and certified as described in section 5(a)(2)(D)(i); and the demographic characteristics of all students upon whom physical restraint or seclusion was imposed, including the student's age, race, disability type, and school. The disaggregation required shall be carried out in a manner to ensure an unduplicated count of the

total number of incidents in the preceding full-academic year in which physical restraint or seclusion was imposed upon a student. This information is not required in a case in which the number of students in a category would reveal personally identifiable information about an individual student. **(Principle 10)**

(c) State Assessment- The state shall carry out an assessment to determine the effectiveness of this Act, which shall include--

- (1) analyzing data related to physical restraint and seclusion incidents;
- (2) analyzing the effectiveness of school efforts to prevent and reduce the number of physical restraint and seclusion incidents in schools;
- (3) identifying the types of programs and services that have demonstrated the greatest effectiveness in preventing and reducing the number of physical restraint and seclusion incidents in schools;
- (4) identifying evidence-based personnel training models with demonstrated success in preventing and reducing the number of physical restraint and seclusion incidents in schools, including models that emphasize positive behavior supports and de-escalation techniques over physical intervention;
- (5) evaluating the State's progress toward the prevention and reduction of physical restraint and seclusion in the schools located in the State, consistent with the minimum standards in this Act; and
- (6) reporting, on an annual basis, the state assessment and making it available to the public and submit it the state legislature.

(Principle 10)

(d) Enforcement and Remedies- If a school fails to comply with subsection (a) or (b), the State shall withhold, in whole or in part, further payments under an applicable program; require the school to submit, and implement, within 1 year of such failure to comply, a corrective plan of action, which may include redirection of funds received under an applicable program; or issue a directive to compel compliance of the school through a cease and desist order **(Principle 10)**

SEC. 7. TRAINING.

(a) Schools shall

- (1) Develop and implement high-quality professional development and training programs to implement evidence-based systematic approaches to school-wide positive behavior supports, including improving coaching, facilitation, and training capacity for administrators, teachers, specialized instructional support personnel, and other staff; **(Principle 12)**
- (2) Develop and implement evidence-based systematic approaches to school-wide positive behavior supports, including technical assistance for data-driven decision-making related to behavioral supports and interventions in the classroom; and **(Principle 12)**
- (3) Provide professional development, training, and certification for school personnel to meet such standards; **(Principle 12)**

(4) Carry out the reporting requirements under section 6(b) and analyzing the information included in a report prepared under such section to identify student, school personnel, and school needs related to the use of physical restraint and seclusion. The school shall provide the report to the department of education on an annual basis. **(Principle 10)**

Sec. 8. SECLUSION

Either

Schools are not permitted to place students in locked seclusion rooms where the student is in any way prohibited from leaving. **(Principle 6)**

Or

Schools that use locked seclusion must ensure that the specially designated seclusion room or similar space must meet the following conditions: (1) there must be specific criteria for returning the student to the routine activities and regular education environment; (2) an evaluation must be on file that determines whether locked seclusion is contraindicated for psychological or physical health reasons; (3) provision is made for the pupil to be continuously monitored by trained staff; (4) the student has adequate access to drinking water and to a bathroom for a time-out that exceeds 15 minutes; (5) the school must create documentation of the length of time spent in each time-out procedure and the number of occurrences each school day; (6) the room must be a safe environment for the pupil where all fixtures are tamper proof, walls and floors are properly covered, and control switches are located immediately outside the room; (7) the room must have an observation window or other device to permit continuous monitoring of the pupil and the school must provide continuous monitoring; (8) the room must have a space that is at least five feet by six feet or substantially equivalent to these dimensions and be large enough to allow the pupil to stand, to stretch the pupil's arms, and to lie down; (9) the room must be well-lighted, well-ventilated, adequately heated, and clean; and (10) the room must meet all applicable fire and safety codes. **(Principle 6)**