ANNUAL CONFERENCE ON BEST PRACTICES FOR NON-PUBLIC SPECIAL EDUCATION PROGRAMS

HISTORICAL AND LEGAL PERSPECTIVES ON PHYSICAL RESTRAINT AND SECLUSION

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RERAINT AND SECLUSION UPDATE

I. PROPOSED FEDERAL LEGISLATION

Currently pending federal legislation on restraint and seclusion was introduced in Congress in response to findings that:

- children are subjected to physical restraint and seclusion at higher rates than adults;
- some physical restraints have resulted in deaths of children in schools; and
- children are protected from inappropriate physical restraint and seclusion in other settings (e.g., hospitals, health facilities, and non-medical community-based facilities) and similar protections are needed in schools – which procedures must acknowledge the differences of the school environment.

A. H.R. 4247: "Keeping All Students Safe Act" (introduced 12/9/09 by Rep. George Miller [CA])

1. This bill directs the Secretary of the U.S. Department of Education to establish minimum standards that:

   (a) prohibit elementary and secondary school personnel\(^1\) from managing any student by using any mechanical\(^2\) or chemical restraint,\(^3\) physical restraint,\(^4\) or physical escort\(^5\) that restricts breathing, or aversive behavioral intervention that compromises student health and safety;

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1 The term “school personnel” includes teachers, principals, administrators, counselors, social workers, psychologists, nurses, librarians, and other support staff who are employed by a school or who perform services for the school on a contractual basis. The term also includes “school resource officer,” defined as a career law enforcement officer, with sworn authority, deployed in community oriented policing, and assigned by the employing police department to a local educational agency to work in collaboration with schools and community based organizations.

2 The term “mechanical restraint” means the use of devices as a means of restricting a student’s freedom of movement.

3 The term “chemical restraint” means a drug or medication used on a student to control behavior or restrict freedom of movement that is not (a) prescribed by a licensed physician, or other qualified health professional acting under the scope of the professional’s authority under State law, for the standard treatment of a student’s medical or psychiatric condition; and (b) administered as prescribed by the licensed physician or other qualified health professional acting under the scope of the professional’s authority under State law.

4 The term “physical restraint” means a personal restriction that immobilizes or reduces the ability of an individual to move his or her arms, legs, or head freely. Such term does not include a physical escort.

5 The term “physical escort” means the temporary touching or holding of the hand, wrist, arm, shoulder or back for the purpose of inducing a resident who is acting out to walk to a safe location.

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(b) prohibit such personnel from using physical restraint or seclusion, unless such measures are required to eliminate an imminent danger of physical injury to the student or others and certain precautions are taken;

(c) require states to ensure that a sufficient number of school personnel receive state-approved and evidence-based crisis intervention training and certification in first aid, cardiopulmonary resuscitation, and certain safe, effective, and evidence-based student management techniques, including:

- positive behavior supports;
- safe physical escort;
- conflict prevention;
- understanding antecedents;
- de-escalation; and
- conflict management.

(d) prohibit physical restraint or seclusion from being written into a student’s education plan, individual safety plan, behavioral plan, or individual education program as a planned intervention; and

(e) require schools to establish procedures to notify parents in a timely manner, including (i) immediate verbal or electronic communication on the same day as each incident, and (ii) written notification within 24 hours of each incident, if physical restraint or seclusion is imposed on their child.

2. When physical restraint or seclusion of a student is required to eliminate an imminent danger of physical injury to such student or others, school personnel must continuously monitor such student face-to-face or, if their safety is significantly compromised by such monitoring, they must remain in direct visual contact with the student.

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6 The term "seclusion" means a behavior control technique involving locked isolation. Such term does not include a time out.

7 The term "positive behavior supports" means a systematic approach to embed evidence-based practices and data-driven decisionmaking to improve school climate and culture, including a range of systemic and individualized strategies to reinforce desired behaviors and diminish reoccurrence of problem behaviors, in order to achieve improved academic and social outcomes and increase learning for all students, including those with the most complex and intensive behavioral needs.
B. S. 2860: “Preventing Harmful Restraint and Seclusion in Schools Act” (introduced 12/9/09 by Senator Chris Dodd [CT]); “Keeping All Students Safe Act” (reintroduced 9/29/10 by Senator Dodd and Senator Richard Burr [NC])

This bill is substantially similar to H.R. 4247, with the following key exceptions:

1. It would permit restraint and seclusion to be included in a student’s IEP or other student plan under certain circumstances, including:

   (a) if the IEP or other student plan is consistent with the bill’s standards on the use of such techniques;

   (b) if the student has a documented history of dangerous behavior in the past two years that has created an imminent danger of serious bodily injury in school; and

   (c) if a comprehensive, data-driven FBA has been conducted and a BIP has been developed.

2. If there is a “rare and clearly unavoidable emergency circumstance” when trained and certified school personnel are not available due to the unforeseeable nature of the emergency circumstance, and after other preconditions are met, other school personnel may impose physical restraint or seclusion upon a student if his/her behavior poses an imminent danger of physical injury to self or others.

3. Within 5 days after the imposition of physical restraint or seclusion upon a student, all school personnel involved and appropriate supervisory and administrative staff would be required to participate in a “debriefing session”, including:

   (a) documentation of antecedents to the physical restraint or seclusion; and

   (b) prevention planning.

   Parents must be given advance notice of the debriefing session and an opportunity to attend.

4. S. 2860 would permit the use of devices implemented by trained school personnel, or utilized by a student, for the specific and approved therapeutic or safety purposes for which such devices were designed, including:
(a) restraints for medical immobilization;

(b) 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 a mechanical support; or

(c) vehicle safety restraints when used as intended during the transport of a student in a moving vehicle.

C. IMPLICATIONS FOR ILLINOIS?

1. See ISBE regulations at 23 Ill. Admin. Code §§1.280 and 1.285 on requirements for the use of isolated time-out and physical restraint in schools (attached).

2. See “Letter to Chief State School Officers” (DOE 7/31/09) (attached):

   “My [Secretary Duncan’s] home State of Illinois has what I believe to be one good approach, including both a strong focus on Positive Behavior Intervention and Supports (PBIS) as well as State regulations that limit the use of seclusion and restraint under most circumstances . . .”

II. EXAMPLES OF CASES ON THE USE OF SECLUSION AND PHYSICAL RESTRAINT

A. UNFAVORABLE RULINGS FOR DISTRICTS

1. Bellflower Unified School District, 54 IDELR 66 (SEA CA 1/26/10): Substitute teacher observed 5-year-old student with “autistic-like behaviors” hitting other children during recess. The substitute believed that he posed a threat to the other children and removed him from the playground and brought him back to his classroom, where he would not remain in his seat despite her redirection. She then restrained him in his chair with “soft ties” for approximately five minutes, at which time his mother arrived at the school and released him. The parents requested a due process hearing to address this and numerous other issues. The district argued that the student had only been restrained for a short time and was not harmed, physically or psychologically, by the restraint. The hearing officer found in favor of the parents, because the student no longer posed an imminent threat of harm to his classmates once he had been removed from the playground and there was therefore no justification for restraining him.
2. *Sanchez v. Commonwealth of Puerto Rico*, 53 IDELR 325 (D.C. Puerto Rico 1/12/10): Student’s IEP included a BIP that included the creation and use of a gate which allowed him and other special education students to play in a secured yard. However, a “barred cage” was built by instead. The court found that this deviation from the student’s BIP resulted in a violation of his constitutional rights.

3. *Emily Charter School #4012*, 110 LRP 15182 (SEA MN 12/1/09): A hearing officer found that the charter school’s use of mechanical restraints, manual restraints, and time-out for seclusion, without proper procedures and in non-emergency situations, violated Minnesota law on restraint and seclusion.

4. *West Baton Rouge Parish School System*, 53 IDELR 245 (SEA LA 6/22/09): A second-grade student with autism had a history of aggressive conduct, climbing, and running away. His teacher admitted that she occasionally grabbed him to keep him from running out the back door of the school, and that a paraprofessional had placed her hand over the boy’s mouth to keep him quiet so that he would not disturb other classes. The hearing officer noted that the LRE mandate of *IDEA* requires districts to refrain from using unnecessary physical restraint, and the paraprofessional’s restraint (i.e., putting her hand over the student’s mouth) was unnecessary in that it was not needed to ensure his physical safety or that of others.

5. *Lincoln County School District*, 109 LRP 38470 (SEA OR 5/12/09): First-grade student with autism had a BIP to address targeted behaviors such as throwing and knocking over objects, hitting, biting, head butting, grabbing other’s clothing, rolling, crawling, and running away from adults. His BIP included a “cool down” routine where he was escorted to a separate space, using restraint if necessary, and given visual and sign language prompts to quiet him down. The parents filed a complaint, and the Oregon Department of Education determined that the district had violated the *IDEA* by removing the student from his educational setting for an excessive amount of time during certain days and cumulatively.

**B. FAVORABLE RULINGS FOR DISTRICTS**

1. *South Lyon (MI) Community Schools*, 55 IDELR 108 (OCR 5/11/10): A 7-year-old student with an emotional disability had an IEP, including a BIP, which provided for his placement in the general education classroom with access to the special education resource room from 5 to 10 hours per week. The staff was to fill out daily progress reports and send them to the parents to sign and return. The BIP included provisions that the student would receive positive rewards to encourage positive behaviors and work completion. The BIP also included a provision for the student to have access to a “vacation” area in the resource room to calm down, as
well as access to a sensory area. The BIP further provided that, if necessary, only the ED teacher in the resource room would use a basket hold to restrain the student for “physical aggression.” The IEP and BIP were subsequently revised, so that the student was in the special education resource room for between 15 and 30 hours, the district would reward the student for good behavior, provide a “vacation” (beanbag) area, and would remove the student from the classroom to the resource room as an intervention step. The parent filed a complaint of discrimination with OCR, alleging that staff members were unnecessarily restraining the student 3 to 4 times a day, not properly documenting the restraints, and, on at least 3 occasions, the student had wet himself while being restrained. The parent also alleged that she was never notified of the restraint except through the daily logs, that staff members were not properly trained to restrain students, and that the district did not have a policy regarding restraint of students. OCR did not find evidence to support the parent’s claim of disability discrimination and denial of FAPE. OCR noted that the staff who worked with the student attended a workshop to learn proper restraint techniques, and that the initial IEP and BIP permitted restraint if the student’s behavior posed a threat to himself or others. Although that provision was later removed at the parent’s request, the district’s guidelines did allow for the use of restraint under similar circumstances.

2. Donald Lee King et al. v. Pioneer Regional Educational Service Agency et al., 110 LRP 23970 (U.S.Ct. 4/19/10): The U.S. Supreme Court declined to hear an appeal of the Georgia Court of Appeals decision that neither the Georgia State Board of Education nor the operator of a private therapeutic school could be held liable by the parents of a student who hanged himself in the school’s time-out room. The student first enrolled in the private therapeutic school in the fall of 2002, at age 11, due to emotional behavioral issues. He had been diagnosed with ADHD at a young age. On several occasions during his enrollment at the private therapeutic school, he had made suicidal comments to a few of the school staff members. However, when the school psychologist tried to discuss these threats with the student, he responded by saying that he was kidding and did not have a true intent to commit suicide. The student’s mother was aware of his suicidal comments but stated that she believed he made them in order to manipulate her. In the fall of 2004, the student’s parents caught him sniffing gasoline. He was admitted to a psychiatric hospital for evaluation and treatment of inhalant abuse, then discharged to resume his enrollment at the private therapeutic school. The hospital discharge summary indicated that the student denied feeling suicidal and indicated that he could be discharged safely. In November of 2004, the student came to school in the morning wearing pants that were too loose for him. He asked his teacher if he could go to the classroom next door to ask if the paraprofessional had anything that could be used as a makeshift belt. The teacher agreed and gave the student a length of macrame from the class art supplies to use
as a belt. Later in the day, the student picked a fight with other students and eventually climbed over his study carrel in an attempt to attack one of them. After physically restraining the student, the paraprofessional took him into the hallway and asked another paraprofessional to assist him in taking the student to the time-out room. Upon entering the time-out room, the student removed his shoes, but not his macrame belt. One of the paraprofessionals began to monitor his behavior in the time-out room through a window in the door. During the first fifteen minutes the student cursed, asked to be let out, and repeatedly hit the door. Shortly thereafter, he became quiet and thus the paraprofessional decided to let him out of the time-out room. However, the paraprofessional discovered the student unconscious, having hanged himself from the metal grate on the door’s window with his macrame belt. The parents filed a wrongful death action against the Georgia Department of Education, the private therapeutic school, and others. Their claims included an allegation that the student was deprived of his due process rights under the 14th Amendment as a result of the failure to implement appropriate policies and training regarding the use of time-out rooms and prevention of suicide. The parents further argued that the private school had an affirmative duty to prevent the student from harming himself, and that confining the student to the time-out room constituted restraint on his liberty that was similar to that of an incarcerated inmate or an involuntarily committed mental patient. The court disagreed, finding that there was no evidence of any deliberate indifference by the employees who were responsible for placing the student in the time-out room.

3. *Payne v. Peninsula School District*, 54 IDELR 72 (9th Cir. 3/18/10): A 7-year-old boy with “moderate autism” was resistant to school work, impulsive, and exhibited “inappropriate or aggressive” responses to his environment. His IEP was designed to address these issues, and included various intervention methods such as the use of time-out in a “safe room.” The safe room was a room about 5' by 6' within the special education classroom. There were disputed details in the case about what the parties had exactly agreed to with respect to the safe room—e.g., whether it was to have a locked, closed door with no adult inside and the duration of the student’s confinement there. On several occasions the student had removed his clothes and urinated and defecated on himself in the safe room, after which he helped his teacher clean up. The parents filed a lawsuit against the district, alleging negligence, constitutional claims, and violations of the IDEA. The district court dismissed the case, because the parents were required to exhaust their administrative remedies under the IDEA before proceeding with a Section 1983 action. The U.S. Court of Appeals for the Ninth Circuit affirmed this decision.
4. C.N. v. Willmar Public Schools, Independent School District No. 347, 53 IDELR 251 (8th Cir. 1/7/10): A third-grade student’s teacher was alleged (among other things) to have made the student sit at a “thinking desk” and maintain a physical posture for a specified time or face restraint or seclusion. After moving out of the district, the parent filed a due process request, which was dismissed because the student was no longer enrolled in the district. The parent appealed to the district court asserting various federal and state claims, and this appeal was dismissed as well. The parent appealed again. With respect to the parent’s claim that the teacher’s restraint and seclusion of the student violated the child’s Fourth Amendment rights, the U.S. Court of Appeals for the Eighth Circuit found that there was no constitutional violation because the student’s IEP/BIP allowed the teacher to use seclusion and restraint techniques and the parent did not object to the BIP prior to moving out of the district.

5. G.C. v. School Board of Seminole County, Florida, 52 IDELR 255 (D.C. Fla. 6/10/09): A student with PDD and ADHD was described as a “known runner.” While he was leaving his classroom and heading towards the bus stop, his teacher sometimes needed to grab him and pull him back to keep him from running away. At times she would also place her leg over the student’s legs while they waited at the bus stop. The parent filed a lawsuit, asserting a variety of claims stemming from the teacher’s alleged improper restraint and abuse of the student. The court ruled in favor of the teacher and the district, noting that under the circumstances the teacher had not used excessive force to restrain the boy.

6. Valley View (OH) Local School District, 53 IDELR 335 (OCR 5/20/09): A second-grader with bipolar disorder would at times be disruptive and physically aggressive with staff and students. On one occasion to school personnel had to call the police to help get him under control. His IEP, to which the parents had agreed, called for the use of restraint when the boy’s behavior became uncontrollable. After several incidents in which staff restrained the student and carried him through the hallway (in front of other students) to the principal’s office, the parents filed a complaint with OCR alleging that the district had harassed the student on the basis of his disability. OCR rejected this claim, noting that the restraint of the student by staff was consistent with his IEP.

7. T.W. v. School Board of Seminole County, Florida, 52 IDELR 155 (D.C. Fla. 4/28/09): A middle school student with PDD-NOS had a history of aggressive and disruptive behaviors. On at least three occasions his special education teacher restrained him—once when he screamed at the teacher and refused to go to his “cool down” room, once to stop him from scratching himself, and a third time after he tried to hit her. The parent filed a lawsuit, asserting a variety of claims stemming from the teacher’s alleged improper restraint and abuse of the student.
The court ruled in favor of the teacher and the district, noting that while the use of restraints may not be the best or most appropriate way to address a child’s behavior, the teacher’s conduct did not amount to a constitutional violation.
Section 1.280 Discipline

Section 24-24 of the School Code [105 ILCS 5/24-24] provides for teachers, other certificated educational employees and persons providing a related service for or with respect to a student as determined by the board of education to maintain discipline in the schools.

a) The board of education shall establish and maintain a parent-teacher advisory committee as provided in Section 10-20.14 of the School Code [105 ILCS 5/10-20.14].

b) The board of education shall establish a policy on the administration of discipline in accordance with the requirements of Sections 10-20.14 and 24-24 of the School Code [105 ILCS 5/10-20.14 and 24-24] and disseminate that policy as provided in Section 10-20.14 of the School Code.

c) Any use of isolated time out or physical restraint permitted by a board's policy shall conform to the requirements of Section 1.285 of this Part. If isolated time out or physical restraint is to be permitted, the policy shall include:

1) the circumstances under which isolated time out or physical restraint will be applied;

2) a written procedure to be followed by staff in cases of isolated time out or physical restraint;

3) designation of a school official who will be informed of incidents and maintain the documentation required pursuant to Section 1.285 of this Part when isolated time out or physical restraint is used;

4) the process the district or other administrative entity will use to evaluate any incident that results in an injury that the affected student (or the responsible parent or guardian), staff member, or other individual identifies as serious;

5) a description of the alternative strategies that will be implemented when determined advisable pursuant to Section 1.285(f)(4) of this Part; and
6) a description of the district's or other administrative entity's annual review of the use of isolated time out or physical restraint, which shall include at least:

   A) the number of incidents involving the use of these interventions,

   B) the location and duration of each incident,

   C) identification of the staff members who were involved,

   D) any injuries or property damage that occurred, and

   E) the timeliness of parental notification and administrative review.

   d) In addition to, or as part of, its policy on the maintenance of discipline, each board of education shall adopt policies and procedures regarding the use of behavioral interventions for students with disabilities who require such intervention. Each board's policies and procedures shall conform to the requirements of Section 14-8.5 (c) of the School Code [105 ILCS 5/14-8.05(c)].

   (Source: Amended at 26 Ill. Reg. 1157, effective January 16, 2002)
Section 1.285 Requirements for the Use of Isolated Time Out and Physical Restraint

Isolated time out and physical restraint as defined in this Section shall be used only as means of maintaining discipline in schools (that is, as means of maintaining a safe and orderly environment for learning) and only to the extent that they are necessary to preserve the safety of students and others. Neither isolated time out nor physical restraint shall be used in administering discipline to individual students, i.e., as a form of punishment. Nothing in this Section or in Section 1.280 of this Part shall be construed as regulating the restriction of students' movement when that restriction is for a purpose other than the maintenance of an orderly environment (e.g., the appropriate use of safety belts in vehicles).

a) "Isolated time out" means the confinement of a student in a time-out room or some other enclosure, whether within or outside the classroom, from which the student's egress is restricted. The use of isolated time out shall be subject to the following requirements.

1) Any enclosure used for isolated time out shall:

A) have the same ceiling height as the surrounding room or rooms and be large enough to accommodate not only the student being isolated but also any other individual who is required to accompany that student;

B) be constructed of materials that cannot be used by students to harm themselves or others, be free of electrical outlets, exposed wiring, and other objects that could be used by students to harm themselves or others, and be designed so that students cannot climb up the walls (including walls far enough apart so as not to offer the student being isolated sufficient leverage for climbing); and

C) be designed to permit continuous visual monitoring of and communication with the student.

2) If an enclosure used for isolated time out is fitted with a door, either a steel door or a wooden door of solid-core construction shall be used. If the door
includes a viewing panel, the panel shall be unbreakable.

3) An adult who is responsible for supervising the student shall remain within two feet of the enclosure.

4) The adult responsible for supervising the student must be able to see the student at all times. If a locking mechanism is used on the enclosure, the mechanism shall be constructed so that it will engage only when a key, handle, knob, or other similar device is being held in position by a person, unless the mechanism is an electrically or electronically controlled one that is automatically released when the building's fire alarm system is triggered. Upon release of the locking mechanism by the supervising adult, the door must be able to be opened readily.

b) "Physical restraint" means holding a student or otherwise restricting his or her movements. "Physical restraint" as permitted pursuant to this Section includes only the use of specific, planned techniques (e.g., the "basket hold" and "team control").

c) The requirements set forth in subsections (d) through (h) of this Section shall not apply to the actions described in this subsection (c) because, pursuant to Section 10-20.33 of the School Code [105 ILCS 5/10-20.33], "restraint" does not include momentary periods of physical restriction by direct person-to-person contact, without the aid of material or mechanical devices, accomplished with limited force and designed to:

1) prevent a student from completing an act that would result in potential physical harm to himself, herself, or another or damage to property; or

2) remove a disruptive student who is unwilling to leave the area voluntarily.

d) The use of physical restraint shall be subject to the following requirements.

1) Pursuant to Section 10-20.33 of the School Code, physical restraint may only be employed when:

   A) the student poses a physical risk to himself, herself, or others,

   B) there is no medical contraindication to its use, and

   C) the staff applying the restraint have been trained in its safe application as specified in subsection (h)(2) of this Section.

2) Students shall not be subjected to physical restraint for using profanity or other verbal displays of disrespect for themselves or others. A verbal threat shall not be considered as constituting a physical danger unless a student also demonstrates a means of or intent to carry out the threat.

3) Except as permitted by the administrative rules of another State agency operating or licensing a facility in which elementary or secondary educational services are provided (e.g., the Illinois Department of Corrections or the Illinois Department of Human Services), mechanical or
chemical restraint (i.e., the use of any device other than personal physical force to restrict the limbs, head, or body) shall not be employed.

4) Medically prescribed restraint procedures employed for the treatment of a physical disorder or for the immobilization of a person in connection with a medical or surgical procedure shall not be used as means of physical restraint for purposes of maintaining discipline.

5) Any application of physical restraint shall take into consideration the safety and security of the student. Further, physical restraint shall not rely upon pain as an intentional method of control.

6) In determining whether a student who is being physically restrained should be removed from the area where such restraint was initiated, the supervising adult(s) shall consider the potential for injury to the student, the student's need for privacy, and the educational and emotional well-being of other students in the vicinity.

7) If physical restraint is imposed upon a student whose primary mode of communication is sign language or an augmentative mode, the student shall be permitted to have his or her hands free of restraint for brief periods, unless the supervising adult determines that such freedom appears likely to result in harm to the student or others.

e) Time Limits

1) A student shall not be kept in isolated time out for more than 30 minutes after he or she ceases presenting the specific behavior for which isolated time out was imposed or any other behavior for which it would be an appropriate intervention.

2) A student shall be released from physical restraint immediately upon a determination by the staff member administering the restraint that the student is no longer in imminent danger of causing physical harm to himself, herself, or others.

f) Documentation and Evaluation

1) A written record of each episode of isolated time out or physical restraint shall be maintained in the student's temporary record. The official designated pursuant to Section 1.280(c)(3) of this Part shall also maintain a copy of each such record. Each such record shall include:

   A) the student's name;
   B) the date of the incident;
   C) the beginning and ending times of the incident;
   D) a description of any relevant events leading up to the incident;
E) a description of any interventions used prior to the implementation of isolated time out or physical restraint;

F) a description of the incident and/or student behavior that resulted in isolated time out or physical restraint;

G) a log of the student's behavior in isolated time out or during physical restraint, including a description of the restraint technique(s) used and any other interaction between the student and staff;

H) a description of any injuries (whether to students, staff, or others) or property damage;

I) a description of any planned approach to dealing with the student's behavior in the future;

J) a list of the school personnel who participated in the implementation, monitoring, and supervision of isolated time out or physical restraint;

K) the date on which parental notification took place as required by subsection (g) of this Section.

2) The school official designated pursuant to Section 1.280(c)(3) of this Part shall be notified of the incident as soon as possible, but no later than the end of the school day on which it occurred.

3) The record described in subsection (f)(1) of this Section shall be completed by the beginning of the school day following the episode of isolated time out or physical restraint.

4) The requirements of this subsection (f)(4) shall apply whenever an episode of isolated time out exceeds 30 minutes, an episode of physical restraint exceeds 15 minutes, or repeated episodes have occurred during any three-hour period.

A) A certified staff person knowledgeable about the use of isolated time out or trained in the use of physical restraint, as applicable, shall evaluate the situation.

B) The evaluation shall consider the appropriateness of continuing the procedure in use, including the student's potential need for medication, nourishment, or use of a restroom, and the need for alternate strategies (e.g., assessment by a mental health crisis team, assistance from police, or transportation by ambulance).

C) The results of the evaluation shall be committed to writing and copies of this documentation shall be placed into the student's temporary student record and provided to the official designated pursuant to Section 1.280(c)(3) of this Part.

5) When a student has first experienced three instances of isolated time out or
physical restraint, the school personnel who initiated, monitored, and supervised the incidents shall initiate a review of the effectiveness of the procedure(s) used and prepare an individual behavior plan for the student that provides either for continued use of these interventions or for the use of other, specified interventions. The plan shall be placed into the student's temporary student record. The review shall also consider the student's potential need for an alternative program or for special education.

A) The district or other entity serving the student shall invite the student's parent(s) or guardian(s) to participate in this review and shall provide ten days' written notice of its date, time, and location.

B) The notification shall inform the parent(s) or guardian(s) that the student's potential need for special education or an alternative program will be considered and that the results of the review will be entered into the temporary student record.

g) Notification to Parents

1) A district whose policies on the maintenance of discipline include the use of isolated time out or physical restraint shall notify parents to this effect as part of the information distributed annually or upon enrollment pursuant to Sections 10-20.14 and 14-8.05(c) of the School Code [105 ILCS 5/10-20.14 and 14-8.05(c)].

2) Within 24 hours after any use of isolated time out or physical restraint, the school district or other entity serving the student shall send written notice of the incident to the student's parent(s), unless the parent has provided the district or other entity with a written waiver of this requirement for notification. Such notification shall include the student's name, the date of the incident, a description of the intervention used, and the name of a contact person with a telephone number to be called for further information.

h) Requirements for Training

1) Isolated Time Out
   Each district, cooperative, or joint agreement whose policy permits the use of isolated time out shall provide orientation to its staff members covering at least the written procedure established pursuant to Section 1.280(c)(2) of this Part.

2) Physical Restraint

   A) Physical restraint as defined in this Section shall be applied only by individuals who have received systematic training that includes all the elements described in subsection (h)(2)(B) of this Section and who have received a certificate of completion or other written evidence of participation. An individual who applies physical restraint shall use only techniques in which he or she has received such training within the preceding two years, as indicated by written evidence of participation.
B) Training with respect to physical restraint may be provided either by the employer or by an external entity and shall include, but need not be limited to:

i) appropriate procedures for preventing the need for physical restraint, including the de-escalation of problematic behavior, relationship-building, and the use of alternatives to restraint;

ii) a description and identification of dangerous behaviors on the part of students that may indicate the need for physical restraint and methods for evaluating the risk of harm in individual situations in order to determine whether the use of restraint is warranted;

iii) the simulated experience of administering and receiving a variety of physical restraint techniques, ranging from minimal physical involvement to very controlling interventions;

iv) instruction regarding the effects of physical restraint on the person restrained, including instruction on monitoring physical signs of distress and obtaining medical assistance;

v) instruction regarding documentation and reporting requirements and investigation of injuries and complaints; and

vi) demonstration by participants of proficiency in administering physical restraint.

C) An individual may provide training to others in a particular method of physical restraint only if he or she has received written evidence of completing training in that technique that meets the requirements of subsection (h)(2)(B) of this Section within the preceding one-year period.

(Source: Added at 26 Ill. Reg. 1157, effective January 16, 2002)
Key Policy Letters Signed by the Education Secretary or Deputy Secretary
July 31, 2009

July 31, 2009

Dear Chief State School Officers:

On May 19, the Education and Labor Committee in the U.S. House of Representatives held a hearing to examine the abusive and potentially deadly misapplication of seclusion and restraint techniques in schools. Related to this hearing was the testimony issued on the same day by the Government Accountability Office on "Seclusions and Restraints: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers." The testimony is available on the Internet at the following Web address: http://www.gao.gov/new.items/d09071sr.pdf.

I was deeply troubled by the testimony, as I am sure you would have been. As education leaders, our first responsibility should be to make sure that schools foster learning in a safe environment for all of our children and teachers. Therefore, I am encouraging each State to review its current policies and guidelines regarding the use of restraints and seclusion in schools to ensure every student is safe and protected, and if appropriate, develop or revise its policies and guidelines.

My home State of Illinois has what I believe to be one good approach, including both a strong focus upon Positive Behavior Intervention and Supports (PBIS) as well as State regulations that limit the use of seclusion and restraint under most circumstances (see http://www.isbe.state.il.us/rti/les/archieve/ndfs/oneark.pdf). The State's requirements, which I found to be extremely helpful as chief executive officer of the Chicago Public Schools, were described in testimony at the hearing. Illinois prohibits the use of seclusion or restraint for the purpose of punishment or exclusion, and allows trained staff to restrain students only in narrow circumstances. The State allows the use of isolated time out or physical restraint only in situations when it is absolutely necessary to preserve the safety of self or others; includes rules that must be followed when these techniques are used; and requires documentation of each incident to be provided to parents within 24 hours. Several other States have also adopted effective seclusion and/or restraint policies, but there are many jurisdictions that have not, leaving students and teachers vulnerable.

Approximately 8,000 schools across the country are already implementing PBIS, a systems approach to establishing the social culture needed for schools to achieve social and academic gains while minimizing problem behavior for all children. PBIS provides a framework for decision making that guides the implementation of evidence-based academic and behavioral practices throughout the entire school, frequently resulting in significant reductions in office disciplinary referrals, suspensions, and expulsions. While the successful implementation of PBIS typically results in improved social and academic outcomes, it will not eliminate all behavior incidents in a school. However, PBIS is an important preventative approach that can increase the capacity of the school staff to support children with the most complex behavioral needs, thus reducing the instances that require intensive interventions.

The American Recovery and Reinvestment Act provides significant one-time resources that districts can use to implement a school-wide system of PBIS. Districts could, consistent with program requirements, use funds provided for the State Fiscal Stabilization Fund, Title I of the Elementary and Secondary Education Act, the Individuals with Disabilities Education Act, and State and local funds to provide professional development, develop data systems, and offer coaching to establish and sustain these programs. The Department's Office of Special Education Programs funds the Center on Positive Behavioral Interventions and Supports, with a Web site (http://www.pbis.org/) where additional information and technical assistance on PBIS can be obtained free of charge.

I urge each of you to develop or review and, if appropriate, revise your State policies and guidelines to ensure that every student in every school under your jurisdiction is safe and protected from being unnecessarily or inappropriately restrained or secluded. I also urge you to publicize these policies and guidelines so that administrators, teachers, and parents understand and consent to the limited circumstances under which these techniques may be used; ensure that parents are notified when these interventions do occur; and provide the resources needed to successfully implement the policies and hold school districts accountable for adhering to the guidelines.

I encourage you to have your revised policies and guidance in place prior to the start of the 2009-2010 school year to help ensure that no child is subjected to the abusive or potentially deadly use of seclusion or restraint in a school. I have asked Fran Walter of our Office of Elementary and Secondary Education to work with staff from our regional Comprehensive Centers to contact your office by August 15, to discuss the status of your State's efforts with regard to limiting the use of seclusion and restraint to protect our students. During this contact, we expect to discuss relevant State laws, regulations, policies, and guidance that affect the use of seclusion and restraint, and any plans for further development or revisions. We expect to post the results of these discussions on the Department's Web site to assist in the sharing of information that will help protect our students.

In the meantime, please feel free to contact Ms. Walter at (202) 205-9198 or at Fran.Walter@ed.gov with any information or

http://www2.ed.gov/print/policy/elsec/guid/secletter/090731.html
questions about your State's efforts to limit the use of restraints and seclusion in schools.

Thank you for your cooperation on this important topic.

Sincerely,

/s/

Ame Duncan

http://www2.ed.gov/print/policy/elsec/guid/secletter/090731.html