

A Review of U.S. Policy Guidance and Legislation on Restraint and Seclusion in Schools: Considerations for Improvement

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Abstract

Restraint and seclusion (R/S) are practices employed by schools to address severe student behavior. Although the use of R/S has been shown to have harmful impact for students, staff, and schools, there is no federal law that addresses its use in schools. A lack of a universal approach leaves each state to determine its own legislation and policy. The current study seeks to extend previous research efforts on state policy guidance and legislation reviews on the use of R/S by reporting on key similarities and differences across states policy guidance and legislation. Specifically, policy guidance and legislation on the school use of R/S are reviewed from the U.S. states and territories, including Washington, D.C.; Puerto Rico; Guam; and the Virgin Islands. Most states and territories were found to have either legislation or policy guidance on the use of R/S in schools. However, there are many differences across the states, including on its use and reporting for students with disabilities. Findings are also compared with the proposed federal bill Keeping All Students Safe Act. Finally, given the lack of passage of the federal law, highlights and recommendations are provided for state leaders on considerations for improvement as R/S remains a state regulated educational issue.

Keywords

restraint and seclusion, education law and policy, school discipline, students with disabilities

Since the *Hartford Courant* reported on the number of deaths resulting from restraint and seclusion (R/S) in nonschool settings (Weiss et al., 1998), there has been an enhanced concern about the continued use of R/S in schools. In 2009, the U.S. Government Accountability Office (GAO) investigated the use of R/S and reported that over the past two decades, there were “hundreds of cases of alleged abuse and death,” including a 7-year-old who died after being held face down and 5-year-olds who were confined to chairs with bungee cords and duct tape (GAO, 2009, p. 2). In 2022, after a yearlong

investigative report, “When Schools Use Force Investigation,” Hearst newspaper reporters identified records of injury and death for students. Specifically, they found that over the past 30 years, 85 children, teens, and young adults 21 and younger had died in

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public and private schools, juvenile justice centers, residential facilities, and other settings for students with disabilities (Munson et al., 2022). The use of R/S in schools remains a historical and ongoing source of danger for school-age children.

The GAO (2009) report and Hearst investigation (Munson et al., 2022) also highlight a lack of federal law and oversight. Currently, no federal law exists on the use of R/S with students, leaving states to develop policy guidance and pass legislation on a state-by-state basis. For this article we will (a) consider the prevalence and impact of R/S; (b) describe select federal policy guidance and proposed legislation; (c) review prior studies on R/S policy guidance and legislation; (d) analyze U.S. state and territory policy guidance and legislation on the use of R/S in schools; (e) compare our findings with a proposed federal law, the Keeping All Students Safe Act (KASSA; 2023), that seeks to uniformly addresses R/S use in schools at the federal level; and (f) provide recommendations for states to consider in the development of future policy guidance.

R/S in Schools

To understand the prevalence of R/S in schools, we consulted the Civil Rights Data Collection (CRDC) on the use of disciplinary practices, including R/S. Although each state might define R/S differently through its state legislation, the CRDC uses the following federal definitions:

Physical Restraint: Refers to a personal restriction that immobilizes or reduces the ability of a student to move his or her torso, arms, legs, or head freely. The term physical restraint does not include a physical escort. Physical escort means a temporary touching or holding of the hand, wrist, arm, shoulder or back for the purpose of inducing a student who is acting out to walk to a safe location.
(Office for Civil Rights [OCR], 2017–2018, p. 14)

Seclusion: Refers to the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving. It does not include a timeout, which is a behavior management technique that is part of an approved program, involves the monitored separation of the student in a non-locked setting, and is implemented for the purpose of calming.
(OCR, 2017–2018, p. 16)

The CRDC reports that 122,000 students (approximately 0.2% of all students enrolled) were restrained or secluded during the 2017–2018 school year (OCR, 2020). More troubling, students receiving special education services make up 80% of the restrained students and 77% of those secluded (OCR, 2020). These statistics are staggering when considering that students with disabilities comprise only 13% of the entire student population (OCR, 2020).

Impact of R/S

R/S occurrences in school can negatively impact all involved. Specifically, R/S leads to a loss of instructional time for students, which is associated with lower academic achievement (Balfanz, 2016; Chang & Romero, 2008). The use of these practices also can lead to serious, even sometimes fatal, student injuries, such as blunt trauma to the chest or aspiration (Mohr et al., 2003; Munson et al., 2022). Munson et al. (2022) found that for the seven states that reported student injury, students were injured at least 1,062 times during 2019–2020. For the four states that reported staff injury, staff were injured 2,291 times. R/S can lead to overall sustained effects related to experiencing trauma and result in long-term psychological impacts and aggravation of existing mental health issues (Munson et al., 2022; Walker & Pinkelman, 2018; Westling et al., 2010).

Federal Policy Guidance

Recognizing the very real impact of R/S for schools, the U.S. Department of Education (ED) has created policy guidance on the matter. In 2009, ED issued a guidance letter that communicated ED's current thinking on R/S and asked states to change their policies on its use (Duncan, 2009). However, as is true for all such guidance letters, ED did not impose any requirements beyond those already required under existing applicable law and regulations. Subsequently in 2012, ED provided a comprehensive policy guidance document (resource document; ED, 2012) that focused on 15 principles to reduce R/S. The guidance suggested (a) changing policy, (b) employing preventive behavioral strategies, (c) providing training, and (d) using data-based decision-making (ED, 2012). The resource document (ED, 2012) also asserted that R/S should be used only in situations with "imminent danger" to self or others, after positive and proactive approaches to de-escalate these situations, and not as a punishment (ED, 2012). Additionally, this guidance outlined notification practices for schools (e.g., that schools should inform parents of current school policies; ED, 2012).

Following the resource document, ED offered further policy guidance for school districts through a nonbinding Dear Colleague letter (Lhamon, 2016) and an ED fact sheet (ED, 2016) that explained the impact of the use of R/S and promoted the use of preventive behavioral strategies. Both documents suggested that the use of R/S could lead to the discrimination of students with disabilities under federal law (e.g., § 504 of the Rehabilitation Act of 1973) and Title II of the Americans With Disabilities Act of 1990 (Lhamon, 2016). Furthermore, if the use of R/S led to a denial of education, a free appropriate public education (FAPE) may be violated under Section 504 (ED, 2016). The ED (2016) fact sheet recommended that schools (a) consider additional supports and interventions, such as positive behavioral interventions or other behavioral strategies; (b) consider the implementation fidelity of such supports; (c) make sure that changes are made when

needed in a timely manner; and (d) address any potential denial of FAPE (ED, 2016).

In 2020 the GAO reviewed the 2015–2016 R/S data from the CRDC and interviewed stakeholders (GAO, 2020). Its subsequent report highlighted the need to enhance the quality of data reporting and to provide more clarity on definitions (GAO, 2020).

Proposed Federal Law

Year after year, Congress has proposed bills to address the use of R/S at the federal level: Senate Bill 1750—better known as KASSA (2023)—and its companion bill (H.R. 3470). However, these bills have yet to pass into law. KASSA covers preschool (i.e., Head Start) and K–12 programs that receive federal funds (KASSA, 2023, Title 2 § 201). The intent of the bill is to prohibit the use of seclusion, mechanical restraint, chemical restraint, and restraints that restrict breathing (e.g., prone restraints; KASSA, 2023). KASSA also limits the use of physical restraint to (a) when there is "imminent danger or serious injury to the student, program personnel, a school security guard, a law enforcement officer, or another individual"; (b) when "less restrictive interventions would be ineffective"; (c) administration by a certified program personnel, school security guard, or law enforcement officer; (d) ending immediately when the imminent danger is over; (e) not interfering with the student's ability to communicate; and (f) using the "least amount of force" (KASSA, 2023, Title I § 101 *et seq.*).

Additionally, KASSA includes other provisions. For example, KASSA contains extensive definitions for common terms (KASSA, 2023, Section 2). The bill also does not allow physical restraint as a planned intervention for a student with disability (i.e., not including R/S in a behavior support plan or individualized education program [IEP]; KASSA, 2023, Title I § 101[e][3]).

KASSA also provides parental protections. For example, there are notification requirements for parents following the incident, including a written incident report (KASSA, 2023, Title I § 101[e][4][A]). After an

incident, the parents, the student, and school staff must meet as soon as practicable (not later than 5 days; KASSA, 2023; Title I, § 101[e][4][B]). KASSA also allows parents the right to sue programs (KASSA, 2023, Title I § 101[c][1] and [2]).

Prior Reviews of State R/S Policy Guidance and Legislation

Through the years, several reviews of state policy guidance and legislation have been completed, and we will highlight a few of these reviews (i.e., Freeman & Sugai, 2013; Marx & Baker, 2017; Ober, 2020; Ryan et al., 2007, 2009; Stewart, 2011). When Ryan et al., 2007, 2009) examined state policies, legislation, and related guidelines on seclusion and physical restraint, they identified 24 states with guidance on seclusion (Ryan et al., 2007) and 32 states on physical restraint (Ryan et al., 2009). Some states had requirements for staff training (seclusion, 15; restraint, 22) and parent notification (seclusion, 15; restraint, 18). For written documentation after the event for both R/S, 21 states had a requirement (Ryan et al., 2007, 2009). Specific for seclusion, 16 states had restrictions for seclusion rooms, and 15 addressed duration (Ryan et al., 2007). For restraint, 11 states required that its use be stated in an IEP (Ryan et al., 2009). One of the most common findings was limiting restraint to emergency situations or when the student was a threat to themselves or others (Ryan et al., 2007).

In 2013, Freeman and Sugai examined legislation and state policies with an emphasis on determining what, if any, changes were adopted after the ED guidance letter (e.g., Duncan, 2009). They reported that 33 states had legislation and 15 had either policy guidance or guidance on the use of R/S, including eight comprehensive technical assistance documents. Additionally, 21 states established duration limitations, 11 states restricted the use of prone restraint, and 32 states referenced parent notification. Finally, 23 of the 30 policy guidance documents suggested that R/S be used only in case of emergency and not for punishment.

In 2019, Butler updated previous versions of her prior review of laws that addressed the use of R/S in schools across the 50 states and the District of Columbia in *How Safe Is the Schoolhouse? An Analysis of State Seclusion and Restraint Laws and Policies*. Butler reported that 31 states offered protective laws for children against the use of R/S. Noting the difficulty in passing protective laws at state and at federal levels, Butler shared this resource freely with the public and analyzed whether a law was “meaningful” in its level of protection for students with and without disabilities. Butler addressed policy guidance in her analysis but suggested it could be problematic to include policy as it is often nonbinding (Butler, 2019, p. 5).

In 2020, Ober reviewed the accountability of laws on R/S. He reported that 47 states had laws on R/S as of 2019. Ober coded the content of the laws across several areas (e.g., use of restraint, students with disabilities, documentation, notification). He also identified when the laws addressed aspects of enforceability, such as civil or criminal liability, for not following these laws. Ober reported that states focused more on ways to properly restrain or seclude and that terms were not used consistently across states (such as “seclusion” vs. “time-out” vs. “isolation”). He also noted that incident documentation and parental notification were the most common topics addressed in the laws and that over 75% of the laws included reporting of data, staff training, and/or incident debriefing. Ober found that over 50% of the states did not have any provisions for enforceability.

It has been over a decade since the ED (2012) guidance, and although KASSA has been introduced yearly, it has yet to gain traction and become law. Without a federally uniform legal mandate, school leaders need a better understanding of what is occurring across states to identify areas of concern and to consider if additional policy guidance is required. With the possibility of student and staff injury, there is an urgent need for an updated analysis of policy guidance and legislation. We seek to extend previous research efforts by reviewing states’ and territories’ policy guidance and legislation, compare our

findings with the proposed content of KASSA, and suggest areas where state policy guidance is needed. We specifically include policy guidance documents despite their nonbinding nature because they help translate existing law into practice and serve as a resource in school-level implementation. To that end, our research questions are as follows:

1. What is the content of state and territory policy guidance on the use of R/S in schools?
2. What is the content of state and territory legislation on the use of R/S in schools?
3. How does the content of state and territory policy guidance and legislation compare with the proposed provisions of KASSA?
4. In the event that KASSA does not become law, how might this analysis help states identify needed areas of policy guidance?

Method

Search Process

Policy guidance. We began by defining the types of policy guidance documents most often developed by states that are more likely to help schools implement legislative mandates. Specifically, we adapted definitions of types of policy guidance by Freeman & Sugai, 2013, p. 430) to include comprehensive technical assistance resources, technical assistance guidance, state data-reporting recommendations, model policy guidance recommendations, policy guidance memos, and other. We then reviewed each state's department-of-education website for documents that addressed "restraint" and/or "seclusion," omitting any document that did not meet our criteria (e.g., information on how to fill out a form).

Next, we looked through state department-of-education websites by visually reviewing areas more likely to house policy guidance for this area (e.g., special education departments) and by a search using the terms "restraint" and "seclusion." For states with multiple policies, we combined the results from each state into one coding so that we were able to report and

compare policy guidance content across states. We conducted the searches from November 2019 through January 2020.

Legislation. We then moved to state legislation and considered "legislation" as both statute(s) and state regulation(s). We defined a statute as "a mandate (e.g., order) passed by the legislative branch of the state government" and a regulation as "a mandate (e.g., order) passed by an administrative branch of the state government." We searched the Westlaw legal electronic database for the terms "restraint" and "seclusion" for each state and territory. Westlaw is an online database for news and business information and law-related resources and is a primary law source for state statutes and regulations. First, the first author set the parameters of the Westlaw search to yield up to 100 citations. Roughly the equivalent of an abstract search for peer-reviewed articles, the search produced the citations and a brief description for each piece of legislation. The first author completed the search separately for the state statutes and the state regulations to find the legislation that addressed "restraint" and that addressed "seclusion," comprising a maximum of 21,600 citations and descriptions. The text from the relevant statutes and regulations was then put into a document with a compilation of all the states' legislation. This document was 412 pages single-spaced. We conducted this search from June 2, 2020, through August 19, 2020.

Next, we conducted a thorough review of other sources to double-check that the previous search was as complete as possible. Specifically, we reviewed the following sources: (a) policy guidance documents from the prior search that reference specific legislation for that state or territory; (b) the ED document (ED, 2010), which contains laws on S/R (current as of 2011); (c) the National Center Safe and Supportive Learning Environments Compendium of School Discipline (2019), which includes information on each state, focusing on its R/S section (current as of 2019); and (d) the guide *How Safe Is the Schoolhouse? An Analysis of State Seclusion and Restraint Laws and Policies*, which includes relevant laws and

policies (current as of 2019; Butler, 2019). We omitted any legislation that does not address the education of students. As with the procedures utilized during the policy guidance review, for states with multiple statutes or regulations, we combined the results for each state to be able to compare across states.

Coding Categories

We selected categories that were reflective of the content of the policy guidance and legislation. The first author (who has a JD) reviewed several laws to set up categories that addressed topics often seen in state legislation and in the proposed KASSA bill, such as notification, definitions, what needs to be addressed, and so on. We also pulled coding categories from prior legislative reviews. If there was a topic that came up repeatedly that was not part of the initial coding categories, such as the specific requirements for seclusion rooms in the legislation, we added categories, and the first author and a student trained for reliability by the first author reread and recoded for this content. Interrater reliability (IRR) was completed at every step.

IRR

For reliability, the first author trained a PhD student in school psychology on how to read and analyze policy guidance and legislation. The student served as the primary coder for the policy guidance, and the first author assumed the role as the primary coder for the legislation. We calculated IRR on a category-by-category agreement using a process like the stringent, exact count-per-category interobserver agreement used for reliability with single-subject research (Cooper et al., 2020). See Appendices A and B in the online supplemental materials for the coding categories and their definitions.

Using random selection, we calculated IRR for about one-third (37%) of states and territories (policy guidance, 37%; legislation, 31%). For Round 1 of policy guidance coding, the average IRR was calculated as 79% for each category, with a median of 80% (ranging from 40% to 100%), and Round 2 was 86%, with a median of 90% (ranging from 50% to 100%). For legislation for Round 1, the average IRR was 92%,

with a median of 90% (ranging from 60% to 100%), and for Round 2, the average IRR was 92%, with a median of 100% (ranging from 43% to 100%). Between rounds, we refined the definitions to increase the reliability in later rounds.

For any disagreement below 85% across any category, we met in person or virtually to reach coding consensus. We discovered that the areas with the largest disagreement occurred when there was ambiguity between the wording of the coding and the text of the policy guidance and/or legislation. For example, for the category “shared with state/district” (specifically for the incident report), it was difficult to determine whether the incident report was shared, and this impacted the reliability for that category.

Results

Overview of Content

Policy guidance (Research question 1). We identified 32 states and territories with policy guidance on R/S (out of 54 states and territories) for a total of 48 documents. Nineteen states and territories had a single policy guidance document, and 13 had several. The types of policy guidance included comprehensive technical assistance (10; 19%), technical assistance guidance (13; 24%), data-reporting recommendations (2; 4%), model policy guidance recommendations (5; 9%), policy guidance memo (6; 11%), and other (11; 20%). “Other” policy guidance often addressed training material that explicitly described the state legislation and how to implement the legislation in schools.

Legislation (Research question 2). Most states and territories had legislation on R/S (48 out of 54 states and territories), including statutes (36; 67%), regulations (38; 70%), or both (25; 46%). For instance, Indiana had the most of any state, with 21 statutes and 37 regulations. Conversely, Missouri had one statute and Nebraska had a single regulation. The six states and territories that had no legislation were Guam, Idaho, North Dakota, Puerto Rico, South Carolina, and the Virgin Islands. In total, 456 pieces of legislation were

coded, including 222 statutes and 234 regulations. Of note, the state's board of education or state education department was referenced in most statutes in the education code section of statutes for the states and in most of the relevant state regulations.

General Findings (Research Questions 1 and 2)

We reviewed content of the policy guidance and legislation for the following components: (a) types of R/S addressed, (b) definitions of R/S, (c) key details, (d) documentation, (e) incident report components, (f) outcome documentation, (g) use of data, (h) seclusion room restrictions, and (i) miscellaneous. All totals and percentages were reported. Specifically, the percentages were calculated by dividing the total of each state's policy guidance and legislation by 54, the number of states and territories that we examined. We also compared findings with the proposed KASSA bill. See Appendix A in the online supplement for an overall table of findings from the coding.

Types of R/S addressed. We coded the types of R/S addressed in the policy guidance and

legislation (Figure 1). It should be noted that when the coding of "prone restraint" was expanded to include language about restricted breathing and/or being face down on the floor, only 12 states were found to not address prone restraint explicitly or by proxy through policy guidance or legislation.

Additionally, we coded topics related to R/S, such as disciplinary actions wherein students were removed to another setting or when adults were assisting with student movement. For instance, "physical escort" (physically assisting a student in walking to guide to another area) was found to be addressed more in the laws than in the policies (policy guidance, 16 [30%]; legislation, 33 [61%]). Likewise, more laws referenced the use of "time-out" than did policies (policy guidance, 11 [20%]; legislation, 31 [57%]). Interestingly, 21 (39%) states and territories addressed "corporal punishment" in the legislation in the same sections as R/S, such as prohibiting its use or differentiating its use from restraint procedures. Finally, only Illinois addressed the use of sensory rooms in the context of R/S.

Definitions of R/S. Further examinations included whether the policy guidance or legislation explicitly defined R/S. We found that

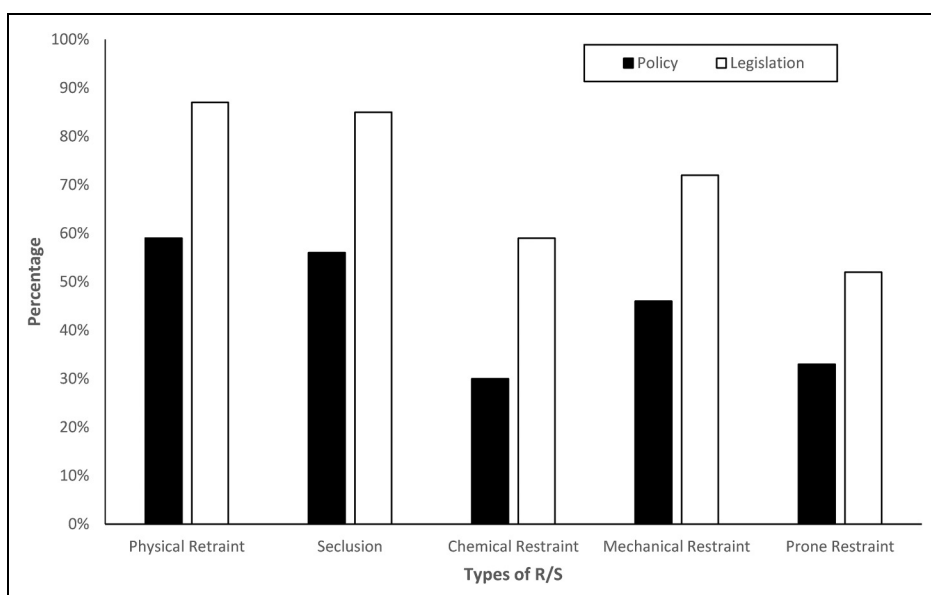


Figure 1. Types of restraint and seclusion contained in the policy and legislation.

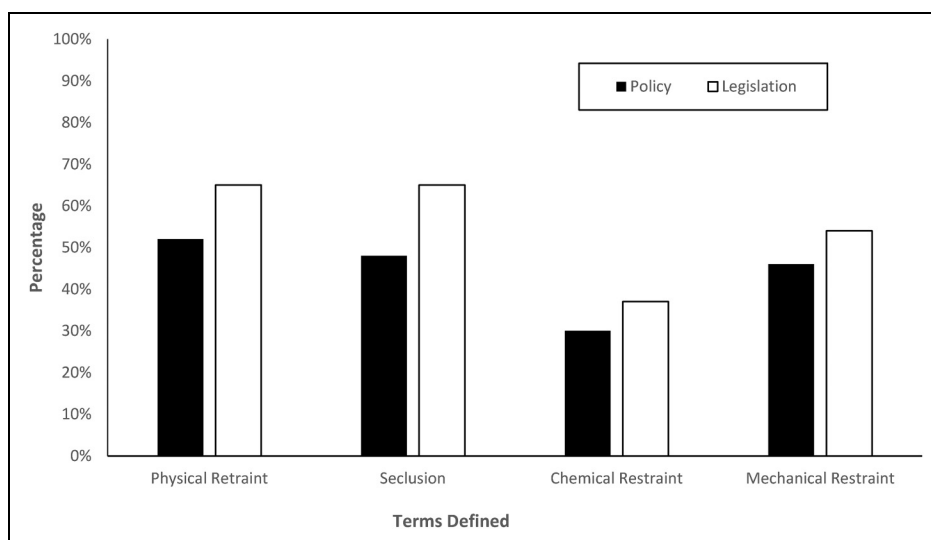


Figure 2. Most commonly defined terms.

policy guidance and legislation often used terms (e.g., “physical restraint”) that were not defined. Figure 2 includes the most defined terms. Only Florida referenced the CRDC definitions in its policy guidance, and no state referenced or used these definitions in their laws. As these definitions are what is used for the CRDC federal data collection, this suggests that states and territories might be defining R/S differently than called for by the federal definition for data collection.

Key details. We looked for key details to see for whom the policy guidance or legislation was intended, any limitations on use or exceptions for bodily needs, and any training requirements. For many states and territories, R/S use was not limited to use on students with disabilities: 28 (52%) of the states and territories had policies and 37 (69%) legislation that included the use for R/S for *all* students in school. Very few states limited the maximum frequency of application of restraint (policy guidance, 1 [2%]; legislation, 4 [7%]). Many of the states and territories had language addressing staff training guidance (policy guidance, 30 [56%]; legislation, 42 [78%]). In a related review, we coded the policy guidance and legislation on alternatives to R/S, such as de-escalation and positive behavior

intervention and support (PBIS; Kern et al., 2021), but this was outside the scope of the review for this study. Figure 3 includes the most common components.

Documentation. We discovered that there were often two levels of documentation for R/S: within schools (i.e., incident reports) and overall disciplinary outcomes (i.e., outcomes reported to the state). Next is a description of the incident report requirements and then outcomes.

Incident report components. We coded school-level documentation for R/S and found more states and territories required documentation on the use of restraint (policy guidance, 31 [57%]; legislation, 37 [67%]) compared with seclusion (policy guidance, 29 [54%]; legislation, 32 [59%]). Figure 4 includes the incident report components.

Outcome documentation. The states and territories often focused on a few outcomes. Figure 5 details the required reported outcomes. Of note, only Kansas’s policy guidance suggested the reporting of a proportion or ratio of students restrained or secluded, but it was not in its legislation. Although we coded “other” outcomes, few were reported. For instance,

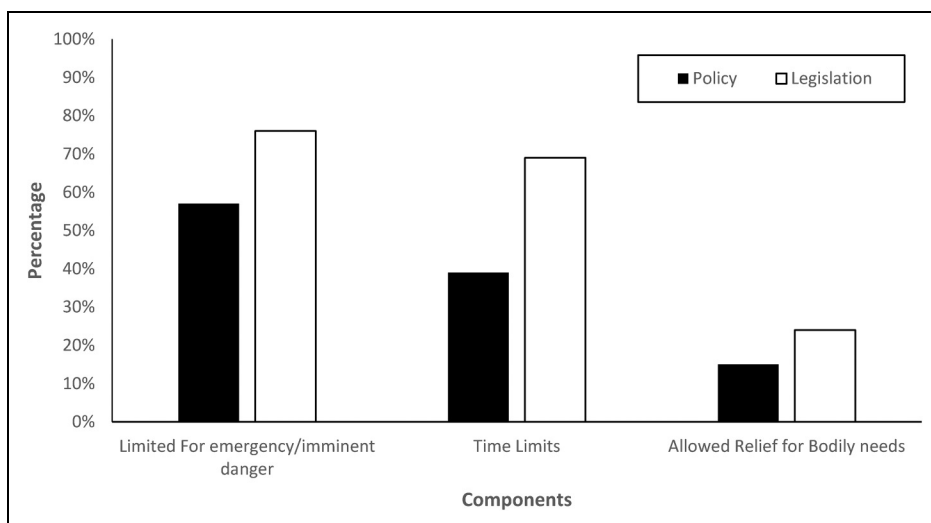


Figure 3. Most common components.

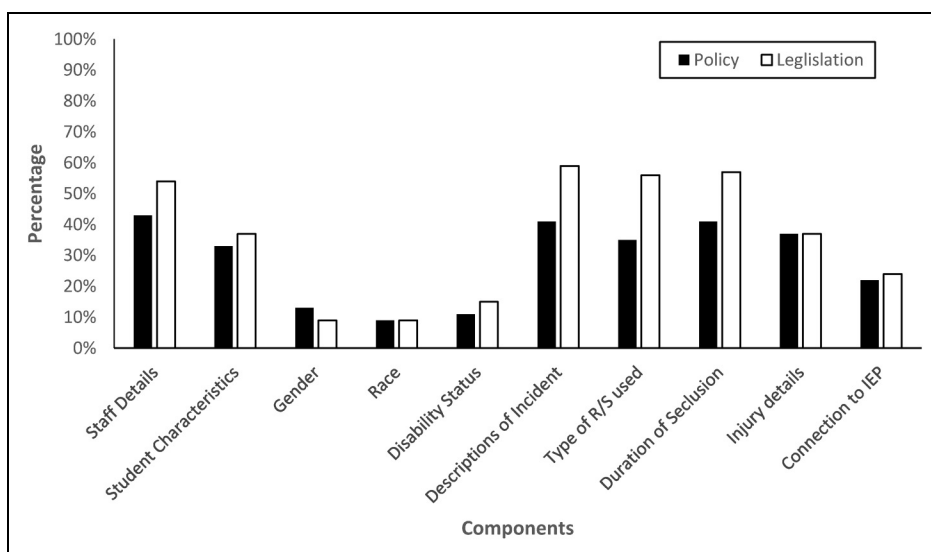


Figure 4. Incident report components.

Kentucky required the aggregate number of incidents involving school resource officers for R/S.

When it came to reporting student characteristics, states and territories lacked many requirements. For example, fewer states and territories were required to identify the total incidents for students with disabilities compared with incidents involving all students for restraint (policy guidance, 14 [26%]; legislation, 16 [30%]) and seclusion (policy

guidance, 12 [22%]; legislation, 13 [24%]). This same pattern held true for race, with few states and territories requiring reporting of total incidents for all students by race for restraint (policy guidance, 8 [15%]; legislation, 8 [15%]) and seclusion (policy guidance, 7 [13%]; legislation, 6 [11%]). Interestingly, policy guidance documents often suggested more details needed to be reported than those required by legislation.

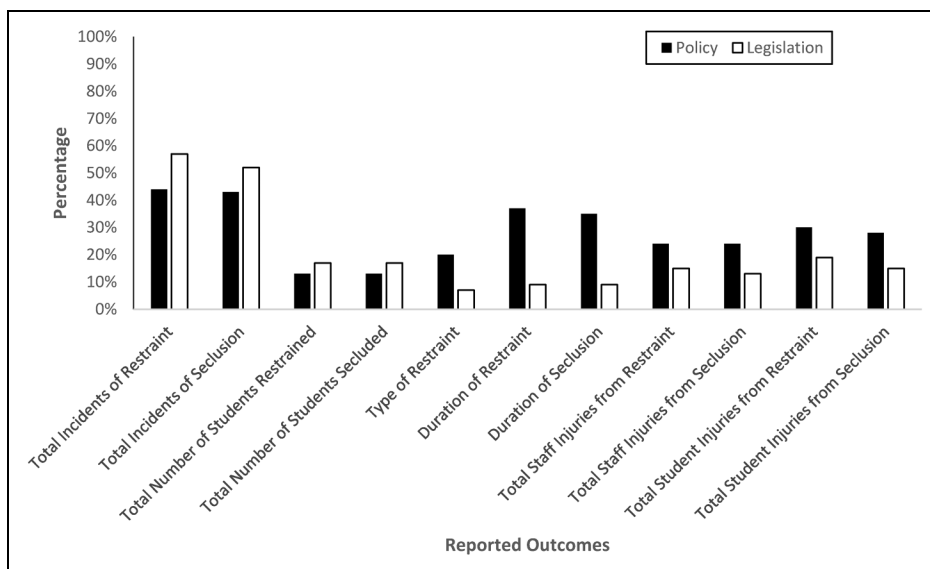


Figure 5. Required reported outcomes.

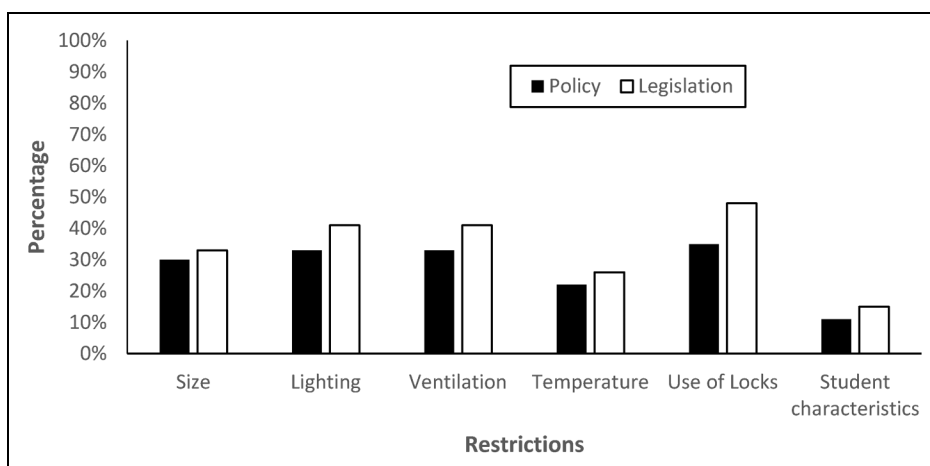


Figure 6. Restrictions on seclusion rooms.

Use of data. As data-based decision-making was part of the federal policy guidance, we coded for the use of data or where data were used, such as sharing incident reports with parents (policy guidance, 30 [56%]; legislation, 44 [81%]) or sending data to the state (policy guidance, 20 [37%]; legislation, 20 [37%]). Interestingly, we found that some states required team debriefing after an incident (policy guidance, 20 [37%]; legislation, 25 [46%]), and the debriefing might include

the student (policy guidance, 10 [19%]; legislation, 9 [17%]). Furthermore, we discovered that very few states and territories promoted the use of a database that might assist with data collection (policy guidance, 4 [7%]; legislation, 1 [2%]).

Seclusion room restrictions. For this category, we looked for explicit restrictions for seclusion rooms. For a few states, this included legislation in other sections that was not tied

directly to education. For example, Florida's law was in the fire marshal section of legislation. Overall, fewer than half of the seclusion rooms explicitly required adult supervision (policy guidance, 22 [41%]; legislation, 23 [43%]). Similarly, only just over half of the states and territories (29 [54%]) had legislation that included limitations or specifications for seclusion rooms, including restrictions based on student characteristics (e.g., age, size, medical conditions). Figure 6 includes details of the seclusion room restrictions.

Miscellaneous legislative requirements. There were a few other areas worth noting in our statutory review. Fifteen (27%) of the states included requirements that addressed school resource officer involvement with R/S. Several states and territories (18 [33%]) contained protections for employees if they used "reasonable force." Finally, a little fewer than half the states (26 [48%]) required that policies must be shared with parents (not just incident reports), with 13 (24%) requiring an annual notice on the policies on the use of R/S with parents.

Comparison With KASSA (Research Question 3)

We also looked at how the legislation compared with KASSA, should KASSA be enacted. Unlike many of the state laws, KASSA includes specific definitions for many of the crisis procedures (KASSA, 2023, Section 2). This allows the states and schools to know what the law covers. KASSA also is more specific in the requirements on the use of physical restraint (i.e., KASSA, 2023, Title I § 101[e][1]). Whereas many states restrict use to imminent danger, KASSA contains additional restrictions, such as prohibiting other forms of restraint. KASSA also totally restricts the use of seclusion. Most states still allow the use of seclusion, and KASSA would constitute a major change to policy guidance and practice at the state level.

Like some of the state laws, KASSA addresses the presence of different personnel who might be involved, including school

resource officers. However, KASSA specifically defines and differentiates school security guards from law enforcement officers (e.g., KASSA, 2023, Title I § 101[e][1][A]). KASSA also includes more details for activities and trainings for the school security guards compared with state legislation, including training for compliance with the Individuals With Disabilities Education Act (KASSA, 2023, Title II § 203[f][5]) and working with students with restorative justice or conflict resolution training (KASSA, 2023, Section 2[11][C] and [D]). KASSA clarifies that arrests by law enforcement officers are distinct from restraint, an area that might be concerning when the procedure overlaps with the use of restraint (KASSA, 2023, Title III § 304). Most states are silent on this issue or on the involvement of school resource officers.

Many of the state laws did not address lawsuits. If KASSA passes, parents will be able to sue the programs (KASSA, 2023, Title I § 101[c][1] and [2]). Although we identified some limitations in the state laws for use of reasonable force by staff, this is not explicitly identified as a limitation in KASSA. However, because staff cannot be sued under KASSA (KASSA, 2023, Title I § 101[c][2]), it would be a moot point to include this limitation. Allowing parents to sue may open the door for more civil litigation of programs that use R/S and would address concerns raised by legal scholars on the lack of enforceability of current state and federal legislation on the use of R/S (Cho, 2021; Decker & Ober, 2017; Kirkman, 2022; Mulay, 2012; Ober, 2020; Stewart, 2011).

Although not the main topic of this article, we note that KASSA identifies types of training and technical assistance allowed by the grant, including certified training on the use of schoolwide PBIS, restorative practices, and de-escalation, among other types of training. Several of these would be able to be supported by grants available under KASSA (KASSA, 2023, Title II § 203[g]).

At the state reporting level, KASSA is broader and addresses several other areas compared with states, such as the repeated use of R/S with the same student (KASSA,

2023, Title II § 202[b][2][A][iii]). KASSA also asks for outcome data to be disaggregated with specificity, including demographic information, such as racial and ethnic groups, English proficiency status, and students with IEPs (KASSA, 2023, Title II § 202[b][2][B]). This is more specific than many the state requirements.

On another note, KASSA covers the pre-school years, especially by including Head Start programs, and this is not the case with the states. Although there has been policy guidance on the use of R/S with preschoolers nationally (Dunlap et al., 2011), KASSA is addressing this use more proactively than the states.

Discussion

This review of the policy guidance and legislation on the use of R/S in schools revealed seven interesting changes from prior reviews: (a) The vast majority of states now have legislation on the use of R/S, and over half of the states and territories have policy guidance. Compared with many of the previous reviews, this is an increase. Schools have more legal mandates and guidance from the state on what to do to address R/S in schools. (b) There were increased requirements to notify parents, including written notification, consistent with Ober (2020). (c) More states had legislative restriction for seclusion rooms. (d) Although there is some debate on the inclusion or exclusion of R/S in IEPs, more emphasis was placed on the use of R/S in the presence of imminent danger and/or threats to self or others than including it in an IEP to address behavior. This aligns with the findings of the ED resource document (ED, 2012) suggesting that R/S was to be used in emergency situations for imminent danger. (e) There are differences on the use of prone restraint, specifically that state legislation and/or policy guidance addressed the use of “prone” restraint while not defining or using the term explicitly. (f) There was a greater emphasis compared with Ryan et al., (2007, 2009) on staff training, with more training required by law and more guidance given

to states on what that training should include. (g) There was no legal remedy for parents under most legislation compared with what is offered explicitly in KASSA. As a result, this might result in an increase in lawsuits, consistent with Ober’s (2020) finding on the lack of provisions of enforceability within the laws. Overall, compared with the findings of prior reviews, states have expanded their legislative and policy guidance of the use of R/S.

Different from prior reviews, this study inspected policy guidance and legislation separately to identify when schools must follow legal mandates (e.g., legislation) compared with nonbinding guidance (e.g., policy guidance). This inclusion is important because legislation often contains requirements that states must follow but not what to do. Related policy guidance will ideally share this information with schools in an accessible manner that offers ways to carry out the intent of the legislation while also implementing with fidelity. In some areas, there was inconsistency across policies and legislation. For some states, there might not be any accompanying policy guidance in a state that has legislation. For example, the legislation might have specific components for incident reports with no policy guidance from the state. At other times, the policy guidance might include more guidance than the legislation required, such as on the reporting of disciplinary outcomes. Further, some of the legislation included more requirements than was referred to in policy guidance, such as requiring that R/S be used for imminent danger (policy guidance, 32 [59%]; legislation, 41 [76%]). Importantly, when there is misalignment of policy guidance with legislation, it can be problematic as schools are required to follow the law.

Highlights and Related Recommendations That Address Research Question 4

This review revealed that states have expanded both their legislative and policy guidance on the use of R/S, yet both are not

without limitations. Minimally, legislation and policy guidance do not always occur succinctly or in conjunction with each other, thus leaving schools and students vulnerable to dangerous practices and lawsuits. Without the passing of KASSA, the use of R/S remains a state educational issue. To assist in developing effective and efficient support for schools, we highlight four areas (defining, using data, preventing, and scope) and provide recommendations that are essential for state policy guidance.

Defining.

The GAO (2020) report suggested more consistency was needed in definitions.

This aligned with our findings as we found that states often defined R/S differently. Some states had more clarity on the types of R/S and included specific statutory definitions, whereas other states were silent. Only Florida referenced the CRDC definition directly but only in its policy guidance, not in legislation. The lack of clarity in definitions, aligned with the concerns raised by the GAO report, supports the need for a uniform approach such as contained in KASSA.

To address this need, states can create policy guidance on how to define R/S. This might include a review considering (a) if there are definitions in their legislation, (b) how such definitions might align with the CRDC definition and reporting requirements at the state and federal level, (c) the impact of the definitions or lack thereof on reporting and data requirements for the state, and (d) whether definitions might be needed through the passage of additional regulations.

Using data. The emphasis for both the GAO (2020) report and the CRDC on using the data to make decisions is something that might benefit policy guidance for states.

Although reporting outcome data and parent notification were found to be more prevalent than in past reviews, states, districts, and schools would

benefit from more guidance on the type of data that is needed by each level and how to collect it.

For instance, states or districts can provide policy guidance for schools on how and when to notify parents, what to include in the notification, and what type of information to collect. Also, several state statutes are explicit in their data-reporting requirements, and state policy guidance can share such details with school leaders to ensure compliance with these mandates. For example, several states have specific requirements for what needs to be included in incident reports, and states can help by providing example forms that align with state reporting mandates.

Digging deeper into data-based decision-making, findings revealed that different types of data were collected and reviewed at different levels, but there was inconsistency on what to do with the data.

For example, even with specific requirements for incident reports, this information was not necessarily reaching the state level and not always shared with parents or the student at the school level through debriefing after an event. More state guidance is needed on what to do with the data to ensure that data-based decisions can happen to plan adequately and accurately so as to prevent events that have previously resulted in the use of R/S.

Preventing. As for what to do preventively, even when training is legislatively mandated, it is important to consider whether the training's purpose is to introduce alternatives to the use of R/S or on how to properly use R/S. Although safety is always a concern, and there is a place for training so that students and staff do not retain injuries, there is equal importance to addressing alternatives to prevent the use of R/S. In a review by Kern et al. (2021) using the same data source as used for this coding, the authors noted that training was mandated by legislation and

supported by policy guidance documents on several preventive measures, such as the use of PBIS, de-escalation, and functional behavior assessments (FBAs). This aligned with Freeman and Sugai (2013), who found that schoolwide positive behavior support (e.g., PBIS) was reported to prevent R/S and matched provisions found in KASSA that directly refer to preventive training (e.g., PBIS). However, Kern et al. (2021) also reported that more states included legislation and policy guidance on how to restrain rather than how to prevent the use of restraint (e.g., use of FBAs and altering the environment to reduce the likelihood of behavioral occurrences). It might be helpful for state policy leaders to look at their guidance on R/S training to ensure it complies with legislative mandates but also addresses prevention, not just how to restrain.

Scope. Most of the legislation was applicable to all students. In other words, states recognize that R/S could be used for any student and provided legislation and regulations for all students. Only a handful of states limited R/S to students with disabilities, and only a few connected the use of R/S to an IEP for students with disabilities. On one hand, it is important to consider the protection of all students, but on the other, this fails to recognize that students with disabilities are disproportionately subject to the use of R/S (OCR, 2020). Unlike some of the states, KASSA is clear on collecting data disaggregated for students with disabilities and other demographic characteristics.

Without such language from KASSA, states need to offer more guidance on how the use of R/S impacts students with disabilities in their state and schools.

Likewise, when there were requirements for outcomes reported to the state, few states asked for information on who was being restrained, including students with disabilities; race; and/or gender. As reported by the CRDC data collection, students with disabilities, Black or African American students, and male students have experienced R/S more

frequently than the general population (OCR, 2018). It begs the question of how to address such disproportionate outcomes if the data were not disaggregated at the point of collection. Again, in the absence of federal legislation, states should provide policy guidance on ways to adequately measure to detect disproportionate outcomes for early intervention.

Limitations

Several limitations should be considered for the current study. Although significant care was extended to address coder reliability, coding inaccuracies are possible as two authors completed the searching of key terms and coding. Despite IRR and coding for consensus, there was a chance that policy guidance or legislation was missed or coded inaccurately. Additionally, the law is not stagnant. This search was current as of the summer of 2020, and several sources were reviewed to collect as much material as possible up until that time. There will always be changes in policy guidance and/or legislation that impact the implications of an analysis. For example, Kirkman (2022) indicates legislation was passed in North Dakota on the use of R/S, and in 2021, Florida prohibited the use of seclusion statewide. To compare between states, we collapsed all policy guidance types and legislation (statutes and regulations) into one combined category that coded for both policy guidance and legislation. We also treated the statutes and regulations as of equal importance. This was not the ideal way to analyze the weight of the types of law, but for the purposes of reviewing content across states, we made this decision that was also aligned with past studies. Future studies should consider the different types of policy guidance and legislation and the role of their importance relative to each other.

Of further note, there are reviews from the field of law that highlight the inability for parents to hold schools accountable for the use of R/S, including the lack of success of lawsuits that are brought under various areas of law (e.g., Cho, 2021; Decker & Ober, 2017; Kirkman, 2022; Mulay, 2012; Ober,

2020; Stewart, 2011). Although enforceability and accountability are of the utmost importance for legislation to prove effective, this topic extends beyond the scope of this article. Therefore, it is suggested that the referenced articles be reviewed for additional issues on enforcing the legislative requirements. Finally, although this study compared the characteristics across all states, we did not look explicitly at state differences. This approach was consistent with other reviews, but analyzing state differences more explicitly might be of interest in future analyses.

The use of R/S has immediate and long-lasting impact on students, schools, and staff. Although there are more state policies and legislation than in the past, this area still needs increased state policy guidance to minimize the use of R/S and, when it is used, to accurately report its use (e.g., for students with disabilities). Barring the passage of a federal law that addresses R/S uniformly, states will continue to control the use of R/S in schools. Until that changes, it is imperative that states provide more policy guidance for schools on how to address these legislative mandates.

References

- Americans With Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 328 (1990).
- Balfanz, R. (2016). Missing school matters. *Phi Delta Kappan*, 98(2), 8–13. <https://doi.org/10.1177/003172171667189>
- Butler, J. (2019). *How safe is the schoolhouse? An analysis of state seclusion and restraint laws and policies*. Autism National Committee. <https://www.autcom.org/pdf/HowSafeSchoolhouse.pdf>
- Chang, H. N., & Romero, M. (2008). *Present, engaged, and accounted for: The critical importance of addressing chronic absence in the early grades*. National Center for Children in Poverty. <https://doi.org/10.7916/D84B392G>
- Cho, V. (2021). Restraint and seclusion in schools and the IDEA struggle. *Connecticut Public Interest Law Journal*, 20, 289–314.
- Cooper, J. O., Heron, T. E., & Heward, W. L. (2020). *Applied behavior analysis* (3rd ed.). Pearson.
- Decker, J. R., & Ober, P. (2017). The inadequacy of restraint and seclusion regulation: A façade of legal recourse. *West's Education Law Reporter*, 338, 1–24.
- Duncan, A. (2009, July 31). *Letter from Education Secretary Arne Duncan to the Council of Chief State School Officers (CCSSO)*.
- Dunlap, G., Ostry, C., & Fox, L. (2011). *Preventing the use of restraint and seclusion with young children: The role of effective positive practices*. https://challengingbehavior.cbcs.usf.edu/docs/IssueBrief_preventing-restraint-seclusion.pdf
- Freeman, J., & Sugai, G. (2013). Recent changes in state policies and legislation regarding restraint or seclusion. *Exceptional Children*, 79(4), 427–438. <https://doi.org/10.1177/001440291307900403>
- Individuals With Disabilities Education Act, 20 U.S.C. § 1400 (2004).
- Keeping All Students Safe Act. S. 1750, 118th Congress, 1st session (2023). <https://www.congress.gov/bill/118th-congress/senate-bill/1750/text?s=2&r=1&q=%7B%22search%22%3A%5B%22Keeping+all+students+safe+act%22%5D%7D>
- Kern, L., George, H. P., Hodnett, J. M., Evanovich, L. L., & Freeman, J. (2021). *Restraint and seclusion alternatives in all U.S. states and territories: A review of legislation and policies*. Center on PBIS, University of Oregon. <https://www.pbis.org/resource/restraint-and-seclusion-alternatives-in-all-us-states-and-territories-a-review-of-legislation-and-policies>
- Kirkman, S. D. (2022). Abuse at the hands of educators: Analyzing the use of seclusion and restraint in K-12 public schools across America. *Wake Forest Journal of Law and Policy*, 12, 149–168.
- Lhamon, C. E. (2016). *Dear Colleague letter: Restraint and seclusion of students with disabilities*. <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201612-504-restraint-seclusion-ps.pdf>
- Marx, T. A., & Baker, J. N. (2017). Analysis of restraint and seclusion legislation and policy guidance across states: Adherence to recommended principles. *Journal of Disability Policy Guidance Studies*, 28(1), 23–31. <https://doi.org/10.1177/1044207317702069>
- Mohr, W. K., Petti, T. A., & Mohr, B. D. (2003). Adverse effects associated with physical restraint. *Canadian Journal of Psychiatry*, 48(5), 330–337. <https://doi.org/10.1177/070674370304800509>
- Mulay, D. A. (2012). Keeping all students safe: The need for federal standards to protect children

- from abusive restraint and seclusion in schools. *Stetson Law Review*, 42, 325–371.
- Munson, E., Rocheleau, M., Putterman, A., Seline, L., & Kanik, A. (2022, October 31). Why not in schools? *Greenwich Time*. <https://www.pressreader.com/usa/greenwich-time/20221031/281487870292706>
- National Center Safe and Supportive Learning Environments. (2019). *Compendium of school discipline laws and regulations for the 50 states, District of Columbia, and the U. S. territories*. <https://safesupportivelearning.ed.gov/sites/default/files/discipline-compendium/School%20Discipline%20Laws%20and%20Regulations%20Compendium.pdf>
- Ober, P. (2020). *Accountability matters: A qualitative content analysis of state restraint and seclusion laws* [Doctoral dissertation, Indiana University]. ProQuest. <https://www.proquest.com/openview/6ced09c6524e9f83222efeb627491e33/1.pdf?pq-origsite=gscholar&cbl=18750&diss=y>
- Office for Civil Rights. (2017–2018). *Master list of CRDC definitions*. U.S. Department of Education. <https://ocrdata.ed.gov/resources/datadefinitions>
- Office for Civil Rights. (2018). *2015-2016 Civil Rights Data Collection: School climate and safety*. U.S. Department of Education. <https://www2.ed.gov/about/offices/list/ocr/docs/school-climate-and-safety.pdf>
- Office for Civil Rights. (2020). *The use of restraint and seclusion on children with disabilities in K-12 schools*. U.S. Department of Education. <https://www2.ed.gov/about/offices/list/ocr/docs/restraint-and-seclusion.pdf>
- Ryan, J. B., Peterson, R., & Rozalski, M. (2007). State policies concerning the use of seclusion timeout in schools. *Education and Treatment of Children*, 30(4), 215–239. <https://doi.org/10.1353/etc.2007.0032>
- Ryan, J. B., Robbins, K., Peterson, R., & Rozalski, M. (2009). Review of state policies concerning the use of physical restraint in schools. *Education and Treatment of Children*, 32(3), 487–504. <https://doi.org/10.1353/etc.0.0062>
- Section 504 of the Rehabilitation Act of 1973, 34 C.F.R. Part 104 (1973).
- Stewart, D. (2011). How do the states regulate restraint and seclusion in public schools? A survey of the strengths and weaknesses in state laws. *Hamline Law Review*, 34, 531–576.
- U. S. Department of Education. (2010). *Summary of seclusion and restraint statutes, regulations, policies and guidance, by state and territory: Information as reported to the regional comprehensive centers and gathered from other sources*. <https://www2.ed.gov/policy/guidance/seclusion/seclusion-state-summary.html>
- U. S. Department of Education. (2012). *Restraint and seclusion: Resource document*. <https://www2.ed.gov/policy/guidance/seclusion/restraints-and-seclusion-resources.pdf>
- U. S. Department of Education. (2016). *Fact sheet: Restraint and seclusion of students with disabilities*. <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-201612-504-restraint-seclusion-ps.pdf>
- U. S. Government Accountability Office. (2009). *Selected cases of death and abuse at public and private schools and treatment centers*. <https://www.gao.gov/assets/gao-09-719t.pdf>
- U. S. Government Accountability Office. (2020). *K-12 education: Education needs to address significant quality issues with its restraint and seclusion data*. <https://www.gao.gov/assets/gao-20-345.pdf>
- Walker, V. L., & Pinkelman, S. E. (2018). Minimizing restraint and seclusion in schools: A response to Beaudoin and Moore. *Intellectual and Developmental Disabilities*, 56(3), 165–170. <https://doi.org/10.1352/1934-9556-56.3.165>
- Weiss, E. M., Altimari, D., Blint, D. F., & Megan, K. (1998, October 11–15). Deadly restraint: A *Hartford Courant* investigative report. *Hartford Courant*. <http://www.charlydmiller.com/LIB05/1998hartfordinvestigation.html>
- Westling, D. L., Trader, B. R., Smith, C. A., & Marshall, D. S. (2010). Use of restraints, seclusion, and aversive procedures on students with disabilities. *Research & Practice for Persons With Severe Disabilities*, 35(3), 116–127. <https://doi.org/10.2511/rpsd.35.3-4.116>

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