

COMMENTS

Restraints, Seclusion, and the Disabled Student: The Blurred Lines Between Safety and Physical Punishment

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INTRODUCTION	860
I. RESTRAINTS, SECLUSION, CORPORAL PUNISHMENT, AND THE FAILURE OF THE EDUCATION SYSTEM.....	864
A. <i>Disabled Children and the Individuals with Disabilities Education Act</i>	865
B. <i>History and Use of Restraints, Seclusion, and Corporal Punishment in Schools</i>	867
C. <i>Current Laws and Practices</i>	870
1. DEPARTMENT OF EDUCATION GUIDELINES	870
2. LAWS AND PRACTICE: UNITED STATES AND INTERNATIONAL	872
II. CHILDREN WITH DISABILITIES DISPROPORTIONALLY RESTRAINED AND SECLUDED	874
A. <i>The Disproportionate Use of Restraints and Seclusion</i>	874
B. <i>The Lasting Effects: Anxiety, Fear, Depression, and PTSD</i>	876
C. <i>School-to-Prison Pipeline Mentality</i>	878
III. CURRENT CASES AND EXAMPLES.....	881

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IV. CHANGING TACTICS.....	884
A. <i>Federal Regulations</i>	884
B. <i>Children’s Rights Convention</i>	887
C. <i>Convention on the Rights of Persons with Disabilities</i>	890
D. <i>Positive Behavior Intervention and Support</i>	893
V. CONCLUSION.....	894

INTRODUCTION

[R]estraint and seclusion are being used to punish and to force compliance. Again and again, we see staff and teachers—who are surely under great pressure themselves, and drastically under-resourced—resort to fear, pain, and isolation to teach disabled students that if they act as themselves, in non-typical ways, they will suffer for it. People strapped to beds for throwing food, thrown into a closet with the lights off for not following orders, given electric shocks. That’s the abuse. That’s the practice we need to stop. That’s the cult of compliance.¹

Carson, a 10-year-old boy with autism, had to have surgery on his hand after his teachers crushed it while trying to slam the door to the school’s cinder block walled seclusion room.² A 13-year-old with attention deficit hyperactivity disorder (ADHD) hung himself after school officials gave him a rope to keep his pants up before

¹ David M. Perry, *Restraint for Safety vs Restraint for Punishment (And Freddie DeBoer)*, HOW DID WE GET INTO THIS MESS? (Dec. 24, 2015), <http://www.thismess.net/2015/12/restraint-for-safety-vs-restraint-for.html>.

² Heather Vogell, *Violent and Legal: The Shocking Ways School Kids are Being Pinned Down, Isolated Against Their Will*, PROPUBLICA (Jun. 19, 2014), <https://www.propublica.org/article/schools-restraints-seclusions#>. The room agitated Carson to the point that he would burst into a panic at the “mere suggestion of being confined there after an outburst.” He had to be muscled down the hallway while teachers attempted to lock him in. *Id.*

shutting him into a seclusion room alone.³ An 8-year-old with ADHD was restrained to a chair with masking tape and had his mouth taped shut because he would not remain seated.⁴ A 14-year-old suffocated when his teachers pinned him to the floor facedown for twenty minutes.⁵ A boy, under the age of 6 with a condition similar to Down syndrome, was tied to a cot with sheets while wearing a five-pound lead physical therapy vest in order to prevent him from wandering.⁶ The knots were tied so tightly that it took five minutes or more to unravel; the teacher also hit him with rulers, flyswatters, and her own hands.⁷ Finally, teachers restrained a 4-year-old with cerebral palsy and autism to a chair with multiple leather straps that resembled a “miniature electric chair” for being “uncooperative.”⁸

These unfortunate incidents are not few and far between for students with disabilities in school settings and illustrate the unsafe and potentially fatal use of restraints and seclusion against this vulnerable population.⁹ Across the United States, students with disabilities are sent to school by parents who expect that their child will be safe and receive an inclusive education.¹⁰ Instead, in some schools, stu-

³ 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 5 (2009) [hereinafter GAO REPORT].

⁴ *Id.* at 12.

⁵ *Id.* at 10. The boy was placed in a “prone restraint in which the boy ended up face down on the floor with the [195 pound] counselor’s left knee on the left side of his body and the counselor’s right leg across his back.” *Id.* at 13. Another child reported hearing the boy yell, “Stop it, I can’t breathe.” *Id.* at 14. The autopsy determined the cause of death was a brain injury sustained as a result of lack of oxygen due to the compression of the student’s chest. *Id.*

⁶ *Id.* at 12, 23.

⁷ *Id.*

⁸ *Id.* at 11. “According to the mother, the chair resembled an electric chair and was high backed with multiple leather straps across the arms, chest, lap, and legs. The mother told the school to never use the chair again.” *Id.* at 22.

⁹ See HUMAN RIGHTS WATCH & ACLU, IMPAIRING EDUCATION: CORPORAL PUNISHMENT OF STUDENTS WITH DISABILITIES IN US PUBLIC SCHOOLS 2 (2009) [hereinafter HUMAN RIGHTS WATCH] (For example, “[s]tudents with disabilities make up 19 percent of those who receive corporal punishment, yet just 14 percent of the nationwide student population.”).

¹⁰ See *id.*

dents with disabilities are subjected to “violent discipline at disproportionately high rates.”¹¹ Many of these incidents occur because of a failure to accommodate or a misunderstanding with the student.¹² These misunderstandings have led to students with disabilities being disproportionately restrained or secluded.¹³ For instance, in 2009 the Government Accountability Office (GAO) found that at least twenty children nationwide, of the hundreds of cases reported and not investigated,¹⁴ have reportedly died while being restrained or isolated over the course of two decades.¹⁵ Moreover, nationally, “students with disabilities make up 12 percent of the student population, but are 75 percent of the students who are physically restrained by adults in their schools[.]”¹⁶

In almost all institutions that receive federal funding for children, including Medicaid, federal rules restrict the practice of “physically restraining children or isolating them in rooms against their will.”¹⁷ This includes psychiatric centers, nursing homes, and hospitals.¹⁸ However, in public schools, isolating and restraining students is legal under federal law and “data suggests some schools

¹¹ *See id.* “Students with disabilities—who are entitled to appropriate, inclusive educational programs that give them the opportunity to thrive—are subjected to violent discipline at disproportionately high rates.” *Id.*

¹² *See* Weissbrodt, et al., *Applying International Human Rights Standards to the Restraint and Seclusion of Students with Disabilities*, 30 *LAW & INEQ.* 287, 288 (2012).

¹³ *See id.*

¹⁴ *See* Vogell, *supra* note 2 (explaining that “underreporting” of the use of restraints and seclusion “is rampant”).

¹⁵ GAO REPORT, *supra* note 3, at 7–8. *See also* Vogell, *supra* note 2.

¹⁶ *Federal Lawsuit Targets Shackling of Children with Disabilities in the Classroom*, ACLU (Aug. 3, 2015), <https://www.aclu.org/news/federal-lawsuit-targets-shackling-children-disabilities-classroom>.

¹⁷ Vogell, *supra* note 2. *See* NATIONAL DISABILITY RIGHTS NETWORK, SCHOOL IS NOT SUPPOSED TO HURT: INVESTIGATIVE REPORT ON ABUSIVE RESTRAINT AND SECLUSION IN SCHOOLS 12 (2009) [hereinafter NATIONAL DISABILITY RIGHTS NETWORK] (“[T]he Children’s Health Act of 2000 protects children from abusive restraint and seclusion practices in facilities receiving Medicaid and other federal funding, such as hospitals, residential treatment centers and residential group homes, it does not explicitly protect children from such practices.”).

¹⁸ Vogell, *supra* note 2; *see* NATIONAL DISABILITY RIGHTS NETWORK, *supra* note 17, at 12.

still routinely rely on them to control children.”¹⁹ Furthermore, state laws differ extensively and the lack of consistent guidelines allows for the possibility of abuse.²⁰

Corporal punishment and the use of seclusion and restraints in schools are distinct from one another; but, researchers have found that the line between these practices is often crossed.²¹ In school settings, the practice of restraining and secluding children with disabilities for student safety has crossed-over into a form of corporal punishment that infringes upon the students’ ability to receive an inclusive education.²² The use of restraints and seclusion in schools is being used for purposes beyond guaranteeing safety,²³ and instead, is being used to “punish and to force compliance.”²⁴

Further, there has been a trend toward teacher victimization, wherein teachers choose to restrain students because of “threats of injury or physical attacks from students.”²⁵ During the 2011–2012 school year, depending on the state, the percentage of public school teachers that reported being physically threatened ranged from 5% to 18%.²⁶ In terms of actually being physically attacked, the range was from 3% to 11%.²⁷ When a teacher is truly facing an imminent threat of violence, it may be necessary to employ physical restraints in order to protect the teacher and other students.²⁸ There are also

¹⁹ Vogell, *supra* note 2 (For example, “[f]ederal data shows schools recorded 163,000 instances in which students were restrained in just one school year.”); *see also* NATIONAL DISABILITY RIGHTS NETWORK, *supra* note 17, at 12.

²⁰ *See* Weissbrodt, *supra* note 12, at 287; GAO REPORT, *supra* note 3, at i.

²¹ *See* Weissbrodt, *supra* note 12, at 288.

²² *See id.* at 288–89.

²³ *Id.* at 289.

²⁴ Perry, *supra* note 1. *See also* David M. Perry, *When Teachers Abuse Disabled Children*, PACIFIC STANDARD (Dec. 17, 2015), <http://www.psmag.com/health-and-behavior/teachers-abusing-disabled-children> (“Unfortunately, in many school districts and institutions, the use of restraint, seclusion, and, too often, pain and trauma, have become the default response to disabled children who don’t perfectly obey commands.”).

²⁵ Susie Bucaro, *A Time Out Or A Knockout: Has the Use of Restraint Against Students With Disabilities Become A Form Of Corporal Punishment?*, 15 PUB. INT. L. REP. 62, 64 (2009).

²⁶ SIMONE ROBERS, ET AL., NAT’L CTR. FOR EDUC. STAT.’S, U.S. DEP’T OF EDUC., BUREAU OF JUST. STAT.’S, INDICATORS OF SCHOOL CRIME AND SAFETY: 2013 24 (2014) [hereinafter INDICATORS OF SCHOOL CRIME].

²⁷ *Id.*

²⁸ *See* Bucaro, *supra* note 25, at 64.

many appropriate instances in which restraint is reasonable and proper for specific behaviors. For instance, if a student is throwing a chair at another student's head, the teacher should stop them, or if a student is trying to run into the street, the teacher should hold the student. However, the danger in using restraints and seclusion "lies in misuse: when corporal punishment becomes the answer to non-violent misbehavior."²⁹

This Comment argues that the use of restraints and seclusion on children with disabilities, beyond ensuring safety, has blurred into a form of corporal punishment that infringes upon the students' ability to receive an inclusive education. Part I of this Comment discusses the Individuals with Disabilities Education Act, the history and use of restraints and seclusion in the education system, the current laws (or lack thereof) and practice, and the different types of punishments used in the United States. Part II explores the disproportionate use of restraints and seclusion on children with disabilities, the effects of such punishments, and the school-to-prison pipeline that is plaguing the nation. Part III addresses current example cases from across the country and highlights a Kentucky case that has recently received significant media attention. Finally, Part IV proposes four different ways to improve the current system in the United States: passing comprehensive federal regulations on the use of seclusion and restraints on disabled students, having Congress ratify the Children's Rights Convention (CRC), having Congress ratify the Convention on the Rights of Persons with Disabilities (CRPD), and/or national implementation of Positive Behavior Intervention and Support (PBIS).

I. RESTRAINTS, SECLUSION, CORPORAL PUNISHMENT, AND THE FAILURE OF THE EDUCATION SYSTEM

Clearly, teachers and school districts face severe behavioral challenges and sometimes serious safety issues with students, particularly students with developmental disabilities and emotional disturbance; nevertheless, restraint and seclusion only exacerbate the problem, and even instances that do not

²⁹ *See id.*

cause death may seriously injure a child both physically and psychologically.³⁰

A. Disabled Children and the Individuals with Disabilities Education Act

When it comes to students with disabilities and education, the Individuals with Disabilities Education Act is the governing federal law:

The Individuals with Disabilities Education Act (IDEA) is a law ensuring services to children with disabilities throughout the nation. IDEA governs how states and public agencies provide early intervention, special education and related services to more than 6.5 million eligible infants, toddlers, children and youth with disabilities.³¹

IDEA requires that all fifty states ensure students with disabilities are entitled to a Free and Appropriate Public Education (FAPE).³² FAPE provides that “[a]n appropriate education allows a child to make educational progress, and to prepare and equip her to further her education, live independently and participate in the workforce.”³³ IDEA came about as a response to the inadequate state-run institutions that were providing minimal accommodations to disabled children and to allow the millions of disabled students who were excluded from schools to receive an education.³⁴ Under IDEA’s “least restrictive environment” requirement, disabled stu-

³⁰ Darcie Ahern Mulay, *Keeping All Students Safe: The Need for Federal Standards to Protect Children from Abusive Restraint and Seclusion in Schools*, 42 STETSON L. REV. 325, 333 (2012).

³¹ *Building the Legacy: IDEA 2004*, ED.GOV, <http://idea.ed.gov> (last visited Feb. 1, 2016).

³² See U.S. Dep’t of Educ., Office for Civil Rights, *Free Appropriate Public Education for Students With Disabilities: Requirements Under Section 504 of The Rehabilitation Act of 1973* (Aug. 2010), <https://www2.ed.gov/about/offices/list/ocr/docs/edlite-FAPE504.html#textnote5>.

³³ Bucaro, *supra* note 25, at 63.

³⁴ See Jennifer Noud, *The Use of Restraint and Seclusion on Disabled Students Is a Violation of Their Procedural and Substantive Due Process Rights*, 39 NOVA L. REV. 265, 272 (2015).

dents are now educated with nondisabled students to the greatest appropriate extent.³⁵ Disabled students are now safeguarded and accommodated in the education system and should only be removed from the regular classroom when their disability is so severe that an education in regular classes cannot be reasonably achieved.³⁶ However, IDEA fails to provide directions as to the appropriate balance between the disabled student's ability to receive an appropriate education and the requirement that the disabled child be educated "to the maximum extent appropriate" with nondisabled children.³⁷ Thus, it all comes down to the judgment of the child's Individualized Education Program (IEP) team to configure the correct balance.³⁸

When a student qualifies for IDEA assistance, the student receives an IEP.³⁹ The IEP is a "document that explains the goals of the student and what services are to be provided to the student."⁴⁰ Moreover, the IEP, which is developed by both parents and school personnel, is personalized to each individual child and includes what specific disciplinary action is to be used on the child.⁴¹ If state law permits the use of certain restraints, the IEP team must consider whether its use is consistent with the terms of that particular IEP.⁴² However, overall, IDEA "does not explicitly prohibit the use of physical restraint or other forms of corporal punishment."⁴³ This means that "there are no specific bright line rules within the IDEA context that provide school employees with clear guidance as to when it is proper or improper to implement restraint or seclusion with students with disabilities."⁴⁴ This lack of proper guidance thus

³⁵ See Anne Proffitt Dupre, *A Study in Double Standards, Discipline, and the Disabled Student*, 75 WASH. L. REV. 1, 9 (2000).

³⁶ See *id.* at 9–10.

³⁷ See *id.* at 10.

³⁸ See *id.*

³⁹ See *id.* at 8.

⁴⁰ Noud, *supra* note 34, at 273.

⁴¹ See *id.* at 273; see also Dupre, *supra* note 35, at 8; Bucaro, *supra* note 25, at 64; GAO REPORT, *supra* note 3, at 3.

⁴² See Bucaro, *supra* note 25, at 64; see also GAO REPORT, *supra* note 3, at 3.

⁴³ See Bucaro, *supra* note 25, at 63.

⁴⁴ Janet R. Decker and Patrick Ober, *The Inadequacy of Restraints and Seclusion Regulation: A Façade of Legal Recourse*, 338 WEST'S ED. LAW REP. 1, 16 (2017).

possibly allows for the misuse of restraints and seclusion on students with disabilities.

B. History and Use of Restraints, Seclusion, and Corporal Punishment in Schools

Under human rights law, corporal punishment is defined as “any punishment in which physical force is used and intended to cause some degree of pain or discomfort.”⁴⁵ Further, under United States state or federal law, there is no comprehensive definition of corporal punishment.⁴⁶ Historically, corporal punishment dates back to the colonial period in American schools.⁴⁷ A parent’s common-law privilege to discipline his or her child was extended to teachers and gave a teacher the ability to use “reasonable force” that he/she felt was necessary “for [the] proper control, training, or education”⁴⁸ of the child. In 1977, the United States Supreme Court finally heard a case that challenged corporal punishment in schools. In that case, *Ingraham v. Wright*,⁴⁹ the Court found and validated the constitutionality of corporal punishment in public schools and held that cruel and unusual punishment did not to apply to students.⁵⁰ The Court upheld school-teacher corporal punishment by justifying its decision on the fact that the “basic doctrine has not changed” and that “[t]he prevalent rule in this country today privileges such force as a teacher . . . reasonably believes to be necessary”⁵¹

In regard to restraints and seclusion, the original standards and definitions used by the Department of Education were promulgated by the Centers for Medicare and Medicaid in their regulations on psychiatric facilities.⁵² Currently, the Department of Education uses

⁴⁵ M.J. Stephey, *Corporal Punishment in U.S. Schools*, TIME (Aug. 12, 2009), <http://content.time.com/time/nation/article/0,8599,1915820,00.html> (citation omitted).

⁴⁶ See *id.*

⁴⁷ See Timothy Garrison, *From Parent to Protector: The History of Corporal Punishment in American Public Schools*, 16 J. CONTEMP. LEGAL ISSUES 115, 115 (2007).

⁴⁸ *Id.* at 116 (quoting *Carpenter v. Commonwealth*, 44 S.E.2d 419, 423 (Va. 1947)).

⁴⁹ *Ingraham v. Wright*, 430 U.S. 651 (1976).

⁵⁰ *Id.* at 671, 683.

⁵¹ *Id.* at 661 (citations omitted).

⁵² See Weissbrodt, *supra* note 12, at 289.

the office of Civil Rights Data Collection's (CRDC) definition to define restraints and seclusions.⁵³ Generally, restraints are divided into three categories: mechanical, physical or manual, and chemical.⁵⁴ The CRDC defines a physical restraint as "[a] personal restriction that immobilizes or reduces the ability of a student to move his or her torso, arms, legs, or head freely."⁵⁵ Similarly, the term mechanical restraint is defined by the CRDC as "[t]he use of any device or equipment to restrict a student's freedom of movement,"⁵⁶ while the definition of chemical restraints includes medication or drugs used to control behavior.⁵⁷ Finally, the CRDC defines seclusion as "[t]he involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving."⁵⁸

Most frequently, schools in the United States use physical restraints;⁵⁹ however, there have also been reports of school officials using mechanical restraints like duct tape to bind students to chairs or to gag them.⁶⁰ One type of physical restraint is the face-down prone restraint.⁶¹ Placing a child in a face-down prone restraint restricts the child's ability to breathe, while teachers or staff simultaneously immobilize the students' extremities.⁶² The face-down prone restraint is one of the most "lethal school practices" because using it on a student may cause a sudden respiratory arrest or fatal cardiac arrhythmia.⁶³ Further, non-lethal consequences of prone restraints can lead to muscle injuries, blunt trauma to the head, lacerations, cerebral oxygen deprivation, psychological trauma, or abrasions.⁶⁴

⁵³ U.S. DEP'T OF EDUC., RESTRAINT AND SECLUSION: RESOURCE DOCUMENT 10 (2012) [hereinafter RESOURCE DOCUMENT].

⁵⁴ See Mulay, *supra* note 30, at 328.

⁵⁵ RESOURCE DOCUMENT, *supra* note 53, at 10.

⁵⁶ *Id.*

⁵⁷ See Mulay, *supra* note 30, at 328.

⁵⁸ RESOURCE DOCUMENT, *supra* note 53, at 10.

⁵⁹ See Weissbrodt, *supra* note 12, at 289.

⁶⁰ *Id.*

⁶¹ See Bucaro, *supra* note 25, at 63–64.

⁶² See RESOURCE DOCUMENT, *supra* note 53, at 16; GAO REPORT, *supra* note 3, at 8.

⁶³ See Bucaro, *supra* note 25, at 63–64; HUMAN RIGHTS WATCH, *supra* note 9, at 23.

⁶⁴ HUMAN RIGHTS WATCH, *supra* note 9, at 23.

Currently nineteen states allow corporal punishment; this includes hundreds of school districts.⁶⁵ Almost a quarter-of-a-million school children are subjected to this violent and degrading punishment every year.⁶⁶ In U.S. schools, most of the corporal punishment is inflicted in the form of paddling, which involves the student being hit on the buttocks several times with a wooden board.⁶⁷ However, punishment can come in many forms when a child is acting up.⁶⁸

Furthermore, in the U.S., approximately 1,500 students are tied up or locked down every day by school officials.⁶⁹ Students are regularly subjected to punishment for behaviors related to their disabilities.⁷⁰ For example, students with Tourette Syndrome, “a condition that causes involuntary vocal and physical tics, may be punished in part because of those tics.”⁷¹ Specifically, a boy with Tourette Syndrome had tics that included loud vocalizations; his teachers repeatedly restrained him and dragged him down a hallway even after the student attempted to explain that he could not control it.⁷²

Restraint and seclusion can come in many forms to ensure obedience. Tactics to ensure compliance in educational settings today include being “pinned facedown on the floor, locked in dark closets, tied up with straps, bungee cords and duct tape, handcuffed, leg shackled, tasered or otherwise restrained, immobilized or placed in solitary confinement in order to bring [students] under control.”⁷³ Nationwide, these tactics were used more than 267,000 times in the 2012 school year.⁷⁴ Of the students restrained, three-quarters of

⁶⁵ See Rachel Chason, *As more schools ban paddling, others defend it*, USA TODAY (Jul. 18, 2014, 9:12 PM), <http://www.usatoday.com/story/news/nation/2014/07/17/school-district-ban-paddling-rural-areas-defend/12421465/>.

⁶⁶ See HUMAN RIGHTS WATCH, *supra* note 9, at 2.

⁶⁷ *Id.* at 3.

⁶⁸ *See id.*

⁶⁹ See John W. Whitehead, *Handcuffs, Leg Shackles and Tasers: The New Face of Punishment in the Public Schools*, THE RUTHERFORD INSTITUTE (Jan. 26, 2015), https://www.rutherford.org/publications_resources/john_whiteheads_commentary/handcuffs_leg_shackles_and_tasers_the_new_face_of_punishment_in_the_pu.

⁷⁰ HUMAN RIGHTS WATCH, *supra* note 9, at 5.

⁷¹ *Id.* at 35.

⁷² *See id.*

⁷³ Whitehead, *supra* note 69.

⁷⁴ Vogell, *supra* note 2.

them had “physical, emotional or intellectual disabilities.”⁷⁵ These tactics are all legal in public schools when employed by school officials or school resource officers.⁷⁶ Every day, at least “500 students are locked up in some form of solitary confinement . . . whether it be a padded room, a closet or a duffel bag.”⁷⁷ These rooms are sometimes called “scream rooms” and are usually isolated, unmonitored locked small rooms to place students in seclusion.⁷⁸ The rooms can often be as “small as four-feet-by-four-feet” and are sometimes padded.⁷⁹ All of these examples can now be tied to the human rights definition of corporal punishment.⁸⁰ When using restraints and seclusion as a form of punishment, teachers and school officials are blurring the lines of its intended use and instead are using physical force for the “pain or discomfort” of the disabled child.⁸¹ Thus, the use of restraints and seclusion has blurred from being used for the safety of the child to being used to punish the child—morphing into a possible form of corporal punishment.

C. Current Laws and Practices

1. DEPARTMENT OF EDUCATION GUIDELINES

On May 15, 2012, the U.S. Secretary for the Department of Education, Arne Duncan, sent a letter to all Chief State School Officers and advised them of fifteen principles for “[s]tates, school districts, schools, parents, and other stakeholders to consider when developing or revising policies and procedures on the use of restraint and seclusion.”⁸² In the letter and following report, Mr. Duncan advised that the principles stressed in the report should be followed to prevent the need for use of restraints and seclusion and that “any behavioral intervention must be consistent with the child’s rights to be

⁷⁵ *Id.*

⁷⁶ Whitehead, *supra* note 69.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ See Stephey, *supra* note 45 (“Corporal punishment is defined under human-rights law as ‘any punishment in which physical force is used and intended to cause some degree of pain or discomfort.’”) (citation omitted).

⁸¹ *See id.*

⁸² RESOURCE DOCUMENT, *supra* note 53, at iii.

treated with dignity and to be free from abuse.”⁸³ The Report found that “[t]here is no evidence that using restraint or seclusion is effective in reducing the occurrence of the problem behaviors that frequently precipitate the use of such techniques.”⁸⁴

Specifically, the Report discussed that the use of restraints and seclusion should be used only in exceptional circumstances when physical harm is imminent:

Physical restraint or seclusion should not be used except in situations where the child’s behavior poses imminent danger of serious physical harm to self or others and restraint and seclusion should be avoided to the greatest extent possible without endangering the safety of students and staff. Schools should never use mechanical restraints to restrict a child’s freedom of movement.⁸⁵

The Report used the GAO report, *Examining the Abusive and Deadly Use of Seclusion and Restraint in Schools*,⁸⁶ to determine the fifteen principles that schools should strive for.⁸⁷ The GAO report found that there were no existing federal regulations, but an extensive assortment of differing state regulations, governing the use of restraints and seclusion in public schools.⁸⁸ Further, the GAO reported that there was a lack of national data that encompassed when and how often restraints and seclusion were being used in schools or of the scope of abuse stemming from the use of these practices in educational settings nationwide.⁸⁹

The Department of Education urged educators to follow the fifteen principles, which include guidelines as to when to use restraints and seclusion, how teachers should be trained, school policies on restraint and seclusion, and the necessity of documenting restraint

⁸³ *Id.*

⁸⁴ *Id.* at 2.

⁸⁵ *Id.*

⁸⁶ *See generally* GAO REPORT, *supra* note 3.

⁸⁷ RESOURCE DOCUMENT, *supra* note 53, at 6.

⁸⁸ *Id.* at 7.

⁸⁹ *Id.*

and seclusion incidents.⁹⁰ Moreover, the fifteen principles “exemplify how to reduce or eliminate restraint and seclusion school wide” and offer guidelines to “ensure the students’ safety as well as the safety of the adults.”⁹¹

2. LAWS AND PRACTICE: UNITED STATES AND INTERNATIONAL

With no federal law guidance, it is up to state governments to decide if laws should be enacted to prohibit the use of abusive restraints and seclusions in public schools. Currently, nineteen states have banned the controversial and sometimes fatal prone restraint⁹² and eighteen have banned mechanical restraints.⁹³ Only Georgia prohibits seclusion completely.⁹⁴ Furthermore, most states do not require that parents be notified every time a child is subjected to restraint or seclusion, and only fifteen states require that parents be notified when their child is restrained or placed in seclusion every time it occurs.⁹⁵

In the classroom, teachers and school personnel should not solely be trained in safely restraining students in emergency situations, but also in proactive strategies designed to teach appropriate behavioral skills to prevent these situations from happening at all.⁹⁶ The problem in most situations with the use of abusive restraints and seclusion is a lack of training in emergency-only safe restraints.⁹⁷ However, to protect students, absolute prohibition of certain dangerous restraints and seclusion, like the prone restraint, is necessary. Thus, restraints or seclusion should not be used to punish or exclude

⁹⁰ *See id.* at 12–13.

⁹¹ Noud, *supra* note 34, at 275–76.

⁹² Heather Vogell & Sisi Wei, *Can Schools in Your State Pin Kids Down? Probably.*, PROPUBLICA (Jun. 19, 2014), <https://projects.propublica.org/graphics/mapping-state-policies-on-student-restraint>. The states that have banned the prone restraint are Washington, Oregon, Wyoming, Colorado, Kansas, Iowa, Illinois, Indiana, Ohio, Kentucky, West Virginia, Maryland, Delaware, Rhode Island, Vermont, New Hampshire, Maine, Alabama, and Georgia. *Id.*

⁹³ *Id.* The states that have banned mechanical restraints are Oregon, Wyoming, Colorado, Arizona, Kansas, Iowa, Wisconsin, Illinois, Ohio, Kentucky, West Virginia, Maryland, New York, Vermont, New Hampshire, Maine, Alabama, and Georgia. *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *See* RESOURCE DOCUMENT, *supra* note 53, at 18.

⁹⁷ *See* Mulay, *supra* note 30, at 334.

and, to ensure that restraints and seclusions are used only during emergency situations, adequate teacher training is essential to guarantee teacher and student safety.⁹⁸

Internationally, human rights laws prohibit certain forms of restraints and seclusion to ensure student safety because it infringes on the child's right to an education.⁹⁹ For example, in the United Kingdom, restraints should not be used as punishment, and certain restraints, like the seated double embrace and the double basket-hold, are unacceptable on children.¹⁰⁰ Moreover, the United Nations General Assembly adopted the Principles for the Protection of Persons with Mental Illness and Improvement of Mental Health Care, which provides that physical restraint or involuntary seclusion should only be employed to "prevent immediate or imminent harm to the patients or others."¹⁰¹ This principle can also be applied to the use of restraints and seclusion of disabled students because it focuses on emergency situations.

According to human rights law, "physical force may only be used against students where it is absolutely necessary to protect a child or others, and even then the principle of the minimum necessary amount of force for the shortest period of time must apply."¹⁰² In regard to the use of restraints and seclusion in school settings, the United States is out of step with international practice and jurisprudence because the practice and use has blurred into a form of corporal punishment.¹⁰³ For instance, the world's most universally ratified human rights treaty,¹⁰⁴ the Convention on the Rights of the

⁹⁸ See RESOURCE DOCUMENT, *supra* note 53, at 16, 18.

⁹⁹ See HUMAN RIGHTS WATCH, *supra* note 9, at 58.

¹⁰⁰ UNITED KINGDOM DEP'T OF EDUC., USE OF REASONABLE FORCE: ADVICE FOR HEADTEACHERS, STAFF AND GOVERNING BODIES 5, 6 (Jul. 2013). There are three prohibited restraints: "the 'seated double embrace' which involves two members of staff forcing a person into a sitting position and leaning them forward, while a third monitors breathing; the 'double basket-hold' which involves holding a person's arms across their chest; and the 'nose distraction technique' which involves a sharp upward jab under the nose." *Id.* at 6.

¹⁰¹ G.A. Res. A/46/119, annex, Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care (Dec. 17, 1991).

¹⁰² HUMAN RIGHTS WATCH, *supra* note 9, at 3.

¹⁰³ See HUMAN RIGHTS WATCH & ACLU, A VIOLENT EDUCATION: CORPORAL PUNISHMENT OF CHILDREN IN US PUBLIC SCHOOLS 2 (2008) [hereinafter A VIOLENT EDUCATION].

¹⁰⁴ HUMAN RIGHTS WATCH, *supra* note 9, at 60.

Child (CRC), acknowledges a child's right to be free from any form of mental and physical violence.¹⁰⁵ In terms of corporal punishment generally, "106 countries outlaw the practice, including the United Kingdom and other European countries, following rulings on corporal punishment by the European Court of Human Rights."¹⁰⁶ The United States is a signatory to the CRC; however, the practice of using restraints and seclusion as a form of punishment still continues in United States schools even though it is prohibited in various settings, including most juvenile correctional facilities.¹⁰⁷

II. CHILDREN WITH DISABILITIES DISPROPORTIONALLY RESTRAINED AND SECLUDED

A. *The Disproportionate Use of Restraints and Seclusion*

The use of restraints and seclusion on students with disabilities is disproportionate to the rest of the student population.¹⁰⁸ The harmful and damaging use of restraint and seclusion mostly impacts children with disabilities such as attention deficit hyperactivity disorder, autism, developmental disorder, and emotional disturbance.¹⁰⁹ The disproportionate use of these tactics as punishment can be attributed to the school system's "failure to properly recognize the prevalence of these disabilities within a set of students."¹¹⁰ For example, under the emotional disability (ED) category, most of the students who qualify for special education have a psychiatric disability and "are likely to manifest [these disabilities] as behavioral issues."¹¹¹

Many ED students in special education placement face an elevated chance of restraint or seclusion because the focus is on the behavior instead of receiving the "individualized treatment necessary to respond to such complex mental health disabilities."¹¹² Further, the federal criteria for the category of ED is based on behavior and not diagnosis, even though most of the students in ED have an underlying psychiatric disability, and those underlying psychiatric

¹⁰⁵ *Id.*

¹⁰⁶ A VIOLENT EDUCATION, *supra* note 103, at 2.

¹⁰⁷ See HUMAN RIGHTS WATCH, *supra* note 9, at 15.

¹⁰⁸ See Weissbrodt, *supra* note 12, at 291.

¹⁰⁹ See Mulay, *supra* note 30, at 332.

¹¹⁰ See Weissbrodt, *supra* note 12, at 291.

¹¹¹ *Id.*

¹¹² See *id.* at 292.

disabilities may not be properly accommodated because they were never directly addressed.¹¹³

Students with disabilities, especially students of color with disabilities, are disproportionately subjected to restraints and seclusion, impeding their access to an inclusive education.¹¹⁴ Further, “[s]tudents with disabilities make up 19 percent of those who receive corporal punishment, yet just 14 percent of the nationwide student population.”¹¹⁵ According to the Department of Education Office for Civil Rights, students with disabilities are 12% of the student population, but 58% of those subjected to seclusion or involuntary confinement.¹¹⁶ Further, even though they constitute only 12% of the student population across the United States, students with disabilities represent 75% of those who are subjected to physical restraints at school to immobilize them or reduce their ability to move freely.¹¹⁷

Similarly, disabled African-American students represent 19% of students with disabilities, but 36% of the students who are restrained at school by mechanical restraints or equipment designed to restrict freedom of movement.¹¹⁸ These numbers show the significantly disparate use of excessive force, restraints, and punishment skewed toward disabled children and disabled children of color in particular.

Significantly, these numbers may be inaccurate because of a fundamental problem: lack of reporting. In 2012, there were 163,000 instances where students were restrained (physically held down) according to federal data.¹¹⁹ Also, in 2012, students were placed roughly 104,000 times in scream rooms and there were 7,600 reports of students being placed in mechanical restraints like handcuffs or

¹¹³ *See id.*

¹¹⁴ *See* “*Corporal Punishment in Schools and Its Effect on Academic Success*” *Joint HRW/ACULU Statement*, HUMAN RIGHTS WATCH (Apr. 15, 2010, 6:52 PM), <https://www.hrw.org/news/2010/04/15/corporal-punishment-schools-and-its-effect-academic-success-joint-hrw/aclu-statement>.

¹¹⁵ HUMAN RIGHTS WATCH, *supra* note 9, at 2.

¹¹⁶ *See* U.S. DEP’T OF EDUC. OFFICE FOR CIVIL RIGHTS, CIVIL RIGHTS DATA COLLECTION: DATA SNAPSHOT: SCHOOL DISCIPLINE 1 (2014) [hereinafter DATA SNAPSHOT].

¹¹⁷ *Id.*

¹¹⁸ *Id.* at 10.

¹¹⁹ Vogell, *supra* note 2.

straps.¹²⁰ However, there is reason to believe even more cases exist, especially for children with autism or those experiencing emotional and behavioral issues.¹²¹ These students are either too young, distressed, or too limited in their ability to communicate what goes on in school.¹²² Children with disabilities are especially vulnerable because they often have a history of behavioral problems, which may undermine their credibility when reporting abuse.¹²³ In other situations, the child's increased agitation can cause a "more forceful and longer application of restraint until the child succumbs and sometimes stops breathing."¹²⁴

Furthermore, many school systems fail to report all incidents to the federal government:¹²⁵ "Fewer than one-third of the nation's school districts reported using restraints or seclusions even once during the school year."¹²⁶ Thus, the number of students with disabilities that are subjected to restraints and seclusion as punishment could be significantly higher.¹²⁷ Reporting the incidents could be a way to have the essential information to ascertain the problems and attempt to find a meaningful solution.¹²⁸

B. *The Lasting Effects: Anxiety, Fear, Depression, and PTSD*

The most lasting effect of the misuse and abuse of students with restraints or seclusion is "most tragically, death."¹²⁹ Other than in the most extreme circumstances, using restraints and seclusion, not for safety, but for punishment, only intensifies the problem and can cause serious psychological and physical injuries.¹³⁰ For example, a

¹²⁰ *Id.*

¹²¹ *See* Whitehead, *supra* note 69; *see also* Mulay, *supra* note 30, at 328 ("Although there is a disproportionate use of restraint and seclusion on children with disabilities, reports have also focused on the fact that this is not solely a disability issue, and the absence of documentation and reporting makes an accurate estimate of who is being restrained and secluded impossible.").

¹²² *See id.*

¹²³ *See* Mulay, *supra* note 30, at 332–33.

¹²⁴ *Id.*

¹²⁵ HUMAN RIGHTS WATCH, *supra* note 9, at 30.

¹²⁶ Vogell, *supra* note 2.

¹²⁷ *See id.*

¹²⁸ *See* RESOURCE DOCUMENT, *supra* note 53, at 22–23.

¹²⁹ *Id.* at 2; *see also* GAO REPORT, *supra* note 3, at 5 (13-year-old disabled boy committed suicide after being placed in a seclusion room).

¹³⁰ *See* NATIONAL DISABILITY RIGHTS NETWORK, *supra* note 17, at 8.

nonverbal 9-year-old autistic boy was restrained regularly at school and would come home with a fat lip, black eye, scrapes on his back, and bruises on his arm.¹³¹ His teachers restrained him in a chair with a lap belt and the resulting trauma caused the student constant anxiety about going to school, such that he would regularly vomit.¹³²

According to researchers, the techniques of restraint and seclusion have led to increased agitation, higher rates of anxiety, depression, and more disruptive behavior in children.¹³³ Furthermore, researchers have continually concluded that there are detrimental effects rather than therapeutic benefits from restraints and seclusion.¹³⁴ For example, one study asked children who were secluded to draw pictures of people being secluded and “[t]he pictures they drew . . . conveyed punishment, with children crying and pleading for help.”¹³⁵ Similarly, restraints and seclusion, as a form of punishment, cause lasting injuries and barriers to education.¹³⁶ Many victims of improper use of restraints and seclusion in schools sustain serious injuries including muscle injuries, bruising, and broken bones.¹³⁷ The physical injuries are immediate and painful; however, it’s the emotional and psychological injuries that last the longest. These types of punishments, in school settings, are humiliating and degrading and anger students to the point that they are more likely

¹³¹ Vogell, *supra* note 2.

¹³² *Id.*

¹³³ See, e.g., Sandy K. Magee & Janet Ellis, *The Detrimental Effects of Physical Restraint As A Consequence For Inappropriate Classroom Behavior*, 34 J. APPLIED BEHAVIOR ANALYSIS 501, 502–04 (2001); NATIONAL DISABILITY RIGHTS NETWORK, *supra* note 17, at 15.

¹³⁴ See, e.g., Magee & Ellis, *supra* note 133, at 504.

¹³⁵ NATIONAL DISABILITY RIGHTS NETWORK, *supra* note 17, at 15.

¹³⁶ See generally HUMAN RIGHTS WATCH, *supra* note 9, at 41.

¹³⁷ See NATIONAL DISABILITY RIGHTS NETWORK, *supra* note 17, at 13 (Injuries from the use of restraints include, but are not limited to, “cerebral and cerebellar oxygen deprivation (hypoxia and anoxia), lacerations, abrasions, injury to muscles, contusions or bruising, overheating, dehydration, exhaustion, blunt trauma to the head, broken neck, [etc]”); see also A VIOLENT EDUCATION, *supra* note 103, at 50.

to lash out at those around them.¹³⁸ For some students, physical punishment through restraints can aggravate their medical condition¹³⁹ or cause them to regress developmentally.¹⁴⁰

According to the American Academy of Pediatrics, “[c]orporal punishment may adversely affect a student’s self-image and school achievement and . . . it may contribute to disruptive and violent behavior.”¹⁴¹ Instead of making students with disabilities feel safe, schools’ use of restraints and seclusion as punishment has traumatized these students, causing some to suffer from post-traumatic stress disorder (PTSD), nightmares, mistrust of adults in authority, despair, and delusion.¹⁴² The physical punishment being exerted on these students is not helping the situation and only succeeds in traumatizing the students further: “[t]here is no amount of force that can make someone less disabled. All you end up doing is intensifying trauma.”¹⁴³

C. School-to-Prison Pipeline Mentality

Restraints and seclusion, when used as a form of physical punishment, erodes students’ confidence in their teachers and their schools.¹⁴⁴ Already facing extreme barriers to education, students with disabilities can be “further excluded from the educational process through the use of physical punishment.”¹⁴⁵ When a student is restrained in handcuffs or dragged into a scream room for non-life threatening behavior (e.g., something as simple as talking back), this feeds into the school-to-prison pipeline mentality.¹⁴⁶ The school-to-prison pipeline is “an epidemic that is plaguing schools across the

¹³⁸ See A VIOLENT EDUCATION, *supra* note 103, at 54.

¹³⁹ See HUMAN RIGHTS WATCH, *supra* note 9, at 44.

¹⁴⁰ *Id.* at 45. Regression in development is particularly prominent for children on the autism spectrum. *Id.* For example, a student with congenital brain abnormalities and developmental disabilities regressed after excessive force used during “basket” holds. The boy became afraid and did not want anyone to touch him and needed to start using diapers again. *Id.* at 45–46.

¹⁴¹ A VIOLENT EDUCATION, *supra* note 103, at 54.

¹⁴² See Whitehead, *supra* note 69.

¹⁴³ Perry, *supra* note 1.

¹⁴⁴ See A VIOLENT EDUCATION, *supra* note 103, at 57.

¹⁴⁵ HUMAN RIGHTS WATCH, *supra* note 9, at 43.

¹⁴⁶ See generally A VIOLENT EDUCATION, *supra* note 103, at 57–58.

nation.”¹⁴⁷ The school-to-prison pipeline is where “children are funneled out of public schools and into the criminal justice system.”¹⁴⁸ This pipeline continues to gain momentum through the trend of suspending, expelling, or even arresting students for minor offenses and is disproportionately targeted at students of color and students with disabilities.¹⁴⁹ Students who are forced out of school for disruptive behavior become stigmatized and fall behind in their studies; many eventually drop out altogether, and many others commit crimes in their communities.¹⁵⁰

The school-to-prison pipeline stems from the zero tolerance policy that many schools use.¹⁵¹ Zero tolerance policies mandate punishments and consequences for specific offenses and require that students receive “harsh punishments for minor infractions.”¹⁵² Contributing factors to a student’s behavior in school, like age, disability, or intentions, are lost or indistinguishable when using zero tolerance policies.¹⁵³ This allows students with disabilities to be on the receiving end of these policies and sees them shuffled into the pipeline to prison because they are reprimanded, expelled, or arrested for behaviors stemming from their disability.

¹⁴⁷ Carla Amurao, *Fact Sheet: How Bad Is the School-to-Prison Pipeline?*, PBS (Mar. 26, 2013), <http://www.pbs.org/wnet/tavisismiley/tsr/education-under-arrest/school-to-prison-pipeline-fact-sheet/>.

¹⁴⁸ ACLU, *supra* note 16.

¹⁴⁹ See, e.g., Marilyn Elias, *The School to Prison Pipeline*, 43 TEACHING TOLERANCE 39, 39–40 (2013) (“For students with disabilities, the numbers are equally troubling. One report found that while 8.6 percent of public school children have been identified as having disabilities that affect their ability to learn, these students make up 32 percent of youth in juvenile detention centers.”).

¹⁵⁰ See generally A VIOLENT EDUCATION, *supra* note 103, at 50; see also Tamika C. Griffin, *Under the International Microscope: The School-to-Prison Pipeline and the U.N. Convention on the Rights of the Child*, 4 HUM. RTS. & GLOBALIZATION L. REV. 133, 146 (2011).

¹⁵¹ See Griffin, *supra* note 150, at 144.

¹⁵² *Id.* For example, Christian Roldan, who has Down Syndrome and can only respond to questions with one or two-words, was 16 years old when “he was hogtied and arrested in 2013 for resisting a school police officer’s attempts to search him at the Chino Valley Unified School District” in California. Susan Ferriss, *An epidemic of questionable arrests by school police*, CTR. FOR PUB. INTEGRITY (Dec. 10 2015, 5:01 PM), <http://www.publicintegrity.org/2015/12/10/18944/epidemic-questionable-arrests-school-police>.

¹⁵³ Griffin, *supra* note 150, at 145.

A lack of motivational achievement, dropping out, and absenteeism has been linked to physical punishment in school settings.¹⁵⁴ Disabled students, particularly disabled students of color,¹⁵⁵ are especially susceptible to push-out trends and the improper discriminatory use of discipline.¹⁵⁶ A recent study found that “[a]bout 1 in 4 black children with disabilities were suspended at least once, versus 1 in 11 white students”¹⁵⁷ This shows the disparate use of physical punishment on disabled students of color, and disabled students generally, creating a hostile school environment in which these students struggle to succeed and graduate on time, if at all.¹⁵⁸ The effects of physical punishment on students with disabilities through the use of restraints and seclusion can dramatically impact their behavior and hamper their academic performance.¹⁵⁹ When using restraints and seclusion as punishment, the students begin to feel insecure in school, which pushes them into the school-to-prison pipeline when they should be receiving counseling or different educational services:

[The physical restraint of students and use of excessive force as] disciplinary practices . . . feed into the ‘school-to-prison pipeline,’ where children are funneled out of public schools and into the criminal justice system. Many of these children have disabilities, yet instead of receiving necessary educational and

¹⁵⁴ A VIOLENT EDUCATION, *supra* note 103, at 57.

¹⁵⁵ See, e.g., Molly Knefel, *The School-to-Prison Pipeline: A Nationwide Problem for Equal Rights*, ROLLING STONE (Nov. 7, 2013), <http://www.rollingstone.com/music/news/the-school-to-prison-pipeline-a-nationwide-problem-for-equal-rights-20131107> (“Black students with disabilities have the highest rates of suspension, almost three times higher than their white disabled peers.”).

¹⁵⁶ ACLU, *supra* note 16.

¹⁵⁷ Elias, *supra* note 149, at 40.

¹⁵⁸ See, e.g., Knefel, *supra* note 155 (In New York City, “nearly one-third of all suspensions are served by students with disabilities even though they are only one sixth of the population. Only 27 percent of disabled students graduated on time in 2011; that number decreases to a remarkable 5 percent when looking only at students in self-contained special education classrooms.”).

¹⁵⁹ See generally Griffin, *supra* note 150, at 151 (“[S]chool districts with higher levels of suspension and expulsion tend to have lower achievement rates. Children removed from the classroom receive less instruction and do not have time to catch up on their work when, and if, they return.”).

counseling services, they are often punished and pushed out.¹⁶⁰

III. CURRENT CASES AND EXAMPLES

In the fall of 2014 in Kenton County, Kentucky, Deputy Sheriff Kevin Sumner handcuffed S.R., an 8-year-old Hispanic boy who suffers from ADHD and has a history of trauma, while he was crying out in pain.¹⁶¹ The Sheriff forced S.R.'s hands behind his back, holding the boy's arms close together, and because his hands were too small, the Sheriff locked the handcuffs around S.R.'s biceps.¹⁶² The same Sheriff also handcuffed L.G., a 9-year-old African-American girl with multiple disabilities, twice at her biceps.¹⁶³ The mechanical restraints, here handcuffs, were used on both children as punishment for behaviors in class related to their disabilities.¹⁶⁴

The only reason the media or the public found out about these incidents was because a school official made a video recording of S.R.'s shackling and turned it over to S.R.'s parents.¹⁶⁵ Because of these incidents, his parents have filed a federal lawsuit claiming violations of the Fourth and Fourteenth Amendments, as well as disability-based discrimination.¹⁶⁶ In Kentucky, school personnel are prohibited from using mechanical restraints to force behavior compliance or punish children.¹⁶⁷ These protocols include school resource officers.¹⁶⁸ The effect of being handcuffed has traumatized S.R. and has given him nightmares and anxiety about going to school.¹⁶⁹

¹⁶⁰ ACLU, *supra* note 16.

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ See Holly Yan, *School resource officer sued for allegedly handcuffing children with ADHD*, CNN (Aug. 4, 2015), <http://www.cnn.com/2015/08/04/us/aclu-disabled-students-handcuffed-lawsuit/>; see also ACLU, *supra* note 16.

¹⁶⁵ Debra Cassens Weiss, *Suit Claims Painful Shackling of School Kids with ADHD Violates Constitution and Disability Law*, ABA JOURNAL (Aug. 4, 2015, 8:14 AM), http://www.abajournal.com/news/article/suit_claims_painful_shackling_of_school_kids_with_adhd_violates_constitutio.

¹⁶⁶ *Id.*

¹⁶⁷ Yan, *supra* note 164.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.* S.R.'s mother stated: "It's hard for him to sleep. He has anxiety, and he is scared of seeing the officer in the school. School should be a safe place for

Similarly, in Tennessee in 2015, police resource officers arrested Colton Granito, an 8-year-old autistic boy with several mental and emotional disorders, after he hit his teacher because he couldn't have a book.¹⁷⁰ The school placed Colton in a straightjacket chair for an hour; Colton was then brought to the police station in handcuffs and put behind bars.¹⁷¹ While in jail, Colton would hit his head against the hard cell wall crying out for his family.¹⁷² The school was aware of Colton's violent outbursts, including kicking and hitting, and had a crisis plan to follow whenever he had a tantrum or became aggressive.¹⁷³ The crisis plan listed that the "teachers and school staff are to handle Colton's behavioral issues in a more understanding manner, such as redirecting his focus and patiently taking him to a safe area or somewhere for a timeout."¹⁷⁴ The school violated protocol with their manner of dealing with the incident.¹⁷⁵ The time in jail has caused Colton to have nightmares and regress developmentally, including having to go back to using Pull-Ups.¹⁷⁶

In another case, Chris Baker, a 9-year-old autistic boy in Kentucky, misbehaved at school and was stuffed into a duffel bag with the drawstring pulled tight as a form of seclusion and punishment.¹⁷⁷ When school officials called his mother to pick him up, the mother was told he was "jumping off the walls."¹⁷⁸ When she walked into his classroom, she saw the duffel bag with a hole at the top and she

children. It should be a place they look forward to going to. Instead, this has turned into a continuing nightmare for my son." *Id.*

¹⁷⁰ Heather Tooley, *Parents Sue Autistic Son's School: 8-Year-Old Arrested, Injured, and Put In Straightjacket*, INQUISITR (Jan. 18, 2015), <http://www.inquisitr.com/1765983/parents-sue-autistic-sons-school-8-year-old-arrested-injured-and-put-in-straightjacket/>.

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *See Couple suing after 8-year-old son arrested, put in straitjacket*, WSVM TV NASHVILLE (Jan. 13, 2015, 7:08 PM), <http://www.wsmv.com/story/27842544/couple-suing-after-8-year-old-son-arrested-put-in-straight-jacket> (last updated Jul. 14, 2015, 7:09 PM).

¹⁷⁶ *See id.*

¹⁷⁷ THE ASSOCIATED PRESS, *School accused of putting autistic boy in bag*, CBSNEWS (Dec. 23, 2011, 7:29 AM), <http://www.cbsnews.com/news/school-accused-of-putting-autistic-boy-in-bag/>.

¹⁷⁸ *Id.*

heard Chris say, “Momma, is that you?”¹⁷⁹ She immediately requested his release and Chris came out dazed and drenched in sweat.¹⁸⁰ In a meeting with school officials later, Chris’s mother found out that the reason he was placed in the bag was because “the boy had smirked at the teacher when he was told to put down a basketball, then threw it across the room.”¹⁸¹ The school district officials described the bag as a “therapy bag” and Chris’s mother was told that this was not the first time he was placed in such a bag.¹⁸²

These three cases showcase the current misuse of restraints and seclusion on children with disabilities. Child safety should be the only valid purpose for the use of restraints and seclusion; yet here, restraints and seclusion were used to physically punish the students because of behaviors associated with their disability.¹⁸³ These students should have been provided with behavior redirection instead of physical punishment. By resorting to physical punishment, the teachers and/or school officials went against the human rights definition of corporal punishment, once again blurring the lines between the use of restraints and seclusion for safety versus the use for punishment. The actions by the teachers and/or resource officers traumatized these students, impeding their ability to receive an inclusive education and possibly pushing them toward the school-to-prison pipeline. Overall, when these students with disabilities did not perfectly obey commands, the teachers or resource officers resorted to physical pain and trauma causing untold damage to the students and their ability to learn.¹⁸⁴

¹⁷⁹ *Id.* Chris’s mother stated, “When I got him out of the bag, his poor little eyes were as big as half dollars and he was sweating . . . I tried to talk to him and get his side of the reason they put him in there, and he said it was because he wouldn’t do his work.” *Id.*

¹⁸⁰ *See id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *See, e.g., id.*

¹⁸⁴ *See Perry, supra note 24.*

IV. CHANGING TACTICS

While the use of seclusion and restraints as a form of punishment has many critics, it also has supporters.¹⁸⁵ School districts and superintendents who defend the practice argue that restraints and the use of seclusion are necessary to protect teachers and children when students are so distressed that their behavior turns hazardous.¹⁸⁶ School superintendents “argue that if educators don’t have the freedom to restrain and isolate children as they see fit, they will be forced to send more students to restrictive settings such as residential institutions.”¹⁸⁷ But this Comment does not argue that restraints and seclusions should be completely prohibited because even critics of restraints agree they are sometimes unavoidable.¹⁸⁸

However, schools too often fail to try alternatives for calming students and use restraints and seclusion as a go-to for punishment instead of for safety.¹⁸⁹ Reforms should be made to ensure that the use of seclusion and restraints in school settings is limited to ensuring safety. These reforms should come from a federal regulation through Congress prohibiting the use of restraints and seclusion as forms of punishment, through ratification of both the Children’s Rights Convention and the Convention on the Rights of Persons with Disabilities, and finally, through the adoption, mandate, and national practice of School-Wide Positive Behavior Interventions and Support. Through these reforms, children with disabilities will be free to receive the proper education that they have been promised all along.

A. Federal Regulations

With the current lack of federal standards, parents of students with disabilities can seek remedies for the abusive use of restraints or seclusion through the court system. First, parents of students with

¹⁸⁵ See, e.g., Vogell, *supra* note 2 (For example, the American Association of School Administrators wrote a position paper in 2012 describing their support of using restraints and seclusion in public schools.).

¹⁸⁶ See *id.*

¹⁸⁷ *Id.*

¹⁸⁸ See *id.*

¹⁸⁹ See, e.g., *id.* (“We have hundreds of examples of kids who are being restrained and secluded for behaviors that do not rise to the level of causing harm to themselves or others. . . .”) (citation omitted).

disabilities can raise an IDEA violation arguing that the abusive techniques deprived their child of a free and appropriate education as required by law.¹⁹⁰ Second, the parents can raise a substantive due process violation under the Fourteenth Amendment and/or a Fourth Amendment unreasonable seizure claim.¹⁹¹ Both choices can present insurmountable barriers to parents¹⁹² and the cases that have gone to court have rarely been successful.¹⁹³

Comprehensive federal legislation is necessary to unblur the lines and prevent students with disabilities from being physically punished with restraints and seclusion. Advocates should lobby Congress to amend IDEA and pass comprehensive legislation to prohibit the use of restraints and seclusion to protect students from receiving physical punishments for conduct that is a manifestation of their disabilities. Congress is in the best position to resolve this problem because it can correct the lack of uniformity across the states.¹⁹⁴ Congress has previously enacted educational legislation in other areas for the benefit of all children¹⁹⁵ and can enact similar legislation to protect children from restraint and seclusion.

Federal legislation must have minimum standards to prevent the use of restraints and seclusion as punishment. First, it must provide for specific prohibitions on the forms of restraints and seclusion to ensure that the restraints are not fatal. This can be done by prohibiting the prone restraint, limiting the use of restraints and seclusion to emergencies, and imposing specific time limits when the tactics are

¹⁹⁰ See Decker, *supra* note 43, at 15–16.

¹⁹¹ See *id.* at 5–14.

¹⁹² See *id.* at 16–17 (IDEA has an exhaustion requirement wherein parents may bring an action in federal court only after they have exhausted the administrative process provided in the law. The parents have the burden of persuasion to demonstrate that the school district did not fulfill its obligations under IDEA).

¹⁹³ See *id.* A study of 111 cases found that from a total of 298 claims that were brought under federal laws or constitutional amendments, “plaintiffs succeeded on one percent—roughly a total of three—of those 298 claims.” *Id.* at 17.

¹⁹⁴ See *id.* at 20.

¹⁹⁵ See, e.g., 20 U.S.C. § 6301–7941 (2006) (describing the Elementary and Secondary Education Act of 1965, which applies to both disabled and non-disabled students).

used during an emergency.¹⁹⁶ Furthermore, the legislation must provide for grants to implement support and training of teachers and staff in the proper use of restraints and seclusion.¹⁹⁷ Finally, documentation should be required to ensure that the lack of reporting plaguing the nation does not continue.¹⁹⁸

Documentation should occur through written or electronic logs of incidents when restraint or seclusion is used.¹⁹⁹ “Appropriate school staff should prepare a written log entry describing each incident, including details of the child’s dangerous behavior, why this behavior posed an imminent danger of serious physical harm to self or others, possible factors contributing to the dangerous behavior, the effectiveness of restraint or seclusion in de-escalating the situation and staff response to such behavior.”²⁰⁰ With proper documentation, the schools that need the most support can be helped.

Interestingly, there have been several attempts over the years to adopt federal legislation to regulate the use of restraints and seclusion in schools.²⁰¹ The first attempt was after the GAO report was presented to the U.S. House of Representatives’ Committee on Education and Labor in 2009.²⁰² The 111th Congress contemplated legislation on the use of restraints and seclusion in schools: “The House bill (H.R. 4247) was titled *Keeping All Students Safe Act*, and two senate bills were introduced, *Preventing Harmful Restraint and Seclusion in Schools Act (S. 2860)* and *Keeping All Students Safe Act (S. 3895)*.”²⁰³ The bills purported to limit the use of seclusion and restraints in schools to emergency cases where there was imminent danger, provided steps for the proper use of restraints or seclusion,

¹⁹⁶ See generally RESOURCE DOCUMENT, *supra* note 53, at 12–23 (discussing the fifteen principles that should be used as a framework to prevent the abusive use of restraints and seclusion on disabled students).

¹⁹⁷ See generally *id.* at 18–19 (discussing the need for teachers and other personnel to be properly and regularly trained on alternatives to restraints and seclusion and for the use of these techniques when child safety is an issue).

¹⁹⁸ See generally *id.* at 22–23 (discussing that policies need to be implemented to provide that each incident involving restraints and seclusion is documented in writing).

¹⁹⁹ See *id.* at 22.

²⁰⁰ *Id.*

²⁰¹ See *id.* at 7.

²⁰² *Id.*

²⁰³ *Id.*

and promoted positive reinforcement and other behavioral interventions.²⁰⁴ Unfortunately, only the House bill passed when the Congressional session ended that year.²⁰⁵ The bills have been reintroduced every year since and the legislation that was proposed to protect children from abusive restraint and seclusion, *Keeping All Students Safe Act*,²⁰⁶ was last referred to the Subcommittee on Early Childhood, Elementary, and Secondary Education in the 114th Congress.²⁰⁷

Critics of comprehensive federal legislation argue that these policy decisions should be left to state and local leaders.²⁰⁸ Furthermore, they warn that restricting restraints and seclusion could increase injuries in staff “because educators would be afraid to intervene when students were acting dangerously.”²⁰⁹ Yet, injuries in Montgomery County Public schools in Virginia have not been a problem since the schools stopped using restraints and seclusion more than two decades ago.²¹⁰ This shows that it is possible to pass federal legislation restricting the use of restraints and seclusion that is workable and ensures the safety of students and staff.

B. Children’s Rights Convention

The United Nations Convention on the Rights of the Child (CRC) entered into force in September of 1990.²¹¹ The CRC sets forth the human rights of children, including access to education and the rights of children with disabilities.²¹² It consists of fifty-four articles and is considered to be the “most comprehensive human rights

²⁰⁴ *Id.* at 7–8.

²⁰⁵ *Id.* at 8.

²⁰⁶ Keeping All Students Safe Act, H.R. 927, 114th Cong. (2015).

²⁰⁷ *Id.*

²⁰⁸ See Vogell, *supra* note 2 (“More than four years ago, federal lawmakers began a campaign to restrict restraints and seclusions in public schools, except during emergencies. Despite a thick stack of alarming reports, the legislation has gone nowhere. Opponents of the legislation say policy decisions about the practices are best left to state and local leaders. The federal government’s role, they say, should be limited to simply making sure districts have enough money to train staff to prevent and handle bad behavior.”).

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

²¹² *Id.* at arts. 19, 23, 28.

treaty and legal instrument for the promotion and protection of children's rights."²¹³ One hundred and ninety-six countries have ratified the CRC, including every member of the United Nations, except the United States.²¹⁴ The United States was an original signatory and played a chief role in the final drafting process of the CRC, but perplexingly has yet to ratify it.²¹⁵

"[C]hildren with disabilities belong to one of the most vulnerable groups of children."²¹⁶ The CRC has recognized that children with disabilities are more vulnerable to abuse, violence, and neglect, in all settings, including schools.²¹⁷ Article 2 of the CRC places a duty on states to ensure that the rights encompassed within its articles shall be granted to all children without discrimination, and explicitly references disability as a forbidden ground for discrimination against a child.²¹⁸ Moreover, Article 28 of the CRC requires parties to: (1) "recognize the right of the child to education" and (2) "take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity."²¹⁹ This emphasizes the state's duty to ensure that children have a right to an education in a setting where their dignity is upheld. Using restraints and seclusion to punish a child with disabilities is not consistent with that child's human dignity.

Article 23 of the CRC specifically mentions that states ensure children with disabilities, who have different capacities, have full

²¹³ Griffin, *supra* note 150, at 136 (citations omitted).

²¹⁴ U. N. TREATY COLLECTION, *Convention on the Rights of the Child* (last visited Mar. 7, 2017), https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg_no=IV-11&chapter=4&clang=_en (Somalia, the only other nation that had not ratified the treaty, ratified the CRC on October 1, 2015).

²¹⁵ Griffin, *supra* note 150, at 136; *see also* Lainie Rutkow & Joshua T. Lozman, *Suffer the Children?: A Call for United States Ratification of the United Nations Convention on the Rights of the Child*, 19 HARV. HUM. RTS. J. 161, 168 (2006) ("[T]he four main areas of U.S. opposition to the CRC [are] sovereignty, federalism, reproductive and family planning rights, and parents' rights . . .").

²¹⁶ U.N. Comm. on the Rights of the Child, General Comment No. 9: The Rights of Children with Disabilities, ¶ 8, UN. Doc. CRC/C/GC/9 (Feb. 27, 2007) [hereinafter General Comment No. 9].

²¹⁷ *Id.* at ¶ 42.

²¹⁸ *Convention on the Rights of the Child*, *supra* note 211, at art. 2; *see also* Weissbrodt, *supra* note 12, at 296.

²¹⁹ *Convention on the Rights of the Child*, *supra* note 211, at art. 28.

inclusion into society.²²⁰ This obligation demands that states provide appropriate care and assistance to disabled children in order to “ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services . . . in a manner conducive to the child’s achieving the fullest possible social integration and individual development”²²¹ This creates a duty to provide reasonable accommodations to students and a state is in breach of that duty if the student with disabilities is not given the suitable care and assistance that is mandated when they are restrained or secluded by school officials as a result of behaviors that directly stem from their disabilities.

The CRC does not explicitly address restraints or seclusion, but Article 19 of the CRC can be used to urge states to protect against the possible dangers of these detrimental practices. Article 19 compels states to take all measures necessary to “protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.”²²² The Article 19 duty to protect should be interpreted to apply to restraints and seclusion in schools because the misuse of restraints and seclusion can be seen as physical and mental violence against the child—blurring into a form of corporal punishment—that students should be protected from. Furthermore, the Committee on the Rights of the Child issued General Comment No. 8, in which it found that all cruel and degrading forms of punishment should be eliminated:

There is no ambiguity: ‘all forms of physical or mental violence’ does not leave room for any level of legalized violence against children. Corporal punishment and other cruel or degrading forms of punishment are forms of violence and States must take all

²²⁰ See *id.* at art. 23.

²²¹ *Id.*

²²² *Id.* at art. 19.

appropriate legislative, administrative, social and educational measures to eliminate them.²²³

The Committee even recognized that there are “exceptional circumstances” where teachers “may be confronted by dangerous behaviour which justifies the use of reasonable restraint to control it.”²²⁴ However, they emphasize that there is a distinction between using force to protect and using force to punish and that “[t]he principle of the minimum necessary use of force for the shortest necessary period of time must always apply.”²²⁵ The committee further demanded training and detailed guidance to ensure that there is never “deliberate infliction of pain as a form of control.”²²⁶ The Committee’s comments highlight that the CRC should be construed to apply to seclusion and restraints in schools, when used as punishment and not safety, because the tactics can be seen as a cruel and degrading form of punishment.

By fully ratifying the CRC, the United States would confirm its commitment to international norms that protect children from degrading punishment in public schools—protections that children across the globe already have. Currently, the United States fails to live up to international standards that protect children from physical punishment in school. When ratified, the international human rights norms outlined by the treaty would be binding upon the United States.

C. Convention on the Rights of Persons with Disabilities

The Convention on the Rights of Persons with Disabilities (CRPD) is a United Nations Treaty that was adopted in 2006, entered into force on May 3, 2008, and has since been signed by the

²²³ U.N. Comm. on the Rights of the Child, General Comment No. 8: The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment, ¶ 18, U.N. Doc. CRC/C/GC/8 (Mar. 2, 2007).

²²⁴ *Id.* at ¶ 15.

²²⁵ *Id.*

²²⁶ *Id.*

United States on July 30, 2009.²²⁷ It has been ratified by 172 nations,²²⁸ however, the United States has yet to ratify it.²²⁹ The CRPD, the first comprehensive international instrument addressing the rights of persons with disabilities, creates enforceable obligations on state governments and emphasizes the right of children with disabilities to have an inclusive education.²³⁰ The treaty's purpose is to "promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity."²³¹

The CRPD requires that states provide an education system that allows students with disabilities to have an inclusive education.²³² Article 24(2)(b) requires states to ensure that "[p]ersons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live[.]"²³³ Instead of resorting to the use of restraints and seclusion, Article 24 calls upon states to accommodate a students' disabilities.²³⁴ Further, because students with disabilities are disproportionately secluded and restrained in schools,²³⁵ subjecting them to seclusion and restraints as a form of physical punishment, often for behaviors that stem directly from their disability, denies these students their right to an inclusive education. Thus, the use of restraints and seclusion as punishment goes directly against the aims of the CRPD.

Moreover, the CRPD contains a number of provisions that are implicated when a child with a disability is restrained or secluded in school instead of being given appropriate accommodations for their

²²⁷ U.N. TREATY COLLECTION, Convention on the Rights of Persons with Disabilities (last visited Mar. 7, 2017), https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-15&chapter=4&clang=en.

²²⁸ *Id.*

²²⁹ *Id.*; see also Rosalind Helderman, *Senate rejects treaty to protect disabled around the world*, WASH. POST (Dec. 4, 2012) (In December 2012, a vote in the United States Senate fell six votes short of the two-thirds majority required for ratification of the CRPD).

²³⁰ See Weissbrodt, *supra* note 12, at 299.

²³¹ Convention on the Rights of Persons with Disabilities, G.A. Res. 61/106, Annex, art. 1, U.N. Doc. A/RES/61/106 (Dec. 13, 2006).

²³² See *id.* at art. 24(2)(b).

²³³ *Id.*

²³⁴ *Id.* at art. 24(2)(c).

²³⁵ See *supra* notes 108–124.

disability. Article 7 mandates that states take “all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.”²³⁶ Furthermore, Article 5 demands that states take “all appropriate steps to ensure that reasonable accommodation[s]” are provided to persons with disabilities and that persons with disabilities are entitled to equal protection without any discrimination.²³⁷

Under Article 15, Children with disabilities are entitled to protection from “torture and . . . cruel, inhuman, or degrading treatment or punishment.”²³⁸ Article 15 requires that States “take all effective legislative, administrative, judicial, or other measures” to protect persons with disabilities from being subjected to such punishment.²³⁹ This language underscores that when students with disabilities are secluded or restrained as punishment, such treatment goes against Article 15 and the school system, as a state actor, should protect the student from that treatment.

The use of restraints and seclusion as a form of physical punishment is further incompatible with Article 16 of the CRPD. Article 16 provides that states shall “take all appropriate measures to prevent all forms of exploitation, violence and abuse. . . .”²⁴⁰ Violence and abuse can be seen when children with disabilities, through the use of restraints and seclusion as physical punishment, are dragged across the floor,²⁴¹ restrained in chairs,²⁴² or are forced to urinate on themselves because they are not allowed to leave a seclusion room.²⁴³ These examples highlight the current harmful practices that are in contradiction to the stance of the CRPD.

In signing the CRPD, President Obama stated that the treaty “reaffirms the inherent dignity and worth and independence of all persons with disabilities. . . .”²⁴⁴ Because President Obama officially

²³⁶ Convention on the Rights of Persons with Disabilities, *supra* note 231, at art. 7.

²³⁷ *Id.* at art. 5.

²³⁸ *Id.* at art. 15.

²³⁹ *Id.*

²⁴⁰ *Id.* at art. 16.

²⁴¹ *See, e.g.*, GAO REPORT, *supra* note 3, at 30.

²⁴² *See, e.g., id.* at 6.

²⁴³ *Id.*

²⁴⁴ Remarks by President Barack Obama on Signing of U.N. Convention on the Rights of Persons with Disabilities Proclamation (Jul. 24, 2009), *available at*

signed the CRPD, this Comment argues that the United States should now adhere to these commitments and proceed to full ratification to ensure that students with disabilities receive an inclusive education that is free from the use of restraints and seclusion as a form of physical punishment. By ratifying the treaty, the United States will be bound by it and will have to adhere to the universal standard for human rights of persons with disabilities; thus, advancing international norms that will increase the protection of students with disabilities across all settings, including the classroom.

D. *Positive Behavior Intervention and Support*

Instead of the zero tolerance school discipline practices that have resulted in the over-use of punishment and excessive force,²⁴⁵ schools should adopt effective programs such as Positive Behavior Interventions and Supports (PBIS).²⁴⁶ PBIS is a “classroom management framework based on preventing behavior issues by building upon students’ strengths, communicating clear expectations, and consistently modeling respectful behavior.”²⁴⁷ This practice is a community-building approach that flips the question from “what is wrong with you” to “what happened to you” when behavioral issues arise.²⁴⁸

Rethinking school discipline and banning the use of restraints and seclusion as a form of physical punishment is critical to ensure that school systems serve and protect all students. Previous uses of the PBIS approach have shown to be an effective method of reducing referrals and problem behaviors in the classroom.²⁴⁹ For example, in Montgomery County Public Schools in Virginia (where the use of restraints and seclusion has been prohibited for more than two

<http://www.benderconsult.com/articles/remarks-president-barack-obama-signing-un-convention-rights-persons-disabilities>.

²⁴⁵ See Griffin, *supra* note 150, at 144–45.

²⁴⁶ See Alex M. Johnson, *Building Positive Relationships to Break the School-To-Prison Pipeline*, THE HUFFINGTON POST (Oct. 10, 2015), http://www.huffingtonpost.com/alex-m-johnson/building-positive-relationships-school-to-prison_b_8265512.html.

²⁴⁷ *Id.*

²⁴⁸ *Id.*

²⁴⁹ See HUMAN RIGHTS WATCH, *supra* note 9, at 54.

decades), PBIS has flourished.²⁵⁰ In the Virginia school district, educators develop a “detailed plan to prevent such [dangerous] behaviors and tell teachers and aides what to do if the plan fails. Over time, as students learn better ways to respond to frustration and grow comfortable with the school routine, they need fewer accommodations.”²⁵¹

Another way to change the use of restraints and seclusion as punishment is to have school districts rethink investments in “police and security guards that often make schools feel like prisons, and pivot toward more investments in support staff such as counselors and mental health professionals.”²⁵² Investing in counselors and mental health professionals will benefit students who are dealing with traumas or disabilities and it will “ultimately benefit the classroom teachers”²⁵³ because there will be someone available to help the student and possibly decrease student outbursts. Adopting these practices nationwide through either federal legislation or state legislation can help put an end to the use of restraints and seclusion as a form of punishment against students with disabilities and ensure that these vulnerable students receive an inclusive education.

V. CONCLUSION

Children have a right to an inclusive, equal, and violence-free education based on the principle that all children should “learn together, wherever possible, regardless of difference.”²⁵⁴ Using restraints and seclusion as a form of punishment against students with disabilities has blurred into a form of corporal punishment that is abusive and ineffective, violates international human rights laws and norms, and should be prohibited in the United States. The use of restraints and seclusion has become a discriminatory practice of discipline that especially affects students with disabilities. If steps are not taken to ban these vicious practices legislatively or through ratification of human rights treaties, more students will be traumatized and possibly funneled into the school-to-prison pipeline.

²⁵⁰ See Vogell, *supra* note 2.

²⁵¹ *Id.*

²⁵² See Johnson, *supra* note 246.

²⁵³ *Id.*

²⁵⁴ HUMAN RIGHTS WATCH, *supra* note 9, at 61.