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.

School districts across the country must address the risk of utilizing restraint and seclusion, if permitted by local and state laws, as they work to provide a safe learning environment for all students and staff. Children in school settings are subjected to restraint and/or seclusion at much higher rates than adults in correctional and mental health settings 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.” In 2014, the United States Senate Committee on Health, Education, Labor and Pensions, published an investigative study of ten cases to better understand the context in which restraint and seclusion practices were being used. The Committee found that in many cases parents were not aware that their children were subjected to restraint and seclusion, had little power to stop these practices, and that the results of these practices were, in some cases, serious injury or death.

According to the US Department of Education’s “Restraint and Seclusion: Resource Document,” 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.”
The Department of Education (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.

Legal environment

Differing policies, the lack of national standards and a variety of state laws leave teachers and school officials with inconsistent 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.

Congressional bills to regulate the use of restraint and seclusion have been introduced repeatedly from 2009 through 2015. Though no federal laws have been passed, the draft legislation has had a substantial impact in prompting states to adopt and strengthen their own restraint and seclusion laws. However, as of July 25, 2015, only 25 states had meaningful protections by law for all children from both restraint and seclusion.

States with meaningful protections

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Source: How safe is the schoolhouse?, July 2015

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 2013, a California school district paid a total of US$ 8m to eight students who were subjected to restraints and abuse by a kindergarten teacher.

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.

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 contribute to the use of restraint and seclusion. Inadequate use of funds, gaps in mandated training, the halo effect/code of silence and insufficient data are all key issues that need to be addressed.

Inadequate use of funds
Title II of the Elementary and Secondary Education Act provides states and local districts with over US$ 2bn dollars for school staff professional development. However, due to competing needs, not all schools make the choice to utilize the funds to provide appropriate training to prevent the use of restraint and seclusion in the nation’s schools.

Gaps in mandated training
According to the report “How Safe is the Schoolhouse?” as of July 2015, there are 29 states with restraint and seclusion laws that require staff training, however the requirements in some states are minimal at best. According to the Positive Behavior Interventions and Supports (PBIS) Center Network, as of August 2015, approximately 20% of school staff across the nation have received PBIS training through their network. While other schools may have received PBIS training outside of the PBIS Center Network, it is difficult to quantifi

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 Behavior Interventions and Supports (PBIS), 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.
since there is no central reporting unit tracking these figures.

**Halo effect and code of silence**
The vast majority of teachers are effective and knowledgeable in their roles as educators. Some, however, use restraint and seclusion and cause injury and harm to children. These teachers often go undetected because they are considered beyond reproach, similar to doctors, police officers and clergy. In addition, if a concern arises about the use of restraint and seclusion, school personnel often adopt a code of silence. In an effort to reduce and/or eliminate the use of restraints and seclusion, school administrators need to foster an open environment where it is safe for staff, parents and students to question and report any suspected incidents.

**Inadequate data**
As of July 25, 2015, only 16 states require annual collection of restraint and seclusion data for all children, 22 states for children with disabilities. 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.

**Other key factors**
In addition to these guidelines, it is also necessary for school administrators 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.

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**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 which 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 state laws? What is the mechanism for communicating these policies on an annual basis?
- Has the school implemented the Positive Behavior Interventions and Supports (PBIS) 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?