

# SEPTA Concerns re: Proposed FCPS Restraint & Seclusion Policy

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## Document Key

- **Blue font** indicates embedded link to documentation.
- Page numbers (i.e., P.1) reference the page of the FCPS Proposed Policy on Restraint and Seclusion
- Quotes from the proposed policy and other policies are noted in *black italics*
- **Purple Font** denotes required Virginia regulation language that has been **OMITTED** from the proposed FCPS Policy on Restraint and Seclusion

## Overview

This document outlines the concerns of Fairfax County SEPTA regarding the proposed FCPS Policy on Restraint and Seclusion. This document is separated into the following categories of concern:

- **Section 1** - Required Virginia Regulation Language Omitted from FCPS Policy Wording
- **Section 2** - Concerns Regarding Parental Notification
- **Section 3** - Addressing Restraint and Seclusion via a Trauma-Informed Lens
- **Section 4** - Documentation Concerns with the Proposed FCPS Policy
- **Section 5** - Concern that the Proposed FCPS Policy is discriminatory under the Americans with Disabilities Act (ADA)
- **Section 6** - Inconsistencies between the Proposed FCPS Policy as written and the FCPS Slide Show Presentation to the School Board
- **Appendices**
  - **Appendix A** - Virginia Restraint and Seclusion Required Policy Components Compliance Checklist
  - **Appendix B** - Excerpt from Virginia Mercury Article about Trauma and the use of alternatives to restraint and seclusion at the Grafton School in VA (link to full article and study included)
  - **Appendix C** - Office on Civil Rights (OCR) Dear Colleague Letter
  - **Appendix D** - Cited Sources

## SECTION 1 - Required Virginia Regulation Language Omitted from FCPS Policy Wording:

Many policy components and sections of wording that are specifically required by Virginia Regulations have been omitted from the proposed FCPS policy. We have noted these omissions in this section of the document. The omitted wording and components are directly quoted in **PURPLE TEXT**. [Click here for full Virginia Regulations<sup>1</sup>](#).

### Omissions of Specific Language

- A. **P.3, IV (Definitions), Section F, #1** -A definition of “time out” -*“Time-out” means a behavioral intervention in which the student is temporarily removed from the learning activity but in which the student is not confined.*
- B. **P.3, IV (Definitions), Section F, #7** *Confinement of a student alone in a room or area from which a student is physically prevented from leaving during the investigation and questioning of the student by school personnel regarding the student’s knowledge of or participation in events constituting a violation of the code of student conduct, such as a physical altercation, or an incident involving drugs or weapons.*
- C. **P.5, V (Prohibitions), #9-** Excluded **“or seclusion”** from the following: *Nothing in this policy shall be construed to prohibit physical restraint or seclusion under the conditions outlined in the Regulations Governing the Use of Seclusion and Restraint in Public Elementary and Secondary Schools in Virginia.*
- D. **P.5, VI (Use of Physical Restraint and Seclusion):** The following component was excluded which states that schools are **not** required to use restraint and/or seclusion at all: *Nothing in this chapter shall be construed to require a school division to employ physical restraint or seclusion in its schools. School divisions electing to use physical restraint and seclusion shall comply with the requirements of this chapter.*
- E. **P.7, VIII (Notification & Reporting), Section B:** *When any student has been physically restrained or secluded after the regular school day, the notifications required by Subsection A shall be made as soon as practicable in compliance with the school division's school crisis, emergency management, and medical emergency response plan required by § 22.1-279.8 of the Code of Virginia within the day of the incident or no later than two school days after an incident.*
- F. **P.7, VIII (Notification & Reporting), Section D:** *After an incident of physical restraint, the school division shall provide the parent with a copy of the incident report within two school days.*
  - i. **This only applies to restraint, not to seclusion, per FCPS wording** - yet the word seclusion is included in **some** of the items listed in Section D which must be included in the written report
  - ii. In the list of information that must be included in written documentation, the word “seclusion” is again omitted
- G. **P.9, X (Training), Section A:** Omitted the required component of follow up social & emotional support - *Ensure that all school personnel receive evidence-based, initial training that focuses on skills related to positive behavior support, conflict prevention, de-escalation, and crisis response [including follow-up support and social-emotional strategy support for students, staff, and families ].*

### Omissions of Specific Policy Components Required by Virginia Regulation

<sup>1</sup>8VAC20-750. Regulations Governing the Use of Seclusion and Restraint in Public Elementary and Secondary Schools in Virginia (adding 8VAC20-750-5 through 8VAC20-750-110)  
<http://register.dls.virginia.gov/details.aspx?id=8093>

**The proposed policy** omits multiple components that are listed in the Virginia regulations [see Appendix A]

- A. Missing citing examples of PBIS & support strategies that are effective alternatives to R&S
- B. Missing description of initial and advanced training to address alternatives to and proper use of R&S
- C. Missing continuous visual monitoring and emergency exceptions to visual monitoring
- D. Missing securing any room being used for seclusion, and that student safety is ensured at all times including fire or other emergency
- E. Missing memorandum of understanding (MOU) with law enforcement since FCPS uses school resource officers (SRO's)
- F. Missing consideration of distinctions in emotional and physical development between elementary & secondary students and between students with and without disabilities
- G. Missing due consideration to practices encouraging parent involvement & collaboration -- no presentation of policy to ACSD prior to presentation to school board

## **Section 2 - Concerns Regarding Parent Notification Section of the Proposed FCPS Policy**

- A. **Parents must be contacted the day of any occurrence of restraint and seclusion.** The wording in the proposed policy, "*reasonable effort to ensure that direct contact is made with the parent...on the day the incident occurred*" does not convey the required urgency.
  - a. In FCPS, parents or emergency backups are contacted immediately for medical emergencies like vomiting or fever - and are expected to come to school immediately to pick up their child, but similar urgency is not shown in notifying family of the use of restraint and seclusion, which are indicators of a student having a mental health emergency.
  - b. Crisis events such as restraint (and seclusion, if not banned) - which are only to be used when a child is an imminent danger to themselves or others, per the proposed policy - must elicit the same urgency to contact parents/guardians as the aforementioned, less emergent, medical concerns.
  - c. SEPTA endorses the ACSD recommendation that calls for a school designee to contact the parent/guardian expediently when a prolonged or repeated restraint is used so that they can take their child home rather than experience continued trauma via repeated restraint.
- B. **Timeline for Written Notification** - the proposed policy gives staff two school days to provide written notification of restraint or seclusion incidents. Given that many students are non/minimally-speaking or have other developmental/communication disorders, to delay full written notification for two school days is unacceptable.
  - a. With this notification being tied to the number of *school* days, this could result in long delays between when an incident happens and when a family receives the written report.
    - i. Should an incident happen Friday, a family may not receive a report until the **following Tuesday**.
    - ii. Should an incident occur the day before spring or winter break, it could be anywhere from **1-2+ weeks** before a family received notification.
    - iii. Should an incident occur the day before summer break, it could be **3 months** before a family received notification.
  - b. SEPTA endorses the ACSD recommendation to require the following notification chain: "Call, leaving a message if no answer, all contact numbers on file until parent/guardian is reached. Should that fail, send an email and an alert through SIS."

- C. **Delaying notification is equivalent to denying the student's right to effective**

## communication with a companion under the ADA<sup>2</sup>.

- a. Many of the students restrained and secluded are **non/minimally-speaking** or have other **developmental/communication disorders**. It is **inhumane** to put these children through a traumatic incident, which both restraint & seclusion are, and not inform their families immediately when the children likely cannot inform their families themselves.
- b. **Delays in notification can result in safety concerns at home**, as often children will express their stress through unanticipated, intense negative behaviors. Parents, unaware of traumatic incidents at school, could unintentionally exacerbate the child's stress and trauma.

### **Section 3 - Addressing Restraint & Seclusion through a Trauma-Informed Lens**

- A. **Restraint and seclusion are traumatizing** for both students and staff [[Appendix B<sup>3</sup>](#)].
- B. **Behavior is a form of communication**. From Harvard's Center for the Developing Child:

"Children with compromised or delayed executive function skills can display very challenging behaviors for which they are often blamed. In most circumstances, however, it is the protracted development of the prefrontal cortex that is to "blame." Efforts to help affected children develop better executive function skills and adjustments of the demands placed upon them to avoid overtaxing their capabilities are much more helpful than punishment for difficult behavior. **Particularly when adverse experiences or environments elicit a toxic stress response, it can be very difficult for even the most competent children to enlist whatever executive function skills they have.** In these circumstances, the provision of a safe and predictable environment offers the sense of security needed for successful behavior change to occur.<sup>4</sup>

### **C. Therapeutic Debriefing for Student, Staff, and Family Following Incident**

- a. Proposed policy states that within two school days the principal or designee must review the incident with the student.
  - i. SEPTA supports the ACSD recommendation is to review the incident with a trusted adult (which could be a school counselor or other student-preferred staff member)
  - ii. This distinction is due to the fact that for some students, the principal is associated with the punishment -- sitting with that individual can, in itself, be an emotional trigger.
  - iii. SEPTA supports that this therapeutic debriefing must be required, rather than optional as presented in the FCPS proposal
- b. Virginia regulations include follow up support and social-emotional strategy support for **students, staff, and families**. FCPS proposal does not include this support for staff or families.

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<sup>2</sup>ADA Requirements, Effective Communication

<https://www.ada.gov/effective-comm.htm#:~:text=The%20ADA%20places%20responsibility%20for,interpret%20in%20only%20two%20situations>

<sup>3</sup>Restraint and seclusion regulations are finalized. Now it's time to prohibit their use. Virginia Mercury, Sept. 2020.

[https://www.virginiamercury.com/2020/09/14/restraint-and-seclusion-regulations-are-finalized-now-its-time-to-prohibit-their-use/?fbclid=IwAR0ZZ2-3L- I\\_s49BpRaEXIKK2es9laRiKH1bbNu9qjXFNBmxtqelHnUyDE](https://www.virginiamercury.com/2020/09/14/restraint-and-seclusion-regulations-are-finalized-now-its-time-to-prohibit-their-use/?fbclid=IwAR0ZZ2-3L- I_s49BpRaEXIKK2es9laRiKH1bbNu9qjXFNBmxtqelHnUyDE)

<sup>4</sup>What is Executive Function? And How Does It Relate To Child Development?

<https://developingchild.harvard.edu/resources/what-is-executive-function-and-how-does-it-relate-to-child-development/>

**D. Trauma-informed practices are physically and emotionally safer for students, staff, and families than restraint and seclusion<sup>5</sup>**

- a. As per a study at Grafton School in Winchester, VA, “Trauma-informed, less restrictive treatment methods provided safer treatment for individuals with a variety of disabilities, while increasing mastery of individualized goals. It also saved the organization over \$16 million in lost time expenses, turnover costs, and workers’ compensation policy costs<sup>6</sup>.” [Click for full source](#).
- b. The move away from seclusion is due to the preponderance of evidence that seclusion not only does not HELP children with difficult behaviors, it exacerbates and perpetuates negative behaviors and trauma in students
- c. **FCPS students are reported to have urinated and/or defecated in seclusion rooms.** This is a sign of massive stress to the autonomic nervous system (loss of bladder/bowel control).
- d. Students have been forced to assist or complete cleaning up their waste.
  - i. This action by staff is now a secondary consequence for the child.
  - ii. This action could be considered use of prohibited aversive stimuli including noxious odors, mental abuse, forced exercise which would have a harmful effect on the student’s health, & deprivation of necessities - using the restroom.

**E. FCPS proposed policy fails to consider the student’s developmental level for the use of seclusion.**

- a. The state regulations include, “The use and duration of seclusion will be based upon the age and development of the student,” FCPS then added, “*with discontinuation expected as soon as imminent risk has abated, not to exceed one (1) minute per year of age or until the student is no longer at risk.*” (P.6, VII (Seclusion; Standards of Use), Section C).
- b. **State regulations already include that seclusion “shall be discontinued as soon as the imminent risk of serious physical harm or injury to self or others presented by the emergency situation has dissipated.”**
- c. The time recommendation included by FCPS makes it less clear that the use of seclusion is an emergency-use only procedure that must cease as soon as possible.
- d. Additionally, the proposed policy does not indicate why these time recommendations were selected; they are a commonly recommended guideline for parents employing time out, not seclusion, in their homes.

**F. Supine restraints are dangerous and have resulted in trauma and even death of those subjected to them. “Use of restraint or seclusion in any manner that restricts a student’s breathing or harms the student.” must include supine restraint as well as prone restraint. (P.5, V (Prohibitions), #6).**

- a. The Mandt System and PCM, the advanced evidence-based de-escalation and intervention programs currently used in FCPS assert that standing and sitting restraints are safer than supine restraints and that supine restraints are to be avoided<sup>7</sup>. Both standing and sitting restraints are still permitted per the proposed policy. FCPS staff who have received Mandt training report that supine restraints are not covered in their training course.

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<sup>5</sup> Smith Richards, Jennifer and Cohen, Jodi S. “These schools did away with seclusion and restraint. They say Illinois can too.” <https://www.chicagotribune.com/investigations/ct-seclusion-restraint-alternatives-grafton-20200413-bfw7u2srpbao3pffhcdnhr2gg-story.html>

<sup>6</sup> Craig, Jason H., and Sanders, Kimberly L. Evaluation of a Program Model for Minimizing Restraint and Seclusion <https://doi.org/10.1007/s41252-018-0076-2>

<sup>7</sup> This ProPublica article reports from inside a training course on physical restraints.

<https://www.propublica.org/article/illinois-schools-student-restraints-training-jennifer-smith-richards>

- b. Supine restraints, similar to the prone restraints (already banned Virginia-wide), are “take down restraints” which results in a student being pinned to the floor. In the case of supine restraint, the student is pinned face-up. This does not respect the dignity of the student, and is traumatizing.
- c. Supine restraints have resulted in the death of public school students.<sup>8</sup>

**G. Staff lack the appropriate training to implement trauma-informed practices.**

- a. FCPS Proposed Policy states that “*FCPS must provide evidenced-based, advanced training in the use of physical restraint and seclusion...for personnel assigned to work with any student whose IEP or Section 504 team determines the student is likely to be physically restrained or secluded.*” (P.9, X (Training), Section C)
- b. SEPTA recommends that the policy include training for any staff member who reports multiple student interactions involving severe behavioral challenges.
- c. SEPTA has received reports from staff who have repeatedly requested and have been denied this training despite routinely working in these situations.

**Section 4 - Documentation Concerns within FCPS Proposed Policy:**

**A. Lack of Necessary Analysis in FCPS Reporting**

- a. Annual reporting & review -- reports such as The FCPS Summary of Restraint and Seclusion<sup>9</sup> (obtained by FOIA) do not give enough detail as to use of R&S.
  - i. For instance, in 2017-2018 at Crossfield Elementary, 2 students were subjected to seclusion and there were 20 instances of seclusion. This leaves to question whether one student was secluded once and another 19 times?
  - ii. At Kilmer Center, 19 students were secluded over 459 instances of seclusion. How many times were individuals secluded? (And, no matter how those numbers are broken down by student, the total number is absolutely horrific.)
  - iii. **This analysis is critical because when a child experiences restraint or seclusion repeatedly, it is indicative that they are not receiving a free and appropriate public education (FAPE), and interventions need to be changed.** For example, from 2015-2016<sup>10</sup>:
    - 1. Coates Elementary: 1 student secluded 54 times in 2015-2016. The school only houses an Enhanced Autism Program.
    - 2. South County Middle School: 2 students secluded 174 times in 2015-2016. The school houses School-Based Autism, School-Based Intellectual Disability and Intellectual Disability - Severe programs.

**B. Seclusion is being written into ABA plans by central office staff as a planned intervention per multiple reports from FCPS families**

**C. Meaningful and comprehensive demographic data must be collected in quarterly review reports so that data can be sufficiently analyzed.** The report shall include:

- a. Data analysis for how often restraint and seclusion as been used in a violation of policy,
- b. Instances of seclusion and restraint broken down by school,
- c. Data analysis for disproportionality
  - i. Age of student restrained or secluded
  - ii. Disability category
  - iii. Gender
  - iv. Race/Ethnicity

<sup>8</sup> [Equip for Equality -The-Lethal-Consequences-of-Restraint](https://www.equipforequality.org/). 61 restraint-related deaths were examined by Equip for Equality, IL and the National Disability Network. Equip for Equality’s current position is to ban seclusion, prone, and supine restraints. <https://www.equipforequality.org/>

<sup>9</sup>FCPS Summary of Restraint and Seclusion - All Schools with At Least One Instance <https://drive.google.com/file/d/1PBVdVtHkZMjgLoyBqCscAAVSPb8UHSoM/view?usp=sharing>

<sup>10</sup> Summary of Restraint and Seclusion - All Schools With At Least One Instance [https://drive.google.com/file/d/1Ee1HvkrTo9cr5UYEfXs3QmcjafHkL\\_Ly/view?usp=sharing](https://drive.google.com/file/d/1Ee1HvkrTo9cr5UYEfXs3QmcjafHkL_Ly/view?usp=sharing)

## Section 5: Concern that FCPS proposed policy is discriminatory under the ADA

- A. The section on seclusion is only applicable to students at three schools, all of which exclusively serve students with disabilities - Kilmer<sup>11</sup>, Key<sup>12</sup>, and Burke School<sup>13</sup>.
- i. Why is the use of seclusion only addressed for these three schools?
  - ii. Does the exclusion of all other schools indicate that seclusion is not to be used at any other schools in FCPS? If this is the case, it must be explicitly stated in the proposed policy.
    - This is critically important, because restraint and seclusion are used significantly at elementary schools across the county that are not special education centers or CSS sites<sup>14</sup>.
      - **Fairfax Villa ES** reports 155 seclusion incidents between just 17 students. The school houses the Early Childhood Special Education and Intellectual Disability programs. (2017-2018)
      - **Kings Park ES** reports 238 physical restraint incidents between just 12 students. They also reported 17 incidents of mechanical restraint, which is banned under the existing policy. The school houses Early Childhood Special Education, Preschool Autism Classes, and Enhanced Autism programs. (2017-2018)
    - Using the SY 2017-2018 data, Kilmer and Burke school reported a combined 464 instances of seclusion. That's 464/1149, or 40.3% of the total cases of seclusion.
    - Given the number of instances of seclusion reported at Kilmer Center SY 2017-2018, seclusion at this site has likely been associated with a denial of FAPE (see OCR section below).
  - iii. However, if FCPS intends to continue to practice seclusion in other schools within Fairfax County, then policy must address all schools and all placements.
  - iv. The three schools designated for continued use of seclusion are schools with 100% special education populations. For the county to propose to use seclusion only in special education programs against students with disabilities and no other students, the policy is inherently discriminatory.
  - v. The proposed policy preserves ten seclusion rooms: seven at Burke, two at Kilmer, and one at Key Center. Are there currently other seclusion rooms besides one per elementary CSS site? If not, it appears this policy would cut seclusion rooms by less than half.
  - vi. If the only reason those three special education schools are able to continue the practice of seclusion schools is because they have seclusion rooms large enough to satisfy Virginia mandate, we must ask why seclusion is easily eliminated at all other FCPS schools, but we chose to continue it out of convenience. This suggests that seclusion will continue not due to need, but rather due to room dimensions and convenience.
- B. The [OCR "Dear Colleague Letter: Restraint and Seclusion of Students with Disabilities"](#)<sup>15</sup> from the US Department of Education - Office of Civil Rights, informs school districts how the use of restraint and seclusion may result in discrimination against students with disabilities by violating

<sup>11</sup> Kilmer Center <https://kilmercenter.fcps.edu/about/philosophy-and-organization>

<sup>12</sup> Key Center <https://keycenter.fcps.edu/about/who-we-are>

<sup>13</sup> Burke Center <https://burkeschool.fcps.edu/about>

<sup>14</sup> FCPS Summary of Restraint and Seclusion - All Schools with At Least One Instance <https://drive.google.com/file/d/1PBVdVtHkZMjgLoyBqCscAAVSPb8UHSoM/view?usp=sharing>

<sup>15</sup> "Dear Colleague Letter" (2016) from the USDOE Office of Civil Rights - <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-201612-504-restraint-seclusion-ps.pdf>

Section 504 of the Americans with Disabilities Act. The following points from this letter must be given significant consideration as pertains to the FCPS proposed policy.

- i. Given that seclusion is only being implemented at schools with disabilities, the policy is unnecessarily treating students with disabilities differently than those without disabilities.
- ii. Repeated use of restraint and seclusion is not justified where alternative methods could be used to prevent imminent danger.
- iii. Students with disabilities are secluded for behaviors that would not result in seclusion if performed by students without disabilities. For instance, parents reported that their child with disabilities was secluded for throwing a pencil -- a consequence that would not occur if the behavior was by a non-disabled child in a general education classroom.
- iv. Restraint and seclusion can cause secondary trauma which, in itself, can then impact a child's FAPE.

## Section 6 - Variations between proposed FCPS policy and slideshow presentation

- A. **Slide 5** In order to comply with the VDOE regulations examples of positive behavioral interventions and supports (PBIS) must be included in the proposed policy. Neither the policy itself nor this presentation list any examples of PBIS interventions
- B. **Slide 9** States that seclusion is only permitted in 3 schools (Key, Kilmer, Burke). This is not explicitly stated in the written policy as the policy only refers to seclusion rooms, but seclusion can happen in any room, of any size, where a child is alone and prevented from leaving.
- C. **Slide 11** Lists structural & physical standards for seclusion rooms at the 3 schools. The slide omits 1 standard from the state regulations -- *All space in the seclusion room shall be visible through the door, either directly or by mirrors.* -- **However, this standard is listed in the proposed policy.**
- D. **Slides 22-23** While these points represent portions of stakeholder recommendations, the slide misleads the audience by not delineating which points are fully met vs. partially met, nor which are required by state regulation regardless of stakeholder input Stakeholders have been almost universally excluded from the development of this policy and it is disingenuous for FCPS to pretend otherwise.
  - a. Student conference with trusted personnel
    - i. **Stakeholders recommended that student debriefing with a trusted staff member be required, not optional.**
  - b. Implement a "chain of intervention" prior to restraint (less restrictive interventions first, which is consistent with current practice)
    - i. **Stakeholders used the language i"chain of intervention" not to refer to what is already current practice, but instead to include detailed list of specific "Evidence Based De-escalation Practices" and detailed list of specific "Safety Measures Not Involving Hands On The Student" -- neither of which was met or partially met.**
  - c. Expand contact options to notify the parent of the incident on the same day"
    - i. **Stakeholders recommended that parents MUST be notified the same day, including documentation.**
  - d. **These requirements are both mandated by State regulation, regardless of stakeholder recommendation.**
    - i. Team, to include the parent, will meet to discuss the need for additional supports for students who have two or more restraints or seclusions in one school year
    - ii. Only staff with advanced training will be permitted to use restraint or seclusion (consistent with current practice)"
- E. **Slide 26** School Division Policy Comparison Chart -- FCPS staff selectively included school districts that do not represent the full range of policies in Virginia and across the United States. This chart is not comprehensive and is misleading.

- a. Some states such as Hawaii, Georgia, Nevada and Pennsylvania<sup>16</sup>, as well as numerous districts throughout the country have banned seclusion completely. Texas has banned seclusion for students with disabilities.
- b. Not included is Stafford County, VA, which does not allow seclusion<sup>17</sup>.
- c. Not included are the districts that self-identified as not permitting restraint and/or seclusion but have no written policy, regulation, or other standard describing this prohibition. Those divisions include: Buchanan, Danville, Galax, Loudoun, Radford, Russell<sup>18</sup>.
- d. The Keep Every Student Safe Act (KASSA)<sup>19</sup>, which would institute a federal ban on the use of seclusion in public schools is currently gaining traction in Congress and has wide support.
- e. If FCPS considers itself a leader in educational practice, then FCPS needs to be a leader in this area, not regressive and outdated in its practices.

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<sup>16</sup>Ban Student Seclusion in Schools, Lawmakers tell Betsy Devos. Ed Week, January 15, 2020.

<http://blogs.edweek.org/edweek/campaign-k-12/2020/01/seclusion-students-devos-illinois.html>

<sup>17</sup>Kiser, Uriah. Changes proposed for student restraint and seclusion policy.

[https://potomaclocal.com/2020/10/27/changes-proposed-for-student-restraint-and-seclusion-policy/?fbclid=IwAR33mmTAZzQFXg\\_MkfMCaNUIRrWeMyYKq4g4kQaW1NfrLtXBL2C2OQMUF28](https://potomaclocal.com/2020/10/27/changes-proposed-for-student-restraint-and-seclusion-policy/?fbclid=IwAR33mmTAZzQFXg_MkfMCaNUIRrWeMyYKq4g4kQaW1NfrLtXBL2C2OQMUF28)

<sup>18</sup> 2009 VDOE's Office of Dispute Resolution and Administrative Services (ODR/AS) Survey

<https://www.wrightslaw.com/virginia/restraint.seclusion.srvy.09.pdf>

<sup>19</sup> Keep All Students Safe Act -

<https://www.ndss.org/wp-content/uploads/2020/05/2020-Issue-Brief-on-Keeping-All-Students-Safe-Act.pdf>

## **APPENDIX A**

A. Each school division that elects to use physical restraint or seclusion shall develop and implement written policies and procedures that meet or exceed the requirements of this chapter and that include, at a minimum, the following:

***Requirements in state regulations annotated with a “check” or “x” to indicate whether or not the FCPS proposed policy includes these items ✓ X Teal highlight indicates which portion of an item is NOT included in the proposed policy, in the event that part of it is included and part is not included. Purple text is original wording from state regulations.***

✓1. A statement of intention that the school division will encourage the use of positive behavioral interventions and supports to reduce and prevent the need for the use of physical restraint and seclusion.

X2. Examples of the positive behavioral interventions and support strategies consistent with the student's rights to be treated with dignity and to be free from abuse that the school division uses to address student behavior, including the appropriate use of effective alternatives to physical restraint and seclusion.

X3. A description of initial and advanced training for school personnel that addresses (i) appropriate use of effective alternatives to physical restraint and seclusion and (ii) the proper use of restraint and seclusion.

✓4. A statement of the circumstances in which physical restraint and seclusion may be employed, which shall be no less restrictive than that set forth in 8VAC20-750-40 and 8VAC20-750-50.

5. Provisions addressing the:

✓a. Notification of parents regarding incidents of physical restraint or seclusion, including the manner of such notification:

✓b. Documentation of the use of physical restraint and seclusion:

Xc. Continuous visual monitoring of the use of any physical restraint or seclusion to ensure the appropriateness of such use and the safety of the student being physically restrained or secluded, other students, school personnel, and others. These provisions shall include exceptions for emergency situations in which securing visual monitoring before implementing the physical restraint or seclusion would, in the reasonable judgment of the school personnel implementing the physical restraint or seclusion, result in serious physical harm or injury to persons; and

Xd. Securing of any room in which a student is placed in seclusion. These provisions shall ensure that any seclusion room or area meet specifications for size and viewing panels that ensure the student's safety at all times, including during a fire or other emergency, as required by this chapter.

X e. School divisions utilizing school resource officers shall enter into a memorandum of understanding with local law enforcement addressing the use of seclusion and restraint by law enforcement personnel in school settings.

Xf. Each school division shall review its policies and procedures regarding physical restraint and seclusion at least annually and shall update these policies and procedures as appropriate. In developing, reviewing, and revising its policies, school divisions shall consider the distinctions in emotional and physical development between elementary and secondary students and between students with and without disabilities.

✓g. Consistent with § 22.1-253.13:7 D of the Code of Virginia, a current copy of a school division's policies and procedures regarding restraint and seclusion shall be posted on the school division's website and shall be available to school personnel and to the public. School boards shall ensure that printed copies of such policies and procedures are available as needed to citizens who do not have online access.

✗ h. ***Did not include formal presentation of proposed policy to the ACSD*** In developing their policies and procedures, school divisions shall give due consideration to practices that encourage parent involvement and collaboration with regard to these matters.

## **APPENDIX B - Trauma**

Tolley, B. (2020). Restraint and seclusion regulations are finalized. Now it's time to prohibit their use. Retrieved 30 November 2020, from

[https://www.virginiamercury.com/2020/09/14/restraint-and-seclusion-regulations-are-finalized-now-its-time-to-prohibit-their-use/?fbclid=IwAR0ZZ2-3L-\\_I\\_s49BpRaEXIKK2es9laRiKH1bbNu9qjXFnBMxtqelHnUyDE](https://www.virginiamercury.com/2020/09/14/restraint-and-seclusion-regulations-are-finalized-now-its-time-to-prohibit-their-use/?fbclid=IwAR0ZZ2-3L-_I_s49BpRaEXIKK2es9laRiKH1bbNu9qjXFnBMxtqelHnUyDE)

During the past 20 years, studies have been done by federal agencies, professional organizations and national research institutions. The research indicates that use of these procedures does not keep students and teachers safer, **it in fact makes them less safe**. Physical injuries up to and including **death have occurred**. Restraint and seclusion have no **therapeutic or educational value**. They are traumatizing for the students subjected to these procedures, to the adults administering them and to the **children and adults observing their use**.

Restraint and seclusion are used in general education and special education schools and settings. They are used in schools where students' behaviors are framed as choices, where school cultures emphasize compliance, but school leaders and staff do not differentiate between voluntary and involuntary stress (fight, flight, freeze) behaviors. Failing to differentiate between voluntary and involuntary behaviors results in punishment of students when they need **support and compassion**.

One of the most important findings from brain, trauma, neuroscience and attachment research during the past 30 years is the recognition of the role unconscious detection of danger, stress and fear play in disruptive behaviors. Unconscious detection of real or perceived danger by the brain's regulatory systems shift the brain state to survival mode, **setting off a flight, fight or freeze response**.

These stress responses are neither voluntary or responsive to a system of rewards and consequences, features all too common in school "behavior management" systems. The brains of children with trauma histories, mental health concerns, neurodiversity and/or developmental delays are highly sensitized to cues of danger. The lack of differentiation between voluntary behaviors and stress responses may be the biggest factor in the **huge disproportionality** of students with disabilities who are restrained and secluded.



## **Appendix C - OCR Dear Colleague Letter - Additional Resources**

**(2020). Retrieved 30 November 2020, from**

**[https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201612-504-restraint-seclusion-ps.pdf?fbclid=IwAR37mEJhAqrBSTcP\\_OzhAkgRY8yi7w10do0r4wczPXXuqcTPFBKY5XFA2XY](https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201612-504-restraint-seclusion-ps.pdf?fbclid=IwAR37mEJhAqrBSTcP_OzhAkgRY8yi7w10do0r4wczPXXuqcTPFBKY5XFA2XY)**

- Students who have experienced trauma in the past may be vulnerable in ways that some of their peers are not, and could therefore be impacted by the use of coercive practices in a much more significant way. The U.S. Department of Health and Human Services' Substance Abuse and Mental Health Services Administration's National Center for Trauma-informed Care and Alternatives to Seclusion and Restraint (NCTIC) offers consultation and technical assistance to develop trauma-informed care to eliminate the use of restraints, seclusion, and other coercive practices. NCTIC is also working to develop a knowledge base related to implementing trauma-informed approaches. Trauma-informed care is an approach to engaging people with histories of trauma that recognizes the presence of trauma symptoms and acknowledges the role that trauma has played in their lives. For further information, see [www.samhsa.gov/nctic](http://www.samhsa.gov/nctic).
- The National Child Traumatic Stress Network, funded by the Substance Abuse and Mental Health Services Administration, provides several resources for educators, parents and children on the serious impact of traumatic stress on children. The Network works with established systems of care, including the health, mental health, education, law enforcement, child welfare, juvenile justice, and military family service systems, to ensure that there is a comprehensive trauma-informed continuum of accessible care. For further information, see [www.nctsn.org/resources/audiences/school-personnel](http://www.nctsn.org/resources/audiences/school-personnel).

## **Appendix D - Cited Sources**

**Regulations Governing the Use of Seclusion and Restraint in Public Elementary and Secondary Schools in Virginia**  
<http://register.dls.virginia.gov/details.aspx?id=8093>

**US Department of Justice Civil Rights Division, Disability Rights Section ADA Requirements - Effective Communication**  
<https://www.ada.gov/effective-comm.htm#:~:text=The%20ADA%20places%20responsibility%20for,interpret%20in%20only%20two%20situations.>

**Virginia Mercury** - On Aug. 22, regulations on the use of seclusion and restraint in public elementary and secondary schools in the Commonwealth of Virginia were finalized, with an implementation date of Jan. 1. Virginia now has regulations that legitimize practices that are ineffective, cruel and harmful.  
[https://www.virginiamercury.com/2020/09/14/restraint-and-seclusion-regulations-are-finalized-now-its-time-to-prohibit-their-use/?fbclid=IwAR0ZZ2-3L-I\\_s49BpRaEXIKK2es9laRiKH1bbNu9qjXFNBmxtqelHnUyDE](https://www.virginiamercury.com/2020/09/14/restraint-and-seclusion-regulations-are-finalized-now-its-time-to-prohibit-their-use/?fbclid=IwAR0ZZ2-3L-I_s49BpRaEXIKK2es9laRiKH1bbNu9qjXFNBmxtqelHnUyDE)

**Center on the Developing Child - Harvard University** What is Executive Function and How Does it Relate to Child Development?  
<https://developingchild.harvard.edu/resources/what-is-executive-function-and-how-does-it-relate-to-child-development/>

**Chicago Tribune and Propublica** Article on implementation of ban on restraint and seclusion at Grafton School in Winchester, VA, as a model for Illinois schools  
<https://www.chicagotribune.com/investigations/ct-seclusion-restraint-alternatives-grafton-20200413-bfw7u2srpba03pffhcdnhr2qg-story.html>

**Advances in Neurodevelopmental Disorders** Research study on outcomes of ban on restraint and seclusion at Grafton School. This study conducted a longitudinal evaluation of an organizational change effort to minimize restraint and seclusion within a behavioral healthcare facility that serves at-risk and high-risk clients with intellectual, developmental, and psychiatric disabilities, using a context, input, process, and product model.  
<https://doi.org/10.1007/s41252-018-0076-2>

**Education Week** After an investigation by ProPublica Illinois and the Chicago Tribune found Illinois schools put children in "isolated timeout" for illegal reasons, a group of the state's federal lawmakers have asked the U.S. Secretary of Education to ban seclusion in schools nationwide.  
<http://blogs.edweek.org/edweek/campaign-k-12/2020/01/seclusion-students-devos-illinois.html>

**National Down Syndrome Society** Issue Brief: Keeping All Students Safe Act  
<https://www.ndss.org/wp-content/uploads/2020/05/2020-Issue-Brief-on-Keeping-All-Students-Safe-Act.pdf>

**ProPublica Illinois** Article investigating a training course for school workers to learn physical restraints and subsequent finding that the workers then often did not use their training properly.  
<https://www.propublica.org/article/illinois-schools-student-restraints-training-jennifer-smith-richards>

**FCPS - Summary of Restraint and Seclusion - All Schools with at Least One Instance (2017-2018, 2015-2016, 2013-2014)**  
<https://drive.google.com/file/d/1PBVdVtHkZMjgLoyBqCscAAVSPb8UHSoM/view?usp=sharing>  
[https://drive.google.com/file/d/1Ee1HvkrTo9cr5UYEfXs3QmcjafHkL\\_Ly/view?usp=sharing](https://drive.google.com/file/d/1Ee1HvkrTo9cr5UYEfXs3QmcjafHkL_Ly/view?usp=sharing)  
<https://drive.google.com/file/d/1ZKahi7-eAqAqPjfh1UFeWS43SNnL7GZb/view?usp=sharing>

**WAMU - March, 2019** Initial report on FCPS violations on under-reporting incidents of restraint and seclusion.  
<https://wamu.org/story/19/03/13/children-are-routinely-isolated-in-some-fairfax-county-schools-the-district-didnt-report-it/>