

ABUSE AT THE HANDS OF EDUCATORS: ANALYZING THE USE OF SECLUSION AND RESTRAINTS IN K-12 PUBLIC SCHOOLS ACROSS AMERICA

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I. INTRODUCTION

Imagine being forced into a cold, confined room with no windows and no other means of escape. Now imagine being physically restrained and forced into that same room not knowing when you will be released. This is the unfortunate reality for thousands of students with disabilities in K-12 public schools across America.¹ Students with disabilities are disproportionately affected by these practices known as seclusion and restraint.² Seclusion refers to “involuntarily confining a student alone in a room or area from which he or she cannot physically leave.”³ During the 2017–2018 school year, 27,538 public school students were reported to have been secluded, and 77% of these students had disabilities.⁴ Restraint is described as “restricting the student’s ability to move.”⁵ During the 2017–2018 school year, 70,833 public school students were reported to have been physically restrained, and an alarming

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¹ See U.S. GOV’T ACCOUNTABILITY OFF., GAO-19-418T, FEDERAL DATA AND RESOURCES ON RESTRAINT AND SECLUSION 4 (2019).

² *Id.* at 1.

³ *Id.*

⁴ U.S. DEP’T OF EDUC., 2017-18 CIVIL RIGHTS DATA COLLECTION, THE USE OF RESTRAINT AND SECLUSION ON CHILDREN WITH DISABILITIES IN K-12 SCHOOL 7 at 5 (2020).

⁵ U.S. GOV’T ACCOUNTABILITY OFF., GAO-19-418T, *supra* note 1, at 1.

80% of these students had disabilities.⁶ While some students are restrained and secluded for a few minutes, others are confined for hours at a time, depending on their behavior.⁷ Despite these startling statistics, there is no federal law addressing the use of seclusion and restraints in public schools.⁸ Therefore, it is up to the states to decide how seclusion and restraints are to be used in public schools, which has resulted in a lack of uniform standards.⁹ As instances of improper seclusion and restraint on students with disabilities continue to surface,¹⁰ there is an urgent need for uniform and comprehensive federal legislation limiting the use of seclusion and restraints in K-12 public schools.

This Comment examines current state laws and recent cases and analyzes potential provisions that legislation should include to provide uniformity and better protect one of the nation's most vulnerable populations. Section II provides an overview of the legislative history addressing the use of seclusion and restraints in public schools and explores where federal guidelines currently stand. Section III examines recent cases and instances of seclusion and restraint, analyzes the state laws governing them, and proposes modifications to these state laws to prevent future instances of use. Finally, Section IV advocates for federal legislation and examines the need for federal funding and enforcement mechanisms to

⁶ This data is collected from a survey of almost all public schools in America. U.S. DEP'T OF EDUC., *supra* note 4, at 1. Thus, there is potential for this number to be higher based on various school reporting methods. *Id.* at 6.

⁷ Jennifer Smith Richards et al., *The Quiet Rooms*, PROPUBLICA ILL. (Nov. 19, 2019), <https://features.propublica.org/illinois-seclusion-rooms/school-students-put-in-isolated-timeouts>.

⁸ Jenny Abamu, *How Some Schools Restrain or Seclude Students: A Look at a Controversial Practice*, NPR (June 15, 2019, 6:01 AM), <https://www.npr.org/2019/06/15/729955321/how-some-schools-restrain-or-seclude-students-a-look-at-a-controversial-practice>.

⁹ JESSICA BUTLER, HOW SAFE IS THE SCHOOLHOUSE? AN ANALYSIS OF STATE SECLUSION AND RESTRAINT LAWS AND POLICIES 16–17 (2009), <https://www.autcom.org/pdf/How-SafeSchoolhouse.pdf>.

¹⁰ See, e.g., C. S. Hagen, *Mother's Lawsuit Claims Fargo Public Schools Improperly Restrained, Secluded Autistic Son*, DULUTH NEWS TRIB. (Dec. 11, 2020, 9 AM), <https://www.duluthnewstribune.com/news/education/6797650-Mothers-lawsuit-claims-Fargo-Public-Schools-improperly-restrained-secluded-autistic-son>; Karen Hensel, *Light Oversight on School Time-Out Rooms Worries Parents, Advocates*, NBC BOS. (Feb. 8, 2019, 4:02 PM), <https://www.nbc-boston.com/news/local/light-oversight-on-school-time-out-rooms-worries-parents-advocates/2313>; Mary Tyler March, *Parents Sue Fairfax Schools Over Alleged Student Seclusion, Discrimination*, NPR (Oct. 9, 2019), <https://www.npr.org/local/305/2019/10/09/768593229/parents-sue-fairfax-schools-over-alleged-student-seclusion-discrimination>.

ultimately provide greater protection for students with disabilities across America.

II. LEGISLATIVE HISTORY AND FEDERAL GUIDELINES ON SECLUSION AND RESTRAINT IN K-12 PUBLIC SCHOOLS

One of the first pieces of federal legislation addressing the treatment of students with disabilities in public schools was the 1975 Education for All Handicapped Children Act.¹¹ Today, the Education for All Handicapped Children Act is known as the Individuals with Disabilities Education Act, and it was created to ensure that individuals with disabilities receive a free public education.¹² The act also requires students with disabilities to receive an “individual education program” or “IEP” that identifies the services required to meet students’ educational needs.¹³ The Individuals with Disabilities Education Act also provides various guidelines regarding the education and treatment of students with disabilities and states that the IEP Team—composed of students’ parents, at least one special education teacher,¹⁴ and other school staff—must “consider the use of positive behavioral interventions and supports, and other strategies” when students engage in disruptive behavior.¹⁵ However, the Act is silent as to whether practices such as the use of restraints and seclusion fall within “positive behavioral interventions and supports.”¹⁶ Therefore, without any federal guidance on the use of restraints and seclusion, school administrators have been free to use these practices as they see fit.¹⁷

A 2009 report by the U.S. Government Accountability Office (“Accountability Office”) renewed public interest in the use of restraints and seclusion on students with disabilities.¹⁸ The report

¹¹ *About IDEA*, IDEA, <https://sites.ed.gov/idea/about-idea/#IDEA-History> (last visited Feb. 21, 2021).

¹² *Id.*

¹³ NANCY LEE JONES & JODY FEDER, CONG. RSCH. SERV., RL40522, THE USE OF SECLUSION AND RESTRAINT IN PUBLIC SCHOOLS: THE LEGAL ISSUES 6 (2010).

¹⁴ 20 U.S.C. § 1414(d)(1)(B).

¹⁵ 20 U.S.C. § 1414(d)(3)(B)(i).

¹⁶ *Id.*

¹⁷ BUTLER, *supra* note 9.

¹⁸ U.S. GOV’T ACCOUNTABILITY OFF., GAO-09-719T, SECLUSIONS AND RESTRAINTS: SELECTED CASES OF DEATH AND ABUSE AT PUBLIC AND PRIVATE SCHOOLS AND TREATMENT CENTERS (2009).

detailed various instances of death and abuse due to the improper use of seclusion and restraints in schools across America.¹⁹ The Accountability Office not only shed light on a lack of policies and trainings,²⁰ but it also detailed numerous inconsistencies in state laws.²¹ In cases examined by the Accountability Office, restraints and seclusion were used on students with disabilities “as disciplinary measures, even when [students’] behavior did not appear to be physically aggressive.”²² Although the report did not analyze whether the practices used by the school staff violated state laws, these findings suggest that students with disabilities may have been unnecessarily secluded or restrained.²³

Following the publication of the Accountability Office’s report, the Keeping All Students Safe Act was introduced in December of 2009.²⁴ Since its initial introduction, a similar version of the Keeping All Students Safe Act has been introduced in recent years, yet the passage of federal legislation addressing restraint and seclusion has been unsuccessful.²⁵ The proposed Act would prohibit school personnel from restraining or secluding all students except when faced with “an imminent danger of physical injury to the student, school personnel, or others.”²⁶ The Act also proposed required trainings and certifications along with procedures for notifying parents and guardians of students following the use of seclusion and/or restraint.²⁷ Additionally, not only did the proposed Act provide requirements for schools and school personnel

¹⁹ *Id.*

²⁰ *See id.* at 9.

²¹ *See id.* at 3–4.

²² *Id.* at 8.

²³ *Id.*

²⁴ *H.R. 4247 - 111th Congress (2009-2010): Keeping All Students Safe Act*, CONGRESS.GOV, <https://www.congress.gov/bill/111th-congress/house-bill/4247> (last visited Feb. 21, 2021).

²⁵ *See, e.g., H.R. 1381 - 112th Congress (2011-2012): Keeping All Students Safe Act*, CONGRESS.GOV, <https://www.congress.gov/bill/112th-congress/house-bill/1381> (last visited Feb. 21, 2021); *H.R. 1893 - 113th Congress (2013-2014): Keeping All Students Safe Act*, CONGRESS.GOV, <https://www.congress.gov/bill/113th-congress/house-bill/1893> (last visited Feb. 21, 2021); *H.R. 927 - 114th Congress (2015-2016): Keeping All Students Safe Act*, CONGRESS.GOV, <https://www.congress.gov/bill/114th-congress/house-bill/927> (last visited Feb. 21, 2021); *H.R. 7124 - 115th Congress (2017-2018): Keeping All Students Safe Act*, CONGRESS.GOV, <https://www.congress.gov/bill/115th-congress/house-bill/7124> (last visited Feb. 21, 2021).

²⁶ Keeping All Students Safe Act of 2009, H.R. 4247, 111th Cong. §§ 3(1), (2), (4) (2010).

²⁷ *Id.* §§ 3(5)(A), (B), 5(a)(5)(A).

but it also recognized “a substantial disparity” among the states regarding “the protection and oversight of the rights of children and school personnel to a safe learning environment.”²⁸ The Keeping All Students Safe Act never became law due to disagreements concerning whether seclusion should be banned entirely or allowed only as a “last resort.”²⁹ In over a decade since this Act was first introduced, the discrepancies in restraint and seclusion practices and regulations continue to persist among the states.³⁰

Most recently in January 2019, former U.S. Secretary of Education Betsy DeVos announced the U.S. Department of Education’s initiative to address current, and prevent future, improper uses of seclusion and restraints.³¹ The initiative stated that the Office for Civil Rights and the Office of Special Education and Rehabilitative Services would oversee the initiative and its goal of protecting students with disabilities.³² The initiative included three aspects: compliance reviews, data quality reviews, and technical assistance to schools.³³ In January 2020, the Office for Civil Rights and the Office of Special Education and Rehabilitative Services released a webinar that provides technical assistance for school personnel working with students with disabilities.³⁴ While the future success of this initiative is still unknown, the end goal is that improper uses of seclusion and restraint will be identified, addressed, and remedied.³⁵

²⁸ *Id.* § 2(5).

²⁹ See BUTLER, *supra* note 9, at 56.

³⁰ *Id.* at x.

³¹ U.S. Department of Education Announces Initiative to Address the Inappropriate Use of Restraint and Seclusion to Protect Children with Disabilities, Ensure Compliance with Federal Laws, U.S. DEP’T EDUC. (Jan. 17, 2019), <https://sites.ed.gov/idea/u-s-department-of-education-announces-initiative-to-address-the-inappropriate-use-of-restraint-and-seclusion-to-protect-children-with-disabilities-ensure-compliance-with-federal-laws>.

³² *Id.*

³³ U.S. DEP’T OF EDUC., *supra* note 4, at 3.

³⁴ News Room, U.S. DEP’T EDUC. (Jan. 10, 2020), <https://www2.ed.gov/about/offices/list/ocr/newsroom.html>.

³⁵ *Id.*

III. RECENT CASES AND INSTANCES OF SECLUSION AND RESTRAINT INVOLVING STUDENTS WITH DISABILITIES AND ANALYSIS OF STATE LAWS

A. *North Dakota*: *Barnum v. Board of Education of City of Fargo*

In *Barnum v. Board of Education of City of Fargo*, an eight-year-old student with autism was allegedly secluded and restrained during the 2018–2019 school year.³⁶ The plaintiff's son was diagnosed with PTSD as a result of the seclusion and restraints.³⁷ The lawsuit, in part, alleges that Fargo Public Schools did not “consistently maintain complete and current records of [the student's] in-school behaviors.”³⁸ This case highlights the need for additional procedures addressing how students' behaviors and instances of seclusion and restraint are recorded and reported.³⁹

The student in the *Barnum* case attended Fargo Public Schools in Fargo, North Dakota.⁴⁰ North Dakota law limits the use of seclusion and physical restraint to emergency situations and requires the public school administrator to be notified of its use.⁴¹ North Dakota law allows such seclusion and physical restraint to continue if deemed necessary by the school administrator provided that the student is monitored every thirty minutes.⁴² One concern with the North Dakota law is that it requires the school administrator to be notified of any instances of seclusion and/or physical restraint but does not require parents or other guardians of the student to be notified.⁴³ Another concern is that the North Dakota law does not contain any provision related to mandatory documentation of students' behaviors and instances where physical restraint and/or seclusion are used.⁴⁴ The lack of any documentation requirement was a key factor in the *Barnum* case because the plaintiff

³⁶ Hagen, *supra* note 10; Complaint at 1, *Barnum v. Bd. of Educ. of City of Fargo*, 3:21CV00119 (D. N.D. filed June 1, 2021).

³⁷ Hagen, *supra* note 10.

³⁸ *Id.*

³⁹ *See id.*

⁴⁰ *Id.*

⁴¹ N.D. CENT. CODE §§ 25-01.2-09, 25-01.2-10 (2021).

⁴² *Id.* § 25-01.2-10.

⁴³ *Id.*

⁴⁴ *See id.*

alleged that the school did not properly maintain records of her son's behaviors, which made it impossible to determine whether the use of seclusion and physical restraint was even warranted.⁴⁵

At the very least, North Dakota law should be modified to require schools to document and report student behavior leading up to the use of physical restraints and/or seclusion and the frequency and duration of these practices. When compliance officers have thorough and accurate records of students' behavior and actions taken by school staff, they can better ensure that all instances of restraint and seclusion are proper.⁴⁶ Additionally, North Dakota law should be modified to require prompt notification to parents or guardians of students once their behavior escalates to the level of an emergency situation. When parents and guardians are notified as soon as a student's behavior escalates, there is less time for potential abuse and misuse of restraints and seclusion.⁴⁷

B. California: Kerri K. & Jacob K. v. State of California

On January 1, 2019, a California law limiting the use of seclusion and restraint to "emergency" situations went into effect.⁴⁸ Just five months after this law became effective, the plaintiffs in *Kerri K. & Jacob K. v. State of California*⁴⁹ filed a lawsuit alleging that students with disabilities were harmed through the illegal use of restraints and seclusion while attending a special education public school in California.⁵⁰ The plaintiffs also alleged that school officials frequently restrained and secluded students in "non-emergency situations," in violation of California law.⁵¹ Not only does the

⁴⁵ See generally Hagen, *supra* note 10.

⁴⁶ See U.S. GOV'T ACCOUNTABILITY OFF., GAO-19-551R, K-12 EDUCATION: EDUCATION SHOULD TAKE IMMEDIATE ACTION TO ADDRESS INACCURACIES IN FEDERAL RESTRAINT AND SECLUSION DATA (2019).

⁴⁷ Debbie Truong, *Parents Sue Fairfax Schools, Allege Improper Seclusion and Restraint of Students with Disabilities*, WASH. POST (Oct. 8, 2019, 6:54 PM), <https://www.washingtonpost.com/local/education/parents-sue-fairfax-schools-allege-improper-seclusion-and-restraint-of-students-with-disabilities/2019/10/08/066166dc-e9f8-11e9-85c0-85a098e47b37story.html>.

⁴⁸ Assemb. B. 2657, 2018 Assemb., Reg. Sess. § 1(49005)(a) (Cal. 2018).

⁴⁹ *Kerri K. v. State*, CIVMSC19-00972 (Cal. Super. Ct. May 13, 2019).

⁵⁰ Diana Lambert, *Lawsuit Challenges Use of Restraint, Seclusion in California Special Education School*, EDSOURCE (May 20, 2019), <https://edsources.org/2019/lawsuit-challenges-use-of-restraint-seclusion-in-california-special-education-school/612690>.

⁵¹ *Id.*

complaint allege that students were improperly subjected to these harmful practices, but it also states that the school neither documented nor told parents and guardians about many instances of seclusion and restraint within the reporting period required under California law.⁵²

California law states that restraint and seclusion “should only be used as a safety measure of last resort” and not as “punishment or discipline or for staff convenience.”⁵³ However, a parent of two students in the lawsuit stated that the school viewed the students as “children with poor behavior” and used restraint and seclusion as a way to “break [the students] into submission.”⁵⁴

According to the California Education Code, schools are required to notify parents and guardians of students within “one school day” of any use of seclusion or restraint.⁵⁵ However, there is no enforcement mechanism or repercussions to ensure that schools follow this requirement.⁵⁶ Thus, California law should be modified to incorporate accountability measures such as termination or unpaid suspension for school staff who do not report the use of restraint and seclusion to parents and guardians by the next school day. Although California has fairly robust protections for public school students with disabilities, these protections are only effective when those administering them are held accountable for their actions.⁵⁷

C. Virginia: *Q.T. v. Fairfax County School Board*

In *Q.T. v. Fairfax County School Board*, one plaintiff’s son was secluded more than seven hundred times over the course of seven years, yet the plaintiff was not notified of these instances within the twenty-four hour timeframe as prescribed by Virginia law.⁵⁸ Moreover, during the 2015–2016 school year, the Fairfax school system

⁵² *Id.*

⁵³ CAL. EDUC. CODE § 49005 (Deering 2021).

⁵⁴ Lambert, *supra* note 50.

⁵⁵ CAL. EDUC. CODE § 56521.1(e) (Deering 2021).

⁵⁶ *Id.* (explaining the procedures for reporting, but not requiring any discipline for failure to report); see also BUTLER, *supra* note 9, at 6 (discussing how not all restraint laws are enforced).

⁵⁷ BUTLER, *supra* note 9, at 11.

⁵⁸ Order, *Q.T. v. Fairfax Cty. Sch. Bd.*, No. 1:19-cv-01285, slip op. at 4, 6 (E.D. Va. July 14, 2020), ECF No. 33.

reported no incidents involving seclusion or restraints despite a report identifying numerous unreported incidents involving these practices.⁵⁹ Not only is underreporting an issue but a lack of proper training is also an alleged contributing factor to the mistreatment of students with disabilities and behavioral problems.⁶⁰ The lawsuit alleges that the school staff lacked both “training and guidance” and were forced to “assume knowledge and responsibilities for responding to children with disabilities that they profoundly lack[ed].”⁶¹ As a result, one plaintiff’s son was allegedly “physically restrained in the classroom and then placed in a six-by-six foot padded room with a magnetically locked door” for reasons “that did not pose an imminent threat to himself or others.”⁶²

Virginia law must be modified to incorporate enforcement mechanisms and accountability measures. In 2015, section 22.1-279.1:1 of the Virginia Code was enacted and required the Virginia Board of Education to “adopt regulations on the use of seclusion and restraint in public elementary and secondary schools” that adhere to the U.S. Department of Education’s guidelines and principles.⁶³ However, while regulations have been proposed, none have been adopted.⁶⁴ One proposed regulation, section 20-750-60 of the Virginia Administrative Code, would require schools to “make reasonable effort[s]” to notify parents of any incident involving the use of seclusion and restraint immediately following the incident.⁶⁵ Additionally, if enacted, the proposed regulation would require schools to craft and implement policies and procedures relating to positive behavioral interventions, notification and documentation requirements, and appropriate trainings.⁶⁶

If enacted, Virginia’s proposed regulations have the potential to prevent the misuse of seclusion and restraint practices noted

⁵⁹ Truong, *supra* note 47.

⁶⁰ *Id.*

⁶¹ Complaint at 4, Q.T. v. Fairfax Cty. Sch. Bd., No. 1:19-cv-01285 (E.D. Va. Oct. 8, 2019), ECF No. 1.

⁶² *Id.* at 33, 34.

⁶³ VA. CODE ANN. § 22.1-279.1:1 (2020).

⁶⁴ SAMANTHA H. HOLLINS, FIRST REVIEW OF PROPOSED REGULATIONS GOVERNING THE USE OF SECLUSION AND RESTRAINT IN PUBLIC ELEMENTARY AND SECONDARY SCHOOLS IN VIRGINIA A–B (2019).

⁶⁵ 8 VA. ADMIN. CODE § 20-750-60(A)(2) (2021).

⁶⁶ 8 VA. ADMIN. CODE § 20-750-70(A)(1)-(5) (2021).

in the *Q.T. v. Fairfax County School Board* case.⁶⁷ Prompt parental notification potentially could have prevented the hundreds of instances of seclusion experienced by one plaintiff's son.⁶⁸ In addition, this case highlights the need for thorough trainings and guidance not only in the use of restraints and seclusion, but also in alternative approaches, such as positive behavioral interventions.⁶⁹ Although restraints and seclusion are supposed to be limited to instances when a student's behavior "places the student or others at risk of harm or injury,"⁷⁰ the complaint alleged that one plaintiff's son was restrained and secluded even when the student was not at risk of harming himself or others.⁷¹ Thus, positive behavioral interventions likely would have been a preferred alternative to the harsh practices described in the complaint.⁷²

D. Illinois: The "Quiet Rooms" Investigation

In November 2019, ProPublica Illinois published the findings of an investigation which detailed more than twenty thousand incidents of seclusion in Illinois public schools over a one and one-half year time period.⁷³ When these instances of seclusion occurred, state law permitted Illinois public school staff to seclude students when students acted in a way that created "a safety threat to themselves or others."⁷⁴ However, the investigation revealed that in over one-third of the incidents, school staff failed to document any valid reason for secluding the students in these "Quiet Rooms."⁷⁵ Despite their name, these rooms were far from quiet as the students locked inside the rooms begged, screamed, and violently thrust their bodies against the walls in an attempt to escape.⁷⁶ Students like Jace

⁶⁷ Truong, *supra* note 47.

⁶⁸ *Id.*

⁶⁹ Complaint, *supra* note 61, at 3, 6–7.

⁷⁰ VA. DEP'T. OF EDUC., GUIDELINES FOR THE DEVELOPMENT OF POLICIES AND PROCEDURES FOR MANAGING STUDENT BEHAVIORS IN EMERGENCY SITUATIONS IN VIRGINIA PUBLIC SCHOOLS FOCUSING ON PHYSICAL RESTRAINT AND SECLUSION 5 (2009), https://www.doe.virginia.gov/support/student_conduct/guidelines_managing_behaviors_emergency.pdf.

⁷¹ Complaint, *supra* note 61, at 34.

⁷² *Id.* at 3, 6–7, 34; VA. DEP'T. OF EDUC., *supra* note 70.

⁷³ Richards et al., *supra* note 7.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

Gill, a nine-year-old with autism, were regularly secluded inside the “Quiet Rooms.”⁷⁷ During these seclusions, Jace would often urinate and defecate on himself as a result of the fear, uncertainty, and confusion he experienced.⁷⁸ Despite school staff assuring Jace’s family that he would not be placed inside the “Quiet Rooms” alone, he was forced and left in a “5-foot-square space made of plywood and cinder block” over twenty times throughout the 2017–2018 school year.⁷⁹ Similarly, a seven-year-old student named Isaiah was repeatedly forced into his school’s “timeout room” where he would frequently “bang his head against the concrete and plywood walls.”⁸⁰ Although the school Isaiah attended kept records of Isaiah’s behavior in these “Quiet Rooms,” Isaiah’s mother neither knew of this recordkeeping nor was notified of Isaiah’s behavior while in the seclusion room.⁸¹ Thus, Isaiah’s mother never knew that Isaiah complained of headaches and “ringing in his ears” nor did she know that school nurses completed a concussion form after Isaiah began exhibiting concussion-like symptoms.⁸² It was only when Isaiah returned home from school with carpet burn on his face that his mother discovered he had been placed “in a prone restraint on a carpeted floor”—a position that can restrict a student’s ability to breathe and ultimately cause asphyxiation.⁸³ While Isaiah’s behavior and the use of seclusion were documented in school records, the Illinois State Board of Education did not monitor the use of seclusion or restraints and did not require any reporting on the use of such practices.⁸⁴ Due to the lack of monitoring and reporting requirements, students like Jace and Isaiah continued to experience frequent and often unsupervised seclusion while parents and

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ Jennifer Smith Richards et al., *Schools Aren’t Supposed to Forcibly Restrain Children as Punishment. In Illinois, It Happened Repeatedly.*, PROPUBLICA (Dec. 20, 2019, 5:00 AM), <https://www.propublica.org/article/illinois-school-restraints>.

⁸⁴ Jodi S. Cohen et al., *Readers Choked Back Tears. Some Struggled to Keep Reading. We Understand.*, PROPUBLICA (Nov. 22, 2019, 4:00 AM), <https://www.propublica.org/article/illinois-school-seclusions-reader-responses>.

guardians were left in the dark, unaware of the horrific acts that occurred in the “Quiet Rooms.”⁸⁵

Following ProPublica Illinois’ publication of the findings of their investigation, the Illinois State Board of Education announced an “immediate ban” on the use of “isolated seclusion” and issued emergency rules to address the investigation’s gruesome discoveries.⁸⁶ The governor of Illinois, J.B. Pritzker, acknowledged the “appalling” nature of “[i]solated seclusion”⁸⁷ and announced emergency rules banning the use of locked seclusion rooms and requiring that an adult trained in “de-escalation, restorative practices, and behavior management practices” stay with all secluded students.⁸⁸ The emergency rules also limited the use of physical restraints to instances where such restraints were necessary to maintain “a safe environment for learning” and “preserve the safety of students and others.”⁸⁹ Additionally, all staff engaged in physically restraining students were required to be trained in “de-escalation of problematic behavior, relationship-building, and the use of alternatives to restraint.”⁹⁰ Lastly, the emergency rules required all schools, including public and special education schools, to report all instances of seclusion and physical restraint to the State Superintendent within two days of the incident and to the parents of students within one day of the incident.⁹¹ This last requirement serves as a resounding response to the lack of knowledge experienced by Isaiah’s mother and numerous other families who were unaware that their children were repeatedly being restrained and secluded in isolated, locked rooms while attending school.⁹²

In January 2021, Illinois lawmakers attempted to pass a bill that would have banned schools from secluding students in locked rooms and physically restraining students in a facedown manner.⁹³

⁸⁵ Richards et al., *supra* note 7.

⁸⁶ Cohen et al., *supra* note 84.

⁸⁷ *Id.*

⁸⁸ 43 Ill. Reg. 14315, 14321 (Dec. 6, 2019).

⁸⁹ *Id.* at 14314.

⁹⁰ *Id.* at 14321.

⁹¹ *Id.* at 14320–21.

⁹² Richards et al., *supra* note 7.

⁹³ Jennifer Smith Richards & Jodi S. Cohen, *Bill Banning Locked Seclusion and Face-Down Restraints in Illinois School Stalls*, DAILY HERALD (Jan. 14, 2021, 12:49 PM), <https://www.dailyherald.com/news/20210114/bill-banning-locked-seclusion-and-face-down-restraints-in-illinois-schools-stalls>.

Unfortunately, the bill failed to pass, leaving thousands of Illinois students at risk of continued harm at the hands of their school staff.⁹⁴ Although the bill stalled in the Illinois House of Representatives, many of its provisions can serve as a model to protect current and future students with disabilities.⁹⁵ In addition to altogether banning the use of “locked seclusion rooms and prone, or facedown, physical restraints,” the proposed bill also limited the use of unlocked seclusion and non-facedown restraints to instances where students pose an “imminent danger of serious physical harm.”⁹⁶ This provision, if enacted earlier, likely would have alleviated the suffering and repeated instances of restraint and seclusion experienced by Jace and Isaiah.⁹⁷ The requirement that students be subjected to restraints and seclusion only when posing an “imminent danger of serious physical harm” could have prevented both Jace and Isaiah from experiencing any form of seclusion, as both students were secluded for minor behavioral issues.⁹⁸ Additionally, the bill, if passed, would have required schools to not only notify parents and guardians of instances of seclusion and/or restraint,⁹⁹ but also to offer to meet with these parents and guardians.¹⁰⁰ As is evident in Isaiah’s case, it is critical for parents to have the opportunity to speak with school staff following a student’s seclusion and/or restraint to ensure the continued safety and proper treatment of students with disabilities.¹⁰¹ One final provision incorporated in the emergency rules and proposed in the bill was mandatory training

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ See Richards et al., *supra* note 7 (explaining that Jace was locked in rooms over two dozen times, and Isaiah would repeatedly bang his head against the walls when in the quiet room, to the point where employees “asked him to use a pillow ‘if he wishes to bang his head’”); Richards et al., *supra* note 83 (noting that Isaiah was pulled out of school “after he came home with a mark on his face from being restrained facedown on carpet”).

⁹⁸ Richards et al., *supra* note 7 (noting that “[t]he incident began that morning when Jace ripped up a math worksheet and went into the hallway, trying to leave school” and that Isaiah was secluded once after pushing a chair and desk and “distracting other students”).

⁹⁹ S.B. 2315, 101st Gen. Assemb., Reg. Sess. (Ill. 2019)

¹⁰⁰ Kendra Yoch & Dana Fattore Crumley, *Proposed State and Federal Legislation Would Further Reduce Physical Restraint and Time Out in Schools*, SPECIAL EDUC. L. INSIGHTS (Dec. 1, 2020), <https://www.specialedlawinsights.com/2020/12/proposed-state-and-federal-legislation-would-further-reduce-physical-restraint-and-time-out-in-schools>.

¹⁰¹ *Id.*

on “positive behavioral interventions” and “restorative practices.”¹⁰² These trainings, which would have been funded by an Illinois State Board of Education grant program, could have prevented various instances of seclusion and restraint by taking a proactive approach to de-escalating student behavior.¹⁰³ Thus, as a result of the “Quiet Rooms” investigation exposing thousands of improper instances of seclusion and restraint, practical solutions were developed that can serve as a guide for future legislation.¹⁰⁴

E. North Carolina: Wake County Lawsuit

In January 2020, the Wake County school system settled a lawsuit with the family of a Raleigh high school student with disabilities.¹⁰⁵ The lawsuit alleged that many students were subjected to improper seclusion throughout the 2018–2019 school year.¹⁰⁶ According to the lawsuit, the school administration was notified of the teacher’s improper treatment of students, yet the teacher continued to teach students with disabilities.¹⁰⁷ When the parents of one student noticed bruises on their son, they contacted both the school administration and school district.¹⁰⁸ Despite proof of the teacher’s improper seclusion of students in the school’s storage room, the teacher currently continues to work for a nearby school district in Durham, North Carolina.¹⁰⁹

The Wake County lawsuit highlights the need for cameras in special education classrooms and the need for greater enforcement mechanisms and accountability measures.¹¹⁰ Having cameras in classrooms may deter teachers from mistreating students with disabilities and may also capture any instances of seclusion and restraint. In North Carolina, school staff may seclude students when

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ Richards et al., *supra* note 7; see also Yoch & Crumley, *supra* note 100.

¹⁰⁵ T. Keung Hui, *Family Says a Student Was Illegally Restrained and Secluded. Wake Will Pay \$450,000.*, NEWS & OBSERVER (Jan. 15, 2020, 2:22 PM), <https://www.newsobserver.com/news/local/education/article239076598.html>.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ The parents of one student who was subjected to improper seclusion advocated for the use of cameras in special education classrooms. *Id.*

“a student’s behavior poses a threat of imminent physical harm to self or others.”¹¹¹ However, school staff may not seclude students “solely as a disciplinary consequence,” which is what the teacher is accused of doing in this case.¹¹² Perhaps most concerning is the fact that the teacher in this case is still allowed to teach in North Carolina’s public school systems.¹¹³ Future legislation must contain provisions that better protect current and future public school students. After thorough investigation, if the school administration or school district concludes that a staff member improperly secluded or restrained a student, the staff member must be suspended and required to complete detailed trainings on the use of seclusion and restraints before returning to the classroom.

IV. PROPOSED FEDERAL LEGISLATION: THE NEED FOR FEDERAL FUNDING AND ENFORCEMENT MECHANISMS

As the cases and incidents above illustrate, there is an urgent need for mandated trainings, improved enforcement mechanisms, and stronger accountability measures in America’s public school systems. Although strengthening state laws on the use of seclusion and restraints is a step in the right direction, to create safer and more streamlined practices across America’s public school systems, federal legislation must be crafted and enacted. First, federal legislation must include federal funding so all teachers and administrators can participate in necessary trainings, including trainings on crisis intervention, de-escalation techniques, and mindfulness practices.¹¹⁴ Second, federal legislation must establish and implement enforcement mechanisms that will hold school systems and schools accountable for their actions.

A. Federal Funding for Trainings on Crisis Intervention, De-escalation Techniques, and Mindfulness

While current state and future federal legislation can mandate certain trainings for school staff, without adequate funding, it

¹¹¹ N.C. GEN. STAT. § 115C-391.1(e)(1)(d) (2020).

¹¹² *Id.* § 115C-391.1(e)(3); see Hui, *supra* note 105.

¹¹³ Hui, *supra* note 105.

¹¹⁴ Michael Couvillon et al., *A Review of Crisis Intervention Training Programs for Schools*, 42 TEACHING EXCEPTIONAL CHILD. 6, 8 (2010).

is unlikely that schools will have sufficient resources to pay for mandatory trainings.¹¹⁵ Thus, federal legislation must provide federal funding to assist in the establishment, maintenance, and implementation of all mandatory trainings. One avenue the federal government can take is the Taxing and Spending Clause found in Article I, Section 8, Clause 1 of the Constitution of the United States.¹¹⁶ Using its power to tax and spend, the federal government can incentivize states and public school systems to require workshops and trainings pertaining to the proper use of seclusion and restraints.¹¹⁷ Through the use of spending programs, the federal government can compel states to adopt restraint and seclusion trainings and workshops before providing states with supplemental funding.¹¹⁸ Although K-12 education funding comes primarily through the states,¹¹⁹ potential spending programs will encourage states to comply with federal laws aimed at better protecting students with disabilities.¹²⁰ The Supreme Court has held that all spending programs must be for the “general welfare of the United States” and cannot violate other constitutional provisions.¹²¹ Additionally, all conditions on the receipt of federal funding must be “unambiguously” expressed to the states and must be related to “the federal interest in particular national projects or programs.”¹²²

Federal funding can be used to support trainings and workshops for public school staff working with students with disabilities.¹²³ Taking a proactive and preventative approach to behavioral

¹¹⁵ Cory Turner, *America's School Funding Crisis: Budget Cuts, Rising Costs and No Help In Sight*, NPR (Oct. 23, 2020, 7:00 AM), <https://www.npr.org/sections/coronavirus-live-updates/2020/10/23/926815076/americas-school-funding-crisis-budget-cuts-rising-costs-and-no-help-in-sight>.

¹¹⁶ U.S. CONST. art. I, § 8, cl. 1.

¹¹⁷ *Id.*

¹¹⁸ See *10 Facts about K-12 Education Funding*, U.S. DEP'T EDUC., <https://www2.ed.gov/about/overview/fed/10facts/index.html> (last modified Sept. 19, 2014).

¹¹⁹ *Id.*

¹²⁰ See CLARE MCCANN, *NEW AMERICA, FEDERAL FUNDING FOR STUDENTS WITH DISABILITIES: THE EVOLUTION OF FEDERAL SPECIAL EDUCATION FINANCE IN THE UNITED STATES* (2014), <https://files.eric.ed.gov/fulltext/ED556326.pdf> (explaining that while federal funding for special needs has been a priority for Congress over the past few decades, the funding model is outdated and needs an overhaul to match current need levels).

¹²¹ *South Dakota v. Dole*, 483 U.S. 203, 207, 208 (1987).

¹²² *Id.* at 207.

¹²³ See MCCANN, *supra* note 120.

concerns can alleviate the need for staff to seclude and restrain students.¹²⁴ In the event that a student's behavior escalates, staff should be trained in crisis intervention and de-escalation techniques.¹²⁵ One study explored the effects of staff training that addressed "prevention strategies for avoiding intensive behavioral incidents" as well as strategies aimed at de-escalating student behaviors.¹²⁶ The study's findings indicate that an emphasis on "prevention, evidence-based behavior support, monitoring, and personnel training" helped reduce instances of "behavioral crisis" and helped promote the safety of both students and staff.¹²⁷ Mindfulness trainings are another way to help reduce the use of restraints and seclusion on public school students.¹²⁸ Studies have found a correlation between increased mindfulness and a reduction in the use of physical restraints on individuals with intellectual disabilities as well as a reduction of "hostile" behavior towards individuals with disabilities.¹²⁹ Therefore, federal funding must be used for mindfulness trainings and trainings on alternative measures such as de-escalation techniques and crisis intervention strategies. Federally-funded trainings will not only educate school staff, but they will also serve as a preventative measure in order to avoid behaviors that often lead to the use of restraints and seclusion in public schools across America.

B. Keeping Schools Accountable Through the Use of Enforcement Mechanisms

In addition to federal funding, enforcement mechanisms must be established in order to hold schools and staff accountable for their interactions with students with disabilities. Federal funding will ensure that schools will have sufficient resources for trainings and workshops, but without any enforcement mechanisms, schools

¹²⁴ Couvillon, *supra* note 114.

¹²⁵ See MCCANN, *supra* note 120.

¹²⁶ Barbara Trader et al., *Promoting Inclusion Through Evidence-Based Alternatives to Restraint and Seclusion*, 42 RSCH. & PRAC. FOR PERSONS WITH SEVERE DISABILITIES 75, 80 (2017).

¹²⁷ *Id.* at 84.

¹²⁸ Nirbhay N. Singh et al., *Mindful Staff Can Reduce the Use of Physical Restraints When Providing Care to Individuals with Intellectual Disabilities*, 22 J. OF APPLIED RSCH. IN INTELL. DISABILITIES 194, 194 (2009).

¹²⁹ *Id.* See A. Willems, et al., *Towards a Framework in Interaction Training for Staff Working with Clients with Intellectual Disabilities and Challenging Behavior*, 60 J. OF INTELL. DISABILITIES RSCH. 134, 144-45 (2016).

will not be held accountable for following the practices established in such trainings.¹³⁰

One proposed enforcement mechanism is the mandatory installation of cameras in classrooms with students with disabilities.¹³¹ As discussed in the Wake County lawsuit,¹³² cameras serve as a possible deterrent for staff who may mistreat students with disabilities. Furthermore, with cameras capturing the interactions between students and staff, repeated instances of mistreatment, such as in the *Q.T. v. Fairfax County School Board* case, may be avoided.¹³³ In 2015, Texas became the first state to require cameras in classrooms with students with disabilities if parents and guardians of these students requested them.¹³⁴ Although opponents of the use of cameras in classrooms voice privacy concerns, having cameras in special needs classrooms can deter staff misconduct and serve as a voice for voiceless and vulnerable students.¹³⁵ Moreover, these cameras would not be placed in areas where students and school staff have “a reasonable expectation of privacy,” such as restrooms, but instead would be placed in areas such as classrooms and seclusions rooms.¹³⁶ Additionally, because the footage captured by these cameras would be considered an “education record,” it would need to be made available to parents and guardians.¹³⁷ Although cameras may not resolve all of the concerns surrounding seclusion and restraints, at the very least, cameras hopefully will deter potential mistreatment of students by capturing both student and staff behavior in the classroom.

Another enforcement mechanism is the implementation of meetings between school staff and the parents and guardians of

¹³⁰ PATRICK OBER, WHO IS HELD ACCOUNTABLE? AN ANALYSIS OF STATE RESTRAINT AND SECLUSION LAWS (2018).

¹³¹ See Hui, *supra* note 105.

¹³² *Id.*

¹³³ Truong, *supra* note 47.

¹³⁴ *Will Classroom Cameras Protect Students with Special Needs?*, PBS NEWSHOUR (Apr. 4, 2017, 7:20 PM), <https://www.pbs.org/newshour/show/will-classroom-cameras-protect-students-special-needs>.

¹³⁵ *Id.* Amy M. Steketee, *The Legal Implications of Surveillance Cameras*, 48 DIST. ADMIN. 55, 55–56 (2012).

¹³⁶ Steketee, *supra* note 135, at 56.

¹³⁷ The Family Educational Rights and Privacy Act requires public schools to make education records, which include footage captured on cameras, accessible to parents of students. See *id.*

students following incidents involving seclusion and/or restraints.¹³⁸ Teachers and staff should also be disciplined for failure to follow this protocol. Future federal legislation should mandate schools and school districts to schedule meetings with students' parents and guardians following the use of seclusion and/or restraints and to document such meetings. If parents have not been notified of the use of seclusion and/or restraints on their children but have reason to believe seclusion and/or restraints were used, the parents can request a meeting with school staff. In this way, parents will be kept abreast of any incident posing risks to their children and will have the opportunity to discuss their children's behavior leading up to the use of potentially harmful practices.

In California, for example, following the use of "emergency interventions," school administrators are required to document the incident and schedule a team meeting to discuss the incident.¹³⁹ However, in the event that school administrators fail to notify parents or schedule such meetings, disciplinary measures should be in place. Upon the first failure to adhere to these policies, school staff should receive a warning and for each subsequent failure, school staff should be suspended and their noncompliance should be documented on their employment record. As in the Wake County lawsuit, the teacher accused of mistreating a student with disabilities was allowed to continue teaching even after reports of incidents surfaced.¹⁴⁰ If staff noncompliance is documented and staff are suspended following noncompliance, future incidents resembling the Wake County case hopefully will be avoided.

V. CONCLUSION AND NEXT STEPS

Across America, students with disabilities will continue to be improperly secluded and restrained if more uniform and protective legislation is not enacted.¹⁴¹ Many students with disabilities cannot

¹³⁸ See Daniel Stewart, *How Do the States Regulate Restraint and Seclusion in Public Schools - A Survey of the Strengths and Weaknesses in State Laws*, 34 HAMLINE L. REV. 531, 561 (2011).

¹³⁹ CAL. EDUC. CODE § 56521.1(a), (g), (h) (Deering 2021).

¹⁴⁰ Hui, *supra* note 105.

¹⁴¹ See Hannah Rappleye & Liz Brown, *Thirteen-Year-Old Activist with Autism Wants to Close Seclusion Rooms at Schools*, NBC NEWS (Nov. 23, 2018, 6:00 AM), <https://www.nbcnews.com/news/education/thirteen-year-old-activist-autism-wants-close-seclusion-rooms-schools-n935356>.

advocate for themselves,¹⁴² so legislators must pass legislation that not only limits the use of seclusion and restraints in K-12 public schools, but also implements enforcement mechanisms and alternative practices for staff working with students with disabilities. The piecemeal approach currently taken by states has led to disparate practices and treatment of students with disabilities.¹⁴³ In light of recent efforts by states to pass and implement new laws,¹⁴⁴ all students, and particularly those with disabilities, should look forward to attending school and should not fear potential mistreatment at the hands of their own teachers. Students with disabilities are one of the nation's most vulnerable groups of individuals, and future federal legislation has the potential to protect and defend these individuals. Indeed, federal legislation has the potential to create a learning environment where students with disabilities are valued, respected, and welcomed with open arms—a far cry from the current abuse experienced by students at the hands of educators.

¹⁴² *See id.*

¹⁴³ *Id.*

¹⁴⁴ *See, e.g.*, Assemb. B. 2657, 2018 Assemb., Reg. Sess. § 1(49005) (Cal. 2018); 35 Va. Reg. Regs. 1617 (Feb. 18, 2019); Richards & Cohen, *supra* note 93.