

OFFICE OF STATE SUPERINTENDENT
Summary of State Board of Education Agenda Items
April 21, 2016

OFFICE OF STATE SUPERINTENDENT

01. Action: Establish State Board Policy Part 3, Chapter 38, Rule 38.13 – Restraint and Seclusion [Goal 4 – MBE Strategic Plan]
(Has cleared the Administrative Procedures Act process with public comments)

Mississippi Department of Education (MDE) staff from offices across the Department met and discussed establishing the restraint and seclusion policy. The group reviewed the policies from other state departments of education and the United States Department of Education recommendations for restraint and seclusion for State Board Policy Part, 3, Chapter 38, Rule 38.13 – Restraint and Seclusion. MDE staff met with the Mississippi ACLU, Special Education Advisory Council, and Parents for Public Education, Mississippi School Boards Association, and MDE Special Education staff to develop the Restraint and Seclusion Policy for the State Board of Education to consider approval. Two public hearings were held for public comments and after the hearings, MDE staff and outside organizations met to finalize the policy.

This item references Goal 4 of the *Mississippi Board of Education 2016-2020 Strategic Plan*.

Recommendation: Approval

Back-up material attached

Rule 38.13 Restraint and Seclusion

1. Introduction

The Mississippi Department of Education and the State Board of Education supports a positive approach to behavior that uses proactive strategies to create a safe school climate that promotes dignity, creates authentic student engagement, and improves student achievement for all students. When teachers and administrators implement evidence-based positive behavior supports with fidelity, a safe and orderly school environment is created that is conducive to learning and students are able to achieve without the constant interruptions that occur when teachers are required to address discipline in the classroom.

Research indicates that the most effective response to school violence is to establish a school culture that emphasizes prevention, early identification, teaching, reinforcement of appropriate behavior and continuous data-based problem solving. One primary method is to structure the environment using a non-aversive effective behavioral system, such as Positive Behavior Interventions and Supports (PBIS). Effective positive behavioral systems are comprehensive, in that they are comprised of a framework or approach for assisting school personnel in adopting and organizing evidence-based behavioral interventions into an integrated continuum that enhances academic and social behavioral outcomes for all students. The PBIS prevention-oriented framework or approach applies to all students, all staff, and all settings. When integrated with effective academic instruction, such systems can help provide the supports children need to become actively engaged in their own learning and academic success. Schools successfully implementing comprehensive behavioral systems create school-wide environments that reinforce appropriate behaviors while reducing instances of dangerous behaviors that may lead to the need to use restraint or seclusion. In schools implementing comprehensive behavioral systems, trained school staff use preventive assessments to identify where, under what conditions, with whom, and why specific inappropriate behavior may occur, as well as implement de-escalation techniques to defuse potentially violent dangerous behavior. Preventive assessments should include (1) a review of existing records; (2) interviews with parents, family members, and students; and (3) examination of previous and existing behavioral intervention plans. Using these data from such assessments helps schools identify the conditions when inappropriate behavior is likely to occur and the factors that lead to the occurrence of these behaviors; and develop and implement preventive behavioral interventions that teach appropriate behavior and modify the environmental factors that escalate the inappropriate behavior. The use of comprehensive behavioral systems significantly decreases the likelihood that restraint or seclusion would be used, supports the attainment of more appropriate behavior, and, when implemented as described, can help to improve academic achievement and behavior. In order to reduce the use of aversive techniques in response to student behavior, restraint and seclusion, school wide behavior systems should include a comprehensive behavior management system that includes: (a) socially valued and measurable outcomes, (b) empirically validated and practical practices (c) systems that efficiently and effectively support the implementation of these practices, and (d) continuous collection and use of data for decision making.

However, at times, some students exhibit behaviors which place themselves and others in imminent danger. Schools shall implement proactive strategies and interventions to reduce the likelihood of these situations, and they shall have clearly identified responses to address such

situations when they occur. Additionally, schools shall have policies in place that address the responses needed to ensure the safety of all students and staff.

2. Restraint and Seclusion Policy

A Restraint and Seclusion Policy is defined through written local school board-approved policies and procedures that define appropriate means of restraint and seclusion to provide for a safe and orderly education. These policies and procedures shall apply to all students in the local school district and shall not focus on one or more subgroups of students.

In accordance with Miss. Code Ann. §§ 37-9-69 and 37-11-57, it is recognized that staff may intercede in situations wherein students are displaying physically violent behavior or are deemed to be a danger to themselves or others. State Board policy positively prohibits the use of excessive force, or cruel and unusual punishment regarding student management. Restraint and/or seclusion shall not be utilized as a punitive measure.

This policy in no way shall inhibit the right of staff to reasonable self-defense in accordance with the provisions of the 5th and 14th amendments to the Constitution of the United States, or the Constitution of Mississippi, nor negate the obligation of the district to provide a safe work environment.

3. Definitions

- a. Aversive behavioral interventions is defined as a physical or sensory intervention program intended to modify behavior that the implementer knows would cause physical trauma, emotional trauma, or both, to a student even when the substance or stimulus appears to be pleasant or neutral to others and may include hitting, pinching, slapping, water spray, noxious fumes, extreme physical exercise, loud auditory stimuli, withholding of meals, or denial of reasonable access to toileting facilities.
- b. Aversive procedure is defined as the use of a substance or stimulus, intended to modify behavior, which the person administering it knows or should know is likely to cause physical and/or emotional trauma to a student, even when the substance or stimulus appears to be pleasant or neutral to others. Such substances and stimuli include but are not limited to: infliction of bodily pain, (e.g., hitting, pinching, slapping), water spray, noxious fumes, extreme physical exercise, costumes, or signs.
- c. Aversive technique is defined as physical, emotional or mental distress as a method of redirecting or controlling behavior.
- d. Behavioral intervention is defined as the implementation of strategies to address behavior that is dangerous, inappropriate, detrimental, or otherwise impedes the learning of the students.
- e. Behavior Intervention Plan (BIP) is defined as a plan of action for managing a student's behavior. The BIP includes a set of strategies and supports intended to increase the occurrence of behaviors that school personnel encourage and to decrease behaviors that school personnel want to lessen or eliminate. The BIP shall include:

- i. Observable and measurable description of the problem behavior;
 - ii. Identified purpose of the problem behavior as a result of the FBA;
 - iii. General strategy or combination of strategies for changing the problem behavior;
 - iv. Written description of when, where, and how often the strategy will be implemented;
and
 - v. Consistent system of monitoring and evaluating the effectiveness of the plan.
- f. Chemical restraint is defined as “the administration of medication for the purpose of restraint.” Chemical restraint does not apply to medication prescribed by and administered in accordance with the directions of a licensed physician. The use of chemical restraint is prohibited in Mississippi Public Schools.
- g. Dangerous behavior is defined as behavior that presents an imminent danger of physical harm to self or others but does not include inappropriate behaviors such as disrespect, noncompliance, insubordination, or out-of-seat behaviors.
- h. De-escalation techniques are defined as strategically employed verbal or non-verbal interventions used to reduce the intensity of threatening behavior before a crisis situation occurs.
- i. Emergency situation is defined as spontaneous unpredictable events posing an imminent threat of serious bodily injury.
- j. Functional Behavioral Assessment (FBA) is defined as a school-based, collaborative process that includes the parent and, as appropriate, the child, to determine why a child engages in challenging behaviors and how the behavior relates to the child’s environment.
- i. The term includes direct assessments, indirect assessments and data analysis designed to assist the team to identify and define the problem behavior in concrete terms.
 - ii. Contextual factors (including affective and cognitive factors) are identified that contribute to the behavior, and a hypothesis is formulated regarding the general conditions under which a behavior usually occurs and the probable consequences that maintain the behavior.
 - iii. Formal documentation of the assessment by appropriately qualified individuals become part of the child’s educational record.
 - iv. The FBA must include all of the following:
 - a. Clear description of the problematic behavior;
 - b. Identification of the antecedent events, times, and situations that predict when the problem behavior will and will not occur;
 - c. Identification of the consequences of the problem behavior;
 - d. Development of hypotheses and summary statements that describes the problem behavior and its functions; and
 - e. Collection of data from a variety of sources: interviews, direct observation data, etc.

- k. Imminent danger is defined as a danger which is impending, close at hand, threatening, or about to happen.
- l. Individualized Education Plan (IEP) is defined as a written statement for a child with a disability that is developed, reviewed, and revised in accordance with §§ 300.320-300.324.
- m. Mechanical restraint is defined as “any device that attaches to a student’s body that restricts movement and cannot be removed by the student.” Examples include: straps, tie downs, boards, and harnesses. Handcuffs are also considered mechanical restraints, but may only be used by certified school resource officers, as defined in Miss. Code Ann. §§ 37-7-321 and 37-7-323. The use of mechanical restraints is prohibited in Mississippi Public Schools, except as provided in §§ 37-7-321 and 37-7-323.

Devices not considered mechanical restraints include: adaptive equipment, protective devices, or assistive technology devices documented in a student’s individualized education plan (IEP), Section 504 plan, behavior intervention plan, or otherwise prescribed for the student by a medical or related service provider, seatbelts, and other safety equipment when used to secure students during transportation.

- n. Physical escort is defined as the temporary touching or holding of the hand, wrist, arm, shoulder or back for the purpose of inducing a student who is acting out (with minimal resistance) and able to respond to such physical prompt, to move to a safe location.
- o. Physical prompt is defined as a teaching technique that involves physical contact with the student and that enable the student to learn or model the physical movement necessary for the development of the desired competency.
- p. Physical Restraint is defined as “the use of physical force, without the use of any device or material that restricts the free movement of all or a portion of a student’s body.” Physical restraint does not include briefly holding a student’s hand or arm to calm them or escort them to another area. A physical restraint shall be removed as soon as the student is no longer a danger to himself/herself or others. The term physical restraint does not include:
 - i. Physical restraint that restricts the flow of air to the student’s lungs.
 - ii. Prone restraint in which a student is placed face down on the floor or other surface, and physical pressure is applied to the student’s body to keep the student in the prone position.
- q. Positive Behavior Interventions and Supports (PBIS) is defined as a proactive approach to establishing the behavioral supports and social culture needed for all students in a school to achieve social, emotional and academic success. Attention is focused on creating and sustaining primary (school-wide), secondary (classroom), and tertiary (individual) systems of support that improve lifestyle results (personal, health, social, family, work, recreation) for all youth by making targeted misbehavior less effective, efficient, and relevant, and desired behavior more functional.

- r. Positive Behavior Support Plan is defined as the design, implementation, and evaluation of individual or group instructional and environmental modifications, including programs of behavioral instruction, to produce significant improvements in behavior through skill acquisition and the reduction of problematic behavior.
- s. Seclusion is defined as “the confinement of a student in an enclosure from which the student’s egress is restricted.” Seclusion does not include in-school suspension, detention, or alternative school.
- t. Section 504 Plan is defined as an individualized plan of accommodations and modifications to provide a free appropriate public education to a student who has a disability that substantially limits a major life activity. A 504 plan spells out the modifications and accommodations that will be needed for a student to have the opportunity to perform at the same level as their peers.
- u. Written report is defined as a printed paper filings and electronic filings that can be printed.

4. General Procedures

Restraint

- a. Physical restraint is considered to be an emergency response after all other verbal and non-verbal de-escalation measures have failed in effectiveness based on the following criteria:
 - i. The student or other person is engaged in actions that would constitute a danger to themselves or others;
 - ii. The student or other person is engaged in actions that would constitute potential or actual destruction of property;
 - iii. To remove a non-compliant student or person from the scene of an incident;
 - iv. The restraint should be removed as soon as the student is no longer a danger to themselves or others.
- b. When using physical restraint for students who are a danger to themselves or others, staff should take precautions necessary to ensure the safety of the student and the staff members engaged in restraining the student. Physical restraints that restrict the flow of air are prohibited in all situations. When deemed it is necessary to restrain a student who is a danger to themselves or others, the following procedures shall be used:
 - i. Restraint shall be conducted by staff who are trained in the restraint procedures adopted by the school district;
 - ii. Staff shall carefully observe the student throughout the restraint to observe the student’s physical and emotional status;
 - iii. Restraint shall be immediately terminated if the student appears to be, or claims to be, in severe stress;
 - iv. The restraint shall be removed as soon as the staff determines the student is no longer a danger to himself/herself or others;

- v. When the student is able, he/she should be returned to the instructional activity, or to a less restrictive environment;
 - vi. Parents must be notified on the same school day of the incident. At the time the parent is notified, the school shall schedule a debriefing with the parent to discuss the incident. In the event a parent cannot be reached by telephone, a letter should be sent informing the parent of the incident and the person who can be contacted at the school to address any questions the parent may have.
 - vii. Within two school days after the restraint incident occurs, the staff shall conduct a debriefing of the circumstances leading to the restraint and discuss any alternative behaviors that could have been utilized;
 - viii. The school shall report the restraint and/or seclusion incident to the local school district and the Mississippi Department of Education.
- c. School districts that permit restraint and seclusion shall ensure that staff members are trained in the use of restraint. This training shall be provided as part of a program which addresses a full continuum of positive behavioral intervention strategies, crisis intervention, and de-escalation techniques.

Absent an imminent danger to health or safety, physical restraint shall only be practiced by staff trained in the physical restraint approach adopted by the local school district. The Mississippi Department of Education does not endorse a particular training program. The local school district shall select programs which are approved by the MDE and those that are founded on evidence-based techniques which focus on:

- i. Certification for school personnel and recertification as required by the training program;
- ii. Preventing the need for restraint;
- iii. Training in first aid;
- iv. Identification of antecedent behaviors;
- v. Use of positive behavior supports, de-escalation, and conflict management;
- vi. Keeping staff and students safe during required restraints.

Local school district administrators shall monitor the use of physical restraint to ensure fidelity of implementation. Additional and follow-up training shall be provided on an ongoing basis and any situations in which procedures are not followed shall be addressed immediately.

- d. The use of mechanical restraints is prohibited in Mississippi Public Schools, except by law enforcement. .
- e. The use of chemical restraints is prohibited in Mississippi Public Schools.

Behavioral Interventions

- a. Behavioral intervention must be consistent with the child's right to be treated as an individual. Schools shall implement an evidence-based system of positive behavioral intervention strategies and support. Elements of the system of support shall include universal screening to identify potential students, teaching school-wide expected

behaviors and social skills, and a system to monitor the effectiveness of the interventions and supports.

- b. Behavioral strategies, in conjunction with the school-wide system of positive behavioral interventions shall be used to help identify the causes of dangerous behavior and reduce the need for restraint or seclusion. Information about a student through interviews, observation, and records help identify the causes of the dangerous behavior and shall guide the development of a behavioral plan for the student. A complete plan shall include:
 - i. Addressing the characteristics of the setting and the event;
 - ii. If possible, removing the antecedents that triggered the event;
 - iii. Adding antecedents that promote appropriate behavior;
 - iv. Teaching appropriate behaviors to replace the dangerous behaviors.

Seclusion

- a. The use of seclusion occurs in a specially designated room or space that is physically isolated from common areas and from which the student is physically prevented from leaving. The room or space used for seclusion may not be locked and staff shall be present to monitor the student. Seclusion shall cease once the student regains control of his or her behavior.

Only school personnel trained in the use of restraint and seclusion should be used to observe and monitor these students. Staff engaged in monitoring students shall have knowledge of effective restraint and seclusion procedures, emergency procedures, and knowledge of how to effectively debrief students after the use of restraint or seclusion.

- b. The room or space used for seclusion shall not contain any objects or fixtures with which a student could reasonably be harmed. Additionally, the room shall provide adequate lighting and ventilation.
- c. School personnel may use seclusion to address a student's behavior:
 - i. If the student's behavior constitutes an emergency and seclusion is necessary to protect a student or other person from imminent, serious physical harm after other less intrusive, nonphysical interventions have failed or been determined inappropriate;
 - ii. After less restrictive or alternative approaches have failed or have been determined to be inappropriate.
- d. Each time a student is placed in restraint or seclusion, the incident shall be documented in the student's educational record or cumulative folder. The documentation shall be available to the parent or guardian, and the parent or guardian shall be notified verbally or in writing on the day of the restraint or seclusion or no later than 48 hours following the incident. In the event a parent cannot be reached by telephone, a letter shall be sent informing the parent of the incident and the person who can be contacted at the school to address any questions the parent may have. This documentation shall be provided using

an incident report that is completed for each student in each instance in which the student is restrained or placed in seclusion. This report shall include the following:

- i. Date of incident and date submitted in MSIS;
- ii. Student's name, age and grade level;
- iii. Ethnicity, sex, and non-disabled/disabled status;
- iv. Location of restraint;
- v. Precipitating behavior/antecedent;
- vi. De-escalation efforts tried;
- vii. Type of restraint used;
- viii. The student's behavior and physical status during the restraint/seclusion;
- ix. Total time spent in restraint or seclusion. The student shall not be kept in seclusion for more than 20 minutes. If additional time is needed, school personnel shall reassess the student and document why the extra time is needed, or after this time, if the physical behavior is still manifested, the student shall be assessed for transport to a medical facility for evaluation by a physician and the parent notified;
- x. Injuries to student or staff;
- xi. Staff participating in the restraint/seclusion;
- xii. Staff signatures, including the principal/administrator;
- xiii. Name of school employee who the parent can contact; and
- xiv. Date and time parent was contacted.

After an incident of restraint and/or seclusion, all school personnel involved in the incident and appropriate administrative staff shall participate in a debriefing session for the purpose of planning to prevent or at least reduce the reoccurrence of the event. The debriefing session shall occur no later than two school days following the imposition of physical restraint or seclusion.

- e. If restraint and/or seclusion is used on a student who is not identified with a disability, the student shall be referred to the school's intervention team within 10 days of the incident. The team shall determine if the student shows a pattern of behavior that would indicate the need for an intervention plan.

5. Administrative Procedures

- a. Local school districts that utilize physical restraint and seclusion for all students shall develop written policies and procedures that govern the use of restraint and/or seclusion and shall periodically review and update them as appropriate. The written policies and procedures shall be designed to ensure the safety of all students, school personnel, and visitors and include the following provisions:
 - i. Staff and faculty training on the use of physical restraint;
 - ii. Parental notification when physical restraint is used to restrain their student not to exceed one school day from the use of the restraint;
 - iii. Documentation of the use of physical restraint or seclusion by staff or faculty participating in or supervising the restraint or seclusion event;
 - iv. Procedures for the periodic review of the use of restraint and seclusion policies;

- v. Procedures by which a parent may submit a complaint regarding the physical restraint or seclusion of their child;
 - vi. Procedures for reporting the use of restraint or seclusion to the local board of education and to the Mississippi Department of Education.
- b. The policies and procedures shall be reviewed with all staff on an annual basis.
 - c. Teachers and other district personnel shall be trained on how to collect and analyze student data to determine the effectiveness of these procedures in increasing appropriate behavior.
 - d. All parents shall receive, at least annually, written information about the policies and procedures for restraint and seclusion issued by the local school district or school. The written policies are to be included in each local education agencies code of conduct, student handbook, or other appropriate school publication.
 - e. A review of the use of a restraint and seclusion process shall be conducted by the school to determine if a revision of behavioral strategies are in place to address dangerous behavior or if positive behavioral strategies were not in place at the time of the restraint or seclusion.
 - f. School districts shall not only establish and disseminate policies and procedures on the use of seclusion and restraint, but also shall periodically review and update them as appropriate. The school district or school shall maintain records of its review of seclusion and restraint data and any resulting decisions or actions regarding the use of seclusion and restraint.
 - g. In any situation in which a student is a danger to themselves or others, and it becomes necessary to contact law enforcement or emergency medical personnel, nothing in this policy guidance shall be construed to interfere with the duties of law enforcement or emergency medical personnel.
 - h. The school district shall report the restraint and/or seclusion incident to the local school district and the Mississippi Department of Education annually.
6. Parental Notification
- a. All parents shall receive, at least annually, written information about the policies for restraint and seclusion issued by the local school district or school.
 - b. All parents shall be notified when physical restraint is used to restrain their student before the close of school on the day the restraint was used or within 48 hours following the incident.

Source: Miss. Code Ann. §§ 37-1-3, 37-7-321, 37-7-323, 37-9-69, 37-11-57, (Adopt 3/2016)

Tollie Thigpen

From: Nicholas Tandler <ntandler@CrisisPrevention.com>
Sent: Thursday, March 24, 2016 3:02 PM
To: Tollie Thigpen
Subject: CPI Public Comment Letter Seclusion and Restraint
Attachments: State Board Policy Part 3 Chapter Rule 38.13 Comment Letter.pdf

Hello,

Please see the attached CPI public comment letter for the proposed Seclusion and Restraint guidelines by the Department of Education.

Nick Tandler • Assistant to the General Counsel at [CPI](#)

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March 24, 2016

Mississippi Department of Education  
P.O. Box 771  
Jackson, MS 39205-0771

**RE: State Board Policy Part 3 Chapter Rule 38.13 Restraint and Seclusion – Comment Letter**

To whom it may concern,

We would like to thank you for the opportunity to provide comment on behalf of the 30,000 active members of the Crisis Prevention Institute (CPI) Instructor Association regarding the proposed adoption of **State Board Policy Part 3 Chapter Rule 38.13**. For over 35 years, CPI has been active in training educators in the skills necessary to manage a crisis situation and to safely intervene physically when required. We share the Mississippi Department of Education's goals of reducing restraint through an emphasis on prevention and early intervention, and by focusing on appropriate restraint policies intended to reduce the risks of performing restraints. As a general matter, CPI applauds the Mississippi Department of Education for its efforts in creating a comprehensive set of guidelines for staff to follow on the use of restraint with students. With that said, CPI would offer a few specific recommendations to the policy to improve the clarity and effectiveness of the rule for school staff as follows:

General Procedures Section 1:

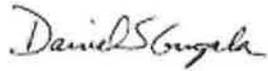
Stated Policy: Section 1 supports the ideal in which restraint shall not be used unless de-escalation efforts have been tried and failed. At that point Section 1(a) indicates that physical restraint shall only be use with a student who is "engaged in actions that would constitute, a danger to themselves or others" and Section 1(d) further qualifies this requirement indicating that a restraint be removed as soon as the conditions of Section 1(a) are no longer met.

Recommendation: CPI would recommend the removal of Section 1(b) and (c) as they are inconsistent with this section and subsequent sections that only qualify restraints used when a student is perceived to be a danger to themselves or others. In the event that these sections remain, CPI would recommend that all subsequent usage restrictions be updated to apply to these situations as well. For example Section 2 does not apply to restraints administered under Section 1(b) and 1(c). We feel this is an important adjustment to improve the overall impact of the policy.

CPI believes that the Mississippi DOE has incorporated many of the most important considerations within the policy that have proven to result in a successful adoption as seen in other, similar policy statements. In fact, many of the inclusions such as notification to parents, debriefing processes, and considerations for the student's emotional (as well as physical) well-being are important and sometimes overlooked elements in a policy such as this. We

understand how challenging the drafting of a rule like this is and commend the department for its efforts. We appreciate the opportunity to comment on this important policy and hope that you find these recommendations helpful. Should you have any further questions, or have an interest in discussing the recommendations I would encourage you to contact me via phone or email.

Sincerely,

A handwritten signature in cursive script that reads "Daniel Gugala".

Daniel Gugala  
General Counsel, CPI  
[dgugala@crisisprevention.com](mailto:dgugala@crisisprevention.com)  
414-979-7129

## Tollie Thigpen

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**From:** Hilary Adler <Hilary@handlewithcare.com>  
**Sent:** Monday, March 28, 2016 10:16 PM  
**To:** Tollie Thigpen  
**Cc:** john.kelly@northroyaltonsd.org; Kami Bumgarner; Jason S. Dean; charterschools@mississippi.edu; whjoneslawoffice@bellsouth.net  
**Subject:** COMMENTS DUE APRIL 16, 2016 RE: RESTRAINT IN SCHOOLS - RULE 38.13  
**Attachments:** MS.HWCs COMMENTS TO MS Restraint Rule. BOE FINAL 2016.pdf

To Mississippi Department of Education and Board of Education:

**Attached to this email is our comments regarding Mississippi's Board of Education's Proposed Rule 38.13 restricting the use of restraint in schools.**

We believe, proposed Rule 38.13 is outside the scope of authority of the MS-DOE and MS-BOE as neither has the authority to restrict the natural, civil, statutory, common law or Constitutional rights of school personnel to defend self, others and property by all means reasonable.

Attached are our comments along with citations to the laws the proposed Rule violates. Please confirm via email that our comments have been received.

We will be distributing a copy of our comments to Mississippi Attorney General Hon. Jim Hood, and every Mississippi legislator, school and teacher.

Bruce Chapman, President &  
Hilary Adler, VP  
Handle With Care  
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Gardiner, NY 12525  
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For the record, our company can easily adapt to this new Rule without any loss of income or financial distress to us. We advance these arguments on behalf of children and teachers because it is our duty as experts to do so.

***Retaliation against HWC for the exercise of our first amendment rights will not be tolerated.***

**HANDLE WITH CARE**  
*Behavior Management System, Inc.*

**Bruce Chapman**  
President

**Hilary Adler**  
Vice President

**TO ALL MISSISSIPPI BOARD OF EDUCATION MEMBERS**

**HWC'S COMMENTS TO DRAFT RESTRAINT AND SECLUSION RULE 38.13  
COMMENTS DUE APRIL 16, 2016**

**Re: Propose Rule 38.13**

Proposed Rule 38.13 regarding the use of restraint in schools conflicts with Mississippi's Constitution and Laws (case law and statute). The role of an administrative agency is to ensure the law as enacted by the legislature and interpreted by the courts is followed. It is not within the scope of authority for an administrative agency, comprised of unelected administrators, to enact law. It is also not within the scope of authority for an administrative agency to enact a rules that directly conflict with Constitutional or State law.

There are Supreme Court (SCOTUS) rulings holding that the right to self-defense does not stop at the schoolhouse gates. This proposed rule limits a person's right to protect self, others and property to an amount less than the Constitution and law provides as a matter of right. Every Mississippi citizen has a Constitutional right to come to the defense of self, others and property. The Rule as it is written regarding the use of restraint is unlawful. The rule should be withdrawn and re-written in accordance with Mississippi law.

Below are our comments as well as citations to Federal and Mississippi laws that this Rule conflicts with.

**HWC's expert and legal analysis of Proposed Rule 38.13**

**The prohibition of prone restraint for school personnel is illegal under Mississippi Law.**

A teacher cannot be forced to surrender her lawful right to self-defense (or defense of others) when she walks onto school grounds. Mississippi citizens have the unwaivable right to use "reasonable" force in accordance with a "reasonable person standard". A teacher does not need the approval of an unelected bureaucrat or even her principal, for that matter, to use physical restraint to protect herself or another.

**The Board of Education does not have the legal authority to prohibit school personnel from using reasonable force including prone (face down) restraint in the protection of self or others. She may lawfully use the least restrictive method including prone restraint to contain or stop an assault or battery under Mississippi law.**

Indeed, Mississippi's self-defense law is determinative whenever a person presents a threat of imminent harm to self or another within its jurisdiction. The State's self-defense law supersedes any

policy, bill or code which interferes with an individual's right to use reasonable force under a reasonable person standard. There is absolutely no scientific evidence demonstrating that a properly performed and engineered prone hold is unsafe or unreasonable. We assert that any policy or regulation in this area must make clear that any restrictions on the use of restraint, including prone and/or supine restraint, would not and could not apply when coming to the defense of self or others; when done in the best interests of the child as part of a IBP or IEP; when it is the least restrictive intervention and when it is necessary to maintain a safe environment.

The use of restraint, including prone restraint is not only permitted but, in fact, is mandated under civil rights, state tort and Mississippi's broader self-defense law requiring staff to be able to reasonably, effectively and in the best interest of staff and student, respond to a threat to oneself or another. Mississippi State law does not require anyone to submit meekly to the unlawful infliction of violence regardless of what mental condition may be causing the threatening behavior or the age of the actor. In fact, Mississippi law gives all its citizens absolute immunity from suit and administrative or disciplinary action when acting in defense of self or others. MCA 97-3-15(5)(b); 37-11-57.

The Supreme Court of the United States (SCOTUS) ruled that the right to self-defense does not terminate when a teacher or student enters the schoolhouse gates. *Tinker v. Des Moines Ind. Community School Dist.*, 393 U.S. 503, 506 (1969).

A sworn officer responding to an emergency at a school would not be prevented from using a prone hold in the course of containing and protecting someone, provided a reasonable and appropriate level of force was used. School staff and teachers often have far less physical assets, capabilities or tools than the average resource officer and have an even greater need to rely upon physical techniques and holds that provide sufficient mechanical advantage to safely manage the entire spectrum of students who may be much larger or physically capable than themselves. Under the proposed rule, schools are not allowed to use chemical or mechanical restraints (i.e. handcuffs or soft restraints) to save themselves or others if their physical restraint program is insufficient. No State legislator, the general public or any self-respecting law enforcement officer in the United States would tolerate this level of intrusion into one's own personal safety or heartfelt sense of duty to protect the children under her care and supervision. School administrators, staff, teachers and students maintain the same rights as every other citizen in Mississippi and are allowed to use any manner of intervention that is least restrictive, effective and reasonable. It has been shown that it is both foreseeable and inevitable that staff will need to use prone restraint to maintain safety.

**There is no science to support a ban on prone restraint.**

This provision of the Bill is motivated by an unsubstantiated concern that there is something inherently and extraordinarily dangerous about prone restraint that deserves the extension of protection this Bill purports. As an expert engineer of physical restraining technology, I can unequivocally state that, whether you hold someone face-up or face-down, if you pile enough people on top of them, you will have the same outcome.

The problem is not prone. The problem is the restriction of breathing by chest compression and not paying attention to the early physiological signs of cardiac or respiratory arrest brought on by the combination of chest compression with exertion. This is a training and, ultimately, a supervision issue.

HWC's protocol demands that client-agencies and schools "continuously monitor the physical and emotional safety of the child (or adult)" and to use HWC's method for eliminating chest compression from the hold. HWC's PRT is the only physical technique of any kind ever awarded a Patent in the history of the U.S. Patent Office for our constellation of safeguards to prevent positional asphyxia ("Apparatus and Method for Safely Maintaining a Restraining Hold on a Person"). Our safeguards are additionally designed to prevent any other type of medical emergency, whether it is related to the hold or, in the case of sudden cardiac arrest, from the physical exertion by someone who might not even have a known history of cardiac issues. We admonish staff and faculty to assume that every student has an undiagnosed cardiac or other condition and to continuously monitor without exception.

Prone restraint, especially HWC's prone restraining technology is NOT dangerous. HWC's "PRT®" in its prone configuration has never been implicated in single a catastrophic injury or fatality, in Mississippi or in any of the other 49 states where we provide training. Nationally, we are talking about many millions of applications. HWC has never been sued for a field application of a HWC technique or method nor have we ever paid a settlement to avoid a suit. Dr. Michael Baden, arguably the preeminent forensic pathologist in the country has been consistent in his appraisal that the PRT in its prone configuration is safe. If our prone holding technology was dangerous, someone would have pointed it out by now.

### **The prone restraint ban is a state-created danger**

#### **Duty to Train**

The Supreme Court has held that agencies, facilities and schools have an obligation to train their employees for the tasks they will predictably face while at work. It is both likely and foreseeable that it will be impossible to maintain an intervention in a standing or seated position. Frankly, the student may dictate the circumstance and configuration. The facility has a duty to train staff how to realistically handle these situations to protect themselves and others from harm. *Canton v. Harris*.

#### **State Created Danger**

State-created danger is found when a person's substantive due process protections -- rights, privileges, or immunities secured by the Constitution and laws i.e. the right to defend and protect oneself or another from bodily harm --are abrogated by the State. "If the state puts a man in a position of danger from private people and then fails to protect him, it will not be heard to say its role was merely passive; it is as much an active tortfeasor as if it had thrown him into a snake pit." *Bowers v. DeVit*. Among the historic liberties so protected is a right to be free from -- and to obtain judicial relief for -- unjustified intrusions on personal security. *Ingram v. Wright*. The State does not have the right to limit a person's right to defend themselves or another in any manner that is reasonable. Well-engineered prone holds are entirely reasonable.

Rule 38.13 amounts to a State created danger. It includes an indiscriminate prohibition of all prone (face down) floor holds, regardless of how competently the hold is engineered. While the Rule permits seated holds, seated holds are inherently unstable, which is best illustrated by the "basket hold." The

basket hold is a prime example of an incompetently engineered seated hold with two weak connection points at the wrists. Because it lacks sufficient mechanical advantage, it has a fatal malfunction mode when it destabilizes from its seated configuration causing the teacher to lose control. Either, the teacher instinctively struggles to regain superior position by assuming a prone configuration with the student or the student puts them both in that position. With the child's arms crisscrossed against his solar plexus (or diaphragm), the child's weight alone is sufficient to create a positional asphyxiation. The basket hold was never intended to be a prone hold. By broadly painting all prone methods dangerous, this "prone" scenario is being exploited by those who really wish to ban the use of all restraint if they could.

According to Rule 38.13, the basket hold in its seated configuration with its well-known history of causing fatalities will be permitted in Mississippi schools while other more thoroughly and safely engineered prone and supine holds will not.

Positional asphyxia is caused by two things: 1) chest compression and 2) not paying attention. HWC's prone method has been granted a Patent for its ability to prevent chest compression and the possibility of positional asphyxiation. You and your student are far safer in a well-engineered prone hold than you will ever be in a basket hold or any other seated hold.

With respect to mechanical advantage, every hold falls along a spectrum of advantage. Mechanical advantage becomes increasingly critical as the teacher is tasked with managing students with superior size, strength and athletic ability; beginning at about middle school age. The MS BOE does great harm to teachers and students by limiting access to proven methods that possess sufficient technical advantage and the safety protocols necessary to guarantee the safety of all concerned. The imposition of the Rule is clearly intended to create a situation in Mississippi classrooms that is so patently unsafe and frightening that teachers will be reluctant to use restraint at all.

This proposed rule is the most recent work of the radical "Restraint-free" movement in Mississippi, which includes the publically-funded disability advocacy attorneys, advocates and others who are driving this movement in Mississippi and elsewhere. The singular trait these advocates all share is, they possess strong visceral feelings about physical restraint absent any discernable expertise, whatsoever. Their shrill proclamations are not supported by science or common sense. For the last decade they have been conducting a relentless witch-hunt against all prone methods by claiming they are universally unsafe. They are not. The fact that this proposed rule is being floated in Mississippi simply proves, if you repeat a lie often enough and loudly enough it will eventually become true – or at least they hope.

### **The "Professional Judgment Standard" - when restraint is used as part of an IEP or IBP**

The United States Supreme Court (SCOTUS) held that the legal standard when determining treatment and safety decisions is the professional judgment standard. SCOTUS held that the duty and legal responsibility for treatment decisions, including what is written as part of an IEP or IPB, rests exclusively with the teachers, parents and facility professionals (not legislators) who work directly with students. As it is the professionals, caretakers, educators and guardians who are best able to 1) determine the clinical, treatment and educational needs of the student and 2) balance those needs with the overall safety and security needs of the facility. IDEA and Rule 504 also support the individual's right to treatment and education which includes the use of restraint.

The American Association of School Administrators (“AASA”) states “Legislation or policy that prohibits parents and school personnel from communicating about the student’s needs and corresponding school interventions *runs counter to the entire purpose of the Individuals with Disabilities in Education Act (IDEA)*.” Mississippi’s education and treatment teams are all operating within the scope of their training and license when they make decisions regarding restraint, including what type of restraint method should be used into an IEP.

The duty and responsibility to provide appropriate treatment, welfare, safety and education decisions rests entirely with the school and treatment team. The opinion of legislators, or state bureaucrats, operating from a remote location and without benefit of contact with the student and no personal stake in a safe outcome matters not, according to SCOTUS.

### **The Prone Restraint Ban Provision Cannot Be Enforced: Mississippi School Personnel Are Immune from Criminal Prosecution, Administrative and Disciplinary Action and Civil Suit.**

Mississippi law provides immunity to anyone acting in reasonable defense of self or others. Mississippi law also states that any person sued (this would include disciplinary and administrative actions) for using reasonable self-defense is entitled to reimbursement of their costs, expenses, compensation and attorney fees. MCA 97-3-15(5)(b); 37-11-57. Ironically, even if the Mississippi BOE enacts the rule, it cannot enforce it. If schools try to enforce the provisions of the rule, the Mississippi taxpayers will be paying for both the school’s and its personnel’s attorney fees, expenses, compensation and costs.

### **Teachers Will Need Additional Indemnification and Immunity for Failure to Protect**

Teachers and schools do not deserve to be held accountable for errant and illegal policies and Rules promulgated by unelected administrative bureaucrats acting outside the scope of their authority. No parent is going to tolerate uninterrupted acts of violence to be perpetrated on her child.<sup>1</sup> If the Mississippi BOE enacts this Rule, it should add a provision shielding schools and indemnifying school employees from both civil and criminal liability for failing to prevent or stop violent acts. Teachers can be prosecuted for neglect and abuse when they stand idly by as a child in her care is battered or injures himself. With a ban on prone holds, the MS BOE is essentially precluding teachers from using effective and reasonable methods of intervention, i.e., when students are on the ground fighting.

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<sup>1</sup> Teacher assistant criminally charged with child abuse for failure to take action to protect students. <http://www.wftv.com/news/news/local/2-teacher-assistants-students-charged-after-classr/ncsCb/>. Multimillion dollar suit filed against school for failure to take action to protect students. <http://handlewithcare.com/tn-multimillion-dollar-suit-filed-against-school-for-failure-to-protect-bullying-assault-and-battery>. School bus driver may face charges for failure to protect. <http://handlewithcare.com/student-attacked-on-school-bus>. Michigan courts give teachers right to sue if school system fails to discipline students who are safety risks. <http://handlewithcare.com/mi-Michigan-courts-give-teachers-right-to-sue-if-school-system-fails-to-discipline-students-who-are-safety-risks>. Lincoln County School District sued for millions for failing to protect students against a 6 year old.

If the state puts a man (or child) in danger from private people and then fails to protect him, it will not be heard to say that its role was merely passive; it is as much an active tortfeasor as if it had thrown him into a snake pit. *Bowers v. DeVito*, 686 F.2d 616 (7th Cir. 1982). Schools act in loco parentis of students and have an independent duty to protect.

The only people who will not need indemnification for all the damage to persons this rule will cause are the disability rights industry at large, its advocates and attorneys and, now, Mississippi's BOE - all operating from the safety and security of their offices.

Fortunately, when common sense fails there is always the law.

### **Rule 38.13 violates the following Mississippi Laws:**

#### **The Constitution of the State of Mississippi**

SECTION 1. The powers of the government of the state of Mississippi shall be divided into three distinct departments, and each of them confided to a separate magistracy, to-wit: those which are legislative to one, those which are judicial to another, and those which are executive to another.

SECTION 2. No person or collection of persons, being one or belonging to one of these departments, shall exercise any power properly belonging to either of the others....

SECTION 12. The right of every citizen to keep and bear arms in defense of his home, person, or property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but the legislature may regulate or forbid carrying concealed weapons.

SECTION 14. No person shall be deprived of life, liberty, or property except by due process of law.

SECTION 32. The enumeration of rights in this constitution shall not be construed to deny and impair others retained by, and inherent in, the people.

**Conclusion:** Mississippi's Constitution gives educators the right to defend life, liberty, natural and inalienable rights by all means reasonable. An employee who works at a Mississippi school does not lose her right to defend self and others at school. Mississippi's constitution specifically gives citizens the right to keep and bear arms for use in self-defense. The use of safely engineered prone holding methods, a much lower use of force threshold, are therefore entirely reasonable and lawful under Mississippi's Constitution. Mississippi's Constitution defines three branches of government, not four. Unelected bureaucrats comprising an administrative agency have no authority to enact rules that conflict with Mississippi's Constitution and laws. Mississippi's Constitution provides that any law (or rule) enacted repugnant to this Constitution (i.e. Rule 38.13) would be void.

#### **Mississippi Statutes Violated**

In Mississippi, a person has a right to defend himself, his home and his property from harm. There are three places that the long cherished rights of self-defense are clearly established in Mississippi law: (1) the Constitution (as cited above); (2) Mississippi Statute (for the use of serious or deadly force), and (3) Mississippi case law and jury instructions (for the use of self-defense).

**Mississippi Code 97-3-15: Crimes Against the Person -- use of defensive force.**

(1) The killing of a human being by the act, procurement or omission of another shall be justifiable in the following cases:

(e) When committed by any person in resisting any attempt unlawfully to kill such person or to commit any felony upon him, or upon or in any dwelling, in any occupied vehicle, in any place of business, in any place of employment or in the immediate premises thereof in which such person shall be;

(f) When committed in the lawful defense of one's own person or any other human being, where there shall be reasonable ground to apprehend a design to commit a felony or to do some great personal injury, and there shall be imminent danger of such design being accomplished;

(g) When necessarily committed in attempting by lawful ways and means to apprehend any person for any felony committed;

(h) When necessarily committed in lawfully suppressing any riot or in lawfully keeping and preserving the peace.

....

(4) A person who is not the initial aggressor and is not engaged in unlawful activity shall have no duty to retreat before using deadly force under subsection (1) (e) or (f) of this section if the person is in a place where the person has a right to be....

(5)(b) The court shall award reasonable attorney's fees, court costs, compensation for loss of income, and all expenses incurred by the defendant in defense of any civil action brought by a plaintiff if the court finds that the (b) The court shall award reasonable attorney's fees, court costs, compensation for loss of income, and all expenses incurred by the defendant in defense of any civil action brought by a plaintiff if the court finds that the defendant acted in accordance with subsection (1)( e) or (f) of this section. A defendant who has previously been adjudicated "not guilty" of any crime by reason of subsection (1)( e) or (f) of this section shall be immune from any civil action for damages arising from same conduct.

**1202: Mississippi Model Jury Instruction on Assault - Self-Defense – Standard of Care**

A person has a right to use reasonable force to defend [himself/herself] and [his/her] 90 property. A person who acts in self-defense or defense of [his/her] property is not legally responsible for any [harm/injuries] resulting from [his/her] acts of self-defense

**1204: Assault - Defense of Other People – Standard of Care**

A person has a right to use reasonable force to defend another person. A person who defends another person is not legally responsible for any [harm/injury/injuries] resulting from [his/her] acts defending the other person.

**1206 Assault - When the Aggressor May Act in Self-Defense - Standard of Care**

A person who commits an assault on someone may still claim self-defense if the person abandons the attack and makes it clear to the other person that [he/she] no longer wants to continue. A person who abandons an assault and then acts in self-defense is not legally responsible for any [harm/injury/injuries] from the assault.

**1208 Assault - Insulting Words Defense - Standard of Care**

A person who commits an assault as a result of having insulting words stated to [him/her] may not be legally responsible for any [harm/injury/injuries] as a result of the assault if the assault was justifiable or excusable as a result of the insulting words.

**1302 Battery - Self-Defense – Standard of Care**

A person has a right to use reasonable force to defend [himself/herself] and [his/her] property. A person who acts in self-defense or defense of [his/her] property is not legally responsible for any [harm/injury/injuries] resulting from [his/her] acts of self-defense.

**1304 Battery - Defense of Other People – Standard of Care**

A person has a right to use reasonable force to defend another person. A person who defends another person is not legally responsible for any [harm/injury/injuries] resulting from [his/her] acts defending the other person.

**1306 Battery - When the Aggressor May Act in Self-Defense - Standard of Care**

A person who commits a battery on someone may still claim self-defense if the person abandons the attack and makes it clear to the other person that [he/she] no longer wants to continue. A person who abandons a battery and then acts in self-defense is not legally responsible for any [harm/injury/injuries] from the battery.

**1308 Battery - Insulting Words Defense - Standard of Care**

A person who commits a battery as a result of having insulting words stated to [him/her] may not be legally responsible for any [harm/injury/injuries] as a result of the battery if the battery was justifiable or excusable as a result of the insulting words.

**Conclusion:** Mississippi’s Constitution, Statutes and case law give educators the right to defend themselves and others by all means reasonable. The reasonable standard is not akin to “no prone restraint.” The use of safely engineered prone holding methods (that do not restrict breathing) are entirely reasonable and lawful.

If an employer (or State actor) does fire or take administrative or disciplinary action against an employee acting in reasonable defense of self, that action constitutes a tort against public policy and a person’s civil liberties. The State legislature and Mississippi courts have held that no civil or criminal liability or sanction (disciplinary or administrative) can attach. As a result, the State, school and ultimately the taxpayer will be responsible for compensating any person erroneously sued or disciplined under this rule for attorney fees, lost compensation, costs and expenses.

**MCA 37-11-57. A Note On Mississippi’s Immunity Law.**

Under the immunity statute, there is a corporal punishment section. Corporal punishment is not akin to self-defense. Currently, Mississippi’s corporal punishment law contains a provision stating that a person can use physical/corporal intervention for self-defense or the defense of others. Specifically,

“(2) ‘corporal punishment’ means the reasonable use of physical force or physical contact by a teacher, assistant teacher, principal or assistant principal, as may be necessary to maintain

discipline, to enforce a school rule, for self-protection or for the protection of other students from disruptive students.”

The above section is more appropriately entitled “Use of force by persons with special responsibility for care, discipline or safety of others.” The use of force described is not being used as punishment. It is being used to maintain a safe environment conducive to learning. As such it should be in its own section.

## **Point 2: Federal laws violated by Proposed Rule 38.13**

### **The United States Constitution:**

Specifically, 2nd, 5th, 9th and 14th Amendment rights to due process/equal protection. Defense of self and others is considered to be an inherent and fundamental right.

### **The “Professional Judgment Standard” - when restraint is used as part of an IEP or IBP**

#### ***Youngberg v. Romeo*, 457 U.S. 307 (1982)**

This Supreme Court applied the professional judgment standard in ruling that the legal responsibility for making treatment and safety decisions rests exclusively with our facility professionals who work directly with our patients and who are best able to 1) determine the clinical needs of the client and 2) balance those needs with the overall safety and security needs of the facility. IDEA and Rule 504 also support the individual’s right to treatment and education.

In deciding *Youngberg*, SCOTUS established the "Professional Judgment Standard" and made it clear that it is only the state-licensed professionals working directly with a student who are 1) qualified and in a position to weigh the physical and emotional needs of the [student] and 2) in a position to balance the student's needs against the overall safety and security concerns and needs of the [school].

The safety protocols and restraining decisions which are specified in the student's Individualized Education or Behavior Plan (IEP/IBP) have the stamp of Constitutional approval. Education and treatment teams are operating within the scope of their training and license when they place their decisions regarding restraint, including what type of restraint method should be used with a particular child, into his or her IEP.

#### **St. Catherine’s Care Center of Findlay v. Centers for Medicare & Medicaid Services, Docket No. C-01-721; Decision No Cr1190 (June 14, 2004)**

A Federal Administrative Court ruled that it is the responsibility of the entity that [is in charge of the student] to determine the crisis intervention [restraint] program in place at the [school]. The court also held that the crisis intervention and restraint program and policy in place must meet the “**real needs**” of the [school] and, further, “neither federal reimbursement practices nor state screening practices relieves the [school] of its responsibility to provide its [students] with necessary [education, safety] and services.”

The duty and responsibility to provide appropriate treatment, welfare, safety and education decisions rests entirely with the school and treatment or education team. The opinion of legislators and

bureaucrats, operating from a remote location and without benefit of contact with the student or a personal stake in a safe outcome, matters not according to the U.S Supreme Court.

**The Right to an Education:**

Children are smart. It does not take long for children and adolescents to realize where the behavioral lines are drawn and exactly how much latitude he has to disrupt a classroom or put others at risk before decisive action is taken. Students will quickly figure out that the adults and teachers are not able to perform a takedown to an effective floor holding method and will act accordingly.

Children need to be protected from the physical and emotional consequences of their behavior in the short term and in the long term. If you agree that the ultimate goal of education is to prepare children and adolescents for the realities of adult life and to achieve personal and professional success, you are about to make that much harder for a large number of children in Mississippi. We know of no post high school graduation work situation or social environment that will ignore the kinds of dangerous and destructive behaviors teachers face every day. Children have a right to an education and some hope of a successful life as adults regardless of their condition or disability.

**In summary:**

Mississippi Rule 38.13 violates and conflicts with Federal laws; Mississippi's Constitution, Mississippi Statutes and Mississippi case law and all common sense. MS BOE does not have the authority to limit a person's right to defend self and others by all reasonable means. The proposed rule needs to be re-drafted to comply with State and Federal law. As currently drafted it is unenforceable and would never withstand judicial challenge.

We will be forwarding this document to every school, teacher, legislator and media outlet in Mississippi. We will be making it as easy as we can for Mississippi's teachers to petition their Legislative Representative and State Attorney General for his legal opinion regarding the legality of Rule 38.13.

For the record, our company can easily adapt to this new rule without any loss of income or financial distress to us. We advance these arguments on behalf of children and teachers because it is our duty as experts to do so.

Please feel free to contact me or Ms. Adler at 845-255-4031 or through the HWC website.

Sincerely,



Bruce Chapman, President  
Handle With Care  
[www.handlewithcare.com](http://www.handlewithcare.com)  
[www.brucechapman.com](http://www.brucechapman.com)

**Who we are:** Handle With Care Behavior Management System is a crisis intervention, verbal intervention and restraint training service provider with more than four decades of experience meeting the needs of virtually every type of human service environment; from nursery schools to penitentiaries. HWC is also a legal research center. We are nationally recognized as experts in this field with an unflinching commitment to creating therapeutic milieus that are safe and free from threats of physical harm and significant disruption. Hilary Adler is an attorney licensed to practice in New York. Bruce Chapman is President and founder of HWC. He is “qualified” to offer expert testimony in multiple jurisdictions throughout the U.S. on matters related to unarmed use-of-force, physical and mechanical restraint; in civil, administrative and criminal proceedings.

***Retaliation against HWC for the exercise of our first amendment rights will not be tolerated.***

**HWC COMMENTS TO RULE 8.13  
ADDENDUM 1**

**Summary of proposed changes to Rule 38.13:**

1. Change the term “corporal punishment” to “Use of force, control or discipline by persons with special responsibility for care, discipline or safety of others.” MCA 37-11-57
2. Remove the ban on prone restraint.
3. Allow the use of restraint as part of an IEP or BP for “non-emergency” and/or “emergency” interventions
4. Allow the use of restraint in accordance with the provisions contained in Mississippi’s Constitution, Statute and case law.

Failure to make the above revisions will result in the following:

- A school to prison pipeline. If teachers and schools are prohibited from or not given the tools necessary to create a safe environment conducive to learning, they will have no choice but to call law enforcement.
- An unlawful breach of the compact between government and the people. Government is not allowed to restrict a person’s right to defend self or others beyond what is reasonable.
- Enactment of the law as currently proposed is outside the scope of authority of the MS BOE. Persons on the MS-BOE should be personally liable for intentionally acting outside its scope.
- Dangerous schools.

Handle With Care can easily adapt to the proposed rule without any loss of income or financial distress. Mississippi schools, school personnel and students will not be able to do the same. Voting for this rule is a vote in favor of uncontrolled, unsafe schools, disempowered teachers, and increased violence.

## Tollie Thigpen

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**From:** tdedeaux@gmail.com  
**Sent:** Tuesday, March 29, 2016 9:27 AM  
**To:** Tollie Thigpen  
**Subject:** Support restraint and seclusion policy

Timothy Dedeaux  
806 N Columbia St  
Poplarville, MS 39470-2024

March 29, 2016

Tollie Thigpen

Tollie Thigpen:

Restraint and seclusion is a serious issue in Mississippi. I thank the Mississippi Department of Education for working with advocacy groups and the community at-large to institute standards that help to keep our students and school personnel safe.

I would like to submit the following recommendations for further consideration as MDE works to finalize proposed policy 4013 - Restraint and Seclusion.

In Section 4 under General Procedures: Restraint Subsection a. ii., the policy needs:

- A clear and working definition of "destruction of property" to prevent discretionary judgments of what acts or behaviors clearly constitute a destruction of property. This clarity will prevent escape hatches designed to use restraint and seclusion for convenience or as punishment.

In Section 4 under General Procedures: Behavioral Interventions Subsection d., the policy needs:

- A specific data collection/public reporting heading providing individual/detailed treatment of data collection/public reporting procedures. The proposed MDE policy only requires individual incidents be documented in the student's educational record. It is necessary to collect statewide data on restraint and seclusion from each school district to track trends, plan preventative measures and adjust policy at the state and local level.

- This documentation [shall] be provided using an incident report that is completed for each student in each instance in which the student is restrained or placed in seclusion.

- An administrator's signature should be added to the requirements for the report to ensure an administrator is aware that an aversive was used as an intervention.

- School districts [shall] not only establish and disseminate policies and procedures on the use of seclusion and restraint, but also [shall] periodically review and update them as appropriate.

- Additionally, the policy shall prohibit the use of seclusion because it is violent, expensive, and largely preventable. Research demonstrates that the use of prevention and positive approaches are cost saving. There are significant dangers and risks to ALL involved in the use of seclusion. It poses an inherent risk to the physical safety and psychological health of everyone involved; it is never risk-free. In addition to producing anxiety, fear and a decreased ability to learn; death, trauma, and injuries can and have resulted from the use of these techniques. All children experience trauma from the use of restraint and seclusion; however, children with significant disabilities are at increased risk if they are not able to fully understand or communicate what happened, how they feel, or report injury or pain as a result of restraint or seclusion.

I thank you for allowing me the opportunity to participate in this process and I look forward to the Mississippi Department of Education creating a policy that addresses the issue of restraint and seclusion, and its threat to the safety and welfare of all children and school personnel.

Sincerely,

Timothy Dedeaux

## Tollie Thigpen

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**From:** waynecountyal1@gmail.com  
**Sent:** Tuesday, March 29, 2016 9:32 AM  
**To:** Tollie Thigpen  
**Subject:** Be the voice that protects students

AL DODSON  
9 Carr43son Rd  
Buckatunna, MS 39322-9586

March 29, 2016

Tollie Thigpen

Tollie Thigpen:

Restraint and seclusion is a serious issue in Mississippi. I thank the Mississippi Department of Education for working with advocacy groups and the community at-large to institute standards that help to keep our students and school personnel safe.

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- Additionally, the policy shall prohibit the use of seclusion because it is violent, expensive, and largely preventable. Research demonstrates that the use of prevention and positive approaches are cost saving. There are significant dangers and risks to ALL involved in the use of seclusion. It poses an inherent risk to the physical safety and psychological health of everyone involved; it is never risk-free. In addition to producing anxiety, fear and a decreased ability to learn; death, trauma, and injuries can and have resulted from the use of these techniques. All children experience trauma from the use of restraint and seclusion; however, children with significant disabilities are at increased risk if they are not able to fully understand or communicate what happened, how they feel, or report injury or pain as a result of restraint or seclusion.

I thank you for allowing me the opportunity to participate in this process and I look forward to the Mississippi Department of Education creating a policy that addresses the issue of restraint and seclusion, and its threat to the safety and welfare of all children and school personnel.

Sincerely,

AL DODSON

## Tollie Thigpen

---

**From:** joanne-walls@comcast.net  
**Sent:** Tuesday, March 29, 2016 9:57 AM  
**To:** Tollie Thigpen  
**Subject:** Support restraint and seclusion policy

JoAnne Walls  
4847 Sunningdale Drive  
Belden, MS 38826-9766

March 29, 2016

Tollie Thigpen

Tollie Thigpen:

Restraint and seclusion is a serious issue in Mississippi. I thank the Mississippi Department of Education for working with advocacy groups and the community at-large to institute standards that help to keep our students and school personnel safe.

I would like to submit the following recommendations for further consideration as MDE works to finalize proposed policy 4013 - Restraint and Seclusion.

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I thank you for allowing me the opportunity to participate in this process and I look forward to the Mississippi Department of Education creating a policy that addresses the issue of restraint and seclusion, and its threat to the safety and welfare of all children and school personnel.

Sincerely,

JoAnne Walls  
6628425581

## Tollie Thigpen

---

**From:** wjresetarits@gmail.com  
**Sent:** Tuesday, March 29, 2016 12:12 PM  
**To:** Tollie Thigpen  
**Subject:** Support restraint and seclusion policy

William Resetarits  
103 Douglas Dr.  
Oxford, MS 38655-2803

March 29, 2016

Tollie Thigpen

Tollie Thigpen:

Restraint and seclusion is a serious issue in Mississippi. I thank the Mississippi Department of Education for working with advocacy groups and the community at-large to institute standards that help to keep our students and school personnel safe.

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Sincerely,

William Resetarits

## Tollie Thigpen

---

**From:** joneal4@gmail.com  
**Sent:** Tuesday, March 29, 2016 12:57 PM  
**To:** Tollie Thigpen  
**Subject:** Be the voice that protects students

Julia O'Neal  
P.O. Box 165  
Ocean Springs, MS 39566-0165

March 29, 2016

Tollie Thigpen

Tollie Thigpen:

Restraint and seclusion is a serious issue in Mississippi. I thank the Mississippi Department of Education for working with advocacy groups and the community at-large to institute standards that help to keep our students and school personnel safe.

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Sincerely,

Julia O'Neal  
6019288510

## Tollie Thigpen

---

**From:** xdirtyouthx@gmail.com  
**Sent:** Tuesday, March 29, 2016 1:52 PM  
**To:** Tollie Thigpen  
**Subject:** Support restraint and seclusion policy

Matt South  
710 Dab lane  
Jackson, MS 39212-3921

March 29, 2016

Tollie Thigpen

Tollie Thigpen:

Restraint and seclusion is a serious issue in Mississippi. I thank the Mississippi Department of Education for working with advocacy groups and the community at-large to institute standards that help to keep our students and school personnel safe.

I would like to submit the following recommendations for further consideration as MDE works to finalize proposed policy 4013 - Restraint and Seclusion.

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I thank you for allowing me the opportunity to participate in this process and I look forward to the Mississippi Department of Education creating a policy that addresses the issue of restraint and seclusion, and its threat to the safety and welfare of all children and school personnel.

Sincerely,

Matt South

## Tollie Thigpen

---

**From:** hollykrogh@bellsouth.net  
**Sent:** Tuesday, March 29, 2016 7:57 PM  
**To:** Tollie Thigpen  
**Subject:** Support restraint and seclusion policy

holly krogh  
201 3rd Ave S  
Columbus, MS 39701-5640

March 29, 2016

Tollie Thigpen

Tollie Thigpen:

Restraint and seclusion is a serious issue in Mississippi. I thank the Mississippi Department of Education for working with advocacy groups and the community at-large to institute standards that help to keep our students and school personnel safe.

I would like to submit the following recommendations for further consideration as MDE works to finalize proposed policy 4013 - Restraint and Seclusion.

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As a developmentalist and as a parent, I urge you to ensure the above considerations are included in any new or amended policy.

I thank you for allowing me the opportunity to participate in this process and I look forward to the Mississippi Department of Education creating a policy that addresses the issue of restraint and seclusion, and its threat to the safety and welfare of all children and school personnel.

Sincerely,

holly krogh

## Tollie Thigpen

---

**From:** Crowder, Stephen <scrowder@jackson.k12.ms.us>  
**Sent:** Wednesday, March 30, 2016 7:57 AM  
**To:** Tollie Thigpen  
**Subject:** comment on restraint and seclusion policy

Hi!

My comment on the restraint and seclusion policy is below:

It is my opinion that the policies and procedures indicated in the plan to address restraint and seclusion within the public school system are adequate. There are two issues that I believe should be addressed before moving forward.

1. The plan indicates that restraint shall only be executed by those with training and/or certifications in a specific restraint system. In reality, what happens is there is not a trained person in the building and the school is left with no options. The plan should specify a minimum number of individuals are to be certified within a school building and what this number is.
2. The plan speaks ad nauseam about seclusion and where this should be done and the factors that must be present in the room e.g. lighting. The problem in reality is that this is too subjective and seclusion can occur in rooms that do not meet these criteria. This ultimately creates a situation that is a liability for the school and places the student in a potentially dangerous situation. The plan should specify that:

If seclusion is going to be utilized, there will be a seclusion room (typically referred to as a time out room in clinical settings) within the building. This room shall be a well-defined space that is not used for anything else but seclusion.

## Tollie Thigpen

---

**From:** llong89@hotmail.com  
**Sent:** Wednesday, March 30, 2016 9:12 AM  
**To:** Tollie Thigpen  
**Subject:** Support restraint and seclusion policy

Lisa Long  
509 South Jackson Street  
Starkville, MS 39759-3351

March 30, 2016

Tollie Thigpen

Tollie Thigpen:

Restraint and seclusion is a serious issue in Mississippi. I thank the Mississippi Department of Education for working with advocacy groups and the community at-large to institute standards that help to keep our students and school personnel safe.

I would like to submit the following recommendations for further consideration as MDE works to finalize proposed policy 4013 - Restraint and Seclusion.

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I thank you for allowing me the opportunity to participate in this process and I look forward to the Mississippi Department of Education creating a policy that addresses the issue of restraint and seclusion, and its threat to the safety and welfare of all children and school personnel.

Sincerely,

Lisa Long  
2024418845

## Tollie Thigpen

---

**From:** ddavis0929.dd@gmail.com  
**Sent:** Thursday, March 31, 2016 2:52 AM  
**To:** Tollie Thigpen  
**Subject:** Support restraint and seclusion policy

Demetria Jones  
PO Box 1076  
Decatur, MS 39327-1076

March 31, 2016

Tollie Thigpen

Tollie Thigpen:

Restraint and seclusion is a serious issue in Mississippi. I thank the Mississippi Department of Education for working with advocacy groups and the community at-large to institute standards that help to keep our students and school personnel safe.

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Sincerely,

Demetria Jones  
601.884.0424

## Tollie Thigpen

---

**From:** Chaffie Gibbs <cgibbs@clintonpublicschools.com>  
**Sent:** Thursday, March 31, 2016 7:06 PM  
**To:** Tollie Thigpen  
**Subject:** Restraint and Seclusion policy

Below are my concerns regarding this policy:

>> I think as it is written it is doable for the most part.

>>

>> First Concern

>> On Page 9... Bullet D number 9 (statement about 20 minutes in seclusion, reassess, then assess for transport)

>> Questions:

>> Who will assess if a transport is needed?

>> Will there be guidelines for assessing this?

>> Who will pay for transport?

>> What happens if the assessor decides a transport is not necessary?

>> Should parents be notified prior to calling for someone to transport, so that decision can be made by the parents to transport or coming to pick up child should that be required?

>>

>> NEXT concern is the funding.

>> Who will pay for training?

>> Will MDE require that everyone use the system if they pay for it or will districts be allowed to choose?

>>

>> NEXT Concern:

>> Why would we notify the local school board? Would the school board be notified of each restraint/seclusion incident daily or how often? I think the Superintendent should be notified and then he /she can make the decision regarding notifying the school board? Not following the reasoning behind this.

>>

>> How often would MDE be notified of the use of restraint or seclusion? DAILY, weekly, monthly?????

>> How will it reported to MDE? through MSIS?

>

## Tollie Thigpen

---

**From:** phamel.phamel@gmail.com  
**Sent:** Saturday, April 02, 2016 4:47 PM  
**To:** Tollie Thigpen  
**Subject:** Support restraint and seclusion policy

Paul Hamel  
P.O. Box 801  
Leland, MS 38756-0801

April 2, 2016

Tollie Thigpen

Tollie Thigpen:

Restraint and seclusion is a serious issue in Mississippi. I thank the Mississippi Department of Education for working with advocacy groups and the community at-large to institute standards that help to keep our students and school personnel safe.

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I thank you for allowing me the opportunity to participate in this process and I look forward to the Mississippi Department of Education creating a policy that addresses the issue of restraint and seclusion, and its threat to the safety and welfare of all children and school personnel.

Sincerely,

Paul Hamel  
6623477139

## Tollie Thigpen

---

**From:** Tajuana Williams <tajuana.williams@dcsms.org>  
**Sent:** Tuesday, April 05, 2016 3:41 PM  
**To:** Tollie Thigpen  
**Cc:** Susan Kizer  
**Subject:** Rule 38.13 Restraint and Seclusion Policy

I would like to submit public comments on behalf of the Special Education Department of Desoto County Schools. Upon review of the policy, the following questions were outlined:

1. Can the definition of **punitive** be given?  
Question in regards to staff restraining students who are fighting (can this be considered a punitive restraint)
2. Under definitions, No# D pg. 2, the use of the word "**inappropriate**", can it be changed to detrimental?  
Inappropriate appears suggestive.
3. Under definitions, No# E pg. 2, the terminology behaviors that "**school personnel**" encourage. Suggestions: "**that the environment maintains**".
4. On pg 3, under Functional Behavioral Assessment: Formal documentation of the assessment by "**appropriately qualified individuals**". Can the policy define "appropriately qualified individuals?"
4. Training of staff/personnel. Is there going to be funding to training all staff?  
If so, where is the funding coming from?
5. Can there be clarity on who should be trained to restrain students.
6. Will the state send a list of approved restraint programs?

Tajuana Williams  
Coordinator of Behavior Services  
Desoto County Schools  
Special Education Department  
(901) 870-4689  
#TeamDCS

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## Tollie Thigpen

---

**From:** Denise Wood <dwood@ossdms.org>  
**Sent:** Wednesday, April 06, 2016 9:45 AM  
**To:** Tollie Thigpen  
**Subject:** Rule 38.13

### Comments Re: Rule 38.13

To the Mississippi Department of Education:

"Rule 38.13 violates my Constitutional right to come to the defense of self, others and property. The Rule is unlawful, repugnant to Mississippi's Constitution and laws, and should be voted down immediately. If the State disregards the law and proceeds to enact regulations that unlawfully curtail my natural and Constitutional rights and Civil Liberties, I demand full indemnification in the event that someone is injured as a result."

### We request the following amendments to Rule 38.13:

1. Change the term "corporal punishment" to "Use of force, control or discipline by persons with special responsibility for care, discipline or safety of others." MCA 37-11-57
2. Remove the ban on prone restraint.
3. Allow the use of restraint as part of an IEP or BP for "non-emergency" and/or "emergency" responses.
4. Allow the use of restraint, including prone restraint, in accordance with the provisions contained in Mississippi's Constitution, Statute and case law.

Failure to make the above revisions will result in the following:

- A school to prison pipeline. If teachers and schools are prohibited from or not given the tools necessary to create a safe environment conducive to learning, they will have no choice but to call law enforcement.
- An unlawful breach of the compact between government and the people. Government is not allowed to restrict a person's right to defend self or others beyond what is reasonable.
- Enactment of the law as currently proposed is outside the scope of authority of the MS BOE. Persons on the MS-BOE should be personally liable for intentionally acting outside its scope.
- Dangerous schools.

--

*Denise D. Wood, Ed.S., NBCT*

Teacher: K-3 District-Wide Behavior Resource Class

Ocean Springs School District

Magnolia Park Elementary

3500 Government Street

Ocean Springs, MS 39564

(228) 875-4263

Fax # (228) 872-0017

[dwood@ossdms.org](mailto:dwood@ossdms.org)

## Tollie Thigpen

---

**From:** Weeks, Jimmy <jimmy.weeks@leecountyschools.us>  
**Sent:** Wednesday, April 06, 2016 11:26 AM  
**To:** Tollie Thigpen  
**Cc:** Coke Magee; Kathy Dickerson  
**Subject:** Response to proposed Seclusion and Restraint Polic

I have read the proposed policy again and overall, I am in agreement. What I do believe needs to be changed is all the reporting/responsibility being placed back on school districts. I don't mean for this to sound like trying to cover things up. Lee County School District, we believe, already does a good job in this area. We do not endorse, believe or practice seclusion in any form. We do not restrain as means of punishment. We do allow restraint in times of emergency/ eminent danger to students or arrests. But all the reporting, debriefing requirements are a huge hindrance to time, which schools are already short on. I believe there are some who will lie or cover up for fear of termination or loss of license and some will simply do nothing and let things run wild.

It sure seems that all of the responsibility for everything deemed wrong in today's world is placed squarely on the shoulders of public education. Education is the answer to many, many of the things that are wrong today, but how can schools be responsible for "fixing" all of it? Parents have to be held accountable for their children as well as the schools. Has anyone considered legislation that would address parent responsibility?

If this policy is implemented as written, what are the expectations for private and charter schools? Will they have to follow the same guidelines? Public schools are already cast in a bad enough light as it is. I can easily see a negative spin that will make public schools look even worse.

I would like to see this policy hold all school entities; public, private and charter, held to the same level of accountability while making our jobs easier; not more difficult.

Thanks

**Jimmy Weeks**

Superintendent  
Lee County Schools  
Ph (662) 841-9144  
Fax (662) 680-6012  
email: [jimmy.weeks@leecountyschools.us](mailto:jimmy.weeks@leecountyschools.us)

### **Confidentiality Disclaimer:**

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## Tollie Thigpen

---

**From:** Weeks, Jimmy <jimmy.weeks@leecountyschools.us>  
**Sent:** Wednesday, April 06, 2016 11:26 AM  
**To:** Tollie Thigpen  
**Cc:** Coke Magee; Kathy Dickerson  
**Subject:** Response to proposed Seclusion and Restraint Policy

I have read the proposed policy again and overall, I am in agreement. What I do believe needs to be changed is all the reporting/responsibility being placed back on school districts. I don't mean for this to sound like trying to cover things up. Lee County School District, we believe, already does a good job in this area. We do not endorse, believe or practice seclusion in any form. We do not restrain as means of punishment. We do allow restraint in times of emergency/ eminent danger to students or arrests. But all the reporting, debriefing requirements are a huge hindrance to time, which schools are already short on. I believe there are some who will lie or cover up for fear of termination or loss of license and some will simply do nothing and let things run wild.

It sure seems that all of the responsibility for everything deemed wrong in today's world is placed squarely on the shoulders of public education. Education is the answer to many, many of the things that are wrong today, but how can schools be responsible for "fixing" all of it? Parents have to be held accountable for their children as well as the schools. Has anyone considered legislation that would address parent responsibility?

If this policy is implemented as written, what are the expectations for private and charter schools? Will they have to follow the same guidelines? Public schools are already cast in a bad enough light as it is. I can easily see a negative spin that will make public schools look even worse.

I would like to see this policy hold all school entities; public, private and charter, held to the same level of accountability while making our jobs easier; not more difficult.

Thanks

## Jimmy Weeks

Superintendent  
Lee County Schools  
Ph (662) 841-9144  
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email: [jimmy.weeks@leecountyschools.us](mailto:jimmy.weeks@leecountyschools.us)

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## Tollie Thigpen

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**From:** Chism, Chris <cchism@pearl.k12.ms.us>  
**Sent:** Wednesday, April 06, 2016 1:17 PM  
**To:** Tollie Thigpen  
**Subject:** Restraint & Seclusion Policy

Good afternoon.

Here are my comments for the proposed restraint and seclusion policy.

First and foremost, this is another situation where the masses are going to have extra work because of the sins of a few. I disagree with this entire thought process completely.

1. If the Mississippi Code already allows school staff to intercede when students display physically violent behavior or they are deemed to be a danger to themselves or others, why do we need a policy clarification? The word “intercede”, by definition, allows us to restrain students displaying dangerous behaviors. We also have a current State Board policy that states restraint and seclusion cannot be used as a punitive measure. Both the law and the policy, intertwined, cover what we need to keep our schools safe. Adding limitations to these laws puts all of us in a very precarious situation. Here is what I mean by this statement. When any major situation arises, we must act quickly and decisively to be sure students are safe. In the heat of the moment, we do not have 2 or 3 minutes to debate on what we should or should not do in the situation developing in front of us. The second part of this idea is a simple one as well. Students, locations, crowds, etc. can all dictate our actions. Seldom are the situations the same. Thus, neither the MDE, nor any of the other associated agencies should be able to legislate how we handle these situations. It is preposterous to think otherwise.
2. On page 3, the proposed change says, “This policy in no way shall inhibit the right of staff to reasonable self-defense in accordance with the provisions of the 5<sup>th</sup> and 14<sup>th</sup> amendments to the Constitution of the United States nor negate the obligation of the district to provide a safe work environment.” My question is a simple one. If we are limited with regard to our responses in what we feel are dangerous situations, how can we be sure we can keep a safe environment within the school setting. Furthermore, we are opening ourselves up to potential litigation when we limit and/or further define these rights.
3. On page 4 – Letter G. “Dangerous behavior” is defined by someone who obviously has not been in a school in recent years. What is considered “imminent”? If I have two students standing 10 feet apart yelling at each other and threatening each other, is that considered imminent? Or, as a principal, should I simply wait until they actually swing at one another before restraining the students? Also, there are many times that noncompliance, disrespect, and out of seat behaviors can be deemed as dangerous behaviors. For instance, if a student picks up a chair in anger, and he is noncompliant when we ask him to put it down, that noncompliance is actually extremely dangerous to others. Again, the behavior exhibited by the student(s) should dictate the response by the school officials. We, as school officials, need some latitude to be able to make those decisions without the fear of a policy breach.
4. Page 4 – Letter K. “Imminent danger” is defined here. The words “close at hand, threatening, and about to happen” are completely subjective terms. What I deem as “about to happen” while standing in front of a situation, others may not see the same way. Again, the school personnel should have the latitude to make those decisions without the fear of a policy breach.
5. Page 6 – Letter S. Seclusion is defined as “the confinement of a students in an enclosure from which the student’s egress is restricted”. In technical terms, if we put a student into a classroom and shut the door, this is considered “seclusion”. Again, this is a broad definition that simply leaves too much room for interpretation. Again, this broad definition could open ourselves up to potential litigation.

6. Page 6 – a. iii. It says restraint can be used to remove a **non-compliant** student from the scene of an incident. Just so we are clear here, we can use restraint to remove a student from the scene of an incident if he/she is noncompliant; however, noncompliance is not considered a “dangerous behavior” according to Letter G on page 4. Again, this makes very little sense.
7. Page 6 – a. iiiii. Restraint should be removed as soon as the student is no longer a danger to themselves or others. By what standards? Again, this is completely subjective. The person handling said incident should have the latitude to define the length needed to restrain a student.
8. Page 6 – b. i.-viii.
  - i. Restraint should only be used by staff trained in restraint procedures? Did the proposed policy not just state that staff members have a right, by Constitutional law, to intervene when dangerous events occur? So, for example, if two students got into a fight and we had a coach standing there on duty. If he hasn’t been “trained” in restraint procedures, he can’t intervene? I hope you can see the ridiculousness of this assertion. Also, who will be paying for the training? Is the MDE going to pay for CPI training for all staff members in the state?
  - iii. If a student is in an altercation, he/she will be in some type of stress. In every instance in my career when I had to intervene by grabbing a student, he/she immediately yells “Let me go!” As the person breaking up the altercation, how am I supposed to know if said student is actually in “severe stress” or said student simply wants to run or jump back into the situation? Again, we need to use some common sense here, and our school personnel need to be able to make decisions based on each individual situation.
  - v. Things happen. In every situation, a “debriefing” is simply not necessary. Did we have people on duty? Did we respond swiftly and appropriately? Those are the two questions that need to be answered, and it does not take a “debriefing with everyone involved within two days” to determine this.
  - vi. The student should be immediately returned to the instructional activity? Again, where is the common sense here? If a student is so volatile that he/she has to be removed or restrained, how is it safe to “immediately” send that student back into an environment with other students? In some rare cases, this may be considered ok. However, these situations need to be handled on an individual basis.
  - vii. This says the parents must be notified on the same day of the incident. It doesn’t say “attempted notification. It says they must be notified. What if this happens just before the bell to leave? What if we can’t get in touch with the parents? What if the numbers the parents gave us during registration won’t work? What if the parent simply does not care and refuses to answer? Obviously, we would attempt to notify the parents. However, we are not always successful with those attempts. And, yet again, we would be noncompliant with this policy.
9. Page 8 – a. “Seclusion occurs in a designated room or space that is physically isolated from common areas and from which the student is physically prevented from leaving.” Again, this is another subjective definition. Let me give you an example of this. Two students get into a fight in our commons area. Our assistant principal handles the situation, and he takes these students into his office. Obviously, we do not need them in the office together. He has small rooms next to his office that were formerly used as ISS rooms. They are large enough for one desk, and they have a door that closes. He places one student in there while he deals with the other student. Is this now seclusion? What if we simply renamed these rooms as ISS rooms? Would it then be seen as seclusion? Again, we are stuck with very little latitude for what we see as common sense situations.
10. Page 9 – d. This is yet another example of adding paperwork that is unneeded. The student is **required to be given due process**. He gets to tell his side, and he is served with the paperwork showing the consequences given. Then we call the parents. This is all placed in our computer system. Everyone, including the MDE, has access to the offenses and consequences in the district. Why add yet another layer of paperwork, especially paperwork that requires an inordinate amount of time? Who are we trying to appease here? What is the goal? Impose this on districts and/or schools that are doing things the wrong way, rather than simply writing blanket policies intended to cover everything.
11. Page 11 – b. All parents SHALL be notified “before the close of school” on the day the restraint was used. Again, every school in the state has difficulty getting in touch with parents. I think the idea is

great in a perfect world. However, when we deal with bogus numbers and burner phones, it is sometimes impossible to contact parents, ESPECIALLY before the close of school on the day said incident occurred. Also, if the parents are divorced, are we forced to make contact with both parents? The policy says all parents. It doesn't state "a parent or guardian".

Again, I am opposed to this entire policy. I do understand the intent; however, I think the current law and the current state policy cover these issues. Schools and school officials need latitude to handle situations that arise without fear of reprisal from a technicality in a poorly-written policy. If you truly want to keep schools SAFE, give us the latitude we need to keep them safe. If we, as school staff members, have to go through a ten-page policy in our heads before acting, students will not remain safe. I have seen the same videos you have with the way some schools treat their students. I have also heard some truly horrible stories about schools and the way they treat children. If that happens here in this state, *deal with those schools specifically*. However, we don't need a policy that throws a blanket on the issue. Also, we certainly do not need a policy written by individuals that haven't spent a day in a school as a teacher or administrator in the last ten years. Most importantly, we do not need a policy that seems to be, in many ways, in direct conflict to our Constitutional rights.

If you have any questions or concerns about my comments, feel free to contact me.

Thanks,

*Chris Chism*

*Principal - Pearl High School*

*(C) 601-932-7931*

*(C) 662-549-0257*

*(F) 601-932-7992*



The Mission of Pearl Public School District is to prepare each student to become a lifelong learner, achieve individual goals, and positively impact a global society.

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## Tollie Thigpen

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**From:** Boykin, Jennifer <jboykin@pearl.k12.ms.us>  
**Sent:** Wednesday, April 06, 2016 1:24 PM  
**To:** Tollie Thigpen  
**Subject:** Restraint & Seclusion Policy

Tollie,

Please see my comments below regarding the proposed policy.

1. Districts must be provided funds to train all staff. Most valid programs that offer training use the train the trainer model. However the training is very expensive, often \$2000 or more per person. In order to be effective, each district would need a minimum of 1 trainer per 100 employees. The trained trainer must take a refresher course every other year. This training usually costs about \$750. In addition, this training requires a good bit of time (at least one school day) to train all staff. Will we provided with funds to pay the teachers a supplement?
2. Districts must be provided funding to provided first-aid training to all staff.
3. How will school district administrators monitor the use of appropriate restraint? They may or may not present when a dangerous situations occur. Must teachers wait until an administrator arrives before they use appropriate restraint techniques?
4. If a student does not calm after 20 minutes of restraint/seclusion and must be transported to a medical facility – the district should not incur the cost of any associated medical charges to the parent.

Thank you!

**Jennifer L. Boykin**  
Director of Special Services  
Pearl Public School District  
3375 Highway 80 East  
Pearl, Mississippi 39208  
Office: (601) 932-7965  
Fax: (601) 932-7929

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## Tollie Thigpen

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**From:** Marietta James <mjames@columbiaschools.org>  
**Sent:** Wednesday, April 06, 2016 1:33 PM  
**To:** Tollie Thigpen  
**Subject:** Restraint and Seclusion Policy Comments  
**Attachments:** Restraint and Seclusion Policy suggestions.docx

Tollie,

I have attached the Columbia School District's comments regarding the Restraint and Seclusion Policy that is currently in the APA process.

Marietta W. James  
Superintendent  
Columbia School District



This email has been checked for viruses by Avast antivirus software.  
[www.avast.com](http://www.avast.com)

The following comments and/or suggestions are made by the Columbia School District as part of the APA process for State Board Policy Part 3, Chapter 38, Rule 38.13 – Restraint and Seclusion:

Page 5 - m. – Reword second paragraph to read as follows: Devices not considered mechanical restraints include: adaptive equipment, protective devices, **seatbelts and other safety equipment used to secure students during transportation**, or assistive technology devices documented in a student’s individualized education plan (IEP), Section 504 plan, behavior intervention plan, or otherwise prescribed for the student by a medical or related service provider.

Page 5 - p. i. – Change to the following: Physical restraint that **restricts** the flow of air to the student’s lungs.

Page 6 - u. – Change to: Written report is defined as a **paper or electronic document** that can be printed.

Page 6 - 4. General Procedures a. iii. – Change to **“The non-compliant student or person should be removed from the scene of an incident.”** (The other items in this section are complete sentences. For consistency, this item should be one also.)

Page 6 - a. iv This item should be deleted. It is duplicated in vi on page 7.

Page 7 – vi. – Who determines when the student “is able” to be returned to the instructional activity or to a less restrictive environment?

Page 7 – c. – In the second sentence, leave out the word “a” to read ... shall be provided as part of a program...

Page 7 – c. – In the last paragraph, the second sentence should read “...are not followed should be addressed **immediately**” not should be immediately addressed.

Page 8 Behavioral Interventions b. – In the second sentence, change the word “on” to “about.”

Page 8 Seclusion a. second paragraph – Change to “Only school personnel trained **in...**, not on. Also change ... and knowledge **of...**, not knowledge as to

Page 9 – d. What is meant by “educational record”?

Page 9 – e. xiii – Change to name of school employee **who...**, not school employee that

Page 11 – 6. B. – Please include a statement that deals with what is to be done if a parent cannot be contacted.

## Tollie Thigpen

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**From:** Tom Duncan <tduncan@simpson.k12.ms.us>  
**Sent:** Wednesday, April 06, 2016 4:05 PM  
**To:** Tollie Thigpen  
**Subject:** Restraint and Seclusion Policy

Tollie:

As the state draft policy reads, it is fine. HOWEVER, what it does is place an unfunded mandate on districts to determine an acceptable protocol for restraint and seclusion which can be extremely costly. I have worked in systems in SC, GA, TX, and FL that used state adopted or a commercially marketed restraint training program. The liability insurance for implementing this training is what makes them costly.

MDE could do districts a huge favor by adopting a training program and offering it to schools throughout the state. MDE would assume the liability costs. If a district chooses another avenue then the cost is on them.

Dr. Tom M. Duncan  
Simpson County School District  
111 Education Lane  
Mendenhall, MS 39114  
phone (601) 847-8000  
fax (601) 847-8001  
[tduncan@simpson.k12.ms.us](mailto:tduncan@simpson.k12.ms.us)

## Tollie Thigpen

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**From:** felicia.brown.williams@gmail.com  
**Sent:** Saturday, April 09, 2016 11:42 PM  
**To:** Tollie Thigpen  
**Subject:** Support restraint and seclusion policy

Felicia Brown-Williams  
337 East Mayes St.  
Jackson, MS 39206-5718

April 10, 2016

Tollie Thigpen

Tollie Thigpen:

Restraint and seclusion is a serious issue in Mississippi. I thank the Mississippi Department of Education for working with advocacy groups and the community at-large to institute standards that help to keep our students and school personnel safe.

I would like to submit the following recommendations for further consideration as MDE works to finalize proposed policy 4013 - Restraint and Seclusion.

In Section 4 under General Procedures: Restraint Subsection a. ii., the policy needs:

- A clear and working definition of "destruction of property" to prevent discretionary judgments of what acts or behaviors clearly constitute a destruction of property. This clarity will prevent escape hatches designed to use restraint and seclusion for convenience or as punishment.

In Section 4 under General Procedures: Behavioral Interventions Subsection d., the policy needs:

- A specific data collection/public reporting heading providing individual/detailed treatment of data collection/public reporting procedures. The proposed MDE policy only requires individual incidents be documented in the student's educational record. It is necessary to collect statewide data on restraint and seclusion from each school district to track trends, plan preventative measures and adjust policy at the state and local level.

- This documentation [shall] be provided using an incident report that is completed for each student in each instance in which the student is restrained or placed in seclusion.

- An administrator's signature should be added to the requirements for the report to ensure an administrator is aware that an aversive was used as an intervention.

- School districts [shall] not only establish and disseminate policies and procedures on the use of seclusion and restraint, but also [shall] periodically review and update them as appropriate.

- Additionally, the policy shall prohibit the use of seclusion because it is violent, expensive, and largely preventable. Research demonstrates that the use of prevention and positive approaches are cost saving. There are significant dangers and risks to ALL involved in the use of seclusion. It poses an inherent risk to the physical safety and psychological health of everyone involved; it is never risk-free. In addition to producing anxiety, fear and a decreased ability to learn; death, trauma, and injuries can and have resulted from the use of these techniques. All children experience trauma from the use of restraint and seclusion; however, children with significant disabilities are at increased risk if they are not able to fully understand or communicate what happened, how they feel, or report injury or pain as a result of restraint or seclusion.

I thank you for allowing me the opportunity to participate in this process and I look forward to the Mississippi Department of Education creating a policy that addresses the issue of restraint and seclusion, and its threat to the safety and welfare of all children and school personnel.

Sincerely,

Felicia Brown-Williams  
601-466-7702

# MISSISSIPPI DEPARTMENT OF EDUCATION PROPOSED RULE 38.13: RESTRAINT AND SECLUSION IN SCHOOLS COMMENT PERIOD: MARCH 18 – APRIL 16, 2016

OFFICE OF STATE SUPERINTENDENT  
Summary of State Board of Education Agenda Items  
March 17, 2016

## OFFICE OF STATE SUPERINTENDENT

03. Action: Approval to begin the Administrative Procedures Act process: To establish State Board Policy Part 3, Chapter 38, Rule 38.13 – Restraint and Seclusion [Goal 4 – MBE Strategic Plan]



....

### *Rule 38.13 Restraint and Seclusion*

#### 1. Introduction

The Mississippi Department of Education and the State Board of Education supports a positive approach to behavior that uses proactive strategies to create a safe school climate that promotes dignity, creates authentic student engagement, and improves student achievement for all students. When teachers and administrators implement evidence-based positive behavior supports with fidelity, a safe and orderly school environment is created that is conducive to learning and students are able to achieve without the constant interruptions that occur when teachers are required to address discipline in the classroom.

....

#### 2. Restraint and Seclusion Policy

A Restraint and Seclusion Policy is defined through written local school board-approved policies and procedures that define appropriate means of restraint and seclusion to provide for a safe and orderly education. These policies and procedures ~~should~~ shall apply to all students in the local school district and must not focus on one or more subgroups of students.

In accordance with Miss. Code Ann. §§ 37-9-69 and 37-11-57, it is recognized that staff may intercede in situations wherein students are displaying physically violent behavior or ~~is~~ are deemed to be a danger to themselves or others. State Board policy positively prohibits the use of excessive force, or cruel and unusual punishment regarding student management. ~~Under no circumstances shall~~ Restraint and/or seclusion shall not be utilized as a punitive measure.

This policy in no way shall inhibit the right of staff to reasonable self-defense in accordance with the provisions of the 5<sup>th</sup> and 14<sup>th</sup> amendments to the Constitution of the United States nor negate the obligation of the district to provide a safe work environment.

**MISSISSIPPI DEPARTMENT OF EDUCATION  
PROPOSED RULE 38.13: RESTRAINT AND SECLUSION IN  
SCHOOLS  
COMMENT PERIOD: MARCH 18 – APRIL 16, 2016**

....

g. Dangerous behavior means is defined as behavior that presents an imminent danger of physical harm to self or others but does not include inappropriate behaviors such as disrespect, noncompliance, insubordination, or out of seat behaviors.

....

i. Emergency situation means is defined as spontaneous unpredictable events posing an imminent threat of serious bodily injury.

....

p. Physical Restraint is defined as “the use of physical force, without the use of any device or material that restricts the free movement of all or a portion of a student’s body.” Physical restraint does not include briefly holding a student’s hand or arm to calm them or escort them to another area. A physical restraint shall be removed as soon as the student is calm. The term physical restraint does not include:

- i. Physical restraint that restrains the flow of air to the student’s lungs.
- ii. Prone restraint in which a student is placed face down on the floor or other surface, and physical pressure is applied to the student’s body to keep the student in the prone position.

....

Restraint

- a. Physical restraint is considered to be an emergency response after all other verbal de-escalation measures have failed in effectiveness based on the following criteria:
  - i. The student or other person is engaged in actions that would constitute a danger to themselves or others;
  - ii. The student or other person is engaged in actions that would constitute potential or actual destruction of property;
  - iii. To remove a non-compliant student or person from the scene of an incident;
  - iv. The restraint should be removed as soon as the student is no longer a danger to themselves or others.

The full version of the proposed Rule can be found at: [http://www.mde.k12.ms.us/docs/2016-board-agenda/tab-03-apa-restraint-sec\\_001.pdf?sfvrsn=2](http://www.mde.k12.ms.us/docs/2016-board-agenda/tab-03-apa-restraint-sec_001.pdf?sfvrsn=2)

**HANDLE WITH CARE**  
*Behavior Management System, Inc.*

**Bruce Chapman**  
President

**Hilary Adler**  
Vice President

**TO ALL MISSISSIPPI SCHOOLS: SCHOOL ADMINISTRATORS,  
TEACHERS, PARAPROFESSIONALS AND STAFF**

**HWC'S COMMENTS TO PROPOSED RULE 38.13: RESTRAINT AND  
SECLUSION IN SCHOOLS - COMMENTS DUE APRIL 16, 2016**

**Re: Propose Rule 38.13**

This fax is to inform you of pending regulation restricting the use of restraint and seclusion in schools. The proposed Rule is as unlawful as it is dangerous.

Proposed Rule 38.13 is unlawful under Mississippi's Constitution, State, Common and Federal Laws. Neither the Mississippi Department of Education nor the Mississippi Board of Education have the authority to restrict anyone's ability to defend themselves, others or property by all means reasonable. The proposed rule is a violation of your and the student's natural rights and civil liberties.

We encourage you to use, edit or create your own comments to the proposed legislation. Below are our comments along with the laws the Rule violates.

**HWC's expert and legal analysis of Proposed Rule 38.13**

**The prohibition of prone restraint for school personnel is illegal under Mississippi Law.**

A teacher cannot be forced to surrender her lawful right to self-defense (or defense of others) when she walks onto school grounds. Mississippi citizens have the unwaivable right to use "reasonable" force in accordance with a "reasonable person standard". A teacher does not need the approval of an unelected bureaucrat or even her principal, for that matter, to use physical restraint to protect herself or another.

**The Board of Education does not have the legal authority to prohibit school personnel from using reasonable force including prone (face down) restraint in the protection of self or others. She may lawfully use the least restrictive method including prone restraint to contain or stop an assault or battery under Mississippi law.**

Indeed, Mississippi's self-defense law is determinative whenever a person presents a threat of imminent harm to self or another within its jurisdiction. The State's self-defense law supersedes any policy, bill or code which interferes with an individual's right to use reasonable force under a reasonable person standard. There is absolutely no scientific evidence demonstrating that a properly performed and engineered prone hold is unsafe or unreasonable. We assert that any policy or regulation in this area must make clear that any restrictions on the use of restraint, including prone

and/or supine restraint, would not and could not apply when coming to the defense of self or others; when done in the best interests of the child as part of a IBP or IEP; when it is the least restrictive intervention and when it is necessary to maintain a safe environment.

The use of restraint, including prone restraint is not only permitted but, in fact, is mandated under civil rights, state tort and Mississippi's broader self-defense law requiring staff to be able to reasonably, effectively and in the best interest of staff and student, respond to a threat to oneself or another. Mississippi State law does not require anyone to submit meekly to the unlawful infliction of violence regardless of what mental condition may be causing the threatening behavior or the age of the actor. In fact, Mississippi law gives all its citizens absolute immunity from suit and administrative or disciplinary action when acting in defense of self or others. MCA 97-3-15(5)(b); 37-11-57.

The Supreme Court of the United States (SCOTUS) ruled that the right to self-defense does not terminate when a teacher or student enters the schoolhouse gates. *Tinker v. Des Moines Ind. Community School Dist.*, 393 U.S. 503, 506 (1969).

A sworn officer responding to an emergency at a school would not be prevented from using a prone hold in the course of containing and protecting someone, provided a reasonable and appropriate level of force was used. School staff and teachers often have far less physical assets, capabilities or tools than the average resource officer and have an even greater need to rely upon physical techniques and holds that provide sufficient mechanical advantage to safely manage the entire spectrum of students who may be much larger or physically capable than themselves. Under the proposed rule, schools are not allowed to use chemical or mechanical restraints (i.e. handcuffs or soft restraints) to save themselves or others if their physical restraint program is insufficient. No State legislator, the general public or any self-respecting law enforcement officer in the United States would tolerate this level of intrusion into one's own personal safety or heartfelt sense of duty to protect the children under her care and supervision. School administrators, staff, teachers and students maintain the same rights as every other citizen in Mississippi and are allowed to use any manner of intervention that is least restrictive, effective and reasonable. It has been shown that it is both foreseeable and inevitable that staff will need to use prone restraint to maintain safety.

### **There is no science to support a ban on prone restraint.**

This provision of the Bill is motivated by an unsubstantiated concern that there is something inherently and extraordinarily dangerous about prone restraint that deserves the extension of protection this Bill purports. As an expert engineer of physical restraining technology, I can unequivocally state that, whether you hold someone face-up or face-down, if you pile enough people on top of them, you will have the same outcome.

The problem is not prone. The problem is the restriction of breathing by chest compression and not paying attention to the early physiological signs of cardiac or respiratory arrest brought on by the combination of chest compression with exertion. This is a training and, ultimately, a supervision issue.

HWC's protocol demands that client-agencies and schools "continuously monitor the physical and emotional safety of the child (or adult)" and to use HWC's method for eliminating chest compression from the hold. HWC's PRT is the only physical technique of any kind ever awarded a Patent in the history of the U.S. Patent Office for our constellation of safeguards to prevent positional asphyxia ("Apparatus and Method for Safely Maintaining a Restraining Hold on a Person"). Our safeguards are additionally designed to prevent any other type of medical emergency, whether it is related to the hold

or, in the case of sudden cardiac arrest, from the physical exertion by someone who might not even have a known history of cardiac issues. We admonish staff and faculty to assume that every student has an undiagnosed cardiac or other condition and to continuously monitor without exception.

Prone restraint, especially HWC's prone restraining technology is NOT dangerous. HWC's "PRT®" in its prone configuration has never been implicated in single a catastrophic injury or fatality, in Mississippi or in any of the other 49 states where we provide training. Nationally, we are talking about many millions of applications. HWC has never been sued for a field application of a HWC technique or method nor have we ever paid a settlement to avoid a suit. Dr. Michael Baden, arguably the preeminent forensic pathologist in the country has been consistent in his appraisal that the PRT in its prone configuration is safe. If our prone holding technology was dangerous, someone would have pointed it out by now.

### **The prone restraint ban is a state-created danger**

#### **Duty to Train**

The Supreme Court has held that agencies, facilities and schools have an obligation to train their employees for the tasks they will predictably face while at work. It is both likely and foreseeable that it will be impossible to maintain an intervention in a standing or seated position. Frankly, the student may dictate the circumstance and configuration. The facility has a duty to train staff how to realistically handle these situations to protect themselves and others from harm. *Canton v. Harris*.

#### **State Created Danger**

State-created danger is found when a person's substantive due process protections -- rights, privileges, or immunities secured by the Constitution and laws i.e. the right to defend and protect oneself or another from bodily harm --are abrogated by the State. "If the state puts a man in a position of danger from private people and then fails to protect him, it will not be heard to say its role was merely passive; it is as much an active tortfeasor as if it had thrown him into a snake pit." *Bowers v. DeVit*. Among the historic liberties so protected is a right to be free from -- and to obtain judicial relief for -- unjustified intrusions on personal security. *Ingram v. Wright*. The State does not have the right to limit a person's right to defend themselves or another in any manner that is reasonable. Well-engineered prone holds are entirely reasonable.

Rule 38.13 amounts to a State created danger. It includes an indiscriminate prohibition of all prone (face down) floor holds, regardless of how competently the hold is engineered. While the Rule permits seated holds, seated holds are inherently unstable, which is best illustrated by the "basket hold." The basket hold is a prime example of an incompetently engineered seated hold with two weak connection points at the wrists. Because it lacks sufficient mechanical advantage, it has a fatal malfunction mode when it destabilizes from its seated configuration causing the teacher to lose control. Either, the teacher instinctively struggles to regain superior position by assuming a prone configuration with the student or the student puts them both in that position. With the child's arms crisscrossed against his solar plexus (or diaphragm), the child's weight alone is sufficient to create a positional asphyxiation. The basket hold was never intended to be a prone hold. By broadly painting all prone methods dangerous, this "prone" scenario is being exploited by those who really wish to ban the use of all restraint if they could.

According to Rule 38.13, the basket hold in its seated configuration with its well-known history of causing fatalities will be permitted in Mississippi schools while other more thoroughly and safely engineered prone and supine holds will not.

Positional asphyxia is caused by two things: 1) chest compression and 2) not paying attention. HWC's prone method has been granted a Patent for its ability to prevent chest compression and the possibility of positional asphyxiation. You and your student are far safer in a well-engineered prone hold than you will ever be in a basket hold or any other seated hold.

With respect to mechanical advantage, every hold falls along a spectrum of advantage. Mechanical advantage becomes increasingly critical as the teacher is tasked with managing students with superior size, strength and athletic ability; beginning at about middle school age. The MS BOE does great harm to teachers and students by limiting access to proven methods that possess sufficient technical advantage and the safety protocols necessary to guarantee the safety of all concerned. The imposition of the Rule is clearly intended to create a situation in Mississippi classrooms that is so patently unsafe and frightening that teachers will be reluctant to use restraint at all.

This proposed rule is the most recent work of the radical "Restraint-free" movement in Mississippi, which includes the publically-funded disability advocacy attorneys, advocates and others who are driving this movement in Mississippi and elsewhere. The singular trait these advocates all share is, they possess strong visceral feelings about physical restraint absent any discernable expertise, whatsoever. Their shrill proclamations are not supported by science or common sense. For the last decade they have been conducting a relentless witch-hunt against all prone methods by claiming they are universally unsafe. They are not. The fact that this proposed rule is being floated in Mississippi simply proves, if you repeat a lie often enough and loudly enough it will eventually become true – or at least they hope.

### **The "Professional Judgment Standard" - when restraint is used as part of an IEP or IBP**

The United States Supreme Court (SCOTUS) held that the legal standard when determining treatment and safety decisions is the professional judgment standard. SCOTUS held that the duty and legal responsibility for treatment decisions, including what is written as part of an IEP or IPB, rests exclusively with the teachers, parents and facility professionals (not legislators) who work directly with students. As it is the professionals, caretakers, educators and guardians who are best able to 1) determine the clinical, treatment and educational needs of the student and 2) balance those needs with the overall safety and security needs of the facility. IDEA and Rule 504 also support the individual's right to treatment and education which includes the use of restraint.

The American Association of School Administrators ("AASA") states "Legislation or policy that prohibits parents and school personnel from communicating about the student's needs and corresponding school interventions *runs counter to the entire purpose of the Individuals with Disabilities in Education Act (IDEA).*" Mississippi's education and treatment teams are all operating within the scope of their training and license when they make decisions regarding restraint, including what type of restraint method should be used into an IEP.

The duty and responsibility to provide appropriate treatment, welfare, safety and education decisions rests entirely with the school and treatment team. The opinion of legislators, or state bureaucrats, operating from a remote location and without benefit of contact with the student and no personal stake in a safe outcome matters not, according to SCOTUS.

## **The Prone Restraint Ban Provision Cannot Be Enforced: Mississippi School Personnel Are Immune from Criminal Prosecution, Administrative and Disciplinary Action and Civil Suit.**

Mississippi law provides immunity to anyone acting in reasonable defense of self or others. Mississippi law also states that any person sued (this would include disciplinary and administrative actions) for using reasonable self-defense is entitled to reimbursement of their costs, expenses, compensation and attorney fees. MCA 97-3-15(5)(b); 37-11-57. Ironically, even if the Mississippi BOE enacts the rule, it cannot enforce it. If schools try to enforce the provisions of the rule, the Mississippi taxpayers will be paying for both the school's and its personnel's attorney fees, expenses, compensation and costs.

## **Teachers Will Need Additional Indemnification and Immunity for Failure to Protect**

Teachers and schools do not deserve to be held accountable for errant and illegal policies and Rules promulgated by unelected administrative bureaucrats acting outside the scope of their authority. No parent is going to tolerate uninterrupted acts of violence to be perpetrated on her child.<sup>1</sup> If the Mississippi BOE enacts this Rule, it should add a provision shielding schools and indemnifying school employees from both civil and criminal liability for failing to prevent or stop violent acts. Teachers can be prosecuted for neglect and abuse when they stand idly by as a child in her care is battered or injures himself. With a ban on prone holds, the MS BOE is essentially precluding teachers from using effective and reasonable methods of intervention, i.e., when students are on the ground fighting.

The only people who will not need indemnification for all the damage to persons this rule will cause are the disability rights industry at large, its advocates and attorneys and, now, Mississippi's BOE - all operating from the safety and security of their offices.

Fortunately, when common sense fails there is always the law.

## **Rule 38.13 violates the following Mississippi Laws:**

### **The Constitution of the State of Mississippi**

SECTION 1. The powers of the government of the state of Mississippi shall be divided into three distinct departments, and each of them confided to a separate magistracy, to-wit: those which are legislative to one, those which are judicial to another, and those which are executive to another.

SECTION 2. No person or collection of persons, being one or belonging to one of these departments,

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<sup>1</sup> Teacher assistant criminally charged with child abuse for failure to take action to protect students. <http://www.wftv.com/news/news/local/2-teacher-assistants-students-charged-after-classr/ncsCb/>. Multimillion dollar suit filed against school for failure to take action to protect students. <http://handlewithcare.com/tn-multimillion-dollar-suit-filed-against-school-for-failure-to-protect-bullying-assault-and-battery>. School bus driver may face charges for failure to protect. <http://handlewithcare.com/student-attacked-on-school-bus>. Michigan courts give teachers right to sue if school system fails to discipline students who are safety risks. <http://handlewithcare.com/mi-Michigan-courts-give-teachers-right-to-sue-if-school-system-fails-to-discipline-students-who-are-safety-risks>. Lincoln County School District sued for millions for failing to protect students against a 6 year old.

If the state puts a man (or child) in danger from private people and then fails to protect him, it will not be heard to say that its role was merely passive; it is as much an active tortfeasor as if it had thrown him into a snake pit. *Bowers v. DeVito*, 686 F.2d 616 (7th Cir. 1982). Schools act in loco parentis of students and have an independent duty to protect.

shall exercise any power properly belonging to either of the others....

SECTION 12. The right of every citizen to keep and bear arms in defense of his home, person, or property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but the legislature may regulate or forbid carrying concealed weapons.

SECTION 14. No person shall be deprived of life, liberty, or property except by due process of law.

SECTION 32. The enumeration of rights in this constitution shall not be construed to deny and impair others retained by, and inherent in, the people.

**Conclusion:** Mississippi's Constitution gives educators the right to defend life, liberty, natural and inalienable rights by all means reasonable. An employee who works at a Mississippi school does not lose her right to defend self and others at school. Mississippi's constitution specifically gives citizens the right to keep and bear arms for use in self-defense. The use of safely engineered prone holding methods, a much lower use of force threshold, are therefore entirely reasonable and lawful under Mississippi's Constitution. Mississippi's Constitution defines three branches of government, not four. Unelected bureaucrats comprising an administrative agency have no authority to enact rules that conflict with Mississippi's Constitution and laws. Mississippi's Constitution provides that any law (or rule) enacted repugnant to this Constitution (i.e. Rule 38.13) would be void.

**Mississippi Statutes Violated**

In Mississippi, a person has a right to defend himself, his home and his property from harm. There are three places that the long cherished rights of self-defense are clearly established in Mississippi law: (1) the Constitution (as cited above); (2) Mississippi Statute (for the use of serious or deadly force), and (3) Mississippi case law and jury instructions (for the use of self-defense).

**Mississippi Code 97-3-15: Crimes Against the Person -- use of defensive force.**

(1) The killing of a human being by the act, procurement or omission of another shall be justifiable in the following cases:

- (e) When committed by any person in resisting any attempt unlawfully to kill such person or to commit any felony upon him, or upon or in any dwelling, in any occupied vehicle, in any place of business, in any place of employment or in the immediate premises thereof in which such person shall be;
- (f) When committed in the lawful defense of one's own person or any other human being, where there shall be reasonable ground to apprehend a design to commit a felony or to do some great personal injury, and there shall be imminent danger of such design being accomplished;
- (g) When necessarily committed in attempting by lawful ways and means to apprehend any person for any felony committed;
- (h) When necessarily committed in lawfully suppressing any riot or in lawfully keeping and preserving the peace.

....

(4) A person who is not the initial aggressor and is not engaged in unlawful activity shall have no duty to retreat before using deadly force under subsection (1) (e) or (f) of this section if the person is in a place where the person has a right to be....

(5)(b) The court shall award reasonable attorney's fees, court costs, compensation for loss of income, and all expenses incurred by the defendant in defense of any civil action brought by a plaintiff if the court finds that the (b) The court shall award reasonable attorney's fees, court costs, compensation for loss of income, and all expenses incurred by the defendant in defense of any civil action brought by a plaintiff if the court finds that the defendant acted in accordance with subsection (1)( e) or (f) of this section. A defendant who has previously been adjudicated "not guilty" of any crime by reason of subsection (1)( e) or (f) of this section shall be immune from any civil action for damages arising from same conduct.

**1202: Mississippi Model Jury Instruction on Assault - Self-Defense – Standard of Care**

A person has a right to use reasonable force to defend [himself/herself] and [his/her] 90 property. A person who acts in self-defense or defense of [his/her] property is not legally responsible for any [harm/injuries] resulting from [his/her] acts of self-defense

**1204: Assault - Defense of Other People – Standard of Care**

A person has a right to use reasonable force to defend another person. A person who defends another person is not legally responsible for any [harm/injury/injuries] resulting from [his/her] acts defending the other person.

**1206 Assault - When the Aggressor May Act in Self-Defense - Standard of Care**

A person who commits an assault on someone may still claim self-defense if the person abandons the attack and makes it clear to the other person that [he/she] no longer wants to continue. A person who abandons an assault and then acts in self-defense is not legally responsible for any [harm/injury/injuries] from the assault.

**1208 Assault - Insulting Words Defense - Standard of Care**

A person who commits an assault as a result of having insulting words stated to [him/her] may not be legally responsible for any [harm/injury/injuries] as a result of the assault if the assault was justifiable or excusable as a result of the insulting words.

**1302 Battery - Self-Defense – Standard of Care**

A person has a right to use reasonable force to defend [himself/herself] and [his/her] property. A person who acts in self-defense or defense of [his/her] property is not legally responsible for any [harm/injury/injuries] resulting from [his/her] acts of self-defense.

**1304 Battery - Defense of Other People – Standard of Care**

A person has a right to use reasonable force to defend another person. A person who defends another person is not legally responsible for any [harm/injury/injuries] resulting from [his/her] acts defending the other person.

**1306 Battery - When the Aggressor May Act in Self-Defense - Standard of Care**

A person who commits a battery on someone may still claim self-defense if the person abandons the attack and makes it clear to the other person that [he/she] no longer wants to continue. A person who abandons a battery and then acts in self-defense is not legally responsible for any [harm/injury/injuries] from the battery.

**1308 Battery - Insulting Words Defense - Standard of Care**

A person who commits a battery as a result of having insulting words stated to [him/her] may not be legally responsible for any [harm/injury/injuries] as a result of the battery if the battery was justifiable or excusable as a result of the insulting words.

**Conclusion:** Mississippi's Constitution, Statutes and case law give educators the right to defend themselves and others by all means reasonable. The reasonable standard is not akin to "no prone restraint." The use of safely engineered prone holding methods (that do not restrict breathing) are entirely reasonable and lawful.

If an employer (or State actor) does fire or take administrative or disciplinary action against an employee acting in reasonable defense of self, that action constitutes a tort against public policy and a person's civil liberties. The State legislature and Mississippi courts have held that no civil or criminal liability or sanction (disciplinary or administrative) can attach. As a result, the State, school and ultimately the taxpayer will be responsible for compensating any person erroneously sued or disciplined under this rule for attorney fees, lost compensation, costs and expenses.

### **MCA 37-11-57. A Note On Mississippi's Immunity Law.**

Under the immunity statute, there is a corporal punishment section. Corporal punishment is not akin to self-defense. Currently, Mississippi's corporal punishment law contains a provision stating that a person can use physical/corporal intervention for self-defense or the defense of others. Specifically,

“(2) ‘corporal punishment’ means the reasonable use of physical force or physical contact by a teacher, assistant teacher, principal or assistant principal, as may be necessary to maintain discipline, to enforce a school rule, for self-protection or for the protection of other students from disruptive students.”

The above section is more appropriately entitled “Use of force by persons with special responsibility for care, discipline or safety of others.” The use of force described is not being used as punishment. It is being used to maintain a safe environment conducive to learning. As such it should be in its own section.

### **Point 2: Federal laws violated by Proposed Rule 38.13**

#### **The United States Constitution:**

Specifically, 2nd, 5th, 9th and 14th Amendment rights to due process/equal protection. Defense of self and others is considered to be an inherent and fundamental right.

### **The “Professional Judgment Standard” - when restraint is used as part of an IEP or IBP**

#### ***Youngberg v. Romeo, 457 U.S. 307 (1982)***

This Supreme Court applied the professional judgment standard in ruling that the legal responsibility for making treatment and safety decisions rests exclusively with our facility professionals who work directly with our patients and who are best able to 1) determine the clinical needs of the client and 2) balance those needs with the overall safety and security needs of the facility. IDEA and Rule 504 also support the individual's right to treatment and education.

In deciding *Youngberg*, SCOTUS established the "Professional Judgment Standard" and made it clear that it is only the state-licensed professionals working directly with a student who are 1) qualified and in a position to weigh the physical and emotional needs of the [student] and 2) in a position to balance the student's needs against the overall safety and security concerns and needs of the [school].

The safety protocols and restraining decisions which are specified in the student's Individualized Education or Behavior Plan (IEP/IBP) have the stamp of Constitutional approval. Education and treatment teams are operating within the scope of their training and license when they place their decisions regarding restraint, including what type of restraint method should be used with a particular child, into his or her IEP.

**St. Catherine's Care Center of Findlay v. Centers for Medicare & Medicaid Services, Docket No. C-01-721; Decision No Cr1190 (June 14, 2004)**

A Federal Administrative Court ruled that it is the responsibility of the entity that [is in charge of the student] to determine the crisis intervention [restraint] program in place at the [school]. The court also held that the crisis intervention and restraint program and policy in place must meet the "real needs" of the [school] and, further, "neither federal reimbursement practices nor state screening practices relieves the [school] of its responsibility to provide its [students] with necessary [education, safety] and services."

The duty and responsibility to provide appropriate treatment, welfare, safety and education decisions rests entirely with the school and treatment or education team. The opinion of legislators and bureaucrats, operating from a remote location and without benefit of contact with the student or a personal stake in a safe outcome, matters not according to the U.S Supreme Court.

**The Right to an Education:**

Children are smart. It does not take long for children and adolescents to realize where the behavioral lines are drawn and exactly how much latitude he has to disrupt a classroom or put others at risk before decisive action is taken. Students will quickly figure out that the adults and teachers are not able to perform a takedown to an effective floor holding method and will act accordingly.

Children need to be protected from the physical and emotional consequences of their behavior in the short term and in the long term. If you agree that the ultimate goal of education is to prepare children and adolescents for the realities of adult life and to achieve personal and professional success, you are about to make that much harder for a large number of children in Mississippi. We know of no post high school graduation work situation or social environment that will ignore the kinds of dangerous and destructive behaviors teachers face every day. Children have a right to an education and some hope of a successful life as adults regardless of their condition or disability.

**In summary:**

Mississippi Rule 38.13 violates and conflicts with Federal laws; Mississippi's Constitution, Mississippi Statutes and Mississippi case law and all common sense. MS BOE does not have the authority to limit a person's right to defend self and others by all reasonable means. The proposed rule needs to be re-drafted to comply with State and Federal law. As currently drafted it is unenforceable and would never withstand judicial challenge.

We will be forwarding this document to every school, teacher, legislator and media outlet in Mississippi. We will be making it as easy as we can for Mississippi's teachers to petition their Legislative Representative and State Attorney General for his legal opinion regarding the legality of Rule 38.13.

For the record, our company can easily adapt to this new rule without any loss of income or financial distress to us. We advance these arguments on behalf of children and teachers because it is our duty as

experts to do so.

If you agree with our comments, write a cover letter and re-submit our comments, write your own letter (or ask us for a sample letter) and submit it to your legislator, Governor and Attorney General.

### **Who to Contact:**

Mississippi Department of Education  
Tollie Thigpen – [tthigpen@mdek12.org](mailto:tthigpen@mdek12.org)

#### Legislative Branch

House Speaker Philip Gunn - [pgunn@house.ms.gov](mailto:pgunn@house.ms.gov)  
Senator President Pro Tempore Terry Burton – [tburton@senate.ms.gov](mailto:tburton@senate.ms.gov)  
Committee Education Chair John Moore - [jmoore@house.ms.gov](mailto:jmoore@house.ms.gov)  
Senate Committee Education Chair Gary Tollison - [gtollison@senate.ms.gov](mailto:gtollison@senate.ms.gov)  
Lt. Governor Tate Reeves – [ltgov@senate.ms.gov](mailto:ltgov@senate.ms.gov)

#### Executive Branch

Governor Phil Bryant Fax: 601-359-3741  
Attorney General Jim Hood – [jhood@ago.state.ms.us](mailto:jhood@ago.state.ms.us); [hpizz@ago.state.ms.us](mailto:hpizz@ago.state.ms.us)  
Geoffrey Morgan, Chief of Staff - [gmorg@ago.state.ms.us](mailto:gmorg@ago.state.ms.us)

### **Sample language to use:**

For the DOE:

“Rule 38.13 violates my Constitutional right to come to the defense of self, others and property. The Rule is unlawful, repugnant to Mississippi’s Constitution and laws, and should be voted down immediately. If the State disregards the law and proceeds to enact regulations that unlawfully curtail my natural and Constitutional rights and Civil Liberties, I demand full indemnification in the event that someone is injured as a result.”

### **We request the following amendments to Rule 38.13:**

#### **Summary of proposed changes to Rule 38.13:**

1. Change the term “corporal punishment” to “Use of force, control or discipline by persons with special responsibility for care, discipline or safety of others.” MCA 37-11-57
2. Remove the ban on prone restraint.
3. Allow the use of restraint as part of an IEP or BP for “non-emergency” and/or “emergency” interventions
4. Allow the use of restraint, including prone restraint, in accordance with the provisions contained in Mississippi’s Constitution, Statute and case law.

Failure to make the above revisions will result in the following:

- A school to prison pipeline. If teachers and schools are prohibited from or not given the tools necessary to create a safe environment conducive to learning, they will have no choice but to call law enforcement.
- An unlawful breach of the compact between government and the people. Government is not

- allowed to restrict a person's right to defend self or others beyond what is reasonable.
- Enactment of the law as currently proposed is outside the scope of authority of the MS BOE. Persons on the MS-BOE should be personally liable for intentionally acting outside its scope.
  - Dangerous schools.

For the legislative and executive branch add to the above:

Unelected bureaucrats comprising an administrative agency or board have no authority to enact rules that conflict with Mississippi's Constitution and laws. Mississippi's Constitution provides that any law (or rule) enacted repugnant to this Constitution (i.e. Rule 38.13) is void.

We request an opinion by the State's Attorney General regarding the legality of this Rule. We also request the elected officials of the executive branch, the State Attorney General and legislature advise DOE and BOE of their limited authority under Mississippi law.

To the Governor add to the above:

"I demand you veto this Rule"

Please feel free to contact me or Ms. Adler at 845-255-4031 or through the HWC website.

Sincerely,



Bruce Chapman, President  
Handle With Care  
[www.handlewithcare.com](http://www.handlewithcare.com)  
[www.brucechapman.com](http://www.brucechapman.com)

**Who we are:** Handle With Care Behavior Management System is a crisis intervention, verbal intervention and restraint training service provider with more than four decades of experience meeting the needs of virtually every type of human service environment; from nursery schools to penitentiaries. HWC is also a legal research center. We are nationally recognized as experts in this field with an unflinching commitment to creating therapeutic milieus that are safe and free from threats of physical harm and significant disruption. Hilary Adler is an attorney licensed to practice in New York. Bruce Chapman is President and founder of HWC. He is "qualified" to offer expert testimony in multiple jurisdictions throughout the U.S. on matters related to unarmed use-of-force, physical and mechanical restraint; in civil, administrative and criminal proceedings.

***Retaliation against HWC for the exercise of our first amendment rights will not be tolerated.***

## Tollie Thigpen

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**From:** Nita Rudy <nrudy@parents4publicschools.org>  
**Sent:** Thursday, April 14, 2016 12:44 PM  
**To:** Tollie Thigpen  
**Cc:** 'Pam Dollar, Ex. Director' (pam@msccd.org); Mandy Rogers (Mom424@aol.com); Joy Hogge  
**Subject:** Public Comments on proposed Restraint and Seclusion Policy 4013  
**Attachments:** Letter to Tollie Thigpen Restrain seclusion final 4-12-16.doc

Dear Mr. Thigpen,  
Attached please find the public comments supported by the parent and advocacy organizations listed.

Also, the summary of action items that is attached to the policy lists one of the groups that MDE personnel met with as Parents for Public Education, actually that group is Parents for Public Schools. I would appreciate it if you could make that edit.

Thank you,

*Nita*

### **NITA RUDY**

Director of Programs and Training  
**Parents for Public Schools, National Office**  
125 South Congress Street, Suite 1218  
Jackson, MS 39201  
**p:** 601-969-6936 ext. 310  
**c:** 601-260-9935  
**e:** [nrudy@parents4publicschools.org](mailto:nrudy@parents4publicschools.org)  
**w:** [www.parents4publicschools.org](http://www.parents4publicschools.org)  
**t:** [@PPS\\_National](https://www.instagram.com/PPS_National)  
**f:** [www.facebook.com/PPSNational](https://www.facebook.com/PPSNational)

April 11, 2016

Tollie Thigpen  
Office Safe and Orderly Schools  
Mississippi Department of Education  
P.O. Box 771  
Suite 210  
Jackson, MS 39205-0771

Public Comments on proposed State Board Policy 4013- Restraint and Seclusion

Dear Mr. Thigpen,

We would like to thank everyone who helped improve the original Restraint and Seclusion Policy submitted for public comment last June. It is important for Mississippi to have a strong restraint and seclusion policy and this current policy draft is improved. The undersigned organizations are in agreement, however, that MDE's current draft restraint and seclusion policy would benefit from additional clarification and internal consistency. This letter serves as our united voice and public comment.

Our specific suggestions are:

Page 2

Second Paragraph, first sentence - The use of the word **violence or violent** creates a negative expectation and has the potential to label students. In the second paragraph first sentence, we suggest replacing the phrase "The most effective response to **school violence**" with "research indicates the most effective way to reduce the need for restraint and seclusion...."

In that same paragraph 17<sup>th</sup> line- eliminate **violent** so the sentence reads "to diffuse potentially dangerous behavior..."

Third Paragraph, first sentence: Omit the word **some**, to read "However, at times students may exhibit. ..." The use of **some** appears to identify a specific group of students that would have negative behaviors.

Page 3

2. Second paragraph: Delete "**physically violent** behavior" correcting the sentence to read "...students are displaying behavior deemed to be a danger to themselves or others.

Page 5

- l. Explain referenced codes in a footnote or appendix and provide links to the relevant State or Federal statutes.
- m. Fourth line- replace may with **shall**
- p. The last sentence, "The term physical restraint does not include...." is confusing. Deleting that sentence and adding the following phrase after i and ii "is prohibited" would be more concise.

Page 6

General Procedures- under Restraint section

- ii. This statement is inconsistent with the restraint definition as an emergency response endangering a student or another person. Destruction of property is not necessarily a cause for eminent danger.
- iii. This statement seems to refer to physical escort not restraint.

Page 9

- d. Fifth line, replace should with **shall**
- xii. Add **administrator signatures**

Page 10

5 -Administrative Procedures

- c. Replace should with **shall**
- d. Replace should with **shall**. As the statement now reads it contradicts 6-parent notification.

Page 11

- h. replace district with **board**

Of course, we would prefer that seclusion be omitted from the policy, but knowing that request will not happen, we anticipate that MDE will put in place procedures to carefully monitor seclusion to determine the effectiveness of its use and to ensure that children are not being adversely affected by the use of seclusion.

We thank you for the opportunity to comment on this policy. As stated earlier, this policy is much stronger than previously submitted. We appreciate the work that the MDE staff has done to improve it.

Standing together, united,

Pam Dollar, Executive Director  
**Coalition for Citizens with Disabilities**  
(601) 969-0601

Joy Hogge, Ph.D. Executive Director  
**Families As Allies**  
(601) 355-0915

Mandy Rogers  
**Parents United Together**  
[Mom424@aol.com](mailto:Mom424@aol.com)

Nita Rudy  
Director of Programs and Training  
**Parents for Public Schools, National Office**  
(601) 969-6936 ext. 31

Mary Troupe, Director  
**Just Advocacy of Mississippi**  
(601) 941-9388

Katie McCustion  
**MFCD- Mississippi Families for Children with Dyslexia**  
(662) 523-5349

Janice M. Harper, Community Organizer  
**Nollie Jenkins Family Center, Inc. (NJFC)**  
(662) 653-0122/0124

Tameka Tobias-Smith, Executive Director  
**National Alliance on Mental Illness - NAMI Mississippi**  
(601)-899-9058

Matt Nalker, Executive Director  
**The Arc of Mississippi**  
(601) 355.0220

Kimberly Remak  
**The Arc Northwest Mississippi**  
(901) 907-9041

Kimberly Jones Merchant  
**Mississippi Center for Justice**

(662) 887-6570

Jennifer A Riley-Collins, Executive Director,  
**ACLU of Mississippi**  
(601) 354-3408

Jody E. Owens, II, Director of Mississippi Office  
**Southern Poverty Law Center**  
(601) 948-8882

## Tollie Thigpen

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**From:** Tony Cook <tcook@houston.k12.ms.us>  
**Sent:** Thursday, April 14, 2016 4:34 PM  
**To:** Tollie Thigpen  
**Subject:** Restraint and Seclusion Policy

3.a.- makes corporal punishment a questionable option by saying "hitting." My interpretation is that paddling is not the same as "hitting", but the wording makes it questionable.

3.b.- infliction of bodily pain also suggests that corporal punishment may not be allowed.

3.g.- disrespect, noncompliance, insubordination, and out of seat behaviors are all precursors to "dangerous behaviors."

4.b.i.- shall requires that all staff be trained in restraint procedures otherwise staff members may have to allow a dangerous situation to continue until a trained staff member is on the scene. This is another unfunded mandate. "Should" makes it much safer for staff and students.

4.b.viii.- report to MDE is more paperwork for already understaffed schools

4.c.- provide consistent training procedures for ALL districts so that everyone is using the same procedures. Provide funding for this training or provide it at no cost to the districts.

4.c.vi.- sometimes physical restraint may be needed when there is not an administrator in the area.

### Seclusion

4.c.i.- should needs to be left in the policy or the learning of other students will be affected. Situations like this are the reason we are losing students to private schools where behavior is mandatory, or the students are not allowed to continue attending the school. Same for ii, again the learning opportunities and rights of well-behaved children are being affected.

### Seclusion

d.- unnecessarily burdensome paperwork for school personnel.

e.- schools will be overrun with students needing interventions. More unfunded mandates.

6.a.- more paperwork and documentation for school personnel.

6.b.- parents should be notified on the same day, but sometimes it may not be possible to reach them before the close of school on the same day.

Many of the changes made to this proposal are detrimental to school districts and detrimental to the educational rights of students who come to school to receive an education. Public education is losing support nationwide because parents who want their children to receive a good education are alarmed at the drastic increase in the rate of dangerous behaviors that are allowed in public schools because disciplinary options are being limited severely through litigation and policy.

Many of the changes also require burdensome paperwork and time out of the classroom for debriefing after incidents. School personnel are already overloaded with paperwork. We don't need to add more.

*"The foregoing electronic message and any files transmitted with it are confidential and are intended only for the use of the intended recipient named above. This communication may contain material protected by the Family Educational Rights and Privacy Act (FERPA). If you are not the intended recipient, copying, distribution, or use of the contents of this message is strictly prohibited. If you received this electronic message in error please notify, me at the email address above."*

## Tollie Thigpen

---

**From:** L. Rene Hardwick <LHardwick@aclu-ms.org>  
**Sent:** Friday, April 15, 2016 4:53 PM  
**To:** Tollie Thigpen  
**Cc:** Jennifer Riley Collins  
**Subject:** Comments submitted by the ACLU of MS submits its public re: 4013 - Restraint and Seclusion  
**Attachments:** Public comments 4013 Restraint and seclusion.pdf

Hello Mr. Thigpen,

Please find the attached comments by the American Civil Liberties Union of Mississippi Foundation, Inc. (ACLU of MS). A hard copy will, also, be hand delivered.

Thank you,

***L. Rene' Hardwick, Ph.D.***

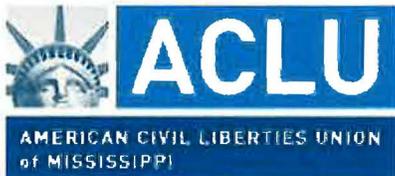
Advocacy Coordinator

ACLU of Mississippi

P.O. Box 2242, Jackson, MS 39225

■ c 601-354-3408 ■ lhardwick@aclu-ms.org

www.aclu-ms.org  



Because Freedom Can't Protect Itself



April 15, 2016

Dr. Carey Wright  
c/o Tollie Thigpen  
Office of Safe and Orderly Schools  
Mississippi Department of Education  
P.O. Box 771  
Jackson, MS 39205-0771

AMERICAN CIVIL  
LIBERTIES UNION OF  
MISSISSIPPI  
P.O. BOX 2242  
JACKSON, MS 39225  
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WWW.ACLU-MS.ORG

**Re: Comments Submitted by the American Civil Liberties Union of Mississippi regarding Mississippi Department of Education Policy Part 3, Chapter 38, Rule 38.13 - Restraint and Seclusion**

Dear Dr. Wright:

The American Civil Liberties Union of Mississippi Foundation, Inc. (ACLU of MS), hereby, submits public comments to the Mississippi Department of Education (MDE) regarding proposed Rule 38.3 - Restraint and Seclusion Policy.

The ACLU of MS is pleased with MDE's production of a significantly improved uniform model policy for the state of Mississippi. While MDE's policy is very comprehensive, it should be expanded in the following areas:

- **Consistently emphasize prevention by eliminating references to "violent" or "violence";**
- **Clarify and/or change certain terminology;**
- **Require educational administrator's written acknowledgement of restraint and seclusion incident; and**
- **Prohibit the use of seclusion.**

Before this policy is adopted, we strongly suggest these issues be addressed and that the recommendations earnestly considered.

**I. Consistently emphasize prevention by eliminating references to "violent" or "violence"**

Prevention is critical to creating an explicit and consistent positive tone throughout any model policy. And while the MDE's policy states, in relevant part, that "The

a school culture that emphasizes prevention...<sup>1</sup>” the goal of any policy should be to establish continuity and consistency. The use of the word “violence” or the variation thereof, i.e., “violent” when describing school acts denotes a negative connotation in describing situations which are not consistent with the framing of positive responses such an act [violent] requires. The phrase “...school violence...” runs counter to the intended tone and mood established in the first paragraph of the proposed policy. Its use does not accurately describe the potential for all children to exhibit challenging behaviors at times for varying reasons, circumstances, and situations. The reference to violence in schools promotes an image and climate of students causing or inflicting intentional harm, damage, or death to someone. This, however, is not the case.

Likewise, MDE’s policy references violent *and* dangerous, in the same sentence, in relevant part, “...as well as implement de-escalation techniques to diffuse potentially violent dangerous behavior.”<sup>2</sup> Also, the policy states, in relevant part, “...staff may intercede in situations wherein students are displaying physically violent behavior or is deemed to be a danger...”<sup>3</sup> Terminology such as “violent” plants the seeds of distrust and discord placing students and school personnel at odds. Utilization of these terms fuels adversity and criminalization of childlike behavior rather than fostering positive behavioral interventions and support.

**Recommendation:**

- We recommend MDE revisit their policy and ensure the tone of prevention and the mood of positive and proactive supports and strategies remain consistent throughout the policy by omitting the use of the word “violence” or the variation thereof, i.e., “violent” when describing challenging or inappropriate student behavior.

**II. Clarify/Change Terminology.**

Clarifying the terminology used throughout the proposed policy will reduce instances of improper application, inappropriate references to students, and provide statewide standards in implementation and uniformity. The following sections contain ambiguous or misleading language that must be clarified:

A. Introduction Section: MDE’s proposed policy states, in relevant part, that “However, at times, some students exhibit behaviors which place

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<sup>1</sup> Section: “1. Introduction” Para. 2, pg.2.

<sup>2</sup> Section: “1. Introduction” Para. 2, pg.2.

<sup>3</sup> Section: “1. Introduction” Para. 2, pg.3.

themselves...<sup>4</sup>” The use of “some students” as opposed to “students” in general limits the identification and scope to certain students. This language creates the potential for certain students to be targeted when, in fact, all students possess the potential to behave inappropriately for a variety of reasons, circumstances, and situations.

- B. Definition Section: MDE’s proposed policy defines physical restraints as “the use of physical force, without the use of any device or material that restricts the free movement of all or a portion of a student’s body.” “[P]hysical restraint does not include briefly holding a student’s hand or arm to calm them or escort them to another area. A physical restraint shall be removed as soon as the student is calm.<sup>5</sup>” This definition lacks explicit language identifying the comprehensive nature of restraint by differentiating among the types of restraint, purpose, and which specific acts defined under restraint are prohibited in all situations.
- C. The proposed policy makes reference to “...destruction of property” as part of a criteria considered in an emergency response after all other verbal de-escalation measures have failed.<sup>6</sup> However, “destruction of property” is not defined with explicit language to ensure consistency and uniformity in determining what constitutes same.

#### **Recommendation:**

- We recommend that MDE omit the reference to “some students” to state, “However, at times students may exhibit behaviors which place themselves and others in imminent danger.”
- We recommend a comprehensive definition of physical restraint to include explicit language which defines restraint in terms of what it is and is not, as well as identify criteria under which restraint is to be used to **read as follows:**
- **Physical restraint** is defined as the use of physical force, without the use of any device or material that restricts the free movement of all or a portion of a student’s body to prevent an imminent and substantial risk of bodily harm to the self or others.
- **Physical restraint that restricts the flow of air** to the student’s lungs refers to any method (facedown, face-up, or choke hold) of physical restraint in

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<sup>4</sup> Section: “1. Introduction” Para. 3, pg.2.

<sup>5</sup> Section: “3. Definitions” Para. 6, letter p., pg. 5.

<sup>6</sup> Section: “4. General Procedures” Restraint, letter a., ii., pg. 6.

which physical pressure is applied to the student's body that restricts the flow of air into the student's lungs **and is prohibited in all situations.**

- **Prone restraint** refers to a specific type of restraint in which a student is intentionally placed face down on the floor or another surface, and physical pressure is applied to the student's body to keep the student in the prone position **and is prohibited in all situations.**
- **Prone Physical Restraint** means holding a student face down on his or her stomach using physical force for the purpose of controlling the student's movement **and is prohibited in all situations.**

The term physical restraint **does not** include:

- i. Mechanical restraint or chemical restraint.
  - ii. Providing limited physical contact and/or redirection to promote student safety or prevent self-injurious behavior,
  - iii. Providing physical guidance or prompting when teaching a skill, redirecting attention,
  - iv. Providing guidance to a location, providing comfort, or providing limited physical contact as reasonably needed to prevent imminent destruction to school or another person's property.
  - v. Providing physical guidance or prompting when teaching a skill, redirecting attention. A brief period of physical contact necessary to break up a fight.
  - vi. Momentarily deflecting the movement of a student when the student's movement would be destructive, harmful or dangerous to the student or to others
- We recommend MDE, change the physical restraint definition to include the use of physical restraints by trained personnel only in situations of imminent danger and substantial risk of bodily harm to student or others.
  - We recommend MDE, include a clear, concise and uniform definition of what constitutes "destruction of property" to ensure the criteria has been met and is, further, consistent when considering an emergency response.

### **III. Require educational administrator's written acknowledgement of restraint and seclusion incident**

The proposed policy states, in relevant part, "...documentation shall be provided using an incident report... This report must include the following:

xii. Staff Signatures;..."<sup>7</sup> An educational administrator signature should also be required on the report to ensure an administrator is aware and involved throughout the process of addressing and documenting that a restraint and seclusion incident occurred.

#### **Recommendation:**

- **We recommend MDE require an educational administrator's signature on the incident report to ensure the awareness and involvement of an administrator throughout the process of addressing and documenting the occurrence of a restraint and seclusion incident.**

#### **IV. Prohibit the Use of Seclusion:**

The proposed MDE policy allows for the use of seclusion. However, seclusion is violent, expensive, largely preventable adverse events<sup>8</sup>. Research demonstrates that the use of prevention and positive approaches saves cost. There are significant dangers and risks to ALL involved in the use of seclusion. It poses an inherent risk to the physical safety and psychological health of everyone involved; it is never risk-free. In addition to producing anxiety, fear and a decreased ability to learn; death, trauma, and injuries can and have resulted from the use of these techniques. All children experience trauma from the use of restraint and seclusion; however, children with significant disabilities are at increased risk if they are not able to fully understand or communicate what happened, how they feel, or report injury or pain as a result of restraint or seclusion. They may acquire post-traumatic stress syndrome or exhibit new challenging or dangerous behaviors<sup>9</sup>.

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<sup>7</sup> Section: "4. General Procedures" Behavioral Interventions, Seclusion letter d, xii., pg. 9.

<sup>8</sup> U.S. Department of Health and Human Services Substance Abuse and Mental Health Services Administration Jan Lebel (2011) *The business case for preventing and reducing restraint and seclusion use*. Washington, DC: Retrieved from <http://store.samhsa.gov/shin/content//SMA11-4632/SMA11-4632.pdf>

<sup>9</sup> There is a strong and non-controversial body of research outlining the dangers of restraint and seclusion and amply documenting their harmful effects. The concern about these techniques and the national call for prevention of the use of restraint and seclusion stand uncontested. Education and clinical professionals must use only interventions that are both evidence and values based. **Seclusion should never be used in a school setting**, only techniques shown to be effective in reducing and preventing restraint should be employed. Preventing the Use of Restraint and Seclusion in Schools: Addressing a National Epidemic through the Keeping All Students Safe Act. This overview of initiatives and public policy concerns includes a history of legislative attempts to establish federal restrictions on the use of

**Recommendation:**

- We recommend MDE prohibit the use of seclusion. Earnestly revisit and reconsider the feasibility of utilizing seclusion, as it significantly increases the risk of injury, trauma, and in some cases death.

**V. Conclusion.**

The American Civil Liberties Union of Mississippi, therefore recommends the following:

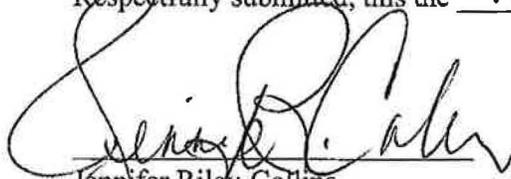
- A. We recommend MDE revisit their policy and ensure the tone of prevention and the mood of positive and proactive supports and strategies remain consistent throughout the policy by omitting the use of the word “violence” or the variation thereof, i.e., “violent” when describing challenging or inappropriate student behavior.
- B. We recommend that MDE omit the reference to “some students” to state, “However, at times students may exhibit behaviors which place themselves and other in imminent danger.”
- C. We recommend MDE expand the definition of physical restraint to include explicit language to define restraint in terms of what it is and is not, as well as identify criteria under which restraint is to be used and when it is to be prohibited.
- D. We recommend MDE change the physical restraint language to require use of physical restraints by trained personnel only in situations of imminent danger and substantial risk of bodily harm to student or others.
- E. We recommend MDE include a clear, concise and uniform definition of what constitutes “destruction of property” to ensure clarification and consistency regarding the criteria to be considered an emergency response have been met.
- F. We recommend MDE require an educational administrator’s signature on the incident report to ensure the awareness and involvement of an administrator throughout the process of addressing and documenting the occurrence of a restraint and seclusion incident.

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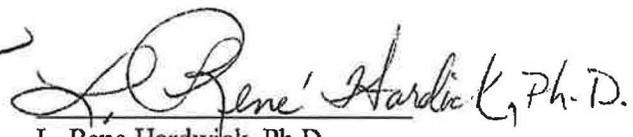
restraint and seclusion in schools, and a statement of the need for legislative action. (3 pages) *Source: The Alliance to Prevent Restraint, Aversive Interventions and Seclusion.*

G. We recommend MDE prohibit the use of seclusion. Earnestly revisit and reconsider the feasibility of utilizing seclusion as it significantly increases the risk of injury, trauma, and in some cases death.

Respectfully submitted, this the 15<sup>th</sup> of April, 2016.



Jennifer Riley-Collins  
Executive Director  
American Civil Liberties Union  
P.O. Box 2242  
Jackson, MS 39225-2242



L. Rene Hardwick, Ph.D.  
Advocacy Coordinator  
Keeping Students Safe  
American Civil Liberties Union  
P.O. Box 2242  
Jackson, MS 39225-2242

## Tollie Thigpen

---

**From:** Flettrich, Doris <dflettrich@pc.k12.ms.us>  
**Sent:** Saturday, April 16, 2016 3:53 PM  
**To:** Tollie Thigpen  
**Subject:** COMMENT STATE BOARD POLICY PART 3, CHAPTER 38, RULE 38.13  
**Attachments:** COMMENT ON RESTRAINT AND SECLUSION POLICY.pdf

Mr. T. Thigpen,

Attached is a comment letter with regard to the restraint and seclusion policy. It is our hope our comments will be considered. Thank you.

Doris B. Flettrich  
Special Education Director/Gifted Coordinator  
Pass Christian Public School District ~ 6457 Kiln-DeLisle Rd ~ Pass Christian, MS 39571  
phone: 228-255-6205 ~ fax: 228-255-9436 ~ email: [dflettrich@pc.k12.ms.us](mailto:dflettrich@pc.k12.ms.us)

*Committed to Excellence*

Students excel when...

Curriculum is challenging and progressive Actively engaged in the learning process All have an equal opportunity to learn Learning is a shared responsibility Held to clearly defined, high expectations All are accepted, valued, and safe

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**To:** Tollie Thigpen  
Office of Safe and Orderly Schools  
Mississippi Department of Education

**From:** Doris Flettrich, Special Education Supervisor   
Meridith Bang, Director of Curriculum and Instruction   
Pass Christian School District

**Date:** April 16, 2016

**RE:** Comment on State Board Policy Part 3, Chapter 38, Rule 38.13 –  
Restraint and Seclusion. Goal 4 – MBE Strategic Plan.

The *Restraint and Seclusion: Resource Document* published by the U. S. Department of Education has listed the state of Mississippi as one of the very few states in the country that does not currently have a state statute or regulation addressing seclusion or restraint. This is evidence that our state has not always utilized researched based educational information at the national level to support our schools with best practice and the funding required to implement these practices.

I applaud the Department of Education for addressing this need through a task force of parents and educators and other interested stakeholders. However, this does not need to become another unfunded mandate. The policy should be supported through the allocation of professional development funds for every district in the state as this is a very serious safety concern for all of our students and all of our teachers and staff members. Positive Behavior Specialist should be fully funded as well as the required professional development in this proposal.

Our Public Schools are required to provide educational benefit to all students, including students with challenging behaviors whether or not they are regular education students or students with disabilities. Districts are required to successfully equip our teachers with the necessary intensive professional development, specialized classrooms and specialized materials to meet the daily

**DORIS B. FLETRICH, Special Education Supervisor and Gifted Program Coordinator**

6457 KILN-DELISLE ROAD • PASS CHRISTIAN, MISSISSIPPI 39571

Phone (228) 244-6205 • Fax (228) 255-9436

needs of these students. These supports are often very costly in terms of staffing. It is also very difficult to hire highly qualified and specially trained teachers to support the increased level of behavioral needs currently being exhibited in the schools.

The proposed Restraint and Seclusion Policy is welcomed, but must consider the day to day reality of the teachers, assistants, and school site administration when implementing the suggested procedures and complying with this proposed policy. Educating a student is a shared responsibility. It requires all of the stakeholders to collectively come to the table to contribute to a safe and orderly school environment conducive to learning for all students.

It is my hope this policy and its procedures will give parents and schools a common ground based on an understanding that we all are working toward the same goal, student success. If this means at some point in the school day a student will require restraint and/or seclusion, parents please know it is with the intention of keeping your child, other children and staff safe.

**I would like to suggest the following edits:**

## **2. Restraint and Seclusion Policy**

**Replace with the following:**

A Restraint and Seclusion Policy shall be defined through written local school board-approved policies for restraint and seclusion based on the definitions promoted by the U.S. Department of Education and Office of Civil Rights' for such terms. These policies should apply to all students in the local school district and must not focus on one or more subgroups of students.

The local school board approved policy in no way shall inhibit the right of staff to reasonable self-defense in accordance with the provisions of the 5<sup>th</sup> and 14<sup>th</sup> amendments to the Constitution of the United State nor negate the obligation of the district to provide a safe work environment.

In accordance with Miss. Code Ann. 37-9-69 and 37-11-57, it is recognized that staff may intercede in situations wherein students are displaying physically violent behavior or deemed to be a danger to themselves or others. The use of excessive

force, or cruel and unusual punishment regarding student management is strictly prohibited by State Board policy.

It is further recommend that all local school districts develop a Restraint and Seclusion Procedural Manual based on the definitions, general procedures, administrative procedures and mandated reporting requirements found in State Board Policy Part 3, Chapter 38, Rule 38.13 – Restraint and Seclusion.

### **3. Definitions**

#### **Replace with the following:**

- d. Behavioral intervention is defined as the implementation of strategies to address behavior that is dangerous or inappropriate, or otherwise impedes the learning of the student **or other students.**
- e. iv. Written description of when, where, and how often the strategy will be implemented and **by whom;**
- e. v. Consistent system **of data collection to monitor and evaluate the effectiveness of the plan.**
- g. Dangerous behavior is defined as behavior that presents an imminent danger of physical harm to self or others but does not include inappropriate behavior such as disrespect, noncompliance, insubordination. **Dangerous behavior can be defined as elopement from safe area.**
- p. i. **The following is prohibited: Physical restraint that restrains the flow of air to the student's lungs. Prone restraint in which a student is placed face down on the floor or other surface and physical pressure is applied to the student's body to keep the student in the prone position.**
- s. **Seclusion is defined as the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving. It does not include a timeout, which is a behavior management technique that is part of an approved program, involves the monitored separation of the student in a non-locked setting, and is implemented for the purpose of calming.**

#### **4. General Procedures**

##### **Replace with the following:**

b. iii. Restraint shall be immediately terminated if the student appears to be, or claims to be, in severe stress **or when school personnel deems it is safe to release the student.**

b. viii. Parents must be notified on the same school day of the **restraint incident to discuss the situation. If there have been numerous incidents a meeting must be scheduled with the parents and documentation must be kept on the discussion of alternate solutions.**

d.ix. Total time spent in restraint or seclusion. **Each incident of seclusion and restraint shall be timed and time will be reported on the incident report. After 20 minutes, the situation must be assessed by a member of the school's crisis team to include, but not limited to principal and/or designee, school resource officer, school nurse, school counselor and any other member assigned to the crisis team. This assessment will be documented on the incident report. The parent will be notified of the incident. The team will make the decision whether or not the student should be transported to a medical facility for evaluation.**

x. Injuries to student or staff **must be documented by the administration of the school and school nurse if available.**

#### **5. Administrative Procedures**

a. ii. **Parental notification must occur on same day of restraint or seclusion. (Note: keep time constraints consistence throughout this document).**

a. vi. **Procedures for reporting the use of restraint or seclusion to the superintendent and the Mississippi Department of Education. School board may review all behavioral data reporting through MSIS.**

a. h. **Delete already in body of document see above a. vi.**

#### **6. Parental Notification**

b. All parents/guardians shall be notified on the same day any incident of physical restraint or seclusion was utilized to keep a student safe and others safe.

## Tollie Thigpen

---

**From:** John, Beth <bjohn@pc.k12.ms.us>  
**Sent:** Saturday, April 16, 2016 6:51 PM  
**To:** Tollie Thigpen  
**Cc:** Flettrich, Doris  
**Subject:** Pass Christian School District Public Comments  
**Attachments:** PCPSD Public Comments.pdf

Please find attached comments regarding the Restraint and Seclusion Policy now out for APA. Our Leadership Team, comprised of principals and supervisors from all departments in the Pass Christian School District, carefully read the proposed policy and discussed it at a recent meeting. Please consider the attached as the voice of those seventeen team members also. Thank you!

Beth John, Ed.S.  
Superintendent  
Pass Christian School District  
Office: (228) 255-6200  
Fax: (228) 255-9302



**To:** Tollie Thigpen  
Office of Safe and Orderly Schools  
Mississippi Department of Education

**From:** Beth John, Superintendent *BJ*  
Pass Christian School District

**Date:** April 16, 2016

**RE:** Comment on State Board Policy Part 3, Chapter 38, Rule 38.13 –  
Restraint and Seclusion. Goal 4 – MBE Strategic Plan.

The *Restraint and Seclusion: Resource Document* published by the U. S. Department of Education has listed the state of Mississippi as one of the very few states in the country that does not currently have a state statute or regulation addressing seclusion or restraint. This is evidence that our state has not always utilized researched based educational information at the national level to support our schools with best practice and the funding required to implement these practices.

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needs of these students. These supports are often very costly in terms of staffing. It is also very difficult to hire highly qualified and specially trained teachers to support the increased level of behavioral needs currently being exhibited in the schools.

The proposed Restraint and Seclusion Policy is welcomed, but must consider the day to day reality of the teachers, assistants, and school site administration when implementing the suggested procedures and complying with this proposed policy. Educating a student is a shared responsibility. It requires all of the stakeholders to collectively come to the table to contribute to a safe and orderly school environment conducive to learning for all students.

It is my hope this policy and its procedures will give parents and schools a common ground based on an understanding that we all are working toward the same goal, student success. If this means at some point in the school day a student will require restraint and/or seclusion, parents please know it is with the intention of keeping your child, other children and staff safe.

**I would like to suggest the following edits:**

## **2. Restraint and Seclusion Policy**

**Replace with the following:**

A Restraint and Seclusion Policy shall be defined through written local school board-approved policies for restraint and seclusion based on the definitions promoted by the U.S. Department of Education and Office of Civil Rights' for such terms. These policies should apply to all students in the local school district and must not focus on one or more subgroups of students.

The local school board approved policy in no way shall inhibit the right of staff to reasonable self-defense in accordance with the provisions of the 5<sup>th</sup> and 14<sup>th</sup> amendments to the Constitution of the United State nor negate the obligation of the district to provide a safe work environment.

In accordance with Miss. Code Ann. 37-9-69 and 37-11-57, it is recognized that staff may intercede in situations wherein students are displaying physically violent behavior or deemed to be a danger to themselves or others. The use of excessive

force, or cruel and unusual punishment regarding student management is strictly prohibited by State Board policy.

It is further recommend that all local school districts develop a Restraint and Seclusion Procedural Manual based on the definitions, general procedures, administrative procedures and mandated reporting requirements found in State Board Policy Part 3, Chapter 38, Rule 38.13 – Restraint and Seclusion.

### 3. Definitions

#### Replace with the following:

d. Behavioral intervention is defined as the implementation of strategies to address behavior that is dangerous or inappropriate, or otherwise impedes the learning of the student **or other students.**

e. iv. Written description of when, where, and how often the strategy will be implemented and **by whom;**

e. v. Consistent system **of data collection to monitor and evaluate the effectiveness of the plan.**

g. Dangerous behavior is defined as behavior that presents an imminent danger of physical harm to self or others but does not include inappropriate behavior such as disrespect, noncompliance, insubordination. **Dangerous behavior can be defined as elopement from safe area.**

p. i. **The following is prohibited: Physical restraint that restrains the flow of air to the student's lungs. Prone restraint in which a student is placed face down on the floor or other surface and physical pressure is applied to the student's body to keep the student in the prone position.**

s. **Seclusion is defined as the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving. It does not include a timeout, which is a behavior management technique that is part of an approved program, involves the monitored separation of the student in a non-locked setting, and is implemented for the purpose of calming.**

#### **4. General Procedures**

##### **Replace with the following:**

b. iii. Restraint shall be immediately terminated if the student appears to be, or claims to be, in severe stress **or when school personnel deems it is safe to release the student.**

b. viii. Parents must be notified on the same school day of the **restraint incident to discuss the situation. If there have been numerous incidents a meeting must be scheduled with the parents and documentation must be kept on the discussion of alternate solutions.**

d.ix. Total time spent in restraint or seclusion. **Each incident of seclusion and restraint shall be timed and time will be reported on the incident report. After 20 minutes, the situation must be assessed by a member of the school's crisis team to include, but not limited to principal and/or designee, school resource officer, school nurse, school counselor and any other member assigned to the crisis team. This assessment will be documented on the incident report. The parent will be notified of the incident. The team will make the decision whether or not the student should be transported to a medical facility for evaluation.**

x. Injuries to student or staff **must be documented by the administration of the school and school nurse if available.**

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a. vi. **Procedures for reporting the use of restraint or seclusion to the superintendent and the Mississippi Department of Education. School board may review all behavioral data reporting through MSIS.**

a. h. **Delete already in body of document see above a. vi.**

## **6. Parental Notification**

b. All parents/guardians shall be notified on the same day any incident of physical restraint or seclusion was utilized to keep a student safe and others safe.

## Tollie Thigpen

---

**From:** Wendy Rogers <wlrogers@stoneschools.org>  
**Sent:** Sunday, April 17, 2016 3:51 PM  
**To:** Tollie Thigpen  
**Subject:** MS-CASE Input for Restraint and Seclusion Proposed Policy  
**Attachments:** MS-CASE Letter to MDE restraint and seclusion.docx; Restraint and Seclusion policy concerns April 2016.docx; Restraint Policy Revised.docx; CEC policy on restraint and seclusion.pdf

Hi,

On behalf of the Mississippi Council of Administrators of Special Education (MS-CASE), I have attached a letter to support the MS Department of Education's efforts to approve a policy for the appropriate use of restraint and seclusion. With the letter I have included the section of the MS-CASE Legislative Platform that is specific to restraint and seclusion. I have also attached a very "rough" set of concerns with the policy as written as well as a revision of the proposed policy as would be supported by MS-CASE. The CEC's Policy for Restraint and Seclusion is also attached. CEC is the Council for Exceptional Children for which MS-CASE is a subdivision.

MS-CASE also wishes to state that policy should remain separate from procedures. The policy as written includes several procedural references.

Thank you for the support given to school districts as we continue to work to meet the needs of students with disabilities in our school districts.

--

Wendy Rogers  
MS-CASE President  
National CASE, Policy and Legislative Committee Member  
Stone County School District, Director of Special Services

Mississippi Council of Administrators of Special Education  
Wendy Rogers, President  
919 Whispering Hollow  
Wiggins, MS 39577

April 10, 2016

Tollie Thigpen  
Office of Safe and Orderly Schools  
Mississippi Department of Education  
P. O. Box 771, Suite 210  
Jackson, MS 39205-0771

Dear Mr. Thigpen:

I write to you on behalf of the Mississippi Council of Administrators of Special Education (MS-CASE). The Council of Administrators of Special Education, Inc. (CASE) is an international non-profit professional organization providing leadership and support to approximately 4800 members by influencing policies and practices to improve the quality of education. CASE is a division of the Council for Exception Children (CEC), which is the largest professional organization representing teachers, administrators, parents, and others concerned with the education of children with disabilities.

MS-CASE is pleased to see the Mississippi Department of Education developing a Restraint and Seclusion Policy. For many years, Mississippi has been one of very few states that has been absent of any type policy in this extremely important area of educational concern. We submit to you our legislative platform regarding the area of restraint and seclusion as well as the specific concerns and changes needed as determined by our organization (see attachments).

Thank you for the continued work and support of the Mississippi Department of Education as we work together to better the educational opportunities and supports for students with disabilities.

If you have any questions, please feel free to contact me at 601-528-0617 (cell) or [wlr Rogers@stoneschools.org](mailto:wlr Rogers@stoneschools.org).

Sincerely,

Wendy Rogers  
MS-CASE President  
National CASE Policy and Legislative Committee Member

Mississippi Council of Administrators of Special Education  
Wendy Rogers, President  
919 Whispering Hollow  
Wiggins, MS 39577

Legislative Platform Restraint and Seclusion Section:

- MS-CASE supports legislation and policies geared toward preventing the inappropriate use of restraint and seclusion for all students. Out of concern for safety in the classroom and on the school campus, we oppose legislation or policies that would prohibit the use of restraints and seclusion. We also believe that it is important to balance restriction on the use of interventions with the need to ensure the safety of other students, the student with a disability, and staff members along with a family's desire for a student with significantly challenging behaviors to receive their education in a neighborhood school.
- MS-CASE opposes any extensive reporting requirements associated with seclusion and restraint legislation and policies as such would impose an undue burden on local schools.
- MS-CASE believes that existing public state agencies can and should assume responsibility for investigation and enforcement of any legislation or state policies passed regarding restraint and seclusion.
- MS-CASE supports funding for programs that focus on training all teachers and support personnel on appropriate safety practices, including student management and de-escalation techniques.

Mississippi Department of Education

Restraint and Seclusion Policy Part 3, Chapter 38, Rule 38.13

Recommendation for Approval by MDE

APA deadline April 17, 2016

Specific concerns with Policy as written:

For every restraint or seclusion reporting to MDE? And to district—specifically who and what to be done with it??? Page 7, Page 10, Page 11; Specific incident types could be reported as described in policy yet not “every” restraint of seclusion

Funding for training of staff to meet the required criteria for restraint and seclusion “programs” to meet MDE approval—allocation must be provided by MDE (Page 7); Training of all staff members of a school district would create an undue financial hardship for school districts.

Policy as written only addresses use of restraint or seclusion “imminent danger of bodily harm to self or others” and does not address the use of “time out” for unreasonable or significant student behavior resulting in disruptions to learning environment for self and others and/or destruction of property. When a student is screaming for a lengthy period and/or at a level that is a disruption to the instruction of the student and/or other students does not pose imminent danger of bodily harm to self or others; however, such behavior does warrant a removal from the learning environment which could meet the definition of seclusion.

Definitions to be added or changed:

“Time out” is defined as a behavior modification technique in which there is a brief removal of a student from sources of reinforcement within instructional contexts for undesirable or inappropriate behaviors. Time out does not meet the definition of seclusion nor is considered seclusion.

Physical restraint is any method of one or more persons restricting another person’s freedom of movement, physical activity, or normal access to his or her body.

Seclusion is the involuntary confinement of a child or youth alone in a room or area from the child or youth is physically prevented from leaving.

Combine the first three definitions into the one following for aversive intervention: Aversive intervention is the systematic use of stimuli or other treatment in which a student is known to find unpleasant for the purpose of discouraging undesirable behavior on the part of the student. Such stimuli include but are not limited to: infliction of bodily pain (e.g. hitting, pinching, slapping), water spray, noxious fumes, extreme physical exercise, costumes, or signs.

Elopement is to run away or leave a predetermined area.

Behavioral intervention is defined as the implementation

Specific language concerns with Policy as written:

1. Content:
  - a. Page 6, Restraint, a, add to "i" including elopement
  - b. Page 6, Restraint, b, add to "i" unless in the case of imminent danger in which a trained staff member is not readily available.
  - c. Page 8, add v, Using appropriate reinforcements to increase appropriate behavior and decrease inappropriate behavior
  - d. Page 8 and 9, seclusion section, part c change to:  
"After other less intrusive, nonphysical interventions have not been successful or have been deemed inappropriate, school personnel may use seclusion to address a student's behavior when:
    - i. The student's behavior constitutes an emergency and seclusion is necessary to protect a student or other person from imminent physical harm;
    - ii. The student's behavior unreasonably interferes with the student's learning or the learning of others
    - iii. The student's behavior leads to a destruction of property"
  - e. Page 9, section d what is considered "student's educational record" for this requirement?
  - f. Page 9, section d, part ix, remove language that is procedural; keep sentence 1 only
  - g. Page 10, end of section l, top of page should there be an addition regarding the possible referral for a comprehensive assessment to determine eligibility for IDEA or 504 according to school district policy?
  - h. Page 10, Section m is being removed, but do we even put restraint and seclusion in IEPs?
  - i. Page 10, section 5
    - i. Item a, vi, change "local school board of education" to district designee??? (Also on page 7, section b, item viii and on page 11, h)
    - ii. Item c change "should" to "shall"???
    - iii. Item e, not sure what "to determine if a 'revision' of behavioral strategies 'are' in place" ...means???
2. Grammatical/wording for understanding:
  - a. Page 2, introduction, second paragraph:
    - i. 4<sup>th</sup> line spell out Positive Behavior Interventions and Supports first and then (PBIS)
    - ii. Sentence on line 19—Using these data...change these to "the"; add comma after occur take out and; add comma after behaviors take out and; add comma after behavior on line 22

- iii. Line 26 instead of “aversive techniques in response to student behavior, restraint and seclusion,” just use “In order to reduce the use of restraint and seclusion to address student behavior, school wide....”
- b. Page 3:
  - i. restraint and seclusion policy, second paragraph, line 4 remove comma between “force, or”
  - ii. definitions, a, take “s” off interventions and change ‘intervention program” to “activity”
  - iii. definitions, d, remove comma between “inappropriate, or”
- c. Page 4:
  - i. Line 1, ii, spell out Functional Behavioral Assessment then put (FBA)
  - ii. Under J, iv, d, take “s” off describes
- d. Page 5:
  - i. L, Change “plan” to “program” (this should be done any where that IEP is stated as “plan” because IDEA/USDE language is “program”; change “written statement” to a written educational program; where State Board Policy 7219 has been removed use wording “the Individuals with Disability Act 2004 and state policies and procedures.
  - ii. M, second paragraph, line 3, change “plan” to “program”
  - iii. N, line 2, add a comma after student
  - iv. O, line 2, add “s” to enable
  - v. P, line 6, change “restraints” to “restrains” and line 7 add comma after “down”
- e. Page 6, definition t, line 3 change “disability” to “condition”
- f. Page 7, section c, last line change “should” to “shall” and move the last heading of “Behavior Interventions” to the next page
- g. Page 8
  - i. Section a, the wording of “to identify potential students” is unclear...potential for what?
  - ii. Section b, line 3 change “Information on a student” to “Gathering information regarding student behavior”
  - iii. Section b, line 4 change “help” to “helps” (whether or not the suggestion above is used)
- h. Page 9
  - i. Section d should be changed to a “Documentation” section
  - ii. Section d, line 3, place a period after “guardian” and begin new sentence with “The”
  - iii. Section d, line 6, change “in each instance in which the student is restrained or placed in seclusion” to “when restraint or seclusion is implemented”
  - iv. Section d, change order of xiii and xiv (Name of who parent could contact with contact information should be the last part of the documentation page)

- v. Section e, line 1, change "on" to "with"
- i. Page 11 Parent Notification section is redundant; both items a and b are already stated previously in the policy:
  - i. A is d on page 10
  - ii. B is d in the documentation section on page 9

The Mississippi Department of Education and the State Board of Education supports a positive approach to behavior that uses proactive strategies to create a safe school climate that promotes dignity, creates authentic student engagement and improves achievement for all students. Even when strong positive behavioral interventions are fully implemented, some students exhibit behaviors that place themselves or others in imminent danger. Schools shall have policies and procedures that address the responses needed to ensure the safety of all students and staff members.

A restraint and seclusion policy, as designed through written local school board approved policies and procedures, defines appropriate means of restraint and seclusion to provide for a safe and orderly education. These policies and procedures shall apply to all students in the local school district and must not focus on one or more subgroups of students.

In accordance with Miss. Code Ann. §§ 37-9-69 and 37-11-37, it is recognized that staff may intercede in situations wherein students are displaying physically violent behavior deemed to be a danger to themselves or others. State board policy positively prohibits the use of excessive force or cruel and unusual punishment regarding student management. Restraint and/or seclusion shall not be utilized as a punitive measure.

This policy shall in no way inhibit the right of staff to reasonable self-defense in accordance with the provisions of the 5<sup>th</sup> and 14<sup>th</sup> amendments to the Constitution of the United States nor negate the obligation of the district to provide a safe work environment.

**Definitions:**

Aversive intervention is the systematic use of stimuli or other treatment in which a student is known to find unpleasant for the purpose of discouraging undesirable behavior on the part of the student. Such stimuli include but are not limited to: infliction of bodily pain (e.g. hitting, pinching, slapping), water spray, noxious fumes, extreme physical exercise, costumes, or signs.

Behavioral intervention means the implementation of strategies to address behavior that is dangerous, disruptive, or otherwise impedes the learning of a student or others.

Behavior Intervention Plan (BIP) is defined as a plan of action for managing a student's behavior. The BIP includes a set of strategies and supports intended to increase the occurrence of behaviors that school personnel encourage and to decrease inappropriate behaviors. The BIP must include:

1. Observable and measureable description of the problem behavior;

2. Identified purpose of the problem behavior as described in the Functional Behavior Assessment (FBA);
3. General strategy or combination of strategies for changing the problem behavior;
4. Written description of when, where and how often the strategy will be implemented; and
5. Consistent system of monitoring and evaluating the effectiveness of the plan.

Chemical restraint is defined as the administration of medication for the purpose of restraint. Chemical restraint does not apply to medication prescribed and administered in accordance with the directions of a licensed physician. The use of chemical restraint is prohibited in Mississippi public schools.

Dangerous behavior is defined as behavior that presents an imminent danger of physical harm to self or others but does not include inappropriate behavior such as but not limited to: disrespect, non-compliance, insubordination, or out of seat behaviors.

Elopement is to run away or leave a predetermined area.

Emergency situation is defined as spontaneous unpredictable events posing an imminent threat of serious bodily injury.

Functional Behavioral Assessment (FBA) is defined as a school-based, collaborative process that includes the parent and, as appropriate, the child to determine why the child engages in challenging behaviors and how the behavior relates to the child's environment.

Imminent danger is defined as a danger which impending, close at hand, threatening or about to happen.

Individualized Education Program (IEP) is defined as a written educational program for a student with a disability that is developed, reviewed, and revised in accordance with the Individuals with Disabilities Act, 2004, and Mississippi Board of Education policies and procedures.

Mechanical restraint is defined as the use of any device or equipment to restrict a student's freedom of movement. This term does not include devices implemented by trained school personnel, or utilized by a student that have been prescribed by an appropriate medical or related services professional and are used for the specific and approved purposes for which such devices were designed, such as:

1. Adaptive devices or mechanical supports used to achieve proper body position, balance, or alignment to allow greater freedom of mobility than would be possible without the use of such devices or mechanical supports;

2. Vehicle safety restraints when used as intended during the transport of a student in a moving vehicle;
3. Restraints for medical immobilization; or
4. Orthopedically prescribed devices that permit a student to participate in activities without risk of harm.

Handcuffs are also considered mechanical restraints, but may only be used by certified school resource officers, as defined in Miss. Code Ann. §§ 37-7-321 and 37-7-323. The use of mechanical restraints is prohibited in Mississippi schools, except as provided in §§ 37-7-321 and 37-7-323.

Physical escort means a temporary touching or holding of the hand, wrist, arm, shoulder, or back for the purpose of inducing a student who is acting out to walk to a safe location.

Physical prompt is defined as a teaching technique that involves physical contact with the student and that enables the student to learn or model the physical movement necessary for the development of the desired competency.

Physical restraint is any method of one or more persons restricting another person's freedom of movement, physical activity, or normal access to his or her body. The term physical restraint does not include a physical escort.

Seclusion is the involuntary confinement of a child or youth alone in a room or area from the child or youth is physically prevented from leaving.

Section 504 plan is defined as a written set of accommodations to provide educational instruction to a student who has a condition that limits a major life function.

"Time out" is defined as a behavior modification technique in which there is a brief removal of a student from sources of reinforcement within instructional contexts for undesirable or inappropriate behaviors. Time out does not meet the definition of seclusion nor is considered seclusion.

### **Physical Restraint:**

Physical restraint, when conducted by school personnel, shall be considered a reasonable use of force when:

1. The student or other person is engaged in actions that would constitute a danger to themselves or others;
2. The student or other person is engaged in actions that constitute potential or actual destruction of property; and/or
3. A non-compliant student or other person needs to be removed from the scene of an incident.

Physical restraint should be removed as soon as the student is no longer a danger to themselves or others. Physical restraint shall not be considered a reasonable use of force when used solely as a disciplinary consequence.

When using physical restraint for students who a danger to themselves or others, staff should take precautions necessary to ensure the safety of the student and the staff members engaged in restraining the student. Physical restraints that restrict the flow of air are prohibited in all situations. Nothing in this subsection shall be construed to prevent the use of force by law enforcement officers in the lawful exercise of their law enforcement duties.

### **Mechanical Restraint:**

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

1. When properly used as an assistive technology device included in the student's IEP, Section 504 plan, or behavior intervention plan or as otherwise prescribed for the student by a medical or related service provider;
2. When using seat belts or other safety restraints to secure students during transportation;
3. As reasonably need to obtain possession of a weapon or other dangerous objects on a person or within the control of a person; and/or
4. As reasonably needed to ensure the safety of any student, school employee, volunteer, or other person present.

Except as set forth in item 1 of this subsection, mechanical restraint, including the use of tying, taping, or strapping down of a student shall not be considered a reasonable use of force, and its use is prohibited. Nothing in this subsection shall be construed to prevent the use of mechanical restraint devices, such as handcuffs, by law enforcement officers in the lawful exercise of their law enforcement duties.

### **Seclusion:**

Seclusion of students by school personnel may be used in the following circumstances:

1. As reasonably needed to respond to a person in control of a weapon or other dangerous object;
2. As reasonably needed to maintain order or prevent or break up a fight;
3. As reasonably needed for self-defense;
4. As reasonably needed when a student's behavior poses a threat of imminent physical harm to self or others or imminent substantial destruction of school or another person's property; and
5. When used as specified in the student's IEP, Section 504 Plan, or behavior intervention plan; and

- a. The student is monitored while in seclusion by an adult in close proximity who is able to see and hear the student at all times;
- b. The student is released from seclusion upon cessation of the behaviors that led to the seclusion or otherwise specified in the student's IEP or Section 504 plan;
- c. The space in which the student is confined has been approved for such use by the local education agency;
- d. The space is appropriately lighted;
- e. The space is appropriately ventilated and heated or cooled; and
- f. The space is free of objects that unreasonably expose the student or others to harm.

Except as set forth in subdivision 1 of this subsection, the use of seclusion is not considered reasonable force, and its use is not permitted. Seclusion shall not be considered reasonable use of force when used solely as a disciplinary consequence. Nothing in this subsection shall be construed to prevent the use of seclusion by law enforcement officers in the lawful exercise of their law enforcement duties.

### **Notice, Reporting, and Documentation**

1. Notice of procedures – Each local board of education shall provide copies of this section and all local school board policies developed to implement this section to school personnel and parents or guardians at the beginning of each school year.
2. Notice of specified incidents:
  - a. School personnel shall promptly notify the principal or the principal's designee of:
    - i. Any use of aversive procedures;
    - ii. Any prohibited use of mechanical restraint;
    - iii. Any use of physical restraint resulting in observable physical injury to a student; and/or
    - iv. Any prohibited use of seclusion or seclusion that exceeds 10 minutes or the amount of time specified on a student's behavior plan.
  - b. When a principal or principal's designee has personal knowledge or actual notice of any of the events described in this subdivision, the principal or principal's designee shall promptly notify the student's parent or guardian and will provide the name of a school employee the parent or guardian can contact regarding the incident.
3. As used in subdivision (2) of this subsection, "promptly notify" means by the end of the workday during which the incident occurred when reasonably possible but in no event later than the end of the following workday.
4. The parent or guardian of the student shall be provided with a written incident report for any incident reported under this section within a reasonable period of time but in no event later than 30 days of the incident. The written incident report shall include:

- a. The date, time of day, location, duration, and description of the incident and interventions.
  - b. The event(s) that led to the incident.
  - c. The nature and extent of any injury to the student.
  - d. The name of a school employee the parent or guardian can contact regarding the incident.
5. No local board of education or employee of a local board of education shall discharge, threaten, or otherwise retaliate against another employee of the board regarding that employee's compensation, terms, conditions, location, or privileges of employment because the employee makes a report alleging a prohibited use of physical restraint, mechanical restraint, aversive procedure, or seclusion, unless the employee knew or should have known that the report was false.
  6. Nothing in this section shall be construed to create a private cause of action against any local board of education, its agents or employees, or any institutions of teacher education or their agents or employees or to create a criminal offense.

**Resources used to create this document include:**

Restraint and Seclusion: Resource Document from U. S. Department of Education

Council for Exceptional Children's Policy on Physical Restraint and Seclusion;  
Procedures in School Settings

North Carolina State Law § 115C-391.1. Permissible use of seclusion and restraint.



## CEC's Policy on Physical Restraint and Seclusion Procedures in School Settings

The Council for Exceptional Children (CEC) recognizes access to the most effective educational strategies as the basic educational right of each child or youth with a disability. CEC believes that the least restrictive positive educational strategies should be always used to respect the child's or youth's dignity and that this especially pertains to the use of physical restraint and seclusion.

A physical restraint is defined as any method of one or more persons restricting another person's freedom of movement, physical activity, or normal access to his or her body. It is a means for controlling that person's movement, reconstituting behavioral control, and establishing and maintaining safety for the out-of-control individual, other individuals, and school staff. Physical restraints have been in widespread use across most human service, medical, juvenile justice, and education programs for a long period of time. While some have proposed physical restraint as a therapeutic procedure for some children and youth, this view has no scientific basis and is generally discredited. Today most schools or programs that employ physical restraint view it as an emergency procedure to prevent injury to the child or youth or others when a child or youth is in crisis.

Seclusion is the involuntary confinement of a child or youth alone in a room or area from which the child or youth is physically prevented from leaving. This includes situations where a door is locked as well as where the door is blocked by other objects or held closed by staff. Any time a child or youth is involuntarily alone in a room and prevented from leaving should be considered seclusion, regardless of the intended purpose or the names applied to this procedure and the place where the child or youth is secluded. Seclusion is often associated with physical restraint in that physical restraint is regularly used to transport a child or youth to a seclusion environment. However, seclusion may occur without employing physical restraint.

In addition, schools may employ a variety of environments that may not meet the definition of seclusion (confinement alone without immediate ability to leave), but which have at least some of the elements of seclusion. These might include detention rooms and in-school suspension rooms where children and youth may not be alone or where they are not technically prevented from leaving, although they may perceive that they are prevented from leaving.

### CEC supports the following principles related to the use of physical restraint and seclusion procedures in school settings:

- Behavioral interventions for children and youth must promote the right of all children and youth to be treated with dignity.
- All children and youth should receive necessary educational and mental health supports and programming in a safe and least-restrictive environment.
- Positive and appropriate educational interventions, as well as mental health supports, should be provided routinely to all children and youth who need them.
- Behavioral interventions should emphasize prevention and positive behavioral supports.
- Schools should have adequate staffing levels to effectively provide positive supports to children and youth and should be staffed with appropriately trained personnel.
- All staff in schools should have mandatory conflict de-escalation training, and conflict de-escalation techniques should be employed by all school staff to avoid and defuse crisis and conflict situations.
- All children and youth whose pattern of behavior impedes their learning or the learning of others should receive appropriate educational assessment, including Functional Behavioral Assessments. These should be followed by Behavioral Intervention Plans that incorporate appropriate positive behavioral interventions, including instruction in appropriate behavior and strategies to de-escalate their own behavior.

## It is the policy of the Council for Exceptional Children that:

- Physical restraint or seclusion procedures should be used in school settings only when the physical safety of the child or youth or others is in immediate danger. Prone restraints (with the student face down on his/her stomach) or supine restraints (with the student face up on the back) or any maneuver that places pressure or weight on the chest, lungs, sternum, diaphragm, back, neck, or throat should never be used. No restraint should be administered in such a manner that prevents a student from breathing or speaking.
- Mechanical or chemical restraint should never be used in school settings when their purpose is simply to manage or address a child's or youth's behavior. Prescribed assistive devices such as standing tables and chairs with restraints are not considered mechanical restraints for purposes of this document. Their use should be supervised by qualified and trained individuals in accord with professional standards. Vehicle restraints and those restraints used by law enforcement officers are not considered mechanical restraints for purposes of this document.
- Neither restraint nor seclusion should be used as a punishment to force compliance or as a substitute for appropriate educational support.
- All seclusion environments should be safe and humane and should be inspected at least annually, not only by fire or safety inspectors, but for programmatic implementation of guidelines and data related to its use.
- Any child or youth in seclusion must be continuously observed by an adult both visually and aurally for the entire period of the seclusion. Occasional checks are not acceptable.
- Guidelines or technical assistance documents are generally not adequate to regulate the use of these procedures, since abuses continue to occur in states or provinces where guidelines are in place and these guidelines have few mechanisms for providing oversight or correction of abuses. Policy is needed in the form of legislation or regulation.
- Federal, state, and provincial legislation or regulations should:
  - Recognize that restraint and seclusion procedures are emergency, not treatment, procedures.
  - Require that preventive measures such as conflict de-escalation procedures be in place in schools where restraint or seclusion will be employed.
- Require that individualized emergency or safety plans are created for children or youth whose behavior could reasonably be predicted to pose a danger. If an emergency or safety plan is deemed necessary for a child or youth with a disability, that document should be created by the IEP team and may be appended to the child's or youth's IEP.
- Require that comprehensive debriefings occur after each use of restraint or seclusion and that reports of the incident are created including parental notification.
- Require that data on restraint and seclusion are reported to an outside agency such as the state or provincial department of education.
- Any school that employs physical restraint or seclusion procedures should have a written positive behavior support plan specific to that program, pre-established emergency procedures, specific procedures and training related to the use of restraint and seclusion, and data to support the implementation of positive behavior supports and specific uses of restraint and seclusion in that environment.
- Additional research should be conducted regarding the use of physical restraint and seclusion with children or youth across all settings.

**This policy is adopted from a position summary published by the Council for Children with Behavior Disorders, a division of the Council for Exceptional Children: *Physical Restraint and Seclusion Procedures in School Settings, VA, Author.***

**More detailed information is available in the following white papers:**

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Council for Children with Behavior Disorders of the Council for Exceptional Children (May July 2009). CCBD Position on the Use of Physical Restraint Procedures in School Settings. Arlington, VA: Author.

Council for Children with Behavior Disorders of the Council for Exceptional Children (May July 2009). CCBD Position on the Use of Seclusion Procedures in School Settings. Arlington, VA: Author.

To access CEC's Policy on Physical Restraint and Seclusion Procedures in School Settings online, go to [www.cec.sped.org](http://www.cec.sped.org)>Policy & Advocacy>CEC Professional Policies. For further information, contact Deborah A. Ziegler, Associate Executive Director, Policy and Advocacy Services, Council for Exceptional Children, 703-264-9406 (P), 703-243-0410 (F), 800-224-6830 (Toll free), 866-915-5000 (TTY), [debz@cec.sped.org](mailto:debz@cec.sped.org).

**Reference**

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Council for Exceptional Children 2009 Policy Manual; Section Three, Part 1, Paragraph 17

**Date Adopted**

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Approved by the Council for Exceptional Children Board of Directors September 2009

## Tollie Thigpen

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**From:** Wendy Rogers <wlr Rogers@stoneschools.org>  
**Sent:** Sunday, April 17, 2016 4:17 PM  
**To:** Tollie Thigpen  
**Subject:** Restraint and Seclusion Proposed Policy  
**Attachments:** Restraint and Seclusion policy concerns April 2016.docx; Restraint Policy Revised.docx

Hi,

As a local director of special services, I would like to thank you and MDE for all the work to submit a policy for approval regarding restraint and seclusion. It has been so overdue as MS is one of just a couple states in the U. S. that have had neither a state law nor state board policy for this extremely important area.

It is critically important that we protect students and staff alike when working to meet the needs of ALL students.

Areas of concern for me individually as well as as the current MS-CASE President and a member of the Southern Six Consortium for Directors of Special Education include:

1. Funding necessary to adequately train ALL staff as stated with a certification level type training such as CPI, PCM, etc. While it is critical that some staff members should be trained in such measures, it would not be necessary for ALL. Such training is tremendously expensive and should be provided by MDE.
2. If various staff members are trained in the previous mentioned methods, there may be situations in which someone other than the trained staff may be needed to provide restraint or seclusion.
3. There may be some instances seclusion may be needed but that are not considered imminent danger or possible destruction of property such as when a student is screaming excessively for lengthy periods of time or verbally aggressive toward others and verbal de-escalation strategies have been tried and determined unsuccessful. Please review the policy for a provision of seclusion for this type incident.
3. I believe there are unreasonable requests for reporting EVERY incident of seclusion or restraint. I do however believe there are specific incidences in which reports should be made to MDE and local district administration.
4. The policy as written appears to have numerous procedural references which should not be in the actual policy. Once the policy is approved, MDE should develop procedures for the implementation of the policy.
5. The proposed policy as written contains significant grammatical errors as well as numerous areas that the language is not as clear as may could be or areas that content is repeated and not necessary in other areas of the document.

Thank you so much for your careful consideration of these and all comments submitted during this period.

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Wendy Rogers  
Stone County School District

Director of Special Services

Mississippi Department of Education

Restraint and Seclusion Policy Part 3, Chapter 38, Rule 38.13

Recommendation for Approval by MDE

APA deadline April 17, 2016

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Policy as written only addresses use of restraint or seclusion “imminent danger of bodily harm to self or others” and does not address the use of “time out” for unreasonable or significant student behavior resulting in disruptions to learning environment for self and others and/or destruction of property. When a student is screaming for a lengthy period and/or at a level that is a disruption to the instruction of the student and/or other students does not pose imminent danger of bodily harm to self or others; however, such behavior does warrant a removal from the learning environment which could meet the definition of seclusion.

Definitions to be added or changed:

“Time out” is defined as a behavior modification technique in which there is a brief removal of a student from sources of reinforcement within instructional contexts for undesirable or inappropriate behaviors. Time out does not meet the definition of seclusion nor is considered seclusion.

Physical restraint is any method of one or more persons restricting another person’s freedom of movement, physical activity, or normal access to his or her body.

Seclusion is the involuntary confinement of a child or youth alone in a room or area from the child or youth is physically prevented from leaving.

Combine the first three definitions into the one following for aversive intervention: Aversive intervention is the systematic use of stimuli or other treatment in which a student is known to find unpleasant for the purpose of discouraging undesirable behavior on the part of the student. Such stimuli include but are not limited to: infliction of bodily pain (e.g. hitting, pinching, slapping), water spray, noxious fumes, extreme physical exercise, costumes, or signs.

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  - d. Page 8 and 9, seclusion section, part c change to:  
“After other less intrusive, nonphysical interventions have not been successful or have been deemed inappropriate, school personnel may use seclusion to address a student’s behavior when:
    - i. The student’s behavior constitutes an emergency and seclusion is necessary to protect a student or other person from imminent physical harm;
    - ii. The student’s behavior unreasonably interferes with the student’s learning or the learning of others
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  - e. Page 9, section d what is considered “student’s educational record” for this requirement?
  - f. Page 9, section d, part ix, remove language that is procedural; keep sentence 1 only
  - g. Page 10, end of section l, top of page should there be an addition regarding the possible referral for a comprehensive assessment to determine eligibility for IDEA or 504 according to school district policy?
  - h. Page 10, Section m is being removed, but do we even put restraint and seclusion in IEPs?
  - i. Page 10, section 5
    - i. Item a, vi, change “local school board of education” to district designee??? (Also on page 7, section b, item viii and on page 11, h)
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2. Grammatical/wording for understanding:
  - a. Page 2, introduction, second paragraph:
    - i. 4<sup>th</sup> line spell out Positive Behavior Interventions and Supports first and then (PBIS)
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- iii. Line 26 instead of “aversive techniques in response to student behavior, restraint and seclusion,” just use “In order to reduce the use of restraint and seclusion to address student behavior, school wide....”
- b. Page 3:
  - i. restraint and seclusion policy, second paragraph, line 4 remove comma between “force, or”
  - ii. definitions, a, take “s” off interventions and change ‘intervention program” to “activity”
  - iii. definitions, d, remove comma between “inappropriate, or”
- c. Page 4:
  - i. Line 1, ii, spell out Functional Behavioral Assessment then put (FBA)
  - ii. Under J, iv, d, take “s” off describes
- d. Page 5:
  - i. L, Change “plan” to “program” (this should be done any where that IEP is stated as “plan” because IDEA/USDE language is “program”; change “written statement” to a written educational program; where State Board Policy 7219 has been removed use wording “the Individuals with Disability Act 2004 and state policies and procedures.
  - ii. M, second paragraph, line 3, change “plan” to “program”
  - iii. N, line 2, add a comma after student
  - iv. O, line 2, add “s” to enable
  - v. P, line 6, change “restraints” to “restrains” and line 7 add comma after “down”
- e. Page 6, definition t, line 3 change “disability” to “condition”
- f. Page 7, section c, last line change “should” to “shall” and move the last heading of “Behavior Interventions” to the next page
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  - i. Section a, the wording of “to identify potential students” is unclear...potential for what?
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- h. Page 9
  - i. Section d should be changed to a “Documentation” section
  - ii. Section d, line 3, place a period after “guardian” and begin new sentence with “The”
  - iii. Section d, line 6, change “in each instance in which the student is restrained or placed in seclusion” to “when restraint or seclusion is implemented”
  - iv. Section d, change order of xiii and xiv (Name of who parent could contact with contact information should be the last part of the documentation page)

- v. Section e, line 1, change “on” to “with”
- i. Page 11 Parent Notification section is redundant; both items a and b are already stated previously in the policy:
  - i. A is d on page 10
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In accordance with Miss. Code Ann. §§ 37-9-69 and 37-11-37, it is recognized that staff may intercede in situations wherein students are displaying physically violent behavior deemed to be a danger to themselves or others. State board policy positively prohibits the use of excessive force or cruel and unusual punishment regarding student management. Restraint and/or seclusion shall not be utilized as a punitive measure.

This policy shall in no way inhibit the right of staff to reasonable self-defense in accordance with the provisions of the 5<sup>th</sup> and 14<sup>th</sup> amendments to the Constitution of the United States nor negate the obligation of the district to provide a safe work environment.

**Definitions:**

Aversive intervention is the systematic use of stimuli or other treatment in which a student is known to find unpleasant for the purpose of discouraging undesirable behavior on the part of the student. Such stimuli include but are not limited to: infliction of bodily pain (e.g. hitting, pinching, slapping), water spray, noxious fumes, extreme physical exercise, costumes, or signs.

Behavioral intervention means the implementation of strategies to address behavior that is dangerous, disruptive, or otherwise impedes the learning of a student or others.

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1. Observable and measureable description of the problem behavior;

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5. Consistent system of monitoring and evaluating the effectiveness of the plan.

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Elopement is to run away or leave a predetermined area.

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Imminent danger is defined as a danger which impending, close at hand, threatening or about to happen.

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Mechanical restraint is defined as the use of any device or equipment to restrict a student's freedom of movement. This term does not include devices implemented by trained school personnel, or utilized by a student that have been prescribed by an appropriate medical or related services professional and are used for the specific and approved purposes for which such devices were designed, such as:

1. Adaptive devices or mechanical supports used to achieve proper body position, balance, or alignment to allow greater freedom of mobility than would be possible without the use of such devices or mechanical supports;

2. Vehicle safety restraints when used as intended during the transport of a student in a moving vehicle;
3. Restraints for medical immobilization; or
4. Orthopedically prescribed devices that permit a student to participate in activities without risk of harm.

Handcuffs are also considered mechanical restraints, but may only be used by certified school resource officers, as defined in Miss. Code Ann. §§ 37-7-321 and 37-7-323. The use of mechanical restraints is prohibited in Mississippi schools, except as provided in §§ 37-7-321 and 37-7-323.

Physical escort means a temporary touching or holding of the hand, wrist, arm, shoulder, or back for the purpose of inducing a student who is acting out to walk to a safe location.

Physical prompt is defined as a teaching technique that involves physical contact with the student and that enables the student to learn or model the physical movement necessary for the development of the desired competency.

Physical restraint is any method of one or more persons restricting another person's freedom of movement, physical activity, or normal access to his or her body. The term physical restraint does not include a physical escort.

Seclusion is the involuntary confinement of a child or youth alone in a room or area from the child or youth is physically prevented from leaving.

Section 504 plan is defined as a written set of accommodations to provide educational instruction to a student who has a condition that limits a major life function.

"Time out" is defined as a behavior modification technique in which there is a brief removal of a student from sources of reinforcement within instructional contexts for undesirable or inappropriate behaviors. Time out does not meet the definition of seclusion nor is considered seclusion.

### **Physical Restraint:**

Physical restraint, when conducted by school personnel, shall be considered a reasonable use of force when:

1. The student or other person is engaged in actions that would constitute a danger to themselves or others;
2. The student or other person is engaged in actions that constitute potential or actual destruction of property; and/or
3. A non-compliant student or other person needs to be removed from the scene of an incident.

Physical restraint should be removed as soon as the student is no longer a danger to themselves or others. Physical restraint shall not be considered a reasonable use of force when used solely as a disciplinary consequence.

When using physical restraint for students who a danger to themselves or others, staff should take precautions necessary to ensure the safety of the student and the staff members engaged in restraining the student. Physical restraints that restrict the flow of air are prohibited in all situations. Nothing in this subsection shall be construed to prevent the use of force by law enforcement officers in the lawful exercise of their law enforcement duties.

### **Mechanical Restraint:**

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

1. When properly used as an assistive technology device included in the student's IEP, Section 504 plan, or behavior intervention plan or as otherwise prescribed for the student by a medical or related service provider;
2. When using seat belts or other safety restraints to secure students during transportation;
3. As reasonably need to obtain possession of a weapon or other dangerous objects on a person or within the control of a person; and/or
4. As reasonably needed to ensure the safety of any student, school employee, volunteer, or other person present.

Except as set forth in item 1 of this subsection, mechanical restraint, including the use of tying, taping, or strapping down of a student shall not be considered a reasonable use of force, and its use is prohibited. Nothing in this subsection shall be construed to prevent the use of mechanical restraint devices, such as handcuffs, by law enforcement officers in the lawful exercise of their law enforcement duties.

### **Seclusion:**

Seclusion of students by school personnel may be used in the following circumstances:

1. As reasonably needed to respond to a person in control of a weapon or other dangerous object;
2. As reasonably needed to maintain order or prevent or break up a fight;
3. As reasonably needed for self-defense;
4. As reasonably needed when a student's behavior poses a threat of imminent physical harm to self or others or imminent substantial destruction of school or another person's property; and
5. When used as specified in the student's IEP, Section 504 Plan, or behavior intervention plan; and

- a. The student is monitored while in seclusion by an adult in close proximity who is able to see and hear the student at all times;
- b. The student is released from seclusion upon cessation of the behaviors that led to the seclusion or otherwise specified in the student's IEP or Section 504 plan;
- c. The space in which the student is confined has been approved for such use by the local education agency;
- d. The space is appropriately lighted;
- e. The space is appropriately ventilated and heated or cooled; and
- f. The space is free of objects that unreasonably expose the student or others to harm.

Except as set forth in subdivision 1 of this subsection, the use of seclusion is not considered reasonable force, and its use is not permitted. Seclusion shall not be considered reasonable use of force when used solely as a disciplinary consequence. Nothing in this subsection shall be construed to prevent the use of seclusion by law enforcement officers in the lawful exercise of their law enforcement duties.

### **Notice, Reporting, and Documentation**

1. Notice of procedures – Each local board of education shall provide copies of this section and all local school board policies developed to implement this section to school personnel and parents or guardians at the beginning of each school year.
2. Notice of specified incidents:
  - a. School personnel shall promptly notify the principal or the principal's designee of:
    - i. Any use of aversive procedures;
    - ii. Any prohibited use of mechanical restraint;
    - iii. Any use of physical restraint resulting in observable physical injury to a student; and/or
    - iv. Any prohibited use of seclusion or seclusion that exceeds 10 minutes or the amount of time specified on a student's behavior plan.
  - b. When a principal or principal's designee has personal knowledge or actual notice of any of the events described in this subdivision, the principal or principal's designee shall promptly notify the student's parent or guardian and will provide the name of a school employee the parent or guardian can contact regarding the incident.
3. As used in subdivision (2) of this subsection, "promptly notify" means by the end of the workday during which the incident occurred when reasonably possible but in no event later than the end of the following workday.
4. The parent or guardian of the student shall be provided with a written incident report for any incident reported under this section within a reasonable period of time but in no event later than 30 days of the incident. The written incident report shall include:

- a. The date, time of day, location, duration, and description of the incident and interventions.
  - b. The event(s) that led to the incident.
  - c. The nature and extent of any injury to the student.
  - d. The name of a school employee the parent or guardian can contact regarding the incident.
5. No local board of education or employee of a local board of education shall discharge, threaten, or otherwise retaliate against another employee of the board regarding that employee's compensation, terms, conditions, location, or privileges of employment because the employee makes a report alleging a prohibited use of physical restraint, mechanical restraint, aversive procedure, or seclusion, unless the employee knew or should have known that the report was false.
  6. Nothing in this section shall be construed to create a private cause of action against any local board of education, its agents or employees, or any institutions of teacher education or their agents or employees or to create a criminal offense.

**Resources used to create this document include:**

Restraint and Seclusion: Resource Document from U. S. Department of Education

Council for Exceptional Children's Policy on Physical Restraint and Seclusion;  
Procedures in School Settings

North Carolina State Law § 115C-391.1. Permissible use of seclusion and restraint.

## Tollie Thigpen

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**From:** Wendy Rogers <wlrogers@stoneschools.org>  
**Sent:** Sunday, April 17, 2016 4:58 PM  
**To:** Tollie Thigpen  
**Subject:** Restraint and Seclusion Response from Southern Six Consortium of Directors of Special Education  
**Attachments:** S6 Letter to MDE restraint and seclusion.docx; Restraint and Seclusion policy concerns April 2016.docx; Restraint Policy Revised.docx

Hi,

I am submitting to you a response from the Southern Six Consortium of Directors of Special Education. We feel strongly that MDE should have a policy regarding the permissible use of restraint and seclusion in an effort to maintain the safety of all students and staff. We do however feel that there are numerous areas in the proposed policy as written that should be addressed for revision.

Our concerns are as follows:

1. Numerous procedural references in the policy itself.
2. Funding necessary to train ALL staff in specific restraint measures that would be the approved programs such as CPI, PCM, etc.
3. Grammatical errors and unclear language (repeated information) throughout document.

Please see the attached letter from our consortium as well as the specific list of concerns/points and an example of a revised policy.

Thank you for your continued support.

--

Wendy Rogers  
Stone County School District  
Director of Special Services

April 10, 2016

Tollie Thigpen  
Office of Safe and Orderly Schools  
Mississippi Department of Education  
P. O. Box 771, Suite 210  
Jackson, MS 39205-0771

Dear Mr. Thigpen:

I write to you on behalf of the Southern Six Consortium of Special Education Directors. This group of veteran educators consists of 16 special education directors from the six coastal counties of Hancock, Harrison, Jackson, Pearl River, Stone, and George. Each member supports the content of this correspondence.

Our group is pleased to see the Mississippi Department of Education developing a Restraint and Seclusion Policy. For many years, Mississippi has been one of very few states that have been absent of any type policy in this extremely important area of educational concern. While there are valid points made in the existing draft as developed, there are also numerous areas in which the wording needs to be made clear, definitions need clarification and to be consistent with current research and organizational definitions, and grammatical errors need to be corrected. There are also specific areas of concern related to the implementation of the policy as written that would leave students and staff in harmful situations and in legal jeopardy. We request that MDE address and revise these areas prior to policy adoption.

Thank you for the continued work and support of the Mississippi Department of Education as we work together to better the educational opportunities and supports for students with disabilities.

If you have any questions, please feel free to contact me at 601-528-0617 (cell) or [wlrorgers@stoneschools.org](mailto:wlrorgers@stoneschools.org) or any of the other directors included in the Southern Six Consortium using their MDE contact information.

Sincerely,

Wendy Rogers  
Director of Special Services, Stone County School District, Southern Six Member  
MS-CASE President  
National CASE Policy and Legislative Committee Member  
MASS Alliance Board Member  
MASA Board Member

Mississippi Department of Education

Restraint and Seclusion Policy Part 3, Chapter 38, Rule 38.13

Recommendation for Approval by MDE

APA deadline April 17, 2016

Specific concerns with Policy as written:

For every restraint or seclusion reporting to MDE? And to district—specifically who and what to be done with it??? Page 7, Page 10, Page 11; Specific incident types could be reported as described in policy yet not “every” restraint or seclusion

Funding for training of staff to meet the required criteria for restraint and seclusion “programs” to meet MDE approval—allocation must be provided by MDE (Page 7); Training of all staff members of a school district would create an undue financial hardship for school districts.

Policy as written only addresses use of restraint or seclusion “imminent danger of bodily harm to self or others” and does not address the use of “time out” for unreasonable or significant student behavior resulting in disruptions to learning environment for self and others and/or destruction of property. When a student is screaming for a lengthy period and/or at a level that is a disruption to the instruction of the student and/or other students does not pose imminent danger of bodily harm to self or others; however, such behavior does warrant a removal from the learning environment which could meet the definition of seclusion.

Definitions to be added or changed:

“Time out” is defined as a behavior modification technique in which there is a brief removal of a student from sources of reinforcement within instructional contexts for undesirable or inappropriate behaviors. Time out does not meet the definition of seclusion nor is considered seclusion.

Physical restraint is any method of one or more persons restricting another person’s freedom of movement, physical activity, or normal access to his or her body.

Seclusion is the involuntary confinement of a child or youth alone in a room or area from the child or youth is physically prevented from leaving.

Combine the first three definitions into the one following for aversive intervention: Aversive intervention is the systematic use of stimuli or other treatment in which a student is known to find unpleasant for the purpose of discouraging undesirable behavior on the part of the student. Such stimuli include but are not limited to: infliction of bodily pain (e.g. hitting, pinching, slapping), water spray, noxious fumes, extreme physical exercise, costumes, or signs.

Elopement is to run away or leave a predetermined area.

Behavioral intervention is defined as the implementation

Specific language concerns with Policy as written:

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2. When using seat belts or other safety restraints to secure students during transportation;
3. As reasonably need to obtain possession of a weapon or other dangerous objects on a person or within the control of a person; and/or
4. As reasonably needed to ensure the safety of any student, school employee, volunteer, or other person present.

Except as set forth in item 1 of this subsection, mechanical restraint, including the use of tying, taping, or strapping down of a student shall not be considered a reasonable use of force, and its use is prohibited. Nothing in this subsection shall be construed to prevent the use of mechanical restraint devices, such as handcuffs, by law enforcement officers in the lawful exercise of their law enforcement duties.

### **Seclusion:**

Seclusion of students by school personnel may be used in the following circumstances:

1. As reasonably needed to respond to a person in control of a weapon or other dangerous object;
2. As reasonably needed to maintain order or prevent or break up a fight;
3. As reasonably needed for self-defense;
4. As reasonably needed when a student's behavior poses a threat of imminent physical harm to self or others or imminent substantial destruction of school or another person's property; and
5. When used as specified in the student's IEP, Section 504 Plan, or behavior intervention plan; and

- a. The student is monitored while in seclusion by an adult in close proximity who is able to see and hear the student at all times;
- b. The student is released from seclusion upon cessation of the behaviors that led to the seclusion or otherwise specified in the student's IEP or Section 504 plan;
- c. The space in which the student is confined has been approved for such use by the local education agency;
- d. The space is appropriately lighted;
- e. The space is appropriately ventilated and heated or cooled; and
- f. The space is free of objects that unreasonably expose the student or others to harm.

Except as set forth in subdivision 1 of this subsection, the use of seclusion is not considered reasonable force, and its use is not permitted. Seclusion shall not be considered reasonable use of force when used solely as a disciplinary consequence. Nothing in this subsection shall be construed to prevent the use of seclusion by law enforcement officers in the lawful exercise of their law enforcement duties.

### **Notice, Reporting, and Documentation**

1. Notice of procedures – Each local board of education shall provide copies of this section and all local school board policies developed to implement this section to school personnel and parents or guardians at the beginning of each school year.
2. Notice of specified incidents:
  - a. School personnel shall promptly notify the principal or the principal's designee of:
    - i. Any use of aversive procedures;
    - ii. Any prohibited use of mechanical restraint;
    - iii. Any use of physical restraint resulting in observable physical injury to a student; and/or
    - iv. Any prohibited use of seclusion or seclusion that exceeds 10 minutes or the amount of time specified on a student's behavior plan.
  - b. When a principal or principal's designee has personal knowledge or actual notice of any of the events described in this subdivision, the principal or principal's designee shall promptly notify the student's parent or guardian and will provide the name of a school employee the parent or guardian can contact regarding the incident.
3. As used in subdivision (2) of this subsection, "promptly notify" means by the end of the workday during which the incident occurred when reasonably possible but in no event later than the end of the following workday.
4. The parent or guardian of the student shall be provided with a written incident report for any incident reported under this section within a reasonable period of time but in no event later than 30 days of the incident. The written incident report shall include:

- a. The date, time of day, location, duration, and description of the incident and interventions.
  - b. The event(s) that led to the incident.
  - c. The nature and extent of any injury to the student.
  - d. The name of a school employee the parent or guardian can contact regarding the incident.
5. No local board of education or employee of a local board of education shall discharge, threaten, or otherwise retaliate against another employee of the board regarding that employee's compensation, terms, conditions, location, or privileges of employment because the employee makes a report alleging a prohibited use of physical restraint, mechanical restraint, aversive procedure, or seclusion, unless the employee knew or should have known that the report was false.
6. Nothing in this section shall be construed to create a private cause of action against any local board of education, its agents or employees, or any institutions of teacher education or their agents or employees or to create a criminal offense.

**Resources used to create this document include:**

Restraint and Seclusion: Resource Document from U. S. Department of Education

Council for Exceptional Children's Policy on Physical Restraint and Seclusion;  
Procedures in School Settings

North Carolina State Law § 115C-391.1. Permissible use of seclusion and restraint.

## Tollie Thigpen

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**From:** Michael Posey <mposey@prc.k12.ms.us>  
**Sent:** Sunday, April 17, 2016 10:45 PM  
**To:** Tollie Thigpen  
**Subject:** Restraint and Seclusion policy  
**Attachments:** Restraint-seclusion letter.docx

Mr. Thigpen,

Please see the attached letter and list of concerns about the MDE's proposed policy on restraint and seclusion.

**Have a Great Blue Devil Day!**

Thanks,  
Mike

Mike Posey  
Pearl River County School District  
Student Services Director  
601-798-1912

The foregoing electronic message and any files transmitted with it are confidential and are intended only for the use of the intended recipient named above. This communication may contain material protected by the Family Educational Rights and Privacy Act (FERPA). If you are not the intended recipient, copying, distribution or use of the contents of this message is strictly prohibited. If you receive this electronic message in error, please notify me immediately at 601-798-1912.

# *Pearl River County School District*

Student Services Office  
7391 Highway 11  
Carriere, MS 39426

(601) 798-1912

Fax # (601) 799-5165

*Mike Posey*  
*Director*

*Stephanie Smith*  
*Case Manager*

*Amanda Stewart*  
*Financial Secretary*

*Pamela Hayes*  
*Records Clerk*

April 10, 2016

Mr. Tollie Thigpen  
Office of Safe and Orderly Schools  
Mississippi Department of Education  
P. O. Box 771, Suite 210  
Jackson, MS 39205-0771

Dear Mr. Thigpen:

A colleague of mine recently shared concerns about the proposed Mississippi Department of Education Restraint and Seclusion Policy. After speaking with my colleague and reviewing the proposed policy myself, I also see a need for further review and several revisions or clarifications. I am in agreement that a policy for restraint and seclusion is needed, I feel a more careful study of the proposed policy is warranted.. While there are valid points made in the existing draft as developed, there are also numerous areas in which the wording needs to be made clear, definitions need clarification and to be consistent with current research and organizational definitions, and grammatical errors need to be corrected. There are also specific areas of concern related to the implementation of the policy as written that would leave students and staff in harmful situations and in legal jeopardy. I would like to request that MDE address and revise these areas prior to policy adoption.

I appreciate your efforts to bring better services to students with disabilities and better policies for those who work with these students to follow. Your work and the work of others on behalf of special education students and educators will ultimately benefit the state of Mississippi and its citizens.

Below, you will see the areas of concern with the policy as it has been proposed. If you need more information, please contact me at 601-798-1912 or at [mposey@prc.k12.ms.us](mailto:mposey@prc.k12.ms.us).

Sincerely,

Mike Posey  
Director of Student Services  
Pearl River County School District

Mississippi Department of Education

Restraint and Seclusion Policy Part 3, Chapter 38, Rule 38.13

Recommendation for Approval by MDE

APA deadline April 17, 2016

Specific concerns with Policy as written:

For every restraint or seclusion reporting to MDE? And to district—specifically who and what to be done with it??? Page 7, Page 10, Page 11; Specific incident types could be reported as described in policy yet not “every” restraint of seclusion

Funding for training of staff to meet the required criteria for restraint and seclusion “programs” to meet MDE approval—allocation must be provided by MDE (Page 7); Training of all staff members of a school district would create an undue financial hardship for school districts.

Policy as written only addresses use of restraint or seclusion “imminent danger of bodily harm to self or others” and does not address the use of “time out” for unreasonable or significant student behavior resulting in disruptions to learning environment for self and others and/or destruction of property. When a student is screaming for a lengthy period and/or at a level that is a disruption to the instruction of the student and/or other students does not pose imminent danger of bodily harm to self or others; however, such behavior does warrant a removal from the learning environment which could meet the definition of seclusion.

Definitions to be added or changed:

“Time out” is defined as a behavior modification technique in which there is a brief removal of a student from sources of reinforcement within instructional contexts for undesirable or inappropriate behaviors. Time out does not meet the definition of seclusion nor is considered seclusion.

Physical restraint is any method of one or more persons restricting another person’s freedom of movement, physical activity, or normal access to his or her body.

Seclusion is the involuntary confinement of a child or youth alone in a room or area from the child or youth is physically prevented from leaving.

Combine the first three definitions into the one following for aversive intervention:

Aversive intervention is the systematic use of stimuli or other treatment in which a student is known to find unpleasant for the purpose of discouraging undesirable behavior on the part of the student. Such stimuli include but are not limited to: infliction of bodily pain (e.g. hitting, pinching, slapping), water spray, noxious fumes, extreme physical exercise, costumes, or signs.

Elopement is to run away or leave a predetermined area.

Behavioral intervention is defined as the implementation

Specific language concerns with Policy as written:

1. Content:
  - a. Page 6, Restraint, a, add to “i” including elopement

- b. Page 6, Restraint, b, add to “i” unless in the case of imminent danger in which a trained staff member is not readily available.
  - c. Page 8, add v, Using appropriate reinforcements to increase appropriate behavior and decrease inappropriate behavior
  - d. Page 8 and 9, seclusion section, part c change to:  
“After other less intrusive, nonphysical interventions have not been successful or have been deemed inappropriate, school personnel may use seclusion to address a student’s behavior when:
    - i. The student’s behavior constitutes an emergency and seclusion is necessary to protect a student or other person from imminent physical harm;
    - ii. The student’s behavior unreasonably interferes with the student’s learning or the learning of others
    - iii. The student’s behavior leads to a destruction of property”
  - e. Page 9, section d what is considered “student’s educational record” for this requirement?
  - f. Page 9, section d, part ix, remove language that is procedural; keep sentence 1 only
  - g. Page 10, end of section l, top of page should there be an addition regarding the possible referral for a comprehensive assessment to determine eligibility for IDEA or 504 according to school district policy?
  - h. Page 10, Section m is being removed, but do we even put restraint and seclusion in IEPs?
  - i. Page 10, section 5
    - i. Item a, vi, change “local school board of education” to district designee??? (Also on page 7, section b, item viii and on page 11, h)
    - ii. Item c change “should” to “shall”???
    - iii. Item e, not sure what “to determine if a ‘revision’ of behavioral strategies ‘are’ in place”...means???
2. Grammatical/wording for understanding:
- a. Page 2, introduction, second paragraph:
    - i. 4th line spell out Positive Behavior Interventions and Supports first and then (PBIS)
    - ii. Sentence on line 19—Using these data...change these to “the”; add comma after occur take out and; add comma after behaviors take out and; add comma after behavior on line 22
    - iii. Line 26 instead of “aversive techniques in response to student behavior, restraint and seclusion,” just use “In order to reduce the use of restraint and seclusion to address student behavior, school wide....”
  - b. Page 3:
    - i. restraint and seclusion policy, second paragraph, line 4 remove comma between “force, or”
    - ii. definitions, a, take “s” off interventions and change ‘intervention program” to “activity”
    - iii. definitions, d, remove comma between “inappropriate, or”
  - c. Page 4:
    - i. Line 1, ii, spell out Functional Behavioral Assessment then put (FBA)
    - ii. Under J, iv, d, take “s” off describes
  - d. Page 5:
    - i. L, Change “plan” to “program” (this should be done any where that IEP is stated as “plan” because IDEA/USDE language is “program”; change “written statement” to a written educational program; where State Board Policy 7219 has been removed use wording “the Individuals with Disability Act 2004 and state policies and procedures.
    - ii. M, second paragraph, line 3, change “plan” to “program”
    - iii. N, line 2, add a comma after student
    - iv. O, line 2, add “s” to enable
    - v. P, line 6, change “restraints” to “restrains” and line 7 add comma after “down”
    - e. Page 6, definition t, line 3 change “disability” to “condition”

- f. Page 7, section c, last line change “should” to “shall” and move the last heading of “Behavior Interventions” to the next page
- g. Page 8
  - i. Section a, the wording of “to identify potential students” is unclear...potential for what?
  - ii. Section b, line 3 change “Information on a student” to “Gathering information regarding student behavior”
  - iii. Section b, line 4 change “help” to “helps” (whether or not the suggestion above is used)
- h. Page 9
  - i. Section d should be changed to a “Documentation” section
  - ii. Section d, line 3, place a period after “guardian” and begin new sentence with “The”
  - iii. Section d, line 6, change “in each instance in which the student is restrained or placed in seclusion” to “when restraint or seclusion is implemented”
  - iv. Section d, change order of xiii and xiv (Name of who parent could contact with contact information should be the last part of the documentation page)
  - v. Section e, line 1, change “on” to “with”
- i. Page 11 Parent Notification section is redundant; both items a and b are already stated previously in the policy:
  - i. A is d on page 10
  - ii. B is d in the documentation section on page 9



April 15, 2016

Dr. Carey Wright  
c/o Tollie Thigpen  
Office of Safe and Orderly Schools  
Mississippi Department of Education  
P.O. Box 771  
Jackson, MS 39205-0771

AMERICAN CIVIL  
LIBERTIES UNION OF  
MISSISSIPPI  
P.O. BOX 2242  
JACKSON, MS 39225  
T/601.354.3408  
WWW.ACLU-MS.ORG

**Re: Comments Submitted by the American Civil Liberties Union of Mississippi regarding Mississippi Department of Education Policy Part 3, Chapter 38, Rule 38.13 - Restraint and Seclusion**

Dear Dr. Wright:

The American Civil Liberties Union of Mississippi Foundation, Inc. (ACLU of MS), hereby, submits public comments to the Mississippi Department of Education (MDE) regarding proposed Rule 38.3 - Restraint and Seclusion Policy.

The ACLU of MS is pleased with MDE's production of a significantly improved uniform model policy for the state of Mississippi. While MDE's policy is very comprehensive, it should be expanded in the following areas:

- **Consistently emphasize prevention by eliminating references to “violent” or “violence”;**
- **Clarify and/or change certain terminology;**
- **Require educational administrator's written acknowledgement of restraint and seclusion incident; and**
- **Prohibit the use of seclusion.**

Before this policy is adopted, we strongly suggest these issues be addressed and that the recommendations earnestly considered.

**I. Consistently emphasize prevention by eliminating references to “violent” or “violence”**

Prevention is critical to creating an explicit and consistent positive tone throughout any model policy. And while the MDE's policy states, in relevant part, that “The

a school culture that emphasizes prevention...<sup>1</sup>” the goal of any policy should be to establish continuity and consistency. The use of the word “violence” or the variation thereof, i.e., “violent” when describing school acts denotes a negative connotation in describing situations which are not consistent with the framing of positive responses such an act [violent] requires. The phrase “...school violence...” runs counter to the intended tone and mood established in the first paragraph of the proposed policy. Its use does not accurately describe the potential for all children to exhibit challenging behaviors at times for varying reasons, circumstances, and situations. The reference to violence in schools promotes an image and climate of students causing or inflicting intentional harm, damage, or death to someone. This, however, is not the case.

Likewise, MDE’s policy references violent *and* dangerous, in the same sentence, in relevant part, “...as well as implement de-escalation techniques to diffuse potentially violent dangerous behavior.”<sup>2</sup> Also, the policy states, in relevant part, “...staff may intercede in situations wherein students are displaying physically violent behavior or is deemed to be a danger...”<sup>3</sup> Terminology such as “violent” plants the seeds of distrust and discord placing students and school personnel at odds. Utilization of these terms fuels adversity and criminalization of childlike behavior rather than fostering positive behavioral interventions and support.

**Recommendation:**

- We recommend MDE revisit their policy and ensure the tone of prevention and the mood of positive and proactive supports and strategies remain consistent throughout the policy by omitting the use of the word “violence” or the variation thereof, i.e., “violent” when describing challenging or inappropriate student behavior.

**II. Clarify/Change Terminology.**

Clarifying the terminology used throughout the proposed policy will reduce instances of improper application, inappropriate references to students, and provide statewide standards in implementation and uniformity. The following sections contain ambiguous or misleading language that must be clarified:

A. Introduction Section: MDE’s proposed policy states, in relevant part, that “However, at times, some students exhibit behaviors which place

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<sup>1</sup> Section: “1. Introduction” Para. 2, pg.2.

<sup>2</sup> Section: “1. Introduction” Para. 2, pg.2.

<sup>3</sup> Section: “1. Introduction” Para. 2, pg.3.

themselves...<sup>4</sup>” The use of “some students” as opposed to “students” in general limits the identification and scope to certain students. This language creates the potential for certain students to be targeted when, in fact, all students possess the potential to behave inappropriately for a variety of reasons, circumstances, and situations.

- B. Definition Section: MDE’s proposed policy defines physical restraints as “the use of physical force, without the use of any device or material that restricts the free movement of all or a portion of a student’s body.” “[P]hysical restraint does not include briefly holding a student’s hand or arm to calm them or escort them to another area. A physical restraint shall be removed as soon as the student is calm.<sup>5</sup>” This definition lacks explicit language identifying the comprehensive nature of restraint by differentiating among the types of restraint, purpose, and which specific acts defined under restraint are prohibited in all situations.
- C. The proposed policy makes reference to “...destruction of property” as part of a criteria considered in an emergency response after all other verbal de-escalation measures have failed.<sup>6</sup>” However, “destruction of property” is not defined with explicit language to ensure consistency and uniformity in determining what constitutes same.

**Recommendation:**

- We recommend that MDE omit the reference to “some students” to state, “However, at times students may exhibit behaviors which place themselves and others in imminent danger.”
- We recommend a comprehensive definition of physical restraint to include explicit language which defines restraint in terms of what it is and is not, as well as identify criteria under which restraint is to be used to **read as follows:**
- **Physical restraint** is defined as the use of physical force, without the use of any device or material that restricts the free movement of all or a portion of a student’s body to prevent an imminent and substantial risk of bodily harm to the self or others.
- **Physical restraint that restricts the flow of air** to the student’s lungs refers to any method (facedown, face-up, or choke hold) of physical restraint in

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<sup>4</sup> Section: “1. Introduction” Para. 3, pg.2.

<sup>5</sup> Section: “3. Definitions” Para. 6, letter p., pg. 5.

<sup>6</sup> Section: “4. General Procedures” Restraint, letter a., ii., pg. 6.

which physical pressure is applied to the student's body that restricts the flow of air into the student's lungs **and is prohibited in all situations.**

- **Prone restraint** refers to a specific type of restraint in which a student is intentionally placed face down on the floor or another surface, and physical pressure is applied to the student's body to keep the student in the prone position **and is prohibited in all situations.**
- **Prone Physical Restraint** means holding a student face down on his or her stomach using physical force for the purpose of controlling the student's movement **and is prohibited in all situations.**

The term physical restraint **does not** include:

- i. Mechanical restraint or chemical restraint.
  - ii. Providing limited physical contact and/or redirection to promote student safety or prevent self-injurious behavior,
  - iii. Providing physical guidance or prompting when teaching a skill, redirecting attention,
  - iv. Providing guidance to a location, providing comfort, or providing limited physical contact as reasonably needed to prevent imminent destruction to school or another person's property.
  - v. Providing physical guidance or prompting when teaching a skill, redirecting attention. A brief period of physical contact necessary to break up a fight.
  - vi. Momentarily deflecting the movement of a student when the student's movement would be destructive, harmful or dangerous to the student or to others
- We recommend MDE, change the physical restraint definition to include the use of physical restraints by trained personnel only in situations of imminent danger and substantial risk of bodily harm to student or others.
  - We recommend MDE, include a clear, concise and uniform definition of what constitutes "destruction of property" to ensure the criteria has been met and is, further, consistent when considering an emergency response.

### **III. Require educational administrator's written acknowledgement of restraint and seclusion incident**

The proposed policy states, in relevant part, "...documentation shall be provided using an incident report... This report must include the following:

xii. Staff Signatures;..."<sup>7</sup> An educational administrator signature should also be required on the report to ensure an administrator is aware and involved throughout the process of addressing and documenting that a restraint and seclusion incident occurred.

#### **Recommendation:**

- **We recommend MDE require an educational administrator's signature on the incident report to ensure the awareness and involvement of an administrator throughout the process of addressing and documenting the occurrence of a restraint and seclusion incident.**

#### **IV. Prohibit the Use of Seclusion:**

The proposed MDE policy allows for the use of seclusion. However, seclusion is violent, expensive, largely preventable adverse events<sup>8</sup>. Research demonstrates that the use of prevention and positive approaches saves cost. There are significant dangers and risks to ALL involved in the use of seclusion. It poses an inherent risk to the physical safety and psychological health of everyone involved; it is never risk-free. In addition to producing anxiety, fear and a decreased ability to learn; death, trauma, and injuries can and have resulted from the use of these techniques. All children experience trauma from the use of restraint and seclusion; however, children with significant disabilities are at increased risk if they are not able to fully understand or communicate what happened, how they feel, or report injury or pain as a result of restraint or seclusion. They may acquire post-traumatic stress syndrome or exhibit new challenging or dangerous behaviors<sup>9</sup>.

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<sup>7</sup> Section: "4. General Procedures" Behavioral Interventions, Seclusion letter d, xii., pg. 9.

<sup>8</sup> U.S. Department of Health and Human Services Substance Abuse and Mental Health Services Administration Jan Lebel (2011) *The business case for preventing and reducing restraint and seclusion use*. Washington, DC: Retrieved from <http://store.samhsa.gov/shin/content//SMA11-4632/SMA11-4632.pdf>

<sup>9</sup> There is a strong and non-controversial body of research outlining the dangers of restraint and seclusion and amply documenting their harmful effects. The concern about these techniques and the national call for prevention of the use of restraint and seclusion stand uncontested. Education and clinical professionals must use only interventions that are both evidence and values based. **Seclusion should never be used in a school setting**, only techniques shown to be effective in reducing and preventing restraint should be employed.

Preventing the Use of Restraint and Seclusion in Schools: Addressing a National Epidemic through the Keeping All Students Safe Act. This overview of initiatives and public policy concerns includes a history of legislative attempts to establish federal restrictions on the use of

**Recommendation:**

- We recommend MDE prohibit the use of seclusion. Earnestly revisit and reconsider the feasibility of utilizing seclusion, as it significantly increases the risk of injury, trauma, and in some cases death.

**V. Conclusion.**

The American Civil Liberties Union of Mississippi, therefore recommends the following:

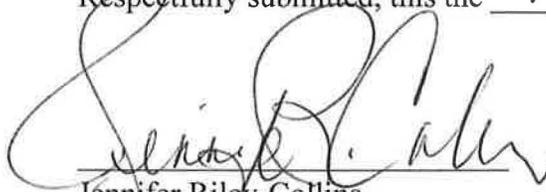
- A. We recommend MDE revisit their policy and ensure the tone of prevention and the mood of positive and proactive supports and strategies remain consistent throughout the policy by omitting the use of the word “violence” or the variation thereof, i.e., “violent” when describing challenging or inappropriate student behavior.
- B. We recommend that MDE omit the reference to “some students” to state, “However, at times students may exhibit behaviors which place themselves and other in imminent danger.”
- C. We recommend MDE expand the definition of physical restraint to include explicit language to define restraint in terms of what it is and is not, as well as identify criteria under which restraint is to be used and when it is to be prohibited.
- D. We recommend MDE change the physical restraint language to require use of physical restraints by trained personnel only in situations of imminent danger and substantial risk of bodily harm to student or others.
- E. We recommend MDE include a clear, concise and uniform definition of what constitutes “destruction of property” to ensure clarification and consistency regarding the criteria to be considered an emergency response have been met.
- F. We recommend MDE require an educational administrator’s signature on the incident report to ensure the awareness and involvement of an administrator throughout the process of addressing and documenting the occurrence of a restraint and seclusion incident.

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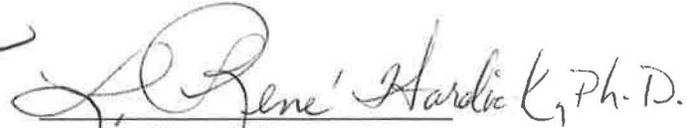
restraint and seclusion in schools, and a statement of the need for legislative action. (3 pages) Source: *The Alliance to Prevent Restraint, Aversive Interventions and Seclusion.*

- G. We recommend MDE prohibit the use of seclusion. Earnestly revisit and reconsider the feasibility of utilizing seclusion as it significantly increases the risk of injury, trauma, and in some cases death.

Respectfully submitted, this the 15<sup>th</sup> of April, 2016.



Jennifer Riley-Collins  
Executive Director  
American Civil Liberties Union  
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L. Rene Hardwick, Ph.D.  
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