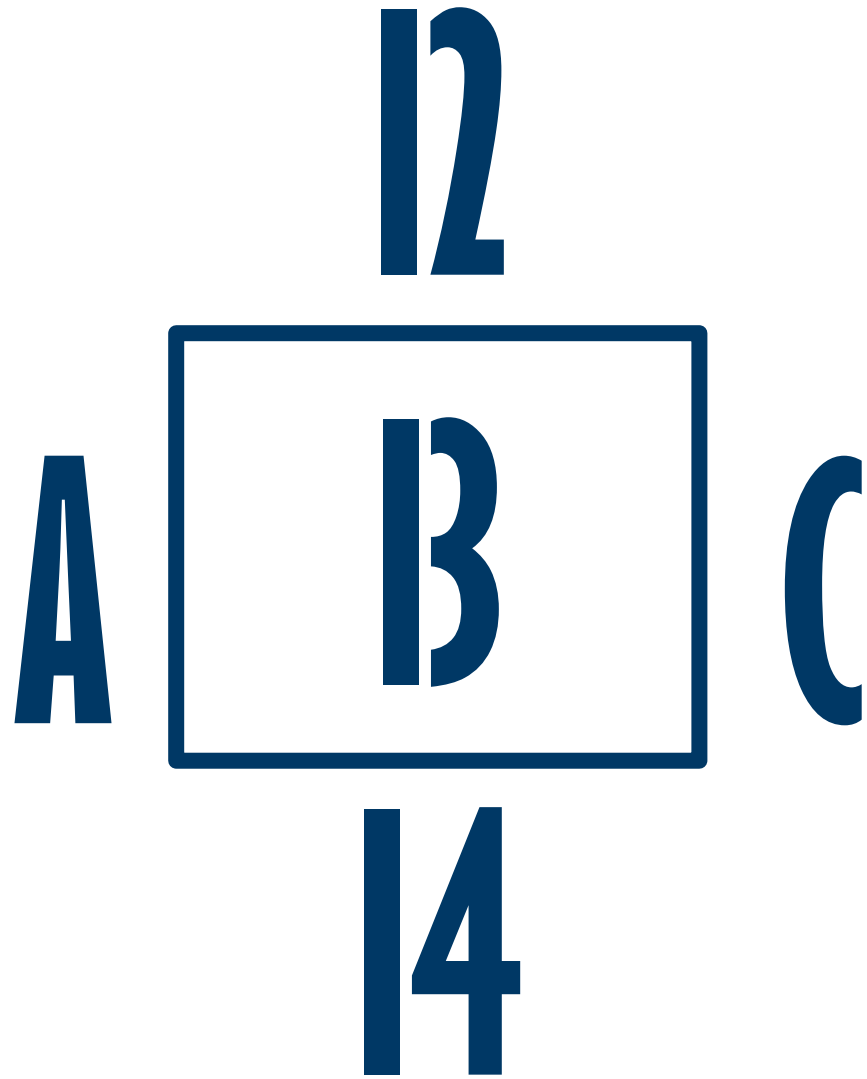




Legal Framework for Restrictive Procedures Use in Schools

Sara K. Wolf

Office of General Counsel



This training will cover the legal framework of **restrictive procedures use in schools** so you will:

- Solidify your understanding of the rights of students and families
- Be able to leverage due process requirements to support the development of appropriate programming for students with emotional/behavioral needs

Restrictive Procedures Statutory Provisions

[Minn. Stat. § 125A.094](#) - Restrictive Procedures for [Children with Disabilities](#)

[Minn. Stat. § 125A.0941](#) - Definitions

[Minn. Stat. § 125A.0942](#) - Standards for Restrictive Procedures

***2023 Revisions clarified that the standards for using restrictive procedures apply to children with disabilities from birth until the child with a disability becomes 22 years old by adding “individualized family service plan” next to individualized education program throughout the statutory provision. ***

“**Restrictive procedures**” means the use of *physical holding* or *seclusion* in an *emergency*.

Restrictive procedures must not be used to punish or otherwise discipline a student.

- By July 15 each year, districts must report to MDE summary data on their use of restrictive procedures during the prior school year.
- Each school year, districts must report data quarterly to MDE by January 15, April 15, July 15, and October 15 about individual students who have been secluded.

2021-22 Restrictive Procedures Use in MN

- 56 Districts Reported Using Seclusion
- 246 Districts reported Using Physical Holds

Down 41%
from 18-19

14,684 uses of restrictive procedures reported

Down .7%
from 18-19

RPs are used most often on boys, on students ages 6-10, and on students with EBDs.

Of 151,532 students receiving special education services, restrictive procedures were used with 2,341 students.

Down 27%
from 18-19

341 students experienced the use of restrictive procedures on 10 or more days during the year

Restrictive Procedures Oversight Committee

Minn. Stat. § 125A.0942, subd. 1(b)

Every year schools must publicly identify **oversight committee members** who must at least include:

- A mental health professional, school psychologist, or school social worker;
- An expert in positive behavior strategies;
- A special education administrator; and
- A general education administrator.

***Oversight Committee Review

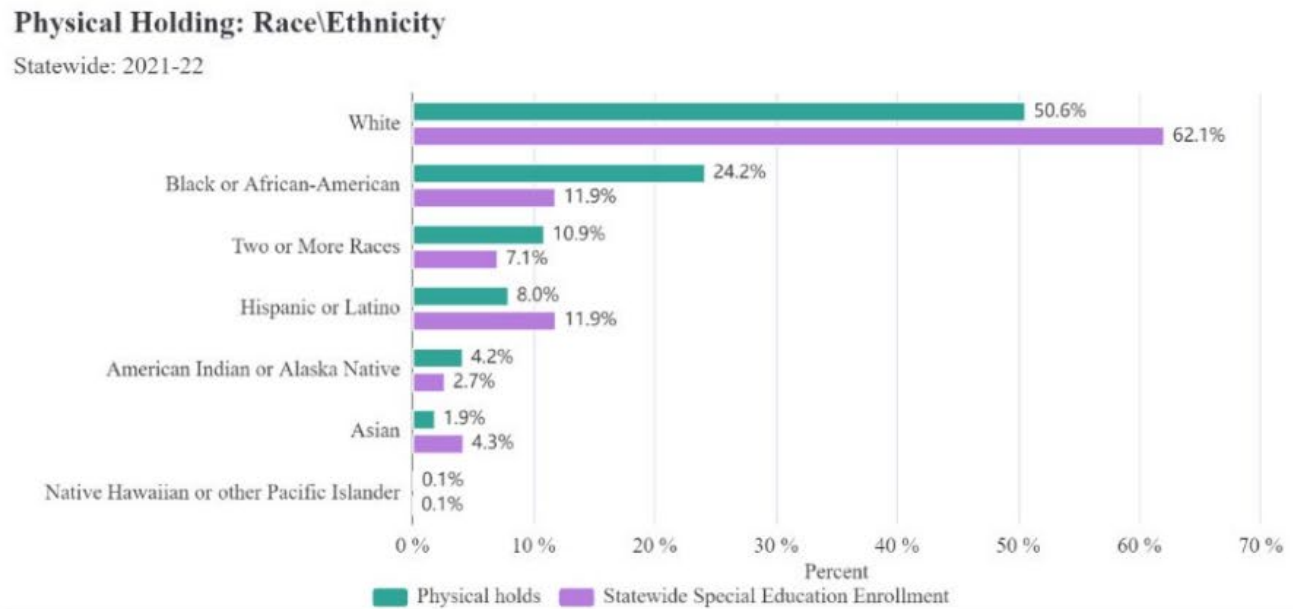
Minn. Stat. § 125A.0942, subd. 1(a)(4)(ii)

The oversight committee must do a **quarterly review** of the following:

- the use of restrictive procedures based on **patterns** or **problems** indicated by similarities in the time of day, day of the week, duration of the use of the procedure, the individuals involved, or other factors associated with the use of restrictive procedures;
- the **number of times** a restrictive procedure is used school-wide and for individual children;
- the **number and types of injuries**, if any, resulting from the use of restrictive procedures;
- whether restrictive procedures are used in **nonemergency situations**;
- the **need for additional staff training**;
- proposed actions to **minimize** the use of restrictive procedures.
- any **disproportionate use** of restrictive procedures based on race, gender, or disability status; ***
- the **role of the school resource officer or police in emergencies** and the use of restrictive procedures;*** and
- documentation to determine if the **standards** for using restrictive procedures as described in sections 125A.0941 and 125A.0942 are met. ***

Disproportionate Use of RPs

Figure J. Students with Disabilities Physically Held by Race/Ethnicity, as Compared to Special Education Enrollment, 2021-22 school year.



[Model Restrictive Procedures Oversight Committee Agenda and Guidance](#)

The Oversight Committee Model Agenda and Companion Guide are offered as support for program, school, and district oversight committee meetings to increase efficiency and effectiveness in collaborative discussion and decision making on the use of restrictive procedures with the goal of reducing the use of restrictive procedures. These documents are meant to be revised and adjusted to meet the needs of the district. They are a work in progress, and we encourage users to offer feedback and suggest improvements. Please submit feedback by calling 651-582-8689.


Restrictive Procedures Plan (RPP)

Minn. Stat. § 125A.0942, subd. 1(a)

Schools that intend to use restrictive procedures shall maintain and make publicly accessible in an electronic format on a school or district web site or make a paper copy available upon request describing a **restrictive procedures plan** for students with disabilities.

[Model Restrictive Procedures Plan](#)

A school's **restrictive procedures plan** must:

1. list the restrictive procedures the school intends to use;
2. describe how the school will implement a range of positive behavior strategies and provide links to mental health services;
3. describe how the school will provide training on de-escalation techniques;
4. describe how the school will monitor and review the use of restrictive procedures, including;
 - i.  conducting **post-use debriefings** consistent with the documentation requirements; and
 - ii. convening an oversight committee to undertake a quarterly review; and
5. include a written description and documentation of the training staff completed.

What We Hear From Districts About Debriefing

- Staff need **dedicated time** for debriefing.
- Debriefing is most successful when it is **supported by administrators.**
- Debriefing paired with **restorative practices** is highly effective.

Standards for Using Restrictive Procedures

Minn. Stat. § 125A.0942, subd. 3(a)(1)-(5)

The use of physical holding or seclusion may be used only in an **emergency** and must meet the following requirements:

1. It is the **least intrusive intervention** that effectively responds to the emergency;
2. It is **not used to discipline** a noncompliant student;
3. It **ends when the threat of harm ends** and the staff member(s) determine the student can safely return to the classroom or activity;
4. Staff **directly observes** the student; and
5. The staff person who implements or oversees the physical holding or seclusion **documents specific information**, as soon as possible after the incident concludes.

Prohibited Actions or Procedures

Minn. Stat. § 125A.0942, subd. 4

1. Engaging in conduct prohibited under § 121A.58 (corporal punishment);
2. Requiring a student to assume and maintain a specified physical position, activity, or posture that induces physical pain;
3. Totally or partially restricting a student's senses as punishment;
4. Presenting an intense sound, light, or other sensory stimuli using smell, taste, substance, or spray as punishment;
5. Denying or restricting a student's access to equipment and devices such as walkers, wheelchairs, hearing aids, and communication boards that facilitate the student's functioning, except when temporarily removing the equipment or device is needed to prevent injury to the student or others or serious damage to the equipment or device, in which case the equipment or device shall be returned to the student as soon as possible;

Prohibited Actions or Procedures continued...

Minn. Stat. § 125A.0942, subd. 4

6. Interacting with a child in a manner that constitutes sexual abuse, neglect, or physical abuse under § 626.556;
7. Withholding regularly scheduled meals or water;
8. Denying access to bathroom facilities;
9. Physical holding that restricts or impairs a child's ability to breathe, restricts or impairs a child's ability to communicate distress, places pressure or weight on a child's head, throat, neck, chest, lungs, sternum, diaphragm, back, or abdomen, or results in straddling a child's torso; and
10. Prone restraint.***

***Prone restraint and certain physical holds not allowed.

Minn. Stat. § 121A.58, subd. 2

Definition: "prone restraint" means placing a child in a face-down position.

- An employee or agent of a district, including a school resource officer, security personnel, or police officer contracted with a district, shall not use prone restraint.***
- An employee or agent of a district, including a school resource officer, security personnel, or police officer contracted with a district, shall not inflict any form of physical holding that restricts or impairs a pupil's ability to breathe; restricts or impairs a pupil's ability to communicate distress; places pressure or weight on a pupil's head, throat, neck, chest, lungs, sternum, diaphragm, back, or abdomen; or results in straddling a pupil's torso.***

Applies to ALL students with and without disabilities!

***Starting September 1, 2024...

The use of seclusion on children from birth through grade 3 will be prohibited as of September 1, 2024.

Student Maltreatment

A prohibited procedure may also constitute **maltreatment** of a student. If you observe any of the prohibited procedures occurring and/or have suspicions that a student is being abused by district staff and are a mandated reporter, you must report that to MDE's Student Maltreatment Team.

24 Hour Reporting Phone Line: 651-582-8546

Reporting Email: mde.student-maltreatment@state.mn.us

Who May Use Restrictive Procedures?

Minn. Stat. § 125A.0942, subd. 2(a)

Restrictive procedures may only be used by the following staff after completion of training:

- Licensed special education teacher;
- School social worker;
- School psychologist;
- Behavior analyst certified by the National Behavior Analyst Certification Board;
- A person with a master's degree in behavioral analysis;
- Other licensed education professional;
- Paraprofessional under § 120B.363; or
- Mental health professional under § 245.4871, subd. 27.

Staff members who use restrictive procedures, including paraprofessionals, shall complete **training in the following twelve skills and knowledge areas:**

1. positive behavioral interventions;
2. communicative intent of behaviors;
3. relationship building;
4. alternatives to restrictive procedures, including techniques to identify events and environmental factors that may escalate behavior;
5. de-escalation methods;

Required Training

Minn. Stat. § 125A.0942, subd. 5(a)

6. standards for using restrictive procedures only in an emergency;
7. obtaining emergency medical assistance;
8. the physiological and psychological impact of physical holding and seclusion;
9. monitoring and responding to a student's physical signs of distress when physical holding is being used;
10. recognizing the symptoms of and interventions that may cause positional asphyxia when physical holding is used;
11. district policies and procedures for timely reporting and documenting each incident involving use of restrictive procedures; and
12. school wide programs on positive behavior strategies.

Minn. Stat. § 125A.0942, subd. 5(a)

Emergency means a situation where immediate intervention is needed to protect the student or other individual from physical injury.

Emergency does not mean circumstances such as:

- a student who does not respond to a task or request and instead places his or her head on a desk or hides under a desk or table;
- a student who does not respond to a staff person's request unless failing to respond would result in physical injury to the student or other individual; or
- an emergency incident has already occurred and no threat of physical injury currently exists.

Scenario: A student is upset and is threatening to run out of the building.

➤ **Is this an emergency?**

Scenario: Elopement

There are many individual factors that need to be considered before we can determine whether or not this scenario meets the definition of **emergency**. Some of the questions that may be considered:

- Are there hazards in the area that could cause physical injury, such as a busy road, a construction site, or inclement weather?
- Does this student have the capacity to keep him/herself safe outside?
- Does the student have an IEP that includes interventions to be implemented in this situation or are there other ways to de-escalate the situation?
- Does this student have a history of following through with threats?
- Other questions

Scenario: A student in a classroom begins throwing objects around the room.

➤ **Is this an emergency?**

Scenario: Target Practice

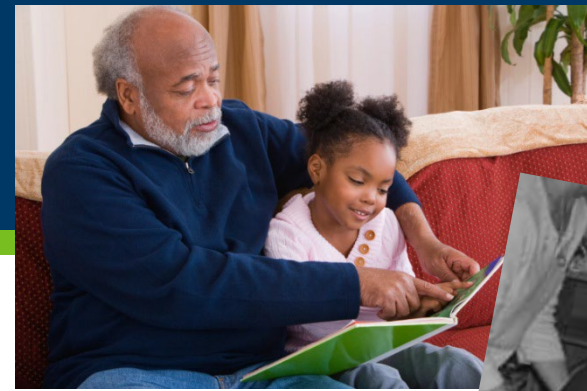
There are many individual factors that need to be considered before we can determine whether or not this scenario meets the definition of **emergency**. Some of the questions that may be considered:

- Are objects being thrown that could cause physical injury?
- Is it possible to move away from the items being thrown?
- Does this student have the capacity to keep him/herself safe in the space?
- Does the student have an IEP that includes interventions to be implemented in this situation or are there other ways to de-escalate the situation?
- Does this student have a history of following through with threats of inflicting injury?
- Other questions

Physical holding means physical intervention intended to hold a student immobile or limit a student's movement, where body contact is the only source of physical restraint, and where immobilization is used to effectively gain control of a student in order to protect a student or other individual from physical injury.

Physical holding *does not* mean physical contact that:

- helps a student respond or complete a task;
- assists a student without restricting the student's movement;
- is needed to administer an authorized health-related service or procedure; or
- is needed to physically escort a student when the student does not resist or the student's resistance is minimal.



Minn. Stat. § 125A.0941(c)

Scenario: Election Day

Community members are arriving at the school building to vote. A student is standing in the vestibule swearing and professing extreme political views. After attempting to verbally deescalate the student, an administrator takes the student by the arm and leads him to a resource room away from the school entrance.

- Is this an **emergency**?
- Was a **physical hold** used?

Scenario: Election Day

There are many individual factors that need to be considered before we can determine whether or not this scenario meets the definition of **emergency** or if a **physical hold** was used. Some of the questions that may be considered: :

- Was immediate intervention needed to prevent physical injury to the student?
- Was the general public in danger of physical injury?
- Did the administrator use physical contact to limit a student's movement in order to protect a student or other individual from physical injury?
- Was the student resisting the physical prompting from the administrator more than minimally?
- Other questions

Seclusion means confining a student alone in a room from which egress is barred.

- Egress may be barred by an adult locking or closing the door in the room or preventing the student from leaving the room.
- Removing a student from an activity to a location where the student cannot participate in or observe the activity is not seclusion.

Before using an unlocked or locked room for seclusion, a school must **register** the room for seclusion with MDE.

A room used for seclusion, unlocked or locked, must:

1. be at least six feet by five feet;
2. be well lit, well ventilated, adequately heated, and clean;
3. have a window that allows staff to directly observe a student in seclusion;
4. have tamperproof fixtures, electrical switches located immediately outside the door, and secure ceilings;
5. have doors that open out and are unlocked, locked with keyless locks that have immediate release mechanisms, or locked with locks that have immediate release mechanisms connected with a fire and emergency system; and
6. not contain objects that a student may use to injure the child or others.

Scenario: The Breakout Room

A student who is highly escalated is transported to a “breakout room” after she attempted to hit several other students. There is no door to the room, but a member of the crisis team is positioned in the room to prevent the student from leaving the space.

- Is this an **emergency**?
- Was a **physical hold** used?
- Was **seclusion** used?

Scenario: The Breakout Room

There are many factors that need to be considered before we can determine whether or not this scenario meets the definition of **emergency** or if a **restrictive procedure** was used. Some of the questions that may be considered:

- Was immediate intervention needed to prevent physical injury to the student or others?
- While the student was being transported to the breakout room, was her movement being restricted or was she resisting more than minimally?
- What was the staff member doing while in the breakout room with the student?
- Does the student's IEP/BIP include strategies and interventions to address situations such as this?
- Other questions

Can restrictive procedures be part of a student's IEP?

Minn. Stat. § 125A.0942, subd. 2(c) and (f)

- An IEP team may plan for using restrictive procedures and may include these procedures in a student's IEP or BIP; however, the restrictive procedures may be used only in response to behavior that constitutes an emergency. The IEP or BIP shall indicate how the parent wants to be notified when a restrictive procedure is used.
- The district must review use of restrictive procedures at a student's annual IEP meeting when the student's IEP provides for using restrictive procedures in an emergency.

*** Documenting the Use of Restrictive Procedures

Minn. Stat. § 125A.0942, subd. 3(a)(5)(i-iv)

Each time physical holding or seclusion is used, the staff person who implements or oversees the physical holding or seclusion documents, as soon as possible after the incident concludes:

1. a description of the incident that led to the physical holding or seclusion;
 2. why a less restrictive measure failed or was determined by staff to be inappropriate or impractical;
 3. the time the physical holding or seclusion began and the time the student was released; and
 4. a brief record of the student's behavioral and physical status.
- *** 5. a brief description of the post-use debriefing that occurred as a result of the use of the physical hold or seclusion***

Notifying Parents

Minn. Stat. § 125A.0942, subd. 2(b),(f)

A school shall make reasonable efforts to notify the parent on the same day a restrictive procedure is used on the student, or if the school is unable to provide same-day notice, notice is sent within two days by written or electronic means or as otherwise indicated by the student's parent.

Restrictive Procedures and IEP Team Meetings

Minn. Stat. § 125A.0942, subd. 2(c)

An IEP team meeting must be held:

- Within ten calendar days after district staff use restrictive procedures on two separate school days within 30 calendar days OR
- A pattern of use emerges and the child's IEP or BIP does not provide for using restrictive procedures in an emergency; OR
- At the request of the parent or the district after restrictive procedures are used.

Removal by Peace Officer

Minn. Stat. § 121A.67, subd. 2

If a student who has an IEP is restrained or removed from a classroom, school building, or school grounds by a peace officer at the request of a school administrator or a school staff person during the school day twice in a 30-day period, the student's IEP team must meet to determine if the student's IEP is adequate or if additional evaluation is needed.

IEP Team Meeting Requirements

Minn. Stat. § 125A.0942, subd. 2(c) and (e)

During the IEP team meeting, the team must:

1. conduct or review a functional behavioral analysis;
2. review data;
3. consider developing additional or revised positive behavioral interventions and supports;
4. consider actions to reduce the use of restrictive procedures;
5. modify the student's IEP or BIP as appropriate; and
6. review any medical or psychological limitations, including medical information the parent provides voluntarily, that contraindicate the use of a restrictive procedure, consider whether to prohibit that restrictive procedure, and document any prohibition in the IEP or BIP.

Ineffective Interventions and Supports

Minn. Stat. § 125A.0942, subd. 2(d)

If the IEP team determines that existing interventions and supports are ineffective in reducing the use of restrictive procedures OR the district uses restrictive procedures on a student on ten or more school days during the same school year, the IEP team, as appropriate, either must:

- consult with other professionals working with the student;
- consult with experts in behavior analysis, mental health, communication, or autism;
- consult with culturally competent professionals;
- review existing evaluations, resources, and successful strategies; or
- consider whether to reevaluate the student.

Scenario: Self Injury

A student is actively harming himself, but when staff try to intervene, the student transfers the aggression to staff. When staff back away from him, he begins to bang his head on the wall.

- Apply the legal framework and discuss how you might proceed in this scenario.

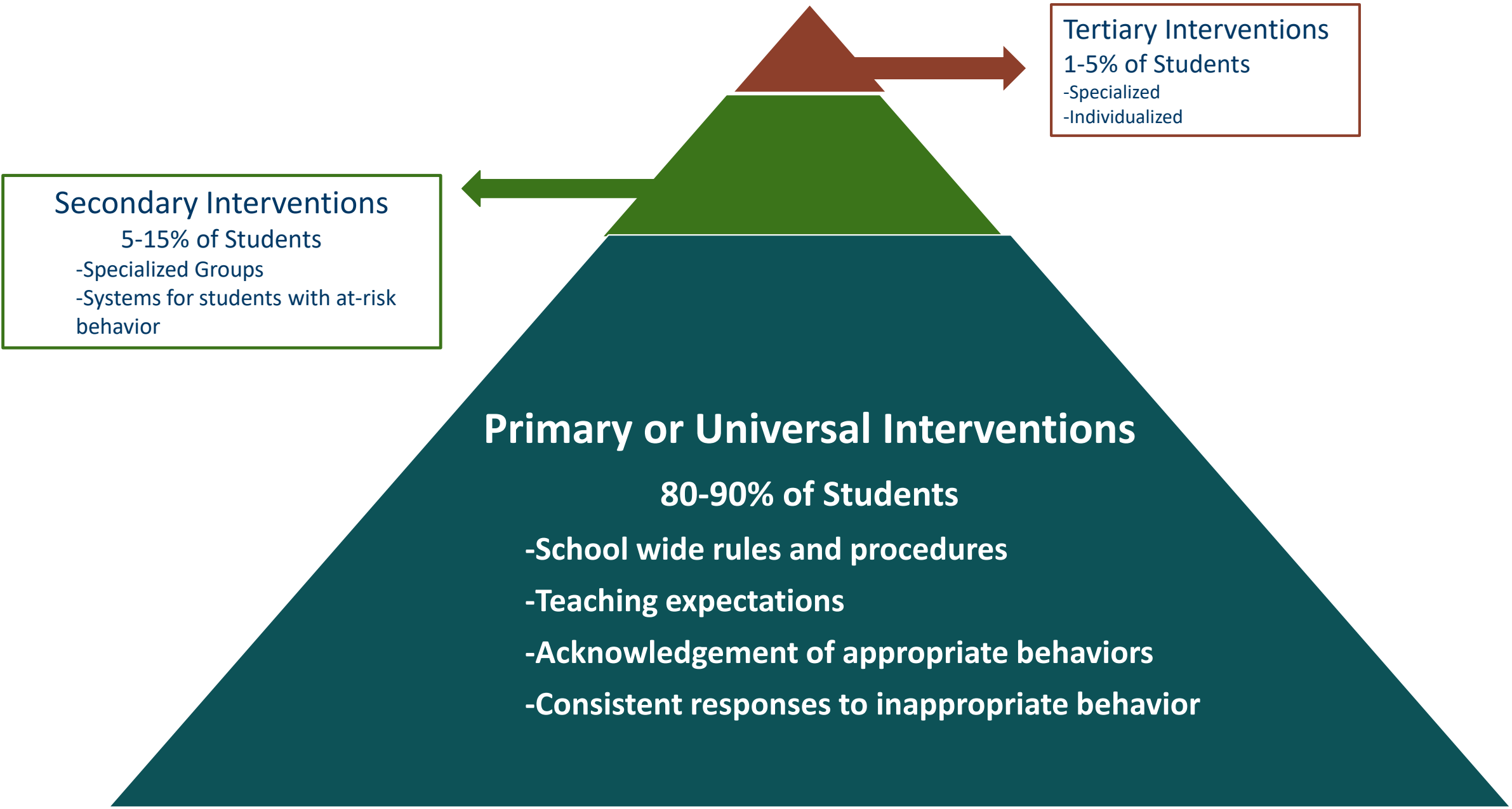
Scenario: Self Injury

There are many factors that need to be considered before we can determine whether or not this scenario meets the definition of **emergency** or if a **restrictive procedure** was used.

Some of the questions you may be asking are:

- Is immediate intervention needed to prevent physical injury to the student or others?
- Is the student using enough force to injure himself? Or injure a staff member who might try to place themselves between the student and the wall?
- Is there a plan in the student's IEP to address this type of behavior?
- Are there other interventions that should be tried, such as putting a mat between the student and the wall or redirecting the student to a preferred activity?
- Other questions?

Be Proactive and Positive!



Addressing Behavior

The IEP team shall: in the case of a pupil whose behavior impedes his or her learning or that of others, consider, when appropriate, strategies, including positive behavioral interventions and supports, to address that behavior.

Minn. R. 3525.2810, subp. 2(B)(1); see also 34 C.F.R. § 300.324(a)(2)(i)

“A student who experiences behavioral challenges in school may have a disability, even if the behavioral challenges are not accompanied by academic challenges.”

Dear Colleague Letter: Restraint and Seclusion of Students with Disabilities (Office for Civil Rights, Dec. 28, 2016)

Definition: *Functional Behavioral Assessment*

Minn. R. 3525.0210, subp. 22

Functional behavioral assessment or “FBA” means a process for gathering information to maximize the efficiency of behavioral supports. An FBA includes a variety of data collection methods and sources that facilitate the development of hypotheses and summary statements regarding behavioral patterns.

An **FBA** :

- Includes a description of problem behaviors and the identification of events, times, and situations that predict the occurrence and nonoccurrence of the behavior;
- Identifies the antecedents, consequences, and reinforcers that maintain the behavior;
- Includes the possible functions of the behavior; and
- Includes possible positive alternative behaviors.

A school district **may conduct a functional behavior assessment** as defined in Minnesota Rules, part 3525.0210, subpart 22, **as a stand-alone evaluation** without conducting a comprehensive evaluation of the student in accordance with prior written notice provisions in section 125A.091, subdivision 3a. A parent or guardian may request that a school district conduct a comprehensive evaluation of the parent's or guardian's student.

Behavioral Intervention Plan (BIP)

U.S. Department of Education, *Restraint and Seclusion: Resource Document*, Washington, D.C., 2012

A complete BIP should describe strategies for:

1. addressing the characteristics of the setting and events;
2. removing antecedents that trigger dangerous behavior;
3. adding antecedents that maintain appropriate behavior;
4. removing consequences that maintain or escalate dangerous behaviors;
5. adding consequences that maintain appropriate behavior; and
6. teaching alternative appropriate behaviors, including self regulation techniques, to replace the dangerous behaviors.

Focus on the Positive!

“Research has shown that the implementation of punishment, especially when it is used inconsistently and in the absence of other positive strategies, is ineffective. Introducing, modeling, and reinforcing positive social behavior is an important part of a student’s educational experience. Teaching behavioral expectations and rewarding students for following them is a much more positive approach than waiting for misbehavior to occur before responding.”

*Dear Colleague Letter: Inclusion of Behavioral Supports in Schools
(Office for Civil Rights, August 1, 2016)*

It is critical that behavioral intervention programs focus on skills acquisition rather than merely behavior reduction or elimination.

Minn. R. 3525.0850

There are many resources available to you!

- **Colleagues**
- **District Administrators**
- **Restrictive Procedures Workgroup Resource Page**
<http://education.state.mn.us/MDE/about/adv/active/res/>
- **MDE Restrictive Procedures Webpage**
<http://education.state.mn.us/MDE/SchSup/ComplAssist/RestProc/index.html>
- **US Department of Ed- Restraint and Seclusion: Resource Document**
<http://www2.ed.gov/policy/seclusion/index.html>
- **PBIS** www.pbis.org
- **PBIS MN** www.pbismn.org

Online Training Modules from MDE

MDE contracted with an outside vendor to develop three online training modules for statewide use that provide **positive strategies** for school staff to use with students with disabilities. These modules and reference documents are designed for districts to use in independent staff training.

Module 1: Supporting Learners with Autism Spectrum Disorder who have Additional Learning Issues

Module 2: Supporting Learners with Complex Emotional Behavior Disorders

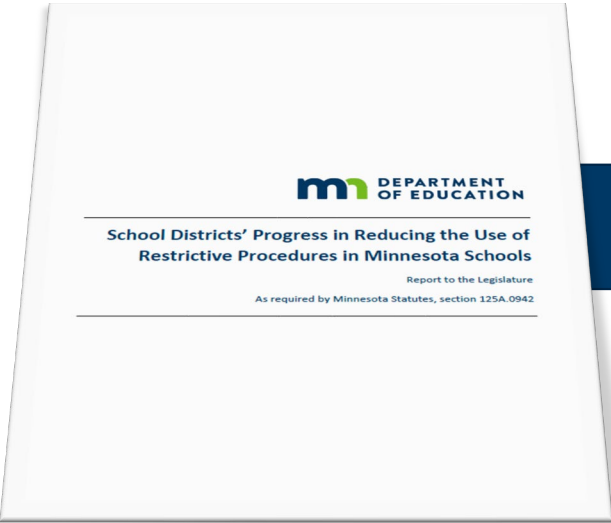
Module 3: Supporting Learners with Complex Learning Needs

Link to training: <http://education.state.mn.us/MDE/dse/sped/spedtrain/MDE058532>

Mandated Reporter Training: <http://education.state.mn.us/MDE/dse/mal/>

Legislative Report and Appendix D

Found on the [MDE Restrictive Procedures Webpage](#)



[Restrictive Procedures Summary Data Form](#)

[Restrictive Procedures Quarterly Seclusion Reporting Form](#)

[Model Post-Use Debrief Form](#)

[Model Restrictive Procedures Plan](#)

[Model Restrictive Procedures Oversight Committee Agenda and Guidance](#)

Current U.S. Department of Education Guidance

Restraint and Seclusion: Resource Document (Office for Civil Rights, 2012)

The purpose of this resource document is to present and describe 15 principles for state, district, and school staff; parents; and other stakeholders to consider when states, localities, and districts develop policies and procedures which should be in writing on the use of restraint and seclusion. This resource document discusses the context within which these principles were developed, lists the principles, and highlights the current state of practice and implementation considerations for each principle

Dear Colleague Letter: Restraint and Seclusion of Students with Disabilities (Office for Civil Rights, Dec. 28, 2016)

Use of seclusion and restraint may violate Section 504 if it 1) constitutes unnecessary different treatment; 2) is based on a policy, practice, procedure, or criterion that has a discriminatory effect on students with disabilities; or 3) denies a student's right to FAPE.

Fact Sheet: Restraint and Seclusion of Students with Disabilities (Office for Civil Rights, Dec. 28, 2016)

Where the school determines that not all of the student's educational needs are being met, the school must 1) determine the extent to which additional or different interventions or supports and services, including positive behavioral interventions and supports are being properly implemented; 3) ensure that any needed changes are made promptly; and 4) remedy any denial of FAPE that resulted from the school's prior use of restraint or seclusion.

Turning the Curve

Staff Development Grant FY18 Final & FY19 Interim Summary

Staff development activities included:

- Proactive behavior management
- Personal safety training
- Training on De-escalation techniques; and
- Implementing research-based curriculum and pedagogy for students with complex learning and behavioral needs.

Commonalities in promising Practices

- Focusing on trauma-informed practices and crisis de-escalation in lieu of compliance-based training
- Paid staff hours for curriculum writing
- Regular debriefing of staff injuries, use of restrictive procedures, and/or individualized data reviews

Opportunities for Improvement and Barriers to Success

- “Artificial inflation”
- Commonality in language with member districts
- Culturally-responsive school leadership
- Lack of available substitute staff
- Student mental illness

- Districts reported an increase in consistency and accuracy of data collection.
- Overall, districts saw a downward trend in the use of restrictive procedure, especially with per-student occurrence.
- Districts reported a substantial decrease in the use of discipline.
- Districts report they are seeing an increase in successful transitions to home districts.

Minnesota Department of Education Resources

Special Education Technical Assistance

651-582-8689

mde.compliance-assistance@state.mn.us

Student Maltreatment Program

651-582-8246

mde.student-maltreatment@state.mn.us