



## Focus On: Restraint and Seclusion in Schools

As more children with developmental and behavioral problems are mainstreamed into the general school population, the use of restraint and seclusion has become an increasingly complex concern for school administrators.

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School districts across the country must balance the risk of utilizing restraints and seclusion, if permitted, with the goal of providing a safe learning environment for all students and staff. Children are being subjected to restraint and/or seclusion at higher rates than adults and are at greater risk of injury, according to a 2009 report by the Government Accountability Office (GAO). The GAO noted "even if no physical injury is sustained, individuals can be severely traumatized during restraint." The report outlines several cases in public school settings where the use of restraints and/or seclusion resulted in student death.

According to the Civil Rights Data Collection (CRDC), 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 involving the monitored separation of the student in a non-locked setting for the purpose of calming."

The CRDC defines physical restraint as "a personal restriction that immobilizes or reduces the ability of a student to move his or her torso, arms, legs, or head freely. The term physical restraint does not include a physical escort. Physical escort means a temporary touching or

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

Mechanical restraint as defined by the CRDC is "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."

In a survey of more than 72,000 public schools K-12, the US Department of Education (DOE) found that during the 2009-2010 school year approximately 39,000 incidents of restraint and more than 25,000 cases of seclusion had taken place. Although seclusion and restraint behavioral modification is typically associated with special education, the data demonstrates that these techniques are used on students without disabilities as well.

The DOE recommends that restraint and seclusion should only be used in situations where a child's behavior poses imminent danger of serious physical harm to himself or others. Daniel A. Domenech, executive director of the American Association of School Administrators (AASA) acknowledges that "not every school administrator has used the best judgment in tackling that challenge."

While the AASA does not support the use of restraint and seclusion as a commonplace response, they note that restraint and seclusion can be necessary tools to protect school personnel and other students from dangerous incidents.

## Current environment

Differing policies, the lack of national standards and inconsistent state laws leave teachers and school officials with no clear guidance in what constitutes appropriate restraint or seclusion techniques and under what circumstances these techniques should be used. For example, some states allow restraint or seclusion to be used only in emergencies while other states have few limitations.

In May 2013, US Representative George Miller of California introduced the Keeping All Students Safe Act. This act would require all states to implement policies that limit the use of physical restraint and seclusion in schools as well as provide training in safe, effective behavior management and crisis intervention techniques for all school staff.

## Legal implications

A Louisiana school district was ordered to pay US\$ 1.8m in 2013 to parents of a five-year old girl who died after being restrained in a Rifton chair. The lawsuit noted the chair, designed for physical rehabilitation and activity, was being misused.

In Connecticut, a US\$ 5m lawsuit was filed in 2012 on behalf of a five-year old child placed in a seclusion room for a timeout as punishment.

In Michigan, a school district paid US\$ 1.3m in 2006 to the parents of a 15-year-old autistic boy who died while being restrained lying face down.

Depending on the circumstances of the restraint or seclusion, charges could be filed based on the Fourteenth Amendment's guarantee of due process or the Fourth Amendment's prohibition against unreasonable search and seizure. When making a decision, courts consider if such tactics are deemed to be reasonable, particularly if such use constitutes a routine disciplinary technique.

Use of restraint or seclusion in a situation that would "shock the conscience," however, could be actionable under the Due Process Clause. For example, a California court declined to dismiss due process claims in *Orange v. County of Grundy*, ruling that "placing school children in isolation (a storage closet) for an entire school day without access to lunch or a toilet facility 'shocks the conscience.'"

Similar to due process claims, courts use the reasonableness standard to analyze Fourth Amendment rights as demonstrated in the case *Rasmus v. Arizona*. In this case, the court upheld the student's claim that brief seclusion in a locked closet was unreasonable and constituted unlawful seizure because the confinement did not comply with the jurisdiction's fire code and the school district's behavior management guidelines.

In addition, the misuse of restraint and seclusion could give rise to legal claims under the Individuals with Disabilities Education Act, which requires a free and appropriate public education for children with disabilities. An argument could be made that some uses of seclusion and restraint would violate this requirement.

## Risk factors

There are many risk factors that may contribute to the misuse of restraint and seclusion. A lack of funds, resistance to change, gaps in teacher training, and inadequate data are several key issues that should be addressed.

### Lack of funds

The elimination of the Safe and Drug Free School state grants in 2009 has reduced funding for professional development and nonviolent crisis intervention programs. Federal cuts known as the sequester, that took effect in March 2013, have reduced the number of teachers and aides, curtailed training and increased class size.

### Resistance to change

Daniel Crimmins, director of the Center for Leadership at Georgia State University, commented that most often schools continue to do "what they always do" when it comes to restraint and seclusion. Many schools have historically used restraint and seclusion, and will continue to do so until something unfortunate happens or there is a change in leadership.

### Gaps in teacher training

Not all general education teachers receive training to deal with emotionally disturbed children. According to Sue Tobin, chief legal counsel of Ohio Legal Rights Services, this situation could create "a perfect storm of kids with more significant needs and people who are not trained to address their needs."

### Inadequate data

No single agency collects data on the use of restraint and seclusion, leaving many to speculate about the extent and severity of the problem. Research has demonstrated that this type of information can help to curtail the use of these disciplinary techniques once administrators become aware of the frequency of use.

## Minimizing the risk

The DOE and the Substance Abuse and Mental Health Services Administration have developed 15 principles that should be considered when establishing and implementing restraint and seclusion policies and procedures:

- 1 The adoption of a non-aversive affective behavioral multi-system such as positive behavioral interventions and supports, promoting a culture where students are able to achieve social and academic gains, while minimizing problem behavior as a whole.
- 2 A ban on the use of mechanical restraints or the use of drugs or medication (except as authorized by a qualified professional health staff) to restrict movement.
- 3 A ban on physical restraints or seclusion except in situations where the child's behavior poses imminent danger of serious physical harm to himself or others.
- 4 The adoption of restraint and seclusion policies that apply to all students, not just to children with disabilities.
- 5 The adoption of non-abusive behavioral interventions that respect the rights of a child as an individual.
- 6 A ban on the use of restraint or seclusion as a method of discipline, punishment, coercion, retaliation or as a convenience.
- 7 The prohibition of restraint and seclusion techniques such as 'prone' (lying face down) that would restrict a child's breathing or otherwise harm a child.
- 8 A review of behavioral strategies if restraint and seclusion are repeatedly used on an individual child, in a classroom, or by the same staff member.
- 9 The development of strategies that address the underlying trigger or cause of dangerous behavior that result in the use of restraint and seclusion.
- 10 Consistent teacher and staff training on the appropriate use of effective alternatives to physical restraint and seclusion and on the proper use of physical restraint and seclusion for those cases that could involve imminent danger or serious physical harm.
- 11 The monitoring, including visual scanning, of every instance to ensure the appropriateness of its use and safety of the child, other children and staff.
- 12 Communications to all parents about the restraint and seclusion policies used at their child's school, as well as applicable federal, state, or local laws.
- 13 Prompt notification of parents whose child has been restrained or secluded.
- 14 Regular review of restraint and seclusion policies by administrators.
- 15 Restraint and seclusion policies should require each incident be documented in detail and in writing. These reports should be used as case studies to implement changes where needed.

## Other key factors

In addition to these guidelines, it is also necessary to perform due diligence in selecting organizations and materials to train staff and teachers in the appropriate use of restraint and seclusion techniques.

All staff trained in the use of restraint and seclusion should also be qualified to recognize the signs of medical distress, provide first aid and administer cardiopulmonary resuscitation (CPR).

States vary as to the minimum conditions required for a seclusion room. It is important to address whether or not seclusion rooms meet at least the minimum state standards and comply with state and local fire and building codes.

## Exposure Checklist

- What is the state law regarding the use of restraint and seclusion in the school district?
- If the state does not have a policy on restraint and seclusion, has the school district developed policies and procedures regarding the use of restraint and seclusion? If so, are the policies and procedures reviewed on a regular basis?
- Does the school district's policy include a section that stipulates that restraint cannot be used if it impedes breathing, inflicts pain, or is life threatening? Have staff who use restraint and seclusion been trained to recognize signs of medical distress, administer CPR and provide first aid?
- Did the school consider the 15 principles developed by the DOE when creating and implementing their policies and procedures regarding the use of restraint and seclusion in their district?
- Have all parents been informed about the restraint and seclusion policies utilized at their school as well as applicable federal, state, or local laws? What is the mechanism for communicating these policies on an annual basis?
- Has the school implemented the positive behavior interventions and supports program? Are all teachers and staff periodically trained in this program?
- What training programs does the school utilize to educate their personnel on restraint and seclusion techniques? Are these training programs sanctioned by the State Department of Education? Is this training ongoing and documented? Has the proper due diligence been conducted on the quality and effectiveness of these training programs?
- If the school permits the use of restraint and seclusion, have all teachers (including general education teachers) and staff been properly trained in restraint and seclusion techniques?
- If restraint and seclusion techniques are utilized, are the incidents properly documented, written and/or videotaped?
- If seclusion is utilized as a method to calm a child, is the child constantly monitored throughout the period of time they are placed in seclusion?
- Are parents notified if restraint and seclusion techniques are utilized with their child as soon as an incident occurs?
- Is data recorded and reported on all incidents that involved the use of restraint and seclusion? Are incident reports reviewed to identify strategies to reduce the future use of restraint or seclusion?
- What are the minimum condition requirements for seclusion rooms in the state?
- Do the seclusion rooms meet approved fire and building code standards in the state?