



EDUCATION LAW NOTES

Federal and Virginia Developments in School Law

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PRINCIPALS ARE AT THE CENTER OF RESTRAINT AND SECLUSION CLAIMS

Recent civil rights data reveals that of the nation's 51 million public school students, nearly 102,000 were subjected to restraint and seclusion during the 2017-18 academic year. Of those subject to physical restraint, 80% were students with disabilities; of those secluded, 77% were students with disabilities. Complaints to the United States Office for Civil Rights alleging impermissible use of restraint and seclusion have risen since 2010. Lawsuits – including one currently pending against the Fairfax County Public Schools – are also increasing.

In 2009, the Virginia Department of Education released guidelines for proper use of restraint and seclusion. In 2012, the US Department of Education issued a resource document announcing 15 principles for use of restraint and seclusion in public schools. In 2015, the Virginia General Assembly passed Code § 22.1-279.1:1 directing the Virginia Board of Education to develop regulations consistent with USDOE's 15 principles and Virginia's guidelines, applying to students with and without disabilities. After lengthy administrative review, the "Regulations Governing the Use of Seclusion and Restraint in Public Elementary and Secondary Schools in Virginia" are slated to become effective on January 1, 2021.

Principals play a pivotal role in implementing the Regulations. VASSP encourages all of its members to read the Regulations: <http://register.dls.virginia.gov/details.aspx?id=8093>. The Regulations impose specific responsibilities for principals.

Key Definitions. The Regulations define applicable terms. ***Physical restraint*** means "a personal restriction that immobilizes or reduces the ability of a student to move freely. It does not include: briefly holding a student in order to calm or comfort the student; holding a student's hand or arm to escort the student safely from one area to another; or the use of incidental, minor, or reasonable physical contact or other actions designed to maintain order and control. ***Seclusion*** is the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving. Provided the room or space is not locked, seclusion does not include in-school suspension, detention, time-out, student-requested breaks in another area, brief removal to allow a student time to regain self-control, removal of a student for disruptive behavior, or questioning the student as part of an investigation (within certain limitations). ***Student*** means any student, with or without a disability, who is enrolled in a Virginia public school – it includes pre-school students and those attending on a less-than-full-time basis, such as those on homebound or homebased instruction. ***School personnel*** includes ALL individuals employed by the school division as instructional, administrative or support personnel; that definition will prove critical for the training and reporting requirements below.

Permitted Actions. School personnel may implement physical restraint or seclusion only when other interventions are, or would be, in the reasonable judgement of the school personnel implementing physical restraint or seclusion in an emergency, ineffective and only to: prevent

a student from inflicting serious physical harm or injury to self or others; defend self or others from serious physical harm or injury; quell a disturbance or remove the student when the student's behavior or damage to property threatens serious physical harm or injury to persons; or obtain possession of controlled substances or paraphernalia or weapons or other dangerous objects that are upon the person of the student or within the student's control. For either physical restraint or seclusion, school personnel must maintain continuous visual monitoring; the intervention must be stopped as soon as the emergency situation has dissipated; and the specific technique used should be safe for the student and appropriate to the student's age, disability and medical needs. *Property damage alone does not justify the use of physical restraint or seclusion.* Finally, the Regulations prescribe specifications/standards for seclusion rooms/areas.

Prohibited Actions. The following are prohibited under the Regulations: mechanical (with certain exceptions) and pharmacological restraints; use of aversive stimuli and corporal punishment; prone restraints; restraint/seclusion that restricts a student's breathing or harms the student; and use of seclusion rooms that do not meet the Regulation's standards. Restraint or seclusion may not be used as punishment or discipline; as a means of coercion or retaliation; as a convenience; to solely prevent property damage; or in any manner inconsistent with the Regulations. Finally, they may not be used when medically or psychologically contraindicated as documented by an IEP team, 504 team, school or medical professionals.

Notifications and Reporting. School personnel must report incidents of restraint/seclusion and any use of first aid to the school principal by the end of the school day on which the incident occurred. The principal must make a reasonable effort to ensure that direct contact is made with the parent on the day of the incident: in person, by phone, or other communication authorized by the parent (e.g., e-mail). School personnel must later provide an incident report to the principal

within two (2) school days, with a copy to the parent within seven (7) calendar days. The incident report must include information sufficient to inform the parent about the incident, including: student name, age, gender, grade, ethnicity; date; whether student has IEP, 504 plan, BIP; name of reporting party; date, time and method of parental contact; date and method of school personnel debriefing (see below); and a description of the incident, including time, duration, location, efforts to restrain/seclude, antecedent events, less restrictive interventions attempted, resolution, any bodily injury sustained, and other relevant information described in the Regulations. The Regulations require certain debriefings and team meetings be conducted among school personnel and, where appropriate, with subject students in an effort to prevent recurrence of the use of restraint and seclusion. Every school principal must regularly review the use of physical restraint and seclusion in the school to ensure compliance with school policies. When multiple incidents occur within the same classroom or by the same individual, the principal must take steps to address the frequency of use. Principals must also annually report to the division superintendent the use of physical restraint and seclusion in the school, based on the individual incident reports received.

Policies/Procedures and Training. By January 1, 2021, school divisions must adopt required policies and procedures and conduct initial training for all employees. VDOE has developed an on-line training module that satisfies the initial training: <http://www.odu.edu/eps/programs/ciees/initiatives/restraint-and-seclusion.html>. At least one administrator in every building and other identified individuals must receive advanced training. All training must be evidence-based.

The Regulations impose significant responsibility on school principals, who are well advised to proactively review the Regulations in their entirety and promptly take steps necessary to comply in advance of their January 1, 2021 effective date.