

SECLUSION, RESTRAINT, AND REASONABLE FORCE

North Carolina School Boards Association

October 11, 2023

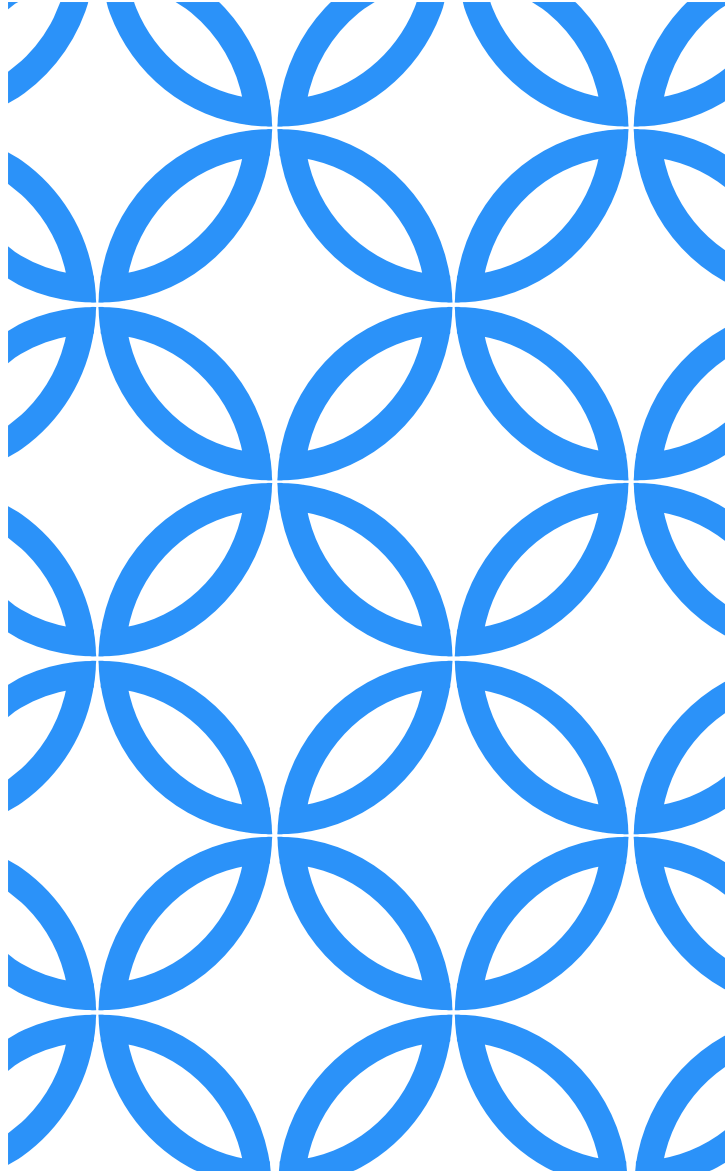
Dr. Amy Clay & Rebecca Williams

Poyner Spruill, LLP



- A Brief History
- Defining Reasonable Force, Seclusion, Restraint
- Recent Investigations and Cases
- Strategies and Trainings

OVERVIEW



A BRIEF HISTORY

Deborah Greenblatt Act

DEBORAH GREENBLATT

Executive Director of Carolina
Legal Assistance (now Disability
Rights North Carolina “DRNC”) for
twenty-three (23) years

Zealous advocate serving the
needs of people with disabilities

Died of cancer on June 13, 2005



DEBORAH GREENBLATT ACT

Enacted one month after Deborah Greenblatt's death in 2005 to address the following:

- ☐ Permissible use of seclusion and restraint in schools
- ☐ Reports of certain incidents of seclusion and restraint
- ☐ Building code requirements for locking mechanisms in schools

Promote

- Promote safety and prevent harm to all students, staff and visitors in the schools

Treat

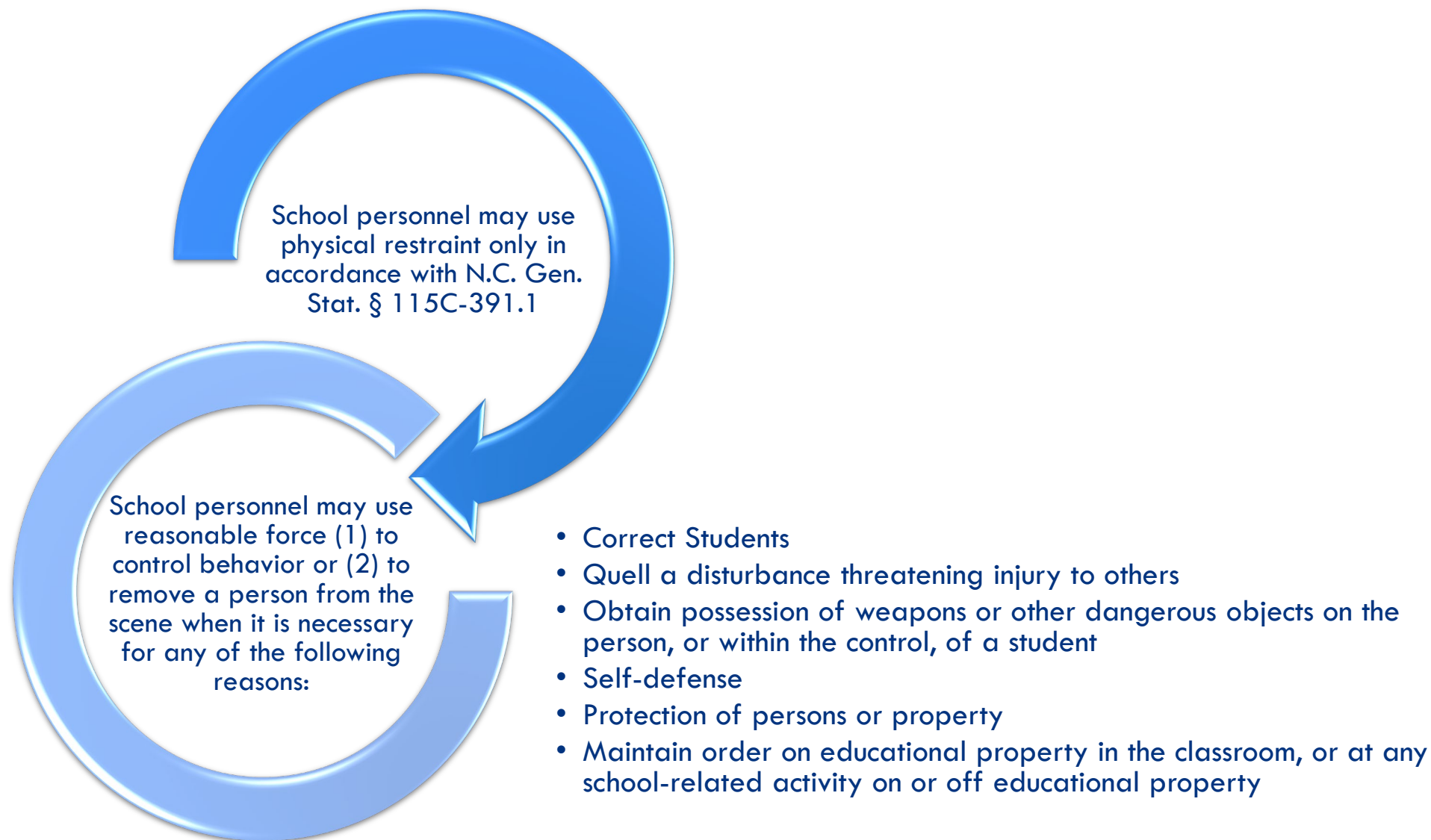
- Treat all public school students with dignity and respect in the delivery of discipline, use of physical restraints or seclusion, and the use of reasonable force as permitted by the law.

Provide

- Provide school staff with clear guidelines about what constitutes use of reasonable force permissible in North Carolina public schools

DEBORAH GREENBLATT ACT (CONT.)

N.C. GEN. STAT. § 115C-390.3 REASONABLE FORCE





N.C. GEN. STAT. § 115C-391.1 PERMISSIBLE USE OF SECLUSION AND RESTRAINT

Definitions



AVERSIVE PROCEDURES

Systematic physical or sensory intervention program for modifying behavior of a student which causes or reasonably may be expected to cause one or more of the following:

- Significant physical harm, such as tissue damage, physical illness, or death
- Serious, foreseeable long-term psychological impairment
- Obvious repulsion on the part of observers who cannot reconcile extreme procedures with acceptable, standard practice

Examples of unacceptable, extreme aversive procedures

- Electric shock applied to body
- Extremely loud auditory stimuli
- Forcible introduction of foul substances to mouth, eyes, ears, nose, or skin
- Place in tub of cold water or shower
- Slapping, pinching, hitting, or pulling hair
- Blindfolding or other forms of visual blocking
- Unreasonable withholding of meals
- Eating one's own vomit, or
- Denial of reasonable access to toileting facilities

BEHAVIORAL INTERVENTION AND ISOLATION

Behavioral Intervention

- Implementation of strategies to address behavior that is dangerous, disruptive, or otherwise impedes the learning of a student or others

Isolation

- Behavior management technique in which a student is placed alone in an enclosed space from which the student is not prevented from leaving



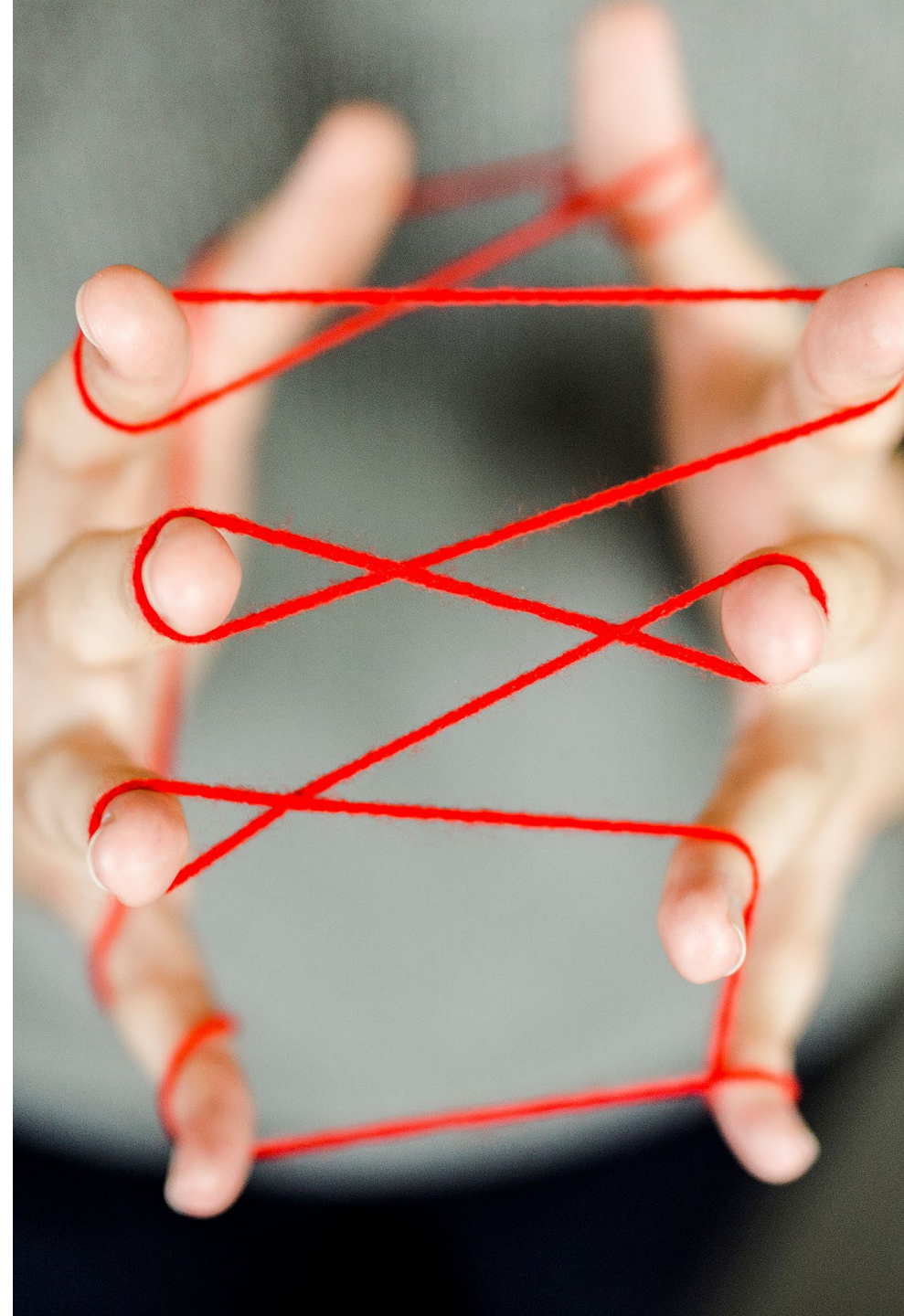
MECHANICAL AND PHYSICAL RESTRAINT

Mechanical Restraint

- Use of any device or material attached or adjacent to a student's body that restricts freedom of movement or normal access to any portion of the student's body and that the student cannot easily remove

Physical Restraint

- Use of physical force to restrict the free movement of all or a portion of a student's body





SECLUSION AND TIME-OUT

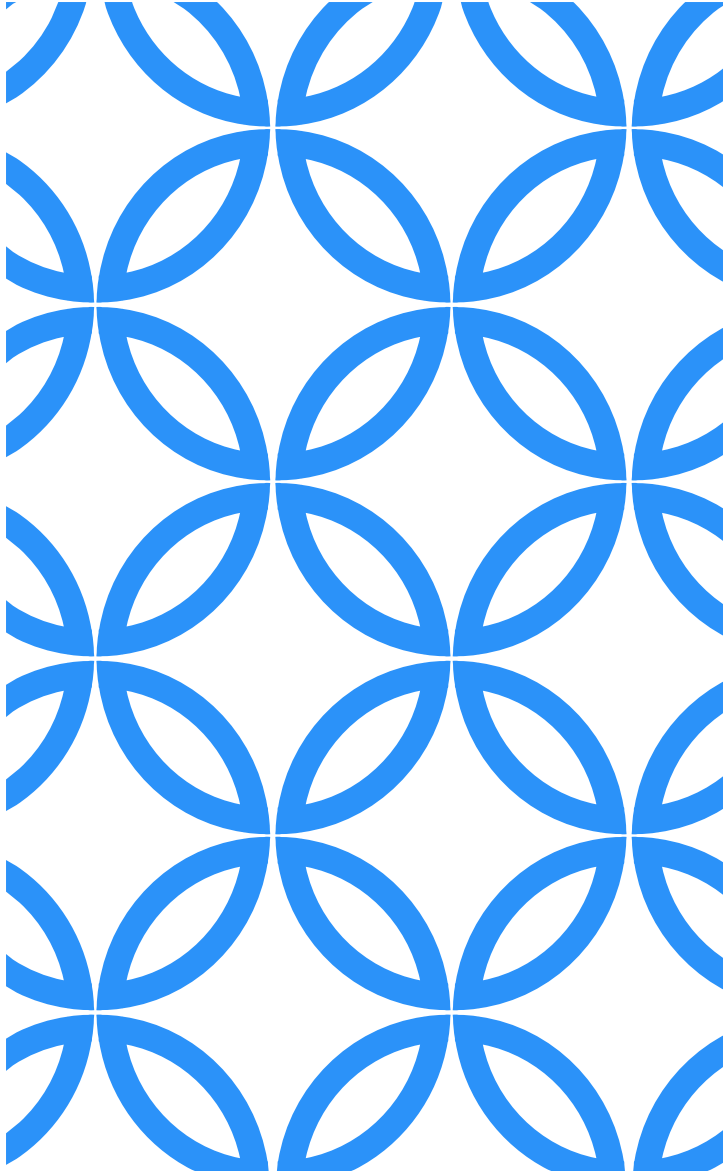
Seclusion

Confinement of a student alone in an enclosed space from which the student is:

- Physically prevented from leaving by locking hardware or other means
- Not capable of leaving due to physical or intellectual incapacity

Time-out

Behavior management technique in which a student is separated from other students for a limited period of time in a monitored setting



WHEN IS RESTRAINT OR
SECLUSION AN EXERCISE OF
REASONABLE FORCE?

PHYSICAL RESTRAINT AND REASONABLE FORCE

Physical restraint of students by school personnel* shall be considered a reasonable use of force **ONLY** when used in the following circumstances:

As reasonably needed to obtain possession of a weapon or other dangerous objects on a person or within the control of a person

As reasonable needed to maintain order or prevent or break up a fight

As reasonably needed for self-defense

As reasonably needed to ensure the safety of any student, school employee, volunteer, or other person present, to teach a skill, to calm or comfort a student, or to prevent self-injurious behavior

As reasonably needed to escort a student safely from one area to another

If used as provided for in a student's IEP, Section 504 plan, or Behavior Intervention Plan

As reasonably needed to prevent imminent destruction to school or another person's property

*School Personnel are: (a) school employees, (b) any person working on school grounds or at a school function under a written agreement with the school system to provide educational or related services to students, (c) any person working on school grounds or at a school function for another agency providing educational or related services

PHYSICAL RESTRAINT AND REASONABLE FORCE

Except in the limited circumstances described on the previous slide, physical restraint shall not be considered a reasonable use of force and its use is prohibited

Nothing prevents the use of force by law enforcement officers in the lawful exercise of their law enforcement duties

MECHANICAL RESTRAINT

Mechanical restraint of students is permissible only in the following circumstances:

When properly used as an assistive technology device in the student's IEP, Section 504 Plan, or Behavior Intervention Plan or as otherwise prescribed by a medical or related service provider

When using seat belts or other safety restraints to secure students during transportation

As reasonably needed to obtain possession of a weapon or other dangerous objects on a person or within control of a person

As reasonably needed for self-defense

As reasonably needed to ensure the safety of any student, school employee, volunteer, or other person present

MECHANICAL RESTRAINT

Except in the limited circumstances described on the previous slide, mechanical restraint, including tying, taping, or strapping down a student, **shall not be** considered a reasonable use of force and is prohibited

Nothing prevents the use of mechanical restraint by law enforcement officers in the exercise of law enforcement duties

SECLUSION

SECLUSION OF STUDENTS BY SCHOOL PERSONNEL MAY BE USED IN THE FOLLOWING CIRCUMSTANCES:



As reasonably necessary to respond to a person in control of a weapon or other dangerous object



As reasonably needed to maintain order or prevent or break up a fight



As reasonably needed for self-defense



As reasonably needed when a student's behavior poses a threat of imminent physical harm to self or other or imminent substantial destruction of school or another person's property

SECLUSION

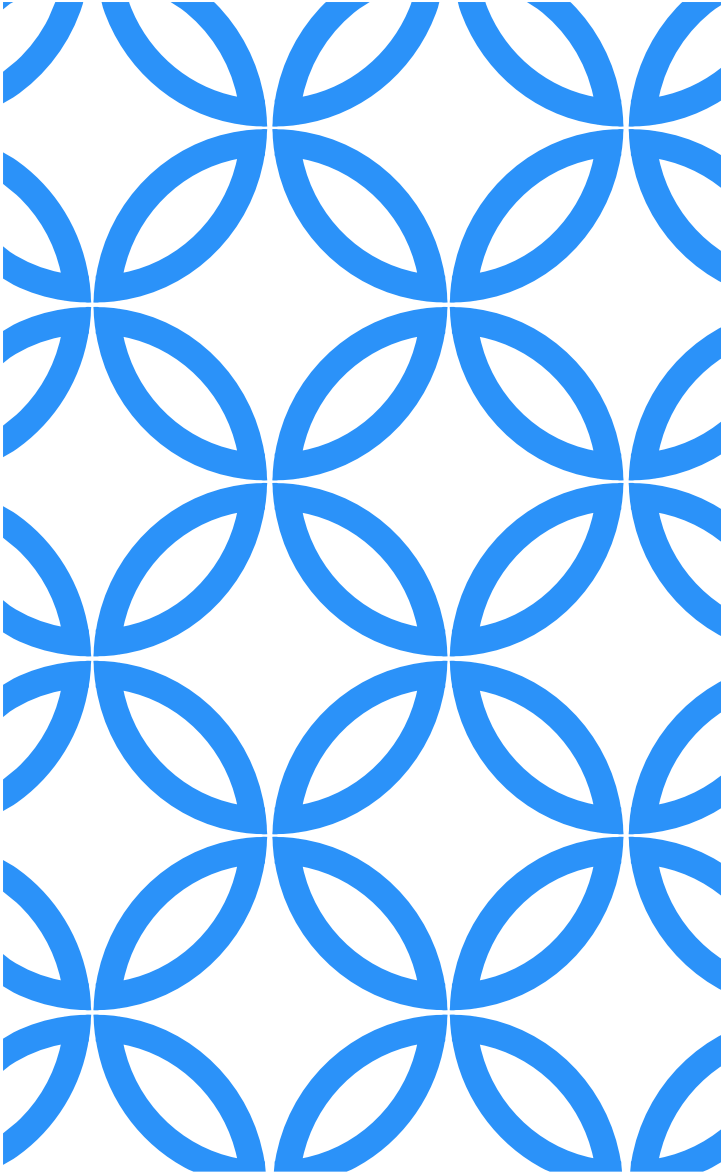
When used as specified in a student's IEP, Section 504 Plan, or Behavior Intervention Plan and:

- Student is monitored by an adult in close proximity who can see and hear the student at all times
- Student is released seclusion upon cessation of the behavior that led to seclusion or as otherwise specified in the IEP, Section 504 Plan, or Behavior intervention plan
- The space in which the student is confined has been approved for such use by the LEA
- The space is appropriately lighted, ventilated, heated, and cooled
- The space is free of objects that unreasonably expose the students or others to harm

Except for the limited circumstances described above and on the previous slide, the use of seclusion is not considered reasonable force and is not permitted

Seclusion is not reasonable force when used solely as a disciplinary consequence

Nothing prevents the use of seclusion by law enforcement officers in lawful exercise of their duties



ISOLATION, TIME-OUT, AND AVERSIVE PROCEDURES

ISOLATION, TIME-OUT, AND AVERSIVE PROCEDURE

Isolation: Permitted as a behavior management technique provided that:

- Space used for isolation is appropriately lighted, ventilated, heated, and cooled
- Duration of isolation is reasonable in light of purpose of isolation
- Student is reasonably monitored while in isolation
- Isolation space is free of objects that unreasonably expose student or others to harm

Time-out: Nothing in law or policy prohibits or regulates the use of time-out as a behavior management technique

Aversive Procedure: Prohibited



RELEVANT BOARD POLICIES

Policy 4301, Authority of School Personnel



Policy 4302, School Plan for Management of Student Behavior



Regulation 4302-R, Rules for Use of Restraint and Seclusion in Schools



Policy 4307, Disciplinary Action for Exceptional Children/Students with Disabilities



REPORTING, NOTICE, AND DOCUMENTATION REQUIREMENTS

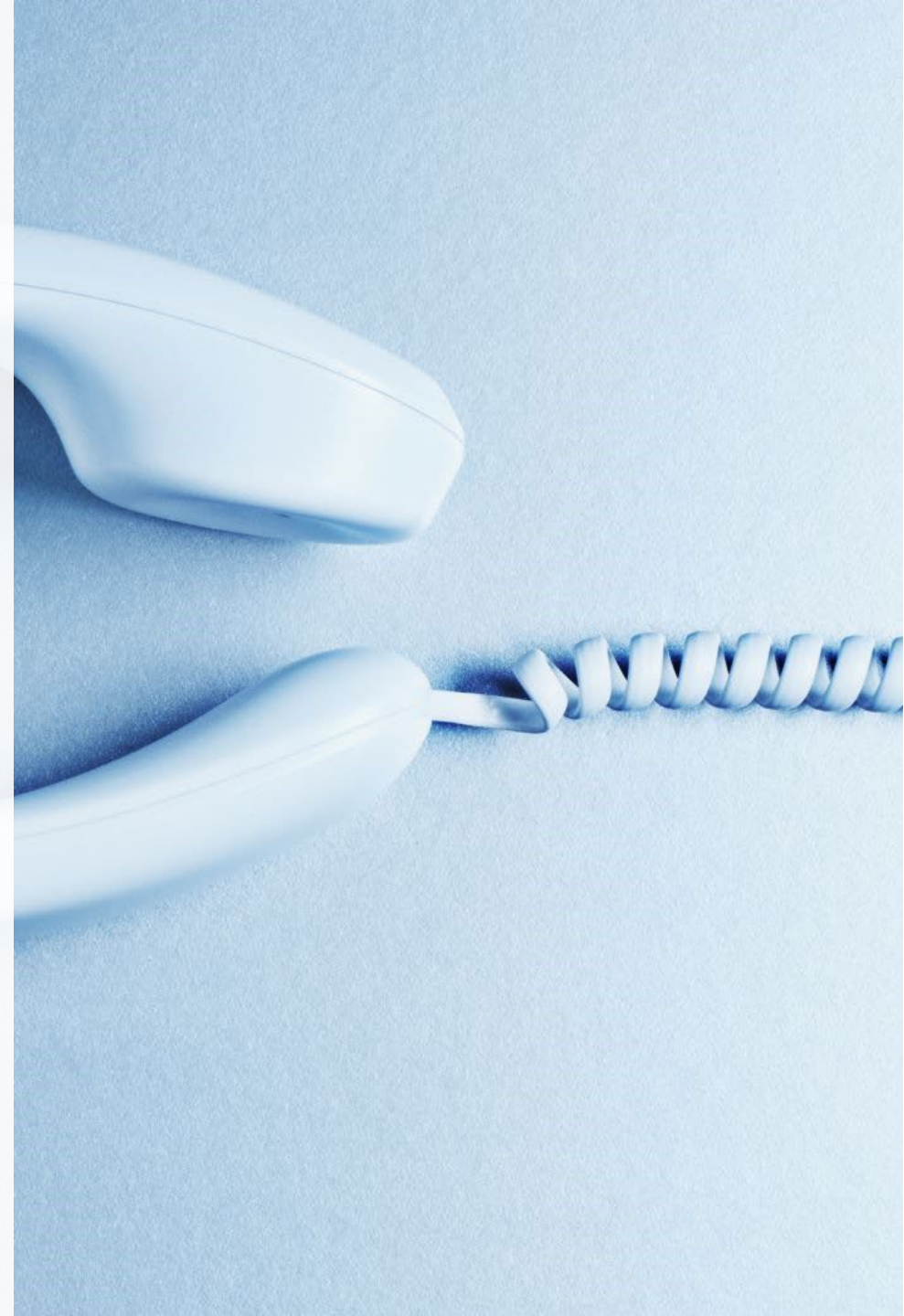
REPORTING AND NOTICE

School personnel must **promptly notify*** the principal or designee of:

- Any use of aversive procedure
- Any prohibited use of mechanical restraint
- Any use of physical restraint resulting in observable physical injury to a student
- Any prohibited use of seclusion that exceeds 10 minutes or the amount of time specified on a student's behavior intervention plan

When a principal or designee has personal knowledge or actual notice of any of the events described above, the principal or designee shall promptly notify the student's parent and provide the name of the school employee that the parent can contact about the incident

***“Promptly notify” means the end of the workday during which the incident occurred when reasonably possible and never later than the end of the following workday**



DOCUMENTATION

Parents shall be provided with a written incident report within a reasonable period of time (no later than 30 days after the incident)

Written incident report shall include:

- Date, time of day, location, duration, and description of incident and interventions
- Events that led up to the incident
- Nature and extent of any injury to the student
- Name of school employee to contact regarding the incident



OTHER PROVISIONS



No board or its employees shall retaliate against another employee for reporting an alleged violation of seclusion and restraint laws unless the employee knew or should have known the report was false



No private right of action against a board, its agents, or employees

STUDENTS WITH DISABILITIES

Students with disabilities are disproportionately secluded and restrained

However, data does not necessarily indicate wrongdoing.

Seclusion and restraint may be considered "reasonable force" when part of a student's IEP/BIP

The IDEA does not prohibit the use of seclusion and restraint for students with disabilities

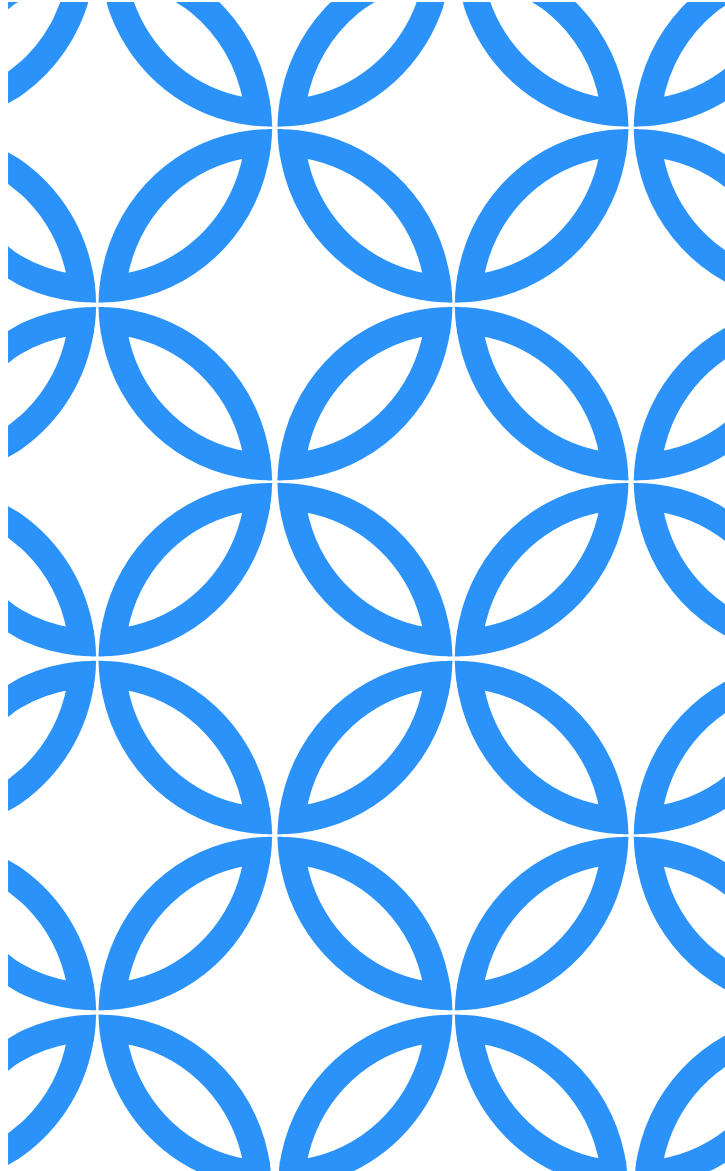
Frequent use of seclusion and restraint may indicate a need for evaluation or reevaluation

May indicate that student's current specialized instruction, related services, or accommodations are not sufficient to provide the student with FAPE

May lead to liability for claims regarding disability-related discrimination under federal anti-discrimination laws

Section 504 and Title II of the Americans with Disabilities Act

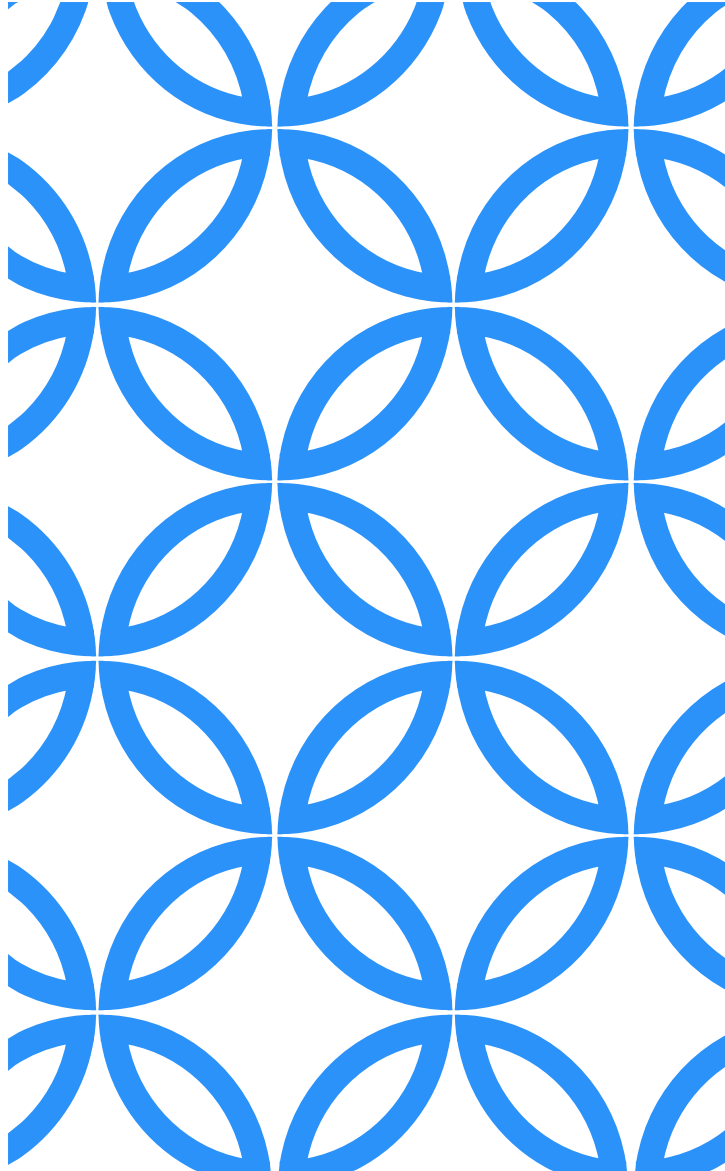
When included in special education due process actions, consider a total release of claims



DISPUTE RESOLUTION

OCR/OSERS RESTRAINT/SECLUSION INITIATIVE

- In 2019, the U.S. Dept. Of Education announced an initiative to address the improper use of seclusion and restraint in schools
- OCR in partnership with OSERS are charged with overseeing this initiative
- Includes:
 - Compliance reviews
 - Civil Rights Data Collection
 - Support for recipients
 - Technical assistance regarding the use of restraint and seclusion, the development and implementation of policy, issues identified through compliance reviews, information to support the use of less dangerous practices, webinars for interested parties regarding the use of appropriate intervention and supports for students



RECENT INVESTIGATIONS AND CASES

WAKE COUNTY NEWS

Wake County school system to pay \$450K, change procedures after special needs student placed in closet

Source: CBS 17

by: [Judith Retana](#)

Posted: Aug 18, 2023 / 03:44 PM EDT

Updated: Aug 31, 2023 / 04:07 PM EDT

WAKE COUNTY SCHOOLS

'It's not good for anyone.' Wake schools will pay \$450,000, make changes after disabled child was placed in a closet

The judge found the school system had denied the child a "free and appropriate education" as guaranteed under federal special education law by using inappropriate punishments and failing to develop or implement behavioral interventions for the child.

Posted 4:20 p.m. Aug 21 - Updated 5:10 p.m. Aug 21



By [Emily Walkenhorst](#), WRAL education reporter

L.P BY AND THROUGH J.P. AND K.P. V. WAKE COUNTY BOARD OF EDUCATION

- Third grade student allegedly locked in a closet in as a disciplinary measure on 24 separate occasions
- Parents noticed a change in her behavior at home (reportedly could not be in rooms alone at home, would take hours to calm down when she returned home from school)
- A video of the student being restrained and carried out of the cafeteria was captured and shared with the child's parents. Per reports regarding this matter, after the student was carried out of the cafeteria, she was placed in a closet in the teacher's lounge, while school staff members held the door shut from the outside for 14 minutes.
- Upon further investigation, the parents found out that their daughter had been placed in a closet on numerous occasions for bad behavior.
- School staff reportedly referred to these incidents as "time out," and such incidents lasted up to an hour and a half at a time.

L.P BY AND THROUGH J.P. AND K.P. V. WAKE COUNTY BOARD OF EDUCATION (CONT'D)

- Board was sued in both the Office of Administrative Hearings (OAH) and federal court
- OAH judge ruled against the Board - student was denied a free, appropriate, public education
- In August of 2023, the Board reached a settlement with the family regarding outstanding claims. As part of this settlement agreement, the Board agreed to pay \$450,00000 in settlement of all outstanding disputes.
 - \$195,000 in attorneys' fees for the underlying administrative hearing and appeal to a state review officer
 - \$115,000 in attorneys' fees for the federal actions
 - \$97,000 for tuition reimbursement, transportation, compensatory services and costs to provide related services ordered by the ALJ in the due process action
 - \$43,000 in damages to the family
- The Board also agreed to increased transparency and accountability measures, including updated reporting requirements, training, and use of an independent consultant.

EL DORADO HILLS SCHOOL — MAX BENSON CASE (C.A.)

- Student with autism placed by his public school district at a private school for students with special needs (The Guiding Hands School)
- School regularly used restraint as form of behavior intervention
- Max was restrained facedown for almost two hours after he allegedly spat in the face of a classmate
- Even after Max stopped breathing, school employees allegedly told him to "stop faking it"
- 25 minutes after Max was rendered unconscious, an ambulance was called
- Max was unresponsive when authorities arrived and had vomited and urinated on himself
- Max was taken to the hospital where he died two days later





EL DORADO HILLS SCHOOL — MAX BENSON CASE (C.A.)

- California Department of Education conducted a preliminary investigation in 2018 and reported that staff utilized “an amount of force which is not reasonable and necessary under the circumstances.”
- School was closed on January 25, 2019, after the California Department of Education sought to strip the school of its certification.
- Prompted an OCR investigation into the public school district that placed Max at Guiding Hands School. Resulted in a resolution agreement that required increased training and monitoring. Found that the district had placed three students with disabilities in non-public school settings, which resulted in a violation of their Section 504 and Title II rights.
- Legal action surrounding this case is ongoing
 - Three school employees including the Executive Director, Principal, and special education teacher have been charged with involuntary manslaughter

OFFICE FOR CIVIL RIGHTS: HORRY COUNTY SCHOOLS, SOUTH CAROLINA

- OCR opened a compliance review of the district's restraint and seclusion practices in January 2019
- "OCR's investigation identified concerns that students who were repeatedly subjected to restraint or seclusion lost educational time and services, and that the district did not re-evaluate students who were repeatedly restrained or secluded to determine whether they should receive additional supports or compensatory services." (OCR, May 24, 2022)
 - Found an underreporting of seclusion and restraint
 - Over the course of one school year:
 - One student secluded 31 times, for a total of 13 hours and 43 minutes
 - One student restrained 143 times for a total of 27 hours and 38 minutes
 - One student secluded 86 times for a total of 10 hours and 18 minutes
 - None of these students underwent a reevaluation during this school year
 - Found that restraint and seclusion were being used as punitive measures (for example, for leaving class, disrupting class, or refusing to stay in a specified area)

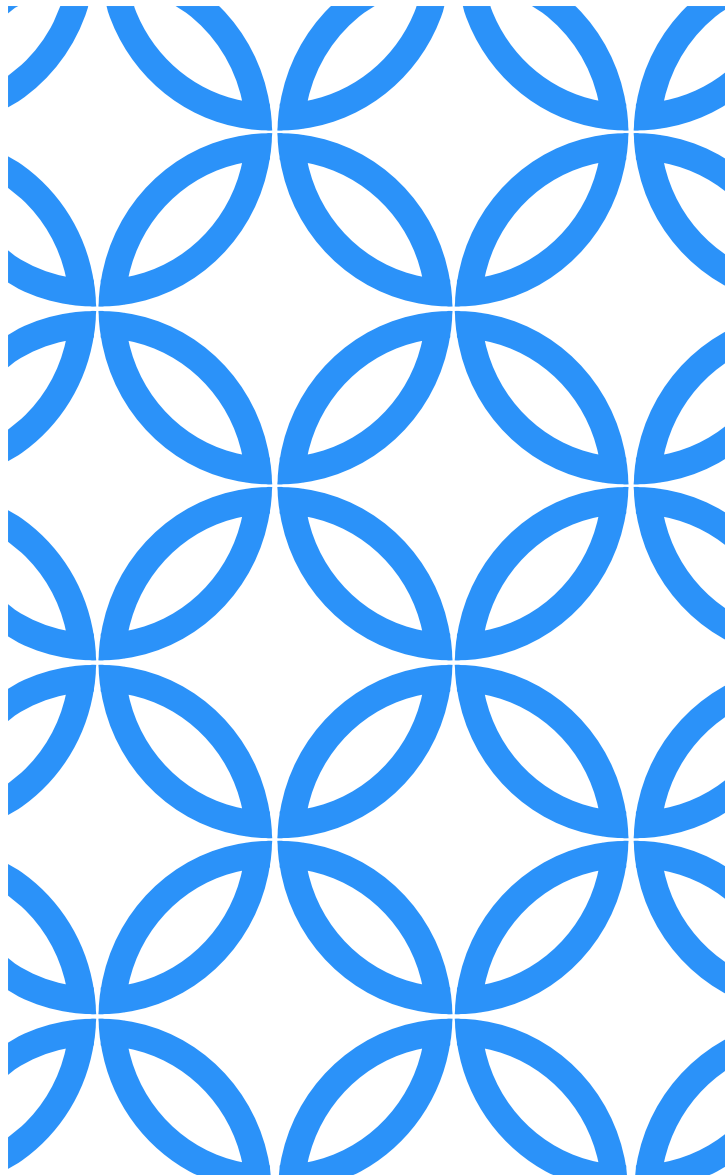


OFFICE FOR CIVIL RIGHTS: HORRY COUNTY SCHOOLS, SOUTH CAROLINA

- On May 24, 2023, OCR announced that it had reached a resolution agreement with Horry County Schools
 - As part of the resolution agreement, the District agreed to seven action items:
 - "Revising its procedures and guidance documents on the use of restraint or seclusion.
 - Clarifying the roles and responsibilities of those involved in monitoring and oversight of the district's use of restraint or seclusion.
 - Modifying its recordkeeping system.
 - Creating a plan to accurately report data to the Civil Rights Data Collection.
 - Training staff on the district's procedures and new recordkeeping system.
 - Reviewing files of currently enrolled students who were restrained or secluded since the start of the 2017-2018 school year to determine, in part, whether any student requires compensatory education for educational services missed due to incidents of restraint or seclusion. And,
 - Implementing a monitoring program to assess the district's use of restraint or seclusion."
- OCR May 24, 2022

DRNC: RECENT INVESTIGATIONS

Look out	Look out for items like metal racks in rooms used in seclusion rooms.
Consider	Consider requiring a key for seclusion rooms so that it is known to someone else that the room is being used for that purpose.
Do not use	Do not use storage rooms (or rooms being used for storage of furniture, for example) for seclusion rooms.
Take	Take care when using rooms that have business equipment, appliances, or other items that can easily fall if hit by an escalated student.
Consider	Consider seclusion logs.



STRATEGIES AND TRAININGS

Strategies

AN OUNCE OF PREVENTION...: BEYOND THE POLICIES

Policies

- Clear Policies
- Clear Procedural Guidelines

What About the Staff?

- Need training plan for staff
- Reminders of policy and guidelines

Variety of Methods

- Are staff trained to minimize and avoid behavioral emergencies?
- Are staff trained in verbal de-escalation?
- Are staff trained in appropriate restraint techniques?

Post-intervention

- Does staff follow up on post-crisis procedures?

AN OUNCE OF PREVENTION...: STAFF TRAINING

CPI

- Crisis Prevention Institute
 - Goal of decreasing staff injuries, decreasing the need for use of force

Techniques

- CPI training provides the de-escalation techniques and person-centered behavior management strategies

Verbal Intervention

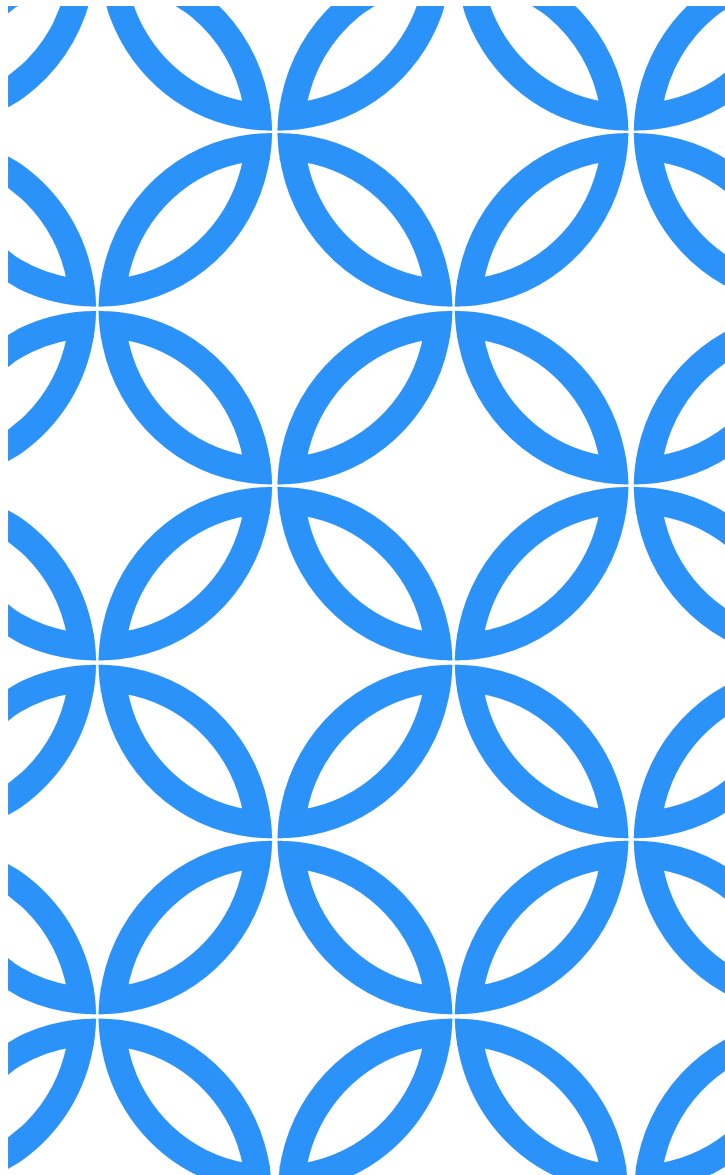
- Verbally de-escalate disruptive behaviors and prevent further escalation

Nonviolent Crisis Intervention

- Safety interventions and disengagement techniques for escalating risk behaviors.

Restraints

- As last resort in behavioral emergencies to protect and maintain safety for the individual in distress and others who could be affected.



QUESTIONS?
