ACSA EVERY CHILD COUNTS SYMPOSIUM

BEHAVIORAL SUPPORTS AND INTERVENTIONS

February 6, 2020

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BEHAVIORAL SUPPORTS AND INTERVENTIONS

February 6, 2020

Page 1

<table>
<thead>
<tr>
<th>Presentation Slides</th>
<th>1</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Oakland USD OCR 09-14-1465</td>
<td>25</td>
</tr>
<tr>
<td>2. US DOE Restraint and Seclusion Resource Document</td>
<td>64</td>
</tr>
<tr>
<td>3. Dear Colleague Letter – Restraints and Seclusion of Students with Disabilities (December 28, 2016)</td>
<td>109</td>
</tr>
<tr>
<td>4. Summary for Stakeholders</td>
<td>133</td>
</tr>
<tr>
<td>5. Legal Update Memo 11-2013 – Functional Analysis Assessment (aka “Hughes Bill”) is Repealed</td>
<td>135</td>
</tr>
<tr>
<td>6. Legal Update Memo 37-2018 – New Law Requires Schools to Limit Use of Restraint and Seclusion for All Students and to Collect Related Data</td>
<td>139</td>
</tr>
</tbody>
</table>
Behavioral Supports and Interventions
February 6, 2020

Presented by:
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Duty to Provide a Safe Environment

- Public school teachers have a statutory duty to supervise their students in order to maintain a safe and welcoming environment.
- Teachers are required to “hold pupils to a strict account for their conduct on the way to and from school, on the playgrounds, or during recess,” and may impose “physical control reasonably necessary to maintain order, protect property, or protect the health and safety of pupils, or to maintain proper and appropriate conditions conducive to learning.” Education Code § 44807.
- “California law has long imposed on school authorities a duty to supervise at all times the conduct of the children on the school grounds and to enforce those rules and regulations necessary to their protection.” Dailey v. Los Angeles Unified School Dist., 2 Cal.3d 741, 747 (1970).
- “This uniform standard to which [school personnel] are held is that degree of care which a person of ordinary prudence, charged with (comparable) duties, would exercise under the same circumstances.” Id.
  - A total lack of supervision or ineffective supervision may constitute a lack of ordinary care on the part of those responsible for student supervision.
  - If a teacher is not available, the duty falls to the site administrator present at the time (including the principal, vice principal, or lead teacher), to assure that students are supervised and that playground activities are safe. Cal. Code of Regs., title 5, § 5552.
Behavioral Interventions

- The California Legislature has made the following findings with regard to behavioral interventions:
  1. That the state has continually sought to provide an appropriate and meaningful educational program in a safe and healthy environment for all children regardless of possible physical, mental, or emotionally disabling conditions.
  2. That some schoolage individuals with exceptional needs have significant behavioral challenges that have an adverse impact on their learning or the learning of other pupils, or both.
  3. That Section 1400(c)(5)(F) of Title 20 of the United States Code states that research and experience demonstrate that the education of children with disabilities can be made more effective by providing incentives for positive behavioral interventions and supports to address the learning and behavioral needs of those children.
  4. That procedures for the elimination of maladaptive behaviors shall not include those deemed unacceptable under Section 49001 or those that cause pain or trauma.

Education Code § 56520

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Behavioral Interventions

- The expressed legislative intent behind the statutory provisions on Behavioral Interventions are:
  1. That children exhibiting serious behavioral challenges receive timely and appropriate assessments and positive supports and interventions in accordance with the federal Individuals with Disabilities Education Act (20 U.S.C. § 1400 et seq.) and its implementing regulations.
  2. That assessments and positive behavioral interventions and supports be developed and implemented in a manner informed by guidance from the United States Department of Education and technical assistance centers sponsored by the Office of Special Education Programs of the United States Department of Education.
  3. That when behavioral interventions, supports, and other strategies are used, they be used in consideration of the pupil’s physical freedom and social interaction, be administered in a manner that respects human dignity and personal privacy, and that ensure a pupil’s right to placement in the least restrictive educational environment.
  4. That behavioral intervention plans be developed and used, to the extent possible, in a consistent manner when the pupil is also the responsibility of another agency for residential care or related services.
  5. That training programs be developed and implemented in institutions of higher education that train teachers and that in-service training programs be made available as necessary in school districts and county offices of education to ensure that adequately trained staff are available to work effectively with the behavioral intervention needs of individuals with exceptional needs.

Education Code § 56520
Disability Discrimination

- Any entity that receives federal financial assistance is prohibited from discriminating against persons with disabilities based on Section 504 of the Rehabilitation Act (Section 504) and Title II of the Americans with Disabilities Act (ADA).
  - Generally, the nondiscrimination standards are the same under both laws.
  - The U.S. Department of Education, Office for Civil Rights (OCR) handles cases of disability discrimination involving a wide range of issues, including discriminatory discipline.

Emergency Interventions

- Emergency interventions may only be used to control unpredictable, spontaneous behavior that poses clear and present danger of serious physical harm to the individual with exceptional needs, or others, and that cannot be immediately prevented by a response less restrictive than the temporary application of a technique used to contain the behavior.
- Emergency interventions shall not be used as a substitute for the systematic behavioral intervention plan that is designed to change, replace, modify, or eliminate a targeted behavior.
- No emergency intervention shall be employed for longer than is necessary to contain the behavior. A situation that requires prolonged use of an emergency intervention shall require the staff to seek assistance of the schoolsite administrator or law enforcement agency, as applicable to the situation.

Education Code § 56521.1
Prohibited Emergency Interventions

• Locked seclusion, unless it is in a facility otherwise licensed or permitted by state law to use a locked room.

• Employment of a device, material, or objects that simultaneously immobilize all four extremities, except that techniques such as prone containment may be used as an emergency intervention by staff trained in those procedures.

• An amount of force that exceeds that which is reasonable and necessary under the circumstances.

Education Code § 56521.1

Prohibited Emergency Interventions

• Any intervention that is designed to, or likely to, cause physical pain, including, but not limited to, electric shock.

• An intervention that involves the release of noxious, toxic, or otherwise unpleasant sprays, mists, or substances in proximity to the face of the individual.

• An intervention that denies adequate sleep, food, water, shelter, bedding, physical comfort, or access to bathroom facilities.

• An intervention that is designed to subject, used to subject, or likely to subject, the individual to verbal abuse, ridicule, or humiliation, or that can be expected to cause excessive emotional trauma.

• Restrictive interventions that employ a device, material, or objects that simultaneously immobilize all four extremities, including the procedure known as prone containment, except that prone containment or similar techniques may be used by trained personnel as a limited emergency intervention.

• Locked seclusion, unless it is in a facility otherwise licensed or permitted by state law to use a locked room.

• An intervention that precludes adequate supervision of the individual.

• An intervention that deprives the individual of one or more of his or her senses.

Education Code § 56521.2
Prohibited Emergency Interventions

- Prohibited emergency interventions were discussed in OAH case, Parlier Unified School District, OAH Case No. 2016080347 (Sept. 2016).
- Parents alleged that the district used prohibited interventions to address the student’s behavior when police officers were called to the school on various occasions to speak with the student.
- The ALJ found that a police officer showed up at the school only on one occasion, with the purpose of de-escalating Student’s out-of-control behavior in the principal’s office.
- Furthermore, no evidence was presented by the student that the district called the police inappropriately to address Student’s behaviors. The student also did not establish that a single conversation with a police officer while his Parent and the principal were present was an intervention designed to subject Student to verbal abuse, ridicule, or humiliation, or that could be expected to cause the student excessive emotional trauma.
- Thus, the student did not meet his burden of proof to show that the district used prohibited disciplinary interventions or emergency interventions with the student.

Restraint & Seclusion

- The U.S. Department of Education defines physical restraint as a personal restriction that immobilizes or reduces the ability of a student to move his/her torso, arms, legs, or head freely.
- The term does not include a physical escort. A physical escort means a temporary touching or holding of the hand, wrist, arm, shoulder, or back for the purposes of inducing a student who is acting out to walk to a safe location.
- The U.S. Department of Education defines seclusion as the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving.
- It does not include a timeout, which is a behavior management technique that is part of an approved program, involves the monitored separation of the student in a non-locked setting, and is implemented for the purpose of calming.
- Restraint does not include behavioral interventions used to calm and comfort an upset student, and seclusion does not include classroom timeouts, supervised in-school detentions, or out-of-school suspensions.

Restraint & Seclusion

- The U.S Department of Education recommends that districts never use “mechanical restraints” such as handcuffs, tape, straps, tie downs, ropes, weights, and weighted blankets.
- The U.S. Department of Education has stated that, if physical restraints and/or seclusion are permitted by state law and are necessary to enable the child to receive FAPE and/or participate in school activities, they should be incorporated into the child’s IEP, BIP, and/or Section 504 plan.
- While restraint and seclusion are not prohibited, “[t]his does not mean, however, that school districts are free to implement aversive behavioral interventions with abandon.”
  - Letter to Trader OSEP 2006).

Restraints of All Students

- The law was recently amended to limit restraints and seclusions of all students (Education Code 49005 et seq.), only to control behavior that poses a clear and present danger of serious physical harm to the pupil or others that cannot be immediately prevented by a response that is less restrictive.
- Among other things, no student can be:
  - Placed in a facedown position with his/her hands held or restrained behind his/her back; or
  - Placed in time out for the purposes of discipline (can only be used for calming).
Appropriate Use of Restraints

• Based on a behavioral assessment, the district developed a BIP that contained specific strategies to address the student’s behaviors. The BIP allowed for escorts and restraints consistent with policy. Parent eventually withdrew consent to the BIP.
  • The ALJ found that “by refusing to permit any plan that had any negative consequences or restraints regardless of the impracticality, Parent was mainly responsible for the problems implementing any sort of behavior plan that in effect prevented reasonable measures to address Student’s needs.”
  • The ALJ found that the district only used restraints after other measures were attempted to deescalate the student.
• Witnesses testified that restraints were consistent with the COE’s Aggressive Response Management (ARM) Manual. Although there were no records, all staff who performed restraints testified credibly to their training and familiarity the ARM Manual.
• Student’s expert witnesses stated that she believed that staff should be able to tolerate bruises, bites, and scratches. The ALJ stated: “This is not reasonable. Staff should not need to wait to be injured, or for others to be injured before they can take action by restraining a Student.”

Oakdale Joint Unified School District, OAH Case No. 2010050392 (Apr. 2011)

Restraints as Denial of FAPE

• In Temecula Valley Unified School District, OAH Case No. 2014010234/2013100202 (Apr. 2014), the student contended that the district denied him a FAPE by using restraints and seclusion.
• Student’s behaviors had required an emergency intervention on 14 separate occasions in 45 days of school attendance. The ALJ found that the district used restraint and seclusion “only as a last result” after evidence-based behavior strategies and other methodologies had failed and the student’s behaviors had become a danger to himself and others.
  • Student would be removed from the classroom and taken to an unlocked windowed room where he was supervised by an adult. The ALJ noted that the witnesses’ description of the seclusion room and restraints used on the student were not seclusion or restraint as defined by the U.S. Department of Education.
  • The IEP team revised the student’s BIP several times over the year.
## Parental Notification

- To prevent emergency interventions from being used in lieu of planned, systematic behavioral interventions, the parent, guardian, and residential care provider, if appropriate, shall be notified within one schoolday if an emergency intervention is used or serious property damage occurs. A behavioral emergency report shall immediately be completed and maintained in the file of the individual with exceptional needs. The behavioral emergency report shall include all of the following:
  1. The name and age of the individual with exceptional needs.
  2. The setting and location of the incident.
  3. The name of the staff or other persons involved.
  4. A description of the incident and the emergency intervention used, and whether the individual with exceptional needs is currently engaged in any systematic behavioral intervention plan.
  5. Details of any injuries sustained by the individual with exceptional needs, or others, including staff, as a result of the incident.

- All behavioral emergency reports shall immediately be forwarded to, and reviewed by, a designated responsible administrator.

  Education Code § 56521.1

## Subsequent Steps

- If the student did not have a BIP:
  - The designated responsible administrator shall, within two days, schedule an IEP team meeting to review the emergency report, to determine the necessity for a functional behavioral assessment, and to determine the necessity for an interim plan. The IEP team shall document the reasons for not conducting the functional behavioral assessment, not developing an interim plan, or both.

- If the student did have a BIP:
  - If a behavioral emergency report is written regarding an individual with exceptional needs who has a positive behavioral intervention plan, an incident involving a previously unseen serious behavior problem, or where a previously designed intervention is ineffective, shall be referred to the IEP team to review and determine if the incident constitutes a need to modify the positive behavioral intervention plan.

  Education Code § 56521.1
Schedule the IEP Meeting for a Student Without a BIP “within two days”

- Question in case centered around the meaning of the word “schedule” in Education Code section 56521.1(g).
- Does the LEA have to convene/hold an IEP meeting within two days of an emergency intervention for a student without a BIP?
- ALJ found: “Education Code section 56521.1 only requires that when a behavioral emergency report is written regarding a student who has an IEP but does not have a behavioral intervention plan, the school district must schedule an IEP team meeting within two days. The statute does not require the IEP team meeting to be held within two days.”
- District complied with this requirement by notifying the parent the first school day following the behavioral emergency of the IEP meeting date/time.

Escondido Union Sch. Dist., OAH Case Nos. 2017040003/2017050705 (Oct. 2017)

Positive Behavior Interventions

- In the case of a child whose behavior impedes the child’s learning or that of others, the IEP team shall consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior, consistent with the IDEA and associated regulations.

Education Code § 56521.2
Positive Behavior Interventions

• The Office of Special Education and Rehabilitative Services (“OSERS”), issued a Dear Colleague Letter on supporting behavior of students with disabilities, including a second document titled: “A Summary for Stakeholders.”
• In conjunction with this guidance, ED updated its school discipline webpage with relevant data and other information
• The letter emphasizes that, although schools are permitted to use exclusionary discipline measures with regard to special education students, a “failure to consider and provide for needed behavioral supports through the IEP process is likely to result in a child not receiving a meaningful educational benefit or FAPE,” and “cautions that the use of short-term disciplinary removals from the current placement may indicate that a child’s IEP, or the implementation of the IEP does not appropriately address his or her behavioral needs.” (Pages 3, 11-12)
• On Pages 9 and 10 of the letter, OSERS lists many circumstances that could result in a denial of FAPE based on a student’s need for behavioral supports, and, throughout the letter, indicates that IEP teams should be reviewing a special education student’s behavior needs during days one through ten of suspension.

Dear Colleague: Positive Behavior Interventions and Supports (OSERS Aug. 1, 2016)

Teacher Training

• Education Code § 56524 (1990) requires the CDE to “explore with representatives of institutions of higher education and the Commission on Teacher Credentialing, the current training requirements for teachers to ensure that sufficient training is available in appropriate behavioral interventions for people entering the field of education.”
BCBAs

• A person recognized by the national Behavior Analyst Certification Board as a Board Certified Behavior Analyst (BCBA) may conduct behavior assessments and provide behavioral intervention services for individuals with exceptional needs.
• This law does not require a district, special education local plan area, or county office to use a BCBA to conduct behavior assessments and provide behavioral intervention services for individuals with exceptional needs.

Education Code § 56525

AB 86 Repealed the “Hughes Bill”

• AB 86, effective July 1, 2013, repealed the requirement that school districts complete Functional Analysis Assessments (FAAs) for students who receive special education services and have behavioral issues. This repealed regulations defining “behavioral emergency,” “behavioral intervention,” “behavioral intervention plan,” and “serious behavioral problems.”
• Because of this repeal, school districts should be complying with the IDEA, which can require Functional Behavior Assessments (FBAs) and Behavioral Intervention Plans (BIPs).
  • The IDEA procedures for an FBA are not described in detail in the IDEA, but caselaw has upheld a number of behavioral procedures to satisfy the legal requirements of an FBA and/or a BIP.
  • In California, the language “Behavior Support Plan,” or “BSP” was used to differentiate a plan required under the Hughes Bill from one required under the IDEA. All current behavior plans should be referred to as BIPs.
What is an FBA?

- Not defined in the law.
- The U.S. Department of Education, Office of Special Education and Rehabilitative Services (OSERS) has stated:
  - An FBA focuses on identifying the function or purpose behind a child’s behavior. Typically, the process involves looking closely at a wide range of child-specific factors (e.g., social, affective, environmental). Knowing why a child misbehaves is directly helpful to the IEP Team in developing a BIP that will reduce or eliminate the misbehavior.
  - *Questions and Answers on Discipline Procedures (OSERS June 2009)*
- The Office of Administrative Hearings has stated:
  - The purpose of a FBA is to isolate a target behavior (a behavior that interferes with the student’s learning) and to develop a hypothesis regarding the function of the target behavior for the purpose of developing a BIP to address the target behavior through strategies and interventions to result in a positive replacement behavior.
  - *Anaheim City School District, OAH Case No. 2010010357 (June 2010)*

An FBA is an Assessment

**Requirements of a FBA:**

- If an FBA is used to evaluate an individual child to assist in determining the nature and extent of special education and related services that the child needs, the FBA is considered an evaluation under federal law.
- Consequently, an FBA must meet the IDEA’s legal requirements for an assessment, such as the requirement that assessment tools and strategies provide relevant information that directly assists in determining the educational needs of the child.
  - 34 CFR § 300.304(c)(7)
When is an FBA Required?

- Student changed topics quickly, walked away, mumbled, picked his nails, licked his hands, touched the wall, and plugged his nose.
  - The district assessed student’s behaviors based on observations and interviews and four standardized assessment tools: the BRIEF, the BASC-II, the BASC-Self Report, and the GARS-3.
  - There was no evidence that the behaviors impeded student’s learning or that of others “even minimally.”
  - The ALJ found that it was appropriate for the district to conclude that his behaviors were not severe enough to warrant an FBA.
  - “A district is not required to use a functional behavior assessment to evaluate every behavioral issue. The district may, for example, conclude that behavior that “does not seriously interfere with instruction” is not severe enough to warrant a functional behavior analysis.”

*San Marino USD, OAH Case No. 2017040077 (Oct. 2017)*

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When is an FBA Required?

- Student demonstrated that his behaviors impeded his learning and that of others. His off-task behaviors of excessive talking, walking around the classroom, blurting out answers, and fidgeting with a pencil, resulted from his ADHD and were heightened when he did not take his medication.
  - Student’s teachers implemented classroom accommodations to address the behaviors, and his annual IEP added goals to address homework completion, organization, following directions, remaining on-task, and completion of in-class assignments.
  - The ALJ found that the evidence showed that the district had already identified the student’s target behaviors, developed accommodations to address those behaviors, and developed goals to track progress on those behaviors.
    - Interestingly, the student’s expert witness did not recommend an FBA and instead found that observing his classroom performance revealed more information than a formal assessment in the area of behavior.
    - The ALJ noted that the student did not present evidence than an FBA would have either: (1) Identified additional target behaviors; or (2) Suggested different goals to address the already identified behaviors.
    - The student also did not require a formal BIP, as the district used positive behavioral interventions, supports and other strategies to address Student’s behaviors impeding learning, during all relevant time periods.

*Capistrano Unified School District, et al., OAH Case No. 2017020910 (July 2017)*
When is an FBA Required?

• IEP team developed behavior intervention strategies, which initially curtailed the student’s behavior concerns.
• However, once the student’s behaviors “markedly escalated and the strategies in use were no longer effective,” the district should have offered a behavior assessment. Student presented with noncompliant behaviors, elopement, causing property damage, and being assaultive towards peers and staff.
• Instead, the district offered a change of placement. The ALJ found that this demonstrated the seriousness of the student’s deteriorating behaviors.

Tehachapi Unified School District, OAH Case No. 2015050839 (Dec. 2015)

When is an FBA Required?

• Daily behavior logs showed an increase in inappropriate and aggressive behaviors, which showed that the interventions being provided to the student were ineffective. Without an FBA, the district did not have enough information to curb the student’s problem behaviors.
  • The district’s program specialist testified that the behaviors had reduced; however, the daily behavior logs contradicted that opinion.
  • The student was frequently removed from the classroom due to disruptive behaviors. Student seldom followed instructions, frequently did not respond to prompting, often sat or lay on the floor, and refused to cooperate with anyone for extended periods of time. It was also common for Student to pinch and hit his teacher and other students.
• The failure to conduct an FBA resulted in the development of inadequate behavior goals, which did not teach positive replacement behaviors or guidance to the teacher tasked with remediating the behaviors.

Los Alamitos Unified School District, OAH Case No. 2015050300 (Aug. 2015)
When is a BIP Required?

• The Office of Administrative Hearings has stated:
  • [N]either Congress, the U.S. Department of Education, nor any statute or regulation has created substantive requirements for a behavior plan as contemplated by the IDEA. The IEP team must consider the use of positive behavioral interventions and supports, and other strategies, but the implementing regulations of the IDEA do not require the team to use any particular method strategy or technique. (71 Fed. Reg. 46,683 (Aug. 14, 2006).)
  • Mill Valley Elementary School District, OAH Case No. 2014110046 (July 2015)

• OSERS has stated:
  • For a child with a disability whose behavior impedes his or her learning or that of others, and for whom the IEP Team has decided that a BIP is appropriate, or for a child with a disability whose violation of the code of student conduct is a manifestation of the child’s disability, the IEP Team must include a BIP in the child’s IEP to address the behavioral needs of the child.
  • Questions and Answers on Discipline Procedures (OSERS June 2009)

Format for an FBA/BIP

• In considering an argument that an assessment and behavior plan were insufficient because they did not meet the standards set by Positive Environments, Network of Trainers (PENT), an OAH ALJ stated:
  • Although PENT criteria may be a “gold standard,” there is no requirement under federal or state special education law that dictates what either a functional behavior analysis or a behavior support plan must contain or what format it should follow. Therefore, the failure to follow PENT criteria did not in itself invalidate Ms. Ertel’s assessment or resulting behavior support plan.
  • However, the ALJ agreed with the criticisms of the content and scope of the assessment, plan, goals, and services.
  • Assessment only included two short observations, and did not indicate in which settings the student was observed. Identification of where the behaviors occurred was important because the primary reason for the assessment was the fact student had to be removed from his normal educational setting, and it was essential that it be determined if his behaviors were occurring in all educational settings
  • Assessment did not consider the several months of behavior data that had been taken by the student’s aides. There were almost 100 pages of data that described situations where Student was yelling, acted aggressively with peers, and threw things. This failure led to an inability to identify antecedents
  • Assessment was flawed because it did not identify antecedents, and neither the assessment or the behavior plan identified any concrete replacement behaviors.
  • Mill Valley Elementary School District, OAH Case No. 2014110046 (July 2015)
**BIP Must Be Implemented By All**

- BIP not implemented with fidelity in the student’s physical education class.
  - PE teacher testified he had never seen the IEP and was unaware of any of its components. He also could not articulate the components of the school-wide PBIS program.
  - The failure to implement the BIP in PE was a material implementation failure that denied the student a FAPE.
- Remedies:
  - There was no evidence presented that the student suffered a loss of educational opportunity for which compensatory PE would be an appropriate remedy.
  - Instead, the ALJ ordered a two-hour training for all of the school’s teachers, administrators, and service providers.

**Substitute Teacher Must Be Provided a Copy of IEPs and BIPs**

- The OCR has found that a district “must have some consistent method of ensuring that substitutes have sufficient information to implement the students’ IEPs and provide them with FAPE, including implementing appropriate behavior strategies.
  - The case involved a long-term substitute in an SDC, who reacted to student’s behavior in a way inconsistent with the student’s BIP. When the student hit the substitute, the substitute then struck the student in the torso at least once.
  - OCR stated: “OCR would not expect that every substitute teacher be trained in advance on each detail of every student’s IEP.”

  Factual Findings in Case No. 09-13-1007 (Dec. 2014)
Discipline – Manifestation Determination Meetings

- Before a district can change a student’s placement through the discipline process (more than 10 cumulative days of suspension during the school year or expulsion), it must hold a Manifestation Determination Meeting and determine if the student’s misconduct was a manifestation of his disability.

1. Was the conduct in question caused by, or had a direct and substantial relationship to the student’s disability? OR
2. Was the conduct in question the direct result of the LEA’s failure to implement the student’s IEP?

FBAs & Manifestation Determinations

- Any student with a disability who is removed from the classroom for more than ten school days is entitled to “[r]eceive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.”
- If the IEP team determines that the behavior in question was a manifestation of the student’s disability:
  - The student may not be disciplined for the behavior;
  - The district must either:
    - Conduct an FBA, unless the district previously had conducted an FBA, and implement a BIP for the child; or
    - If a BIP has already been developed, review and modify the BIP as necessary to address the behavior;
  - The student must be returned to the placement from which the student was removed unless the parents and district agree to a change of placement as a part of the BIP.
- Unless there are “special circumstances” justifying an interim alternative educational setting.

34 C.F.R. § 300.530
**Manifestation Determinations**

- Ensure that the determination is meaningful.
- Team must have a comprehensive understanding of the student and his/her disabilities.
- Gather knowledgeable team members.
- Consider all of the student’s disabilities, not just his/her eligibility category.
- Determine whether a re-evaluation is in order.
- Continue the meeting if necessary.
- Especially if new information is introduced by parents.

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**Manifestation Determinations**

- Do not make regrettable decisions.
  - In *LA USD*, OAH Case No. 2014040246 (2014), the IEP team of an 8th grade student with the primary disability of OHI determined the student’s action of bringing a semi-automatic handgun to school during the schoolday was a manifestation of his disability. Accordingly, the ALJ found that the district could not expel the student, despite state and federal laws requiring such expulsion of students because the IDEA law precluding change of placement (e.g. expulsion) when a student’s misconduct was a manifestation of the student’s disability applied.
- You have ten schooldays in which to hold the MD.
  - In *Fresno USD*, OAH Case No. 2012020842 (2012), the ALJ found that the district’s policy of holding the MD within three school days caused the district to “rush” the meetings, and, in this case, for parents to not receive adequate notice of the meeting.
MD – Suspended Expulsions

• A federal District Court upheld an OAH decision that found that a school district was required to hold a manifestation determination meeting prior to reinstating an expulsion that had been suspended by the school board.

• In other words, the revocation of a suspended expulsion is a change of placement requiring a manifestation determination meeting.

• The suspended expulsion agreement did not contain an express waiver of rights under the IDEA.


MD for ED Student

• In LAUSD, OAH Case No. 2017081054 (Oct. 2017), a student challenged a district’s determination that conduct resulting in expulsion was not caused by and did not have a direct and substantial relationship to his disability. The ALJ found that the student’s conduct “was unequivocally a manifestation of his emotional disturbance disability.”

• In November 2016, the district changed student’s eligibility from SLD to ED and changed his placement to an SDC for students with ED; however, parent did not consent to this change of placement.

• Report indicated that the student’s behaviors included physical injury, threats, profanity, harassment, property damage, and bullying.

• Student had a goal meant to address aggression.
On March 16, 2017, the student was on campus but did not attend classes.

At 12:56 p.m., Student was reported to have passed the psychologist’s room, screaming profanities and yelling “I am gonna kill you nigga.”

At approximately 4:30 p.m. while participating in an after school program, Student was in the gym eating soup. A peer playing nearby kicked a ball and struck Student with the ball. Student became upset, confronted the peer and grabbed him by the neck or collar. The peer pushed Student away. Student walked away a few feet, took off his backpack, and announced his intention to hit the other student. His friend told him not to do it, but Student returned to confront the peer. Student punched him in the mouth and broke his jaw. The entire event lasted no more than 10 minutes.

At the MD meeting, the team discussed:

- The incident, parts of the November 2016 psychoeducational assessment, and student’s tendency to manifest his disability as depression.
- The team discussed that Student usually shut down, was nonresponsive, became angry, walked out of class, cursed at teachers, but he never physically hit people. When upset, he verbally assaulted peers, teachers, and staff and was disrespectful.
- The team did not extensively discuss his disciplinary history, including prior incidents of hitting, assaulting, being physically aggressive, or threatening people.
- The team “did not conduct a record review of all relevant information in Student’s file.”
MD for ED Student

- The team decided the student’s conduct was not caused by or directly and substantially related to his disability.
- Decision was based on their determination that student’s ED exhibited itself in cursing, walking out of class, making rude comments to teachers, and sometimes crying when going through difficult moments with peers.
- His disability typically manifested as depression and a physical response was not typical of the student.
- Student walked away and talked to a friend, which gave him time to de-escalate.
- It was an “unpredictable act of aggression.”

MD for ED Student

- Student’s expert witness’s opinion was given great weight by the ALJ:
  - Expert opined that there is a comorbidity of ADHD and an ED such as depression.
  - Expert stated that “a substantial neurodevelopmental delay exists in the ability to inhibit inappropriate responses” when a child is exhibiting issues associated with attentional issues such as difficulties with self-control. “This was underscored by the fact Student was an adolescent, and his executive functioning and ability to restrain himself was still developing.”
MD for ED Student

• The ALJ found that the conduct was caused by or had a direct and substantial relationship to Student’s disability:
  • Student’s expert “a highly qualified clinical neuropsychologist with extensive experience assessing children with emotional disturbance and attention issues” opined that the conduct “was a direct expression of Student’s emotional disturbance.” The expert had reviewed Students’ entire educational file and found that the student had “an extensive history of aggression, conduct problems and attention issues.”
  • District witnesses to the contrary were found not persuasive.

MD for an ED Student #2

• In Southern Kern USD, OAH Case No. 2017070207 (Aug. 2017), the ALJ found that the MD team did not properly consider whether the student’s behavior was a manifestation of his disability, concluding that “it is more likely than not that Student’s punching of another child on April 21, 2017, was a manifestation of either his ADHD or his emotional disturbance disabilities.”
  • The district argued that the behavior was not impulsive, and thus not a manifestation of the student’s ADHD. Additionally, because “emotional disturbance is not a disability,” the team only needed to consider student’s ADHD.
MD for an ED Student #2

- Student, an 11-year old, punched another child in the head prior to leaving school.
- School psychologist had evaluated student and found him eligible under ED; however he did “not believe that emotional disturbance is a disability.” He told the MD team that they only needed to consider student’s ADHD at the MD meeting. He believed that any expressions of disability that could be considered markers for emotional disturbance were explainable as aspects of Student’s ADHD. He also told the IEP team that the behavior was not connected to any disability because he understood there would be consequences for his behavior.
- No member of the MD team had first-hand knowledge of the conduct in question.

MD – Team Must Review the Conduct

- Student sent Snapchat messages to friends with photos depicting a gun, including a text telling them not to come to school the next day and making reference to the anniversary of the Columbine High School shootings.
- The IEP team found the behavior was not caused by or directly or substantially related to her disabilities of ADHD, Tourette syndrome, OCD, and executive functioning deficits.
- The ALJ found that the team did not review all relevant information when it found that student’s conduct was not a manifestation of her disabilities.
  - "Photographs of Student’s snaps, Student’s written statement, and relevant written statements from other students would have given the manifestation determination team a more complete picture of Student’s conduct on April 20, 2017."
    
Questions?

Information in this presentation, including but not limited to PowerPoint handouts and presenters’ comments, is summary only and not legal advice. We advise you consult with legal counsel to determine how this information may apply to your specific facts and circumstances.

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UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
REGION IX - CALIFORNIA

50 BEALE STREET, SUITE 7200
SAN FRANCISCO, CA 94105

June 24, 2016

Suge Lee
Disability Rights California
1330 Broadway, Ste 500
Oakland, CA 94612

(In reply, please refer to case no. 09-14-1465.)

Dear Ms. Lee:

The U.S. Department of Education, Office for Civil Rights (OCR) has resolved the complaint you filed against the Oakland Unified School District. Your complaint alleged that the District discriminated against the Student on the basis of disability by placing the Student in a non-public school (NPS) at which NPS staff repeatedly subjected the Student to inappropriate prone restraint over an 11-month period. With regard to this allegation, OCR investigated the following issues:

1. Whether the District failed to provide the Student with a free, appropriate public education (FAPE) by: a) failing to implement the Student's Individualized Education Program (IEP); and b) failing to appropriately evaluate/re-evaluate the Student's

OCR previously provided the Recipient with the identity of the Complainant and the Student. We are withholding their names from this letter to protect their privacy. “Return to Main Document”
individual educational needs.

2. Whether the District discriminated against the Student on the basis of disability by allowing the NPS to: a) deny the Student an opportunity to participate in, or benefit from an aid, benefit or service when the Student was excessively restrained and secluded from class; b) subject the Student to different discipline than non-disabled students; and c) subject the Student to a hostile environment.

OCR investigated the complaint under the authority of Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990, as amended. Section 504 prohibits discrimination on the basis of disability in programs and activities operated by recipients of Federal financial assistance. OCR also has jurisdiction as a designated agency under Title II of the Americans with Disabilities Act of 1990 and its implementing regulation over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The District receives Department funds, is a public education system, and is subject to the requirements of Section 504 and Title II.

OCR gathered and reviewed documents from the Complainant and the District and interviewed the Complainant, the Student’s mother, District staff, NPS staff, and staff at an alternative program utilized by the District at District school sites. Additionally, OCR conducted onsite visits of the NPS and the alternative program. OCR found sufficient evidence to support a conclusion that the District failed to provide the Student with a FAPE and discriminated against the Student on the basis of disability.

The applicable legal standards, the facts gathered, and the basis for OCR’s determination are summarized below.

Legal Standards

FAPE

The regulations implementing Section 504, at 34 C.F.R. section 104.33, require public school districts to provide a FAPE to all students with disabilities in their jurisdictions. An appropriate education is defined as regular or special education and related aids and services that are designed to meet the individual needs of students with disabilities as adequately as
the needs of non-disabled students are met, and that are developed in accordance with the procedural requirements of sections 104.34-104.36 pertaining to educational setting, evaluation and placement, and due process protections. Implementation of an individualized education program (IEP) developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting these requirements. OCR interprets the Title II regulations, at 28 C.F.R. sections 35.103(a) and 35.130(b)(i)(ii) and (iii), to require districts to provide a FAPE at least to the same extent required under the Section 504 regulations.

Section 104.35(a) of the Section 504 regulations requires school districts to conduct an evaluation of any student who needs or is believed to need special education or related aids and services because of disability before taking any action with respect to the student’s initial placement and before any subsequent significant change in placement. Under section 104.35(b), tests and other evaluation materials must be administered by trained personnel, must be reliable, and must be valid for the purpose for which they are being used. Under subsection (c), placement decisions (i.e., decisions about whether any special services will be provided to the student and, if so, what those services are) must be made by a group of persons knowledgeable about the student, the evaluation data, and the placement options. Placement decisions must be based on information from a variety of sources, with information from all sources being carefully considered and documented. School districts must also establish procedures for the periodic reevaluation of students who have been provided special education and/or related services. A procedure consistent with the IDEA is one means of meeting this requirement.

**Discrimination under 34 C.F.R. section 104.4(a) and (b)**

Under the Section 504 regulations, at 34 C.F.R. sections 104.4(a) and (b), no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance. The Title II regulations, at 28 C.F.R. sections 35.130(a) and (b), create the same prohibition against disability-based discrimination by public entities. Under 34 C.F.R. section 104.4(b)(1) and 28 C.F.R. section 35.130(b)(1) a school district may not, directly or through contractual, licensing, or other arrangements, on the basis of disability:
deny a qualified disabled individual the opportunity to participate in or benefit from an aid, benefit, or service; afford a qualified disabled individual an opportunity to participate in or benefit from an aid, benefit, or service that is not equal to that afforded others; provide a qualified disabled individual with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others; provide different or separate aids, benefits, or services unless necessary to provide qualified disabled individuals with aids, benefits, or services that are as effective as those provided to others; or limit a qualified disabled individual in the enjoyment of any right, privilege, advantage, opportunity enjoyed by others receiving an aid, benefit, or service; or aid or perpetuate discrimination against a qualified individual with a disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit or service to beneficiaries of the recipient's program or activity. If a school district provides significant assistance to an outside entity and the entity is shown to have discriminated on the basis of disability, the district must take steps to obtain compliance from the organization or terminate its assistance.

Hostile Environment

The regulations implementing Section 504, at 34 C.F.R. sections 104.4(a) and (b), prohibit discrimination based on disability by recipients of Federal financial assistance. The Title II regulations, at 28 C.F.R. sections 35.130(a) and (b), create the same prohibition against disability-based discrimination by public entities. School districts are responsible under Section 504 and Title II for providing students with a nondiscriminatory educational environment. Harassment of the student based on disability can result in the denial or limitation of the student's ability to participate in or receive education benefits, services, or opportunities.

Under Section 504, Title II and the regulations, once a school district has notice of possible harassment of a student by a third party based on disability that took place in a district program, it is responsible for determining what occurred and responding appropriately. The district is not responsible for the actions of the third party, but rather for its own discrimination in failing to respond adequately. A school district may violate Section 504, Title II, and the regulations if: (1) the harassing conduct
is sufficiently serious to deny or limit the student's ability to participate in or benefit from the educational program; (2) the district knew or reasonably should have known about the harassment; and (3) the district fails to take appropriate responsive action that is within its authority.

OCR evaluates the appropriateness of the responsive action by assessing whether it was prompt, thorough, and effective. What constitutes a reasonable response to harassment will differ depending upon the circumstances. However, in all cases the district must promptly conduct an impartial inquiry designed to reliably determine what occurred. The response must be tailored to stop the harassment, eliminate the hostile environment, and remedy the effects of the harassment on the student who was harassed. The district must also take steps to prevent the harassment from recurring. The type of action needed for an appropriate response will vary depending upon the degree of control the district has over the harasser.

School districts provide program benefits, services, and opportunities to students through the responsibilities given to employees. If an employee who is acting, or reasonably appears to be acting, in the context of carrying out these responsibilities engages in disability-based harassment that is sufficiently serious to deny or limit a student's ability to participate in or benefit from the program, the school district is responsible for the discriminatory conduct whether or not it has notice.

In determining whether a hostile environment based on disability has been created, OCR evaluates whether or not the conduct was sufficiently serious to deny or limit the student's ability to participate in or benefit from the district's program. OCR examines all the circumstances, including: the type of harassment (e.g., whether it was verbal or physical); the frequency and severity of the conduct; the nature of the student's disability; the age and relationship of the parties; the setting and context in which the harassment occurred; whether other incidents have occurred at the district; and other relevant factors.

Department Guidance on Restraint Use

OCR and the Office of Special Education and Rehabilitative Services ("OSERS") in the U.S. Department of Education have issued a Dear Colleague Letter (DCL) defining disability harassment under Section 504
and Title 11, as intimidating or abusive behavior toward a student based on disability that creates a hostile environment by interfering with or denying a student's participation in or receipt of benefits, services, or opportunities in the institution's program. The DCL provides examples of types of harassment that could create an unlawful hostile environment, including when "[a] teacher subjects a student to inappropriate physical restraint because of conduct related to his disability."

In May 2012, the Department published, Restraint and Seclusion: Resource Document which provides guidance to schools on the use of restraints. The Resource Document emphasizes that schools should make every effort to structure environments and provide supports so that restraint and seclusion are unnecessary.

The Resource Document states that there is no evidence that using restraints is effective in reducing the occurrence of the problem behaviors that frequently precipitate the use of such techniques. It provides that restraints should not be used as routine school safety measures; that is, they should not be implemented except in situations where a child's behavior poses imminent danger of serious physical harm to self or others and not as a routine strategy implemented to address instructional problems or inappropriate behavior (e.g., disrespect, noncompliance, insubordination, out of seat), as a means of coercion or retaliation, or as a convenience.

The Resource Document further provides that repeated restraint use for an individual child, multiple uses within the same classroom, or multiple uses by the same individual should trigger a review and, if appropriate, a revision of behavioral strategies currently in place to address dangerous behavior; if positive behavioral strategies are not in place, staff should consider developing them. Finally, the Resource Document states that prone (i.e., lying face down) restraints should never be used because they

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3 For more information, see http://www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf. "Return to Main Document"
can cause serious injury or death. Breathing can also be restricted if loose clothing becomes inadvertently entangled or tightened or if the child's face is covered by a staff member's body part (e.g., hand, arm, or torso) or through pressure to the abdomen or chest.

Findings

District Policies and Procedures on Behavior Interventions

- At the time the Student's IEP team agreed to a functional analysis assessment (FAA) on May 22, 2013, the District's special education policies and procedures distinguished between an FAA, which was conducted to address serious behavior not yet responsive to previous plans and a functional behavior assessment (FBA), which was conducted as part of the disciplinary process.

- District policies and procedures required that an FAA be conducted by, or be under the supervision of a person trained in behavior analysis with an emphasis on positive behavioral interventions. An FAA was required to include all of the following:

  1. systematic observation of the occurrence of the targeted behavior for an accurate definition and description of the frequency, duration, and intensity;

  2. systematic observation of the immediate antecedent event associated with each instance of the display of the targeted inappropriate behavior;

  3. systematic observation and analysis of the consequences following the display of the behavior to determine the function the behavior serves for the individual;

  4. an analysis of the settings in which the behavior occurs most frequently;

  5. review of records for health and medical factors which may influence behaviors; and,

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4 For more information, see Resource Document at p. 16. "Return to Main Document"
6. review of the history of the behavior to include the effectiveness of previously used behavioral interventions.

- FAA reports were required to have a description of the targeted behavior(s) in objective and measurable terms, including baseline data and an analysis of the antecedents and consequences that maintain the targeted behavior, a functional analysis of the behavior across all appropriate settings in which it occurs, and recommendations.

- District policies and procedures required that an IEP Team meeting be convened to review the FAA and if necessary, develop a behavioral intervention plan (BIP) which would be part of the student's IEP.

- Current District procedures require that positive behavioral supports and strategies be used with all students, including students whose behavior impedes their learning, or the learning of others. An IEP team may consider more restrictive choices only when lesser ones are unsuccessful in addressing the challenging behavior.

- District policy and procedures now allow for FBAs to be conducted outside of the discipline context if a student continues to exhibit serious behavioral challenges despite the use of multiple strategies. The goal of an FBA under current District policy and procedures is to determine why a behavior is occurring (function of the behavior) and to develop appropriate replacement behaviors through explicit strategies in a behavior intervention plan (BIP). A BIP is a proactive action plan to assist in modifying behavior which impedes the learning of the student or others. If developed for a student with an IEP or 504 Plan, the FBA results and BIP become part of the IEP or 504 Plan.

- Current district policies and procedures state that emergency interventions, including physical interventions, may only be used to control unpredictable, spontaneous behavior that poses a clear and present danger of serious physical harm to the individual with exceptional needs, or others, and that cannot be immediately prevented by a response less restrictive than the temporary application of a technique used to contain the behavior.

- District policy and procedures allow for contracted non-public schools to use alternate behavior intervention strategies which include physical
interventions if staff are trained and certified in their use. However, District policy states that emergency interventions may not be used in lieu of planned, systematic behavioral interventions.

- District policy and procedures require that a behavioral emergency report (BER) be completed if an emergency intervention has been used. If the student does not have a BIP, an IEP must be scheduled within two days to review the BER and determine the necessity of an FBA and an interim plan. If the student has a BIP and the incident involves a previously-unseen serious behavior problem or the existing BIP is ineffective, the IEP team must convene to determine if there is a need to modify the plan.

- District staff members interviewed by OCR indicated a lack of uniform understanding with respect to the District's policy on prone restraint use. Some staff members stated that prone restraint may be used in an emergency situation; others indicated that prone restraint was prohibited. All District staff members interviewed by OCR stated that prone restraint is never used on students in its schools, but may be applied to students with disabilities whom the District has placed in an NPS. All District staff members also stated that prone restraint is not an effective behavior intervention and is not an instructional tool. District staff was also unaware of the District's policies in regards to responding to reports of restraint at an NPS.

**District School Wide Positive Behavioral Interventions and Supports (SWPBIS)**

- As part of the resolution agreement with OCR in 09-12-5001, the District began implementing SWPBIS in its schools in an effort to reduce the disproportionate discipline of African American students. Consequently, by creating a systematic, evidence-based approach to responding to behavior that is consistent with the District's behavioral expectations for students, SWPBIS has become an integral part of the District's approach to student discipline. Rather than responding to inappropriate student behavior by referring the student for a suspension, the District promotes pre-referral interventions.

- The District defines interventions as, "interactions between students and adults that correct student behavior by meeting a need or teaching a
replacement behavior." District interventions are developed based on the function of the behavior and include environment changes, teaching/reinforcing student skills, checking in with the student at the beginning and end of each day, arranging for social skill groups, and academic supports, etc. They do not include prone restraint.

- District staff stated that prone restraint does not correct behavior or teach replacement behavior. The District does not use prone restraint as an SWPBIS intervention in its schools.

District Utilized Alternatives to Restraint

- OCR investigated alternative practices to the use of prone restraint which included an onsite visit to the Lincoln Childcare Center (LCC) and a District school classroom which houses one of LCC's programs.

- LCC provides onsite wrap-around services in intensive, self-contained classes for students who meet the emotional disability (ED) or autism eligibility criteria for special education services. These classrooms are located on public school campuses, including some District school sites.

- LCC had previously used prone-restraints and restraint in the form of physical escorts using the ProAct protocol. After LCC stopped using prone restraints and physical escorts, they found that staff injury decreased by 75%.

- LCC utilizes an approach known as Safe Environments which includes a hold for crisis situations that is performed by two adults holding the student in one place to contain the student until he is safe. One adult is on either side of the student and each uses a gentle under arm hold of the student. Additionally, one adult will place his/her leg in front of one student's legs; the other adult will place his/her leg behind the other leg of the student. The adults are close enough to the student so that their hips touch the student's hips. The adults will follow, rather than resist, the student's movements. For example, if the student drops to the floor, the adults will go down to the floor as well.

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- LCC staff indicated that one of the least safe things for staff is to forcibly move a student. Under the protocol applied by LCC, once a decision is made that there is a crisis situation, the first act is to clear the environment; i.e. staff move the students who are willing to move, not the student who is exhibiting a crisis behavior. If a Safe Environments hold is necessary to keep the student safe, it will not last longer than a few minutes. LCC staff does not wait for the student to be calm or deescalated as a condition for release because those two things are not possible for a student who is held in a restraint position. LCC staff explained that the higher the student's state of crisis is, the lower the student's cognitive function will be at that time.

- LCC stated that when a student is upset and starts engaging in an activity such as tearing paper, even though this behavior is not unsafe and does not warrant a restraint, it may trigger a response from the adult to restrain the student. LCC spends more time on teaching staff de-escalation techniques for themselves so that they are not triggered by a student's non-crisis behavior than on teaching the Safe Environments hold.

- LCC staff stated that restraint use demonstrates a failure of intervention; it does not eliminate the problem behavior. LCC stated that based on their experience, restraint teaches a student nothing except how to seek restraint. The students learn that they cannot control themselves and they must do something in order to be controlled. So, typically, what LCC saw was students intentionally engaging in behavior to get the adult to behave in a predictable way because that was the only thing the students had learned to control.

- A District administrator present at the LCC onsite stated that the culture shift that took place within LCC as it moved away from the use of prone restraint was aligned with the District's shift away from suspensions to implementing SWPBIS in response to student misconduct.

**Student Background**

- At the time the District placed the Student at the NPS; he was 9 years old, small for his age and had low-muscle tone. He is intellectually gifted with a verbal IQ of 142 and a perceptual reasoning IQ of 135.
The Student exhibited a number of challenging behaviors from the time he first enrolled in a general education kindergarten class in a District elementary school in August 2009.

The Student's mother requested that the Student be evaluated for special education services in September 2009. Based upon a medical diagnosis of ADHD, the District determined that the Student was eligible for special education and related services under the IDEA eligibility category of Other Heath Impaired (OHI) on September 16, 2010 when the Student was in first grade. The IEP called for push-in RSP for 20 minutes, three times a week.

The Student continued to engage in challenging behaviors particularly with respect to transitions including impulsivity, biting, kicking, and screaming.

In March 2011, the Student's parents filed for due process with the California State Office of Administrative Hearings (OAH) regarding the services the District was providing the Student. Pursuant to the settlement agreement, the Student was re-evaluated by an Independent Education Evaluator (IEE) who issued a report on May 11, 2011.

The IEE report stated that the Student's behavioral outbursts, negative peer relationships, and an inability to interpret social situations were biological in nature. The report noted that the Student's condition caused cognitive fluctuations, including deficits in his ability to pay attention and employ problem solving skills. In addition, the Student's Anxiety Disorder caused the Student to be impulsive, talkative, distractible, withdrawn, or difficult to engage due to a heightened emotional state.

The IEE determined that the Student qualified for mental health services under the IDEA category, Emotional Disturbance, and recommended that the Student have one-on-one adult supervision by a behaviorally trained aide, especially during all times outside of the classroom. The IEE indicated that the Student's challenging behaviors need to be interpreted for their communicative value and that the Student's misbehavior would likely be due to a state of heightened anxiety and/or sensory overwhelm. The IEE recommended against negative adult responses to the Student's behavior because they
would cause the Student to "spin out of control."

- The District placed the Student in the Children's Learning Center (CLC), a non-public school, in December 2011. At CLC, the Student's behaviors became progressively more challenging; the Student engaged in throwing objects, kicking, punching, and slapping adults as well as elopements and other disruptive behavior.

- The Student had two District-developed Behavior Support Plans (BSPs) dated May 12, 2012 and February 13, 2013 to address throwing, hitting/kicking, spitting, threatening gestures, cursing, eloping, invading personal space, yelling, and singing.

- The BSP indicated that there were multiple functions of these behaviors and gave the following functions as examples: escape/avoidance, attention seeking, tangible access to preferred items/activities and seeking control of a situation. The BSP called for the use of the Second Step curriculum and other activities to teach the Student flexible thinking, problem solving and the concepts of accidental versus on-purpose. The plan listed direct instruction on replacement behavior as a teaching strategy and indicated staff should provide verbal reinforcement of appropriate replacement behavior as well as a menu of available classroom rewards based on the Student's preferences.

- The BSP stated that when dangerous behaviors occur, the Student is to be directed to a quiet area or other students should be removed from the area where the Student is engaging in the unwanted behavior. The BSP also stated that physical confrontation was to be avoided as a response to the Student's behavior.

- With the consent of the Student's parents in an IEP amendment dated April 3, 2013 the District placed the Student at one of the San Francisco Bay Area campuses of Anova, a non-public school. The Student attended Anova from April 9, 2013 until February 27, 2014.

- From March 31, 2014 to the present, the Student has attended a different NPS which prohibits the use of prone restraint.

Anova
- Anova holds itself out as serving students with high functioning autism with related social, emotional, behavioral challenges. Anova operates three campuses in the Bay Area. There are no District students currently placed at the campus in which the Student was placed. A few District students currently are placed at a different Anova campus.

- The District's master contract with Anova for the 2013-2014 school year contained a provision on positive behavior interventions. Under this provision, Anova was responsible for the completion of functional analysis assessments; the development, implementation, monitoring, supervision, modification, and evaluation of behavior intervention plans; and emergency interventions.

- Under the contract, Anova was prohibited from authorizing, ordering, consenting to or paying for a number of prohibited interventions, including those that are designed to, or likely to, cause physical pain, deny adequate sleep, food, water, shelter, bedding, physical comfort, or access to bathroom facilities, those that are designed to subject, used to subject, or likely to subject the District student to verbal abuse, ridicule, or humiliation, or which can be expected to cause excessive emotional trauma, and restrictive interventions which employ a device, material, or objects that simultaneously immobilize all four extremities, including the procedure known as prone containment, except that prone containment or similar techniques may be used as a short term emergency intervention by Anova's trained and qualified personnel as allowable by applicable law and regulations. Although Anova's informational material indicates that Anova utilizes physical escorts and containment methods to protect the safety of everyone concerned, it does not state that staff hold students face-down on the floor.

- Under the master contract with Anova, the District had the right to institute a program audit with or without cause and that such audits included, but were not limited to, a review of core compliance areas of health and safety; curriculum/instruction; related services; and contractual, legal, and procedural compliance.

- The Student's Experience at Anova

- When the Student entered Anova, the District-developed BSP was still part of his IEP. At the onsite, Anova staff reported that they did not
implement the Student's BSP; rather, they utilized Anova's own methods of behavior modification which Anova used on all of its students.

- Within two hours of the Student's first day at Anova on April 9, 2013, staff placed him in a prone restraint. Anova's incident report indicates that on that day the Student was held in prone restraint twice for eight and six minutes, respectively.

- Based on Anova's documentation of its use of prone restraint, Anova staff held the Student face down 92 times over a period of 11 months, for a total duration of over 2200 minutes. The longest duration of a single face-down restraint was 93 minutes and on one day Anova staff restrained the Student multiple times for a total duration of 117 minutes due to the Student's failure to follow directions during the recovery period in the resource room. The average duration in which Anova staff held the Student face down was 29 minutes.

- Based on OCR's onsite inspection, the resource room is approximately 12 feet by 10 feet. There is no furniture in the room. There is a mat on the floor against the far wall of the room that is approximately 6 feet by 2"5 feet by 1" inch thick. There are no windows that let in natural light and only one small window in the door to the room. When a student is in the room being held in a prone restraint the door is shut; two staff members are inside restraining the student and one other staff member sits outside the room timing the restraint.

- During the onsite, Anova staff provided some examples of reasons why the Student would be removed from the classroom and restrained: disruptive behavior, not following directions, pushing desks, and ripping up assignments. Staff explained that the Student wanted to be disciplined and understood prone restraint to be disciplinary. Anova staff explained that because the Student knew or expected to end up in the resource room, he often just went straight there on his own.

- Rather than following the BSP that was part of the Student's IEP, Anova staff created three behavior flow charts for the Student to follow which visually demonstrated the consequence of his misconduct, which was restraint and time in the resource room. Each chart contained a web of color coded arrows connecting vague descriptions of disruptive or defiant behaviors (e.g. "too much silly", "non-compliance" and
"unexpected.") to the resource room where he would be restrained. Unlike a BSP, the charts did not identify the Student's triggers for problematic behaviors and referenced no positive behavior interventions.

- Based on the charts and what Anova staff described, after the Student was restrained, he would remain out of the classroom for two periods or more, either in the resource room or front office. The charts indicated and Anova staff confirmed that if the Student ended his day in the resource room or the front office, he would need to start the following school day there.

- During the onsite, Anova staff described how they typically initiated use of a prone restraint on the Student. If the Student began disrupting the class by throwing a paper, disagreeing with staff members, shouting, pinching, or any other disruptive or defiant conduct, Anova staff would firmly place their hands on the Student and physically remove him from the classroom. If the Student was unable to maintain a quiet voice and calm body after the hands-on removal from the classroom, he would be escorted to the resource room by one or two staff members. The staff member would place one of the Student's hands behind the Student's back and hold the Student's upper arm in place. When two staff members escorted the Student, they would each hold one of the Student's arms and almost carry the Student to the resource room if he struggled to free himself.

- Removal of the Student from the classroom often resulted in the Student's behaviors escalating to hitting, biting, wrapping his legs around staff or other similar behaviors.

- Once they reached the resource room, staff initially would release the Student, but if he did not demonstrate a calm body and quiet voice staff would respond by placing the Student into a prone restraint by holding the Student face down and pressing the Student's arms and legs down into a mat on the floor of the resource room. Usually two alternating staff members at a time would cup their hands over the long bones of the Student, pressing their fingertips into the mat to maintain the hold.

- Staff would then require the Student to achieve and maintain a quiet voice and calm body as a condition of release from the face down hold.
- Staff at Anova explained that during the restraints, the Student would not be permitted to use the restroom if he could not present with a calm body and quiet voice; the Student urinated on himself on at least one occasion. Staff explained it would be dangerous to allow a student out of a prone restraint for any reason even if the student needed to use the restroom if the student's voice and body had not yet reached their requisite level of quiet and calm.

- Similarly, Anova staff also denied the Student any break from the restraint for food or water even during long periods of restraint in the middle of the school day. In contrast, after 10 minutes of restraining the Student, staff members would rotate in order to take a break.

- Staff described the Student's behavior and their response as "a crisis cycle" that begins with a trigger of the Student's behavior which escalates to a crisis where the Student is not responsive to any prompting and engages in unsafe behavior. The cycle ends in a "recovery phase" where the Student's muscles are relaxed, he has stopped struggling to get out of the restraint, is no longer resisting verbally or physically and has responded affirmatively to staff's inquiry about whether he is ready to be released. Although multiple staff might be involved in restraining the Student only one staff person would talk to the Student and would do so in a calm and direct manner.

- The incident reports maintained by Anova for each prone restraint do not document the total amount of time the Student spent in the resource room "recovering" or in the office after the incident. However, Anova staff acknowledged that the Student would spend most of the school day in the resource room and that the Student was out of the classroom more often than in the classroom.

- Anova notified the District of the use of prone restraints against the Student by providing the District with written incident reports and verbal reports at IEP meetings. However, according to the District, Anova only provided half of the 92 prone restraint incident reports during the period in which the Student was in attendance at Anova and would often send several incident reports at a time, not necessarily near or at the time of the incidents. According to the District, it did not receive all of the incident reports until October 2014, following the District's receipt of OCR's data request. The District did not respond to the incident reports
it received from Anova by calling IEP meetings or developing a BIP. As reported by Anova staff, the District did not request to observe the Student at Anova during his enrollment.

- According to the Student's mother, neither Anova nor the District told her that the Student had been prone-restrained. She was first informed about Anova's use of prone restraint by the Student who described to her how staff had been holding him down and informed her that it caused him to experience pain. When the Student's mother raised concern, Anova staff informed her that prone restraint was necessary and convinced her that it would help the Student's behavior to improve.

- On May 22, 2013, the District convened an IEP team meeting to conduct a 30-day review of the Student's placement at Anova. The notes of the meeting, written by a District administrator, state that the Student's parents expressed concern about the use of restraints against the Student. Anova staff explained that "physical restraints and escorts have been necessary on occasion." The notes of the meeting document that the IEP team agreed that an FAA should be conducted for the Student so the team could develop a behavior intervention plan. The Student's mother signed the assessment plan that day.

- At the May 22, 2013 IEP meeting, Anova staff reported that they were not implementing the Student's BSP because it was not appropriate for Anova; Anova instead used a protocol it used to address the behavior of all of its students.

- By the time of the May 22, 2013 IEP meeting, Anova staff had placed the Student in a prone restraint 27 times for a total of 339 minutes. Examples of the use of prone restraint during this period include the following:
  * Anova staff prone-restrained the Student for 35 minutes on May 2, 2013 because he was upset about walking into dog droppings and ran into the classroom screaming.
  * On May 9, 2013 Anova staff held the Student in a continuous prone restraint for 45 minutes for throwing a chair. Additionally, on May 9, 2013, Anova staff prone restrained the Student two other times, each time for 15 minutes, due to the Student's expression of frustration
regarding a game of Uno.

- On May 17, 2013, Anova staff placed the Student in a prone restraint for bouncing a ball inappropriately in the occupational therapy room. The first restraint was for three minutes and the second one was for 15 minutes. Later that day, staff placed him in a prone restraint for 35 minutes and then again for 15 minutes because he had an emotional breakdown in his mother's car.

- The speech and language therapist and the occupational therapist both reported at the May 22, 2013 IEP that the Student's behavior was preventing him from being available to participate in their classes.

- Based on the incident reports, on two occasions in which he was prone-restrained during his first six weeks at Anova, the Student expressed suicidal ideation. The IEP team did not address this during the 30-day review.

- A week after the interim IEP meeting, Anova staff placed the Student in prone restraints six separate times in a single day, May 30, 2013, for a total duration of 103 minutes. The Student had been having difficulty transitioning that day. He eloped from his classroom in the morning and in response, Anova staff placed him in a prone restraint three times. In the afternoon, Anova staff prone restrained the Student an additional three times. The Student had run into the OT classroom and attempted to hide under a desk and proceeded to kick and scream. Anova staff responded by physically escorting the Student out of the OT room. By the time they entered the resource room, the Student's behavior escalated to hitting and kicking staff.

- The 93 minute-prone restraint occurred on October 3, 2013. The incident report indicates that the initial behavior that lead to the staff placing the Student in a prone restraint was cursing; the Student's behavior escalated following staff interventions which culminated with them placing the Student in a prone restraint. The incident report states that in response to the Student's cursing, staff told the Student to take a break in which they attempted to restrict his movement with proximity control. This lead to the Student eloping from the building. Staff captured and escorted the Student to the resource room where he was initially released, but then was placed in a prone
restraint to which the Student responded by trying to bite and scratch staff's hands. There were multiple staff changes throughout this restraint.

- Also on October 3, 2013, the District held the Student's triennial IEP meeting. During the period from the Student's first day of school to the date of the triennial IEP, Anova staff had held the Student face down 48 times for a total of 1250 minutes. At the October 3, 2013 IEP meeting, the team noted that the Student's behavior had still not been evaluated to appropriately develop a behavior intervention plan, despite the parent-signed assessment plan from the May 22, 2013 IEP. A September 12, 2013 note to the school nurses from the Student's District case manager indicates that the case manager had been unaware that the Student's parents had signed the May 22, 2013 assessment plan.

- A District psychologist conducted the Student's triennial psychological evaluation on September 18-19, 2013. This assessment did not include an FAA or FBA. The District psychologist's report states that just prior to her conducting a classroom observation; the Student was placed in a restraint for an extended period for showing aggression towards another student in the classroom.

- The notes of the October 3 IEP meeting state that in lieu of a BSP, Anova instituted an emergency behavior intervention plan and discontinued the Student's existing BSP.

- On December 20, 2013 the District provided the mother with another consent form to sign to conduct a behavior assessment.

- On January 6, 2014, the Student was prone restrained a combined total of 95 minutes during four back-to-back periods of restraint. An IEP meeting was convened on January 23, 2014 to discuss the increased duration of physical restraint. The notes of the meeting document that Anova explained the reason for keeping the Student in a restraint was his verbal response to the restraint. The Student’s attorney stated that his family believed that Anova staff was triggering the Student’s behavior.

- At the January 23, 2014 IEP meeting, the District provided the
Student's mother with a plan to conduct a mental health assessment and evaluate the Student for a one-on-one aide. The District's written justification on the January 23, 2014 assessment plan was "multiple incidents since mid-December that involved restraint for at least 40 minutes." However, the District made no mention of the fact that by this time, on at least four occasions in which the Student was held in a prone restraint, he expressed suicidal ideations.

- On February 13, 2014, the Student's mother sent the District a letter that reiterated her concerns regarding the use of restraints against the Student and indicated that since the January 23rd IEP meeting, Anova staff had restrained the Student five more times. The Student's parents previously had raised concerns about the use of restraint against the Student at his May 2013, October 2013, and January 2014 IEP meetings.

- On February 14, 2014, a District-contracted behavior analyst assessed the Student to determine whether he needed a one-on-one aide. The behavior analyst recommended that the Student have a temporary adult aide.

- On February 16, 2014, the Student's mother notified the District that the Student had been injured while he was restrained at Anova.

- On February 21, 2014, in a telephone conversation with the Student's mother, the Student's case manager mentioned the possibility of changing the Student's placement, but offered only one option, an NPS which the mother believed would not have met the Student's needs. The case manager did not discuss any other alternative placements or options for making Anova a safer environment for the Student.

- On February 27, 2014, Anova staff placed the Student in and out of a prone restraint seven times for a total duration of 107 minutes. The Student's mother came to pick up the Student and heard his screams while she was still in the Anova parking lot. The Student's parents determined it was unsafe for the Student to return to Anova. Consequently, February 27th was the Student's last day at Anova.

- On March 3, 2014, nine months after the Student's parents signed the
May 22, 2013 assessment plan and after the Student stopped attending Anova, an Anova behavior analyst pieced together a functional behavior assessment report and recommended that the Student have a behavior intervention plan.

- Also on March 3, 2014, an IEP team meeting was convened to review the March 3 behavior assessment and February 2014 assessment for a one-on-one aide. The team agreed that the Student needed a change in placement and the District, with the consent of the Student's parents, made referrals to other NPS programs.

- From February 28 until March 31, 2014 which is the date the Student began attending the NPS he currently attends, the Student stayed at home and did worksheets provided by Anova. During this period, the District did not offer or provide the Student with instructional support or services.

**Impact on the Student**

- During the onsite, an Anova staff member reported that the Student made no academic or behavioral progress during his enrollment at Anova. Anova staff acknowledged that they were unable to focus on academics because the Student’s behaviors were not responsive to the Anova behavior management program.

- The Student's academic and functional performance declined in some areas as demonstrated by comparing his assessment scores pre- and post-Anova. For example his grade level equivalent for applied problems in April 2012 was 7.8. In April 2014, after 11 months at Anova, it dropped more than a grade level to 6.6.

- In addition to the loss of instructional time due to being held in prone restraint which totaled approximately 2200 minutes, Anova staff explained that the Student was excluded from the instructional setting following each restraint in order for the Student to "recover" and reflect on why he had been restrained. The staff reported that on many days, the Student just went to the resource room because he knew he was going to end up there.

- According to the Complainant, the Student experienced physical and emotional trauma due to the long periods and frequency of being held
face down. The Student frequently reported to his parents that his arms or upper body hurt at night because of being restrained. On at least one occasion, because his face was pressed into the floor, the Student sustained an abrasion on his face.

- The Student was in constant fear of being forcibly taken to the resource room and being restrained. Even when the Student was not personally subjected to restraint, he heard the cries and screams of other students who were similarly subjected to physical restraint. According to the Student, he heard such cries nearly every day he was at school.

- The Student experienced difficulty sleeping at night and difficulty engaging academically and socially at school because of this fear. As noted in behavior incident reports that Anova provided to the District, the Student expressed suicidal ideation. In addition, the Student's January 23, 2014 IEP indicated that the Student repeatedly expressed his wish to die to his parents and to Anova staff.

Analysis

Issue 1: Whether the District failed to provide the Student with a free, appropriate public education (FAPE) by: a) failing to ensure implementation of the Student's Individualized Education Program (IEP); and, b) failing to appropriately evaluate/re-evaluate the Student's individual educational needs.

OCR determined that the preponderance of evidence was sufficient to support a conclusion that the District violated Section 504 and Title II by failing to ensure that the Student's IEP was implemented and by failing to appropriately evaluate and re-evaluate the Student's individual educational needs.

   a. Failure to Implement the Student's IEP

The District failed to ensure that the Student's IEP was implemented at Anova with regard to the BSP and other services required by the Student's IEP. Anova staff failed to implement the Student's IEP by disregarding the Student's BSP. Instead Anova utilized a behavior management protocol it applied to all of its students which included the routine use of prone restraint. Additionally, while Anova staff were holding the Student face down to the ground and during the periods the Student
was in the resource room or office "recovering" from the restraint, the Student did not receive the instructional services, speech and language services, and occupational therapy required under the Student's IEP.

Therefore, OCR concluded that in violation of Section 504 and Title 11, the District denied the Student a FAPE by failing to ensure Anova implemented the Student's IEP with respect to the Student's BSP, speech and language services, occupational services and classroom instruction.

b. **Failure to Evaluate the Student**

Contrary to the information in the Student's IEE report and BSP which was part of his IEP that made clear the Student would "spiral out of control" if physical intervention were used to manage his behavior, Anova regularly prone restrained the Student for behaviors which were frequently not dangerous. The fact that Anova used this highly restrictive and dangerous type of aversive behavior intervention so frequently and for such long durations should have prompted the District to evaluate the Student's behavior under its own policy which prohibits the use of emergency interventions such as prone restraint in lieu of planned, systematic behavioral interventions and requires the IEP team to evaluate the effectiveness of a behavioral intervention plan and modify it if necessary when emergency interventions are used. Indeed, the Department's Resource Document provides that repeated restraint use for an individual child, multiple uses within the same classroom, or multiple uses by the same individual should trigger a review and, if appropriate, a revision of behavioral strategies currently in place to address dangerous behavior.

Moreover, for each of the 92 times that the Student was prone restrained, he was removed from the classroom/instructional setting and for each time the Student was restrained, Anova reported that he spent at least an equal amount of time "recovering" in the small, windowless, unfurnished resource room. Indeed, Anova acknowledged that during the period of his attendance, the Student would spend most of the school day in the resource room rather than receiving instruction in his classroom and the services required in his IEP. The 2200 minutes that the Student was held face down combined with the amount of time the Student was "recovering" in the resource room exceeded ten instructional days and thus, constituted a significant change in placement. Under 34 C.F.R.
section 104.35(a) the District is responsible for conducting an evaluation of any student who needs or is believed to need special education or related aids and services because of disability before making a significant change in placement. After the Student was removed from the classroom setting for the equivalent of ten days, the District should have conducted an evaluation.

Although the District eventually recognized the need to evaluate the Student and provided the Student's parents with assessment plans which they signed initially in May 2013, nearly a year passed, during which the Student was continually subjected to prone restraint, before the assessment was completed. The Student's mother signed a behavior assessment plan at the conclusion of each IEP meeting in May, October and January and the District failed to ensure that the assessment was completed. Although the District's contract with Anova indicates that Anova would conduct FAAs and the evidence may show that Anova failed to meet its contractual obligation in this regard, the District cannot contract away its FAPE obligation and is ultimately responsible under Section 504 and Title II for ensuring that the Student is properly and timely evaluated. Therefore, OCR concluded that in addition to denying the Student a FAPE by failing to implement the Student's IEP, the District also denied the Student a FAPE by failing to evaluate the Student in violation of Section 504 and Title II.

**Issue 2: Whether the District discriminated against the Student on the basis of disability by allowing the NPS to: a) deny the Student an opportunity to participate in, or benefit from an aid, benefit or service when the Student was excessively restrained and secluded from class; b) subject the Student to a hostile environment; and, c) subject the Student to different treatment for defiant and disruptive behavior than non-disabled students.**

Under Section 504 and Title II, if a school district provides significant assistance to an outside entity and the entity is shown to have discriminated on the basis of disability, the district must take steps to obtain compliance from the organization or terminate its assistance. OCR determined that the preponderance of the evidence is sufficient to support a conclusion that the District provided significant assistance to Anova, that Anova discriminated against the Student on the basis of disability and the District failed to take appropriate steps to obtain compliance from
Anova or terminate its contractual relationship with Anova during the period of the Student's placement at Anova.

As it does with every NPS in which it places a District student, the District provided significant assistance to Anova by virtue of its contractual relationship with Anova to provide educational services to the Student. Just as it is impermissible for the District to contract away its responsibility to ensure that District students who are placed in an NPS receive a FAPE, the District is ultimately responsible under Section 504 and Title II for ensuring that the students it places in NPS environments are provided with an education that is free from discrimination on the basis of disability.

a. Denial of Equal Opportunity for Educational Benefit

OCR determined that Anova's excessive use of prone restraint against the Student along with its application of physical escort and "recovery" during the entire period of his attendance at the NPS excluded the Student from the instructional setting for behavior related to the Student's disability. The Student was excluded from the instructional setting for a significant period of time consisting not only of the 2200 minutes in which the Student was held face down, but also the undocumented amount of time the Student spent in the resource room or front office "recovering." As acknowledged by Anova staff in interviews and documented on the Student's disciplinary charts, the Student spent most of his time at Anova outside of the instructional setting. Indeed, Anova staff reported that the Student made no academic progress during his enrollment at Anova and his academic and functional performance declined as shown by grade level drops in pre- and post Anova assessments. Thus, OCR concluded that the preponderance of the evidence is sufficient to support a conclusion that in violation of Section 504 and Title II, the Student was denied an equal opportunity to benefit from the educational program when he was being restrained and made to stay in the recovery room or office since he was not receiving academic instruction or educational benefit during these periods.

b. Hostile Environment

As noted in the above-referenced Dear Colleague Letter, inappropriate use of physical restraint may constitute disability-based harassment. The U.S. Department of Education Resource Document makes clear that there is no circumstance under which an educational institution's use of
a prone restraint against a student would be appropriate. The Resource Document unambiguously states that the reason prone restraints should never be used is because they can cause the student to either suffer serious injury or death. Thus, OCR determined that Anova’s inappropriate use of prone restraints against the Student constituted disability-based harassment since Anova restrained the Student in response to his disability-related behaviors. OCR then considered the totality of the circumstances. Based upon the following, OCR determined that Anova’s use of prone restraint against the Student was severe. Prone restraint is a serious, potentially lethal act. Being prone restrained caused the Student to scream and cry with physical pain, suffer physical injury, fear and anxiety about going to school, and become depressed to the point of being suicidal. The Student struggled against the restraint use; it was not welcome; he did not consent to its use. The Student was subjected to this dangerous type of restraint when he was nine years old, small for his age and experiencing weak muscle tone by adults who were more than twice his size. He was denied food and water and was denied the right to use the restroom during periods of restraint. The restraint subjected the Student to public humiliation as its use was preceded by a physical escort to the resource room which was visible to his peers who saw him with his arms being held behind him by the adult escort(s) as they took him away.

OCR considered the frequency and duration of Anova’s application of prone restraints against the Student and determined that in addition to being severe, the use of prone restraint at Anova was persistent and pervasive. Anova forced the Student into a face down hold over 90 times in 11 months, an average of twice a week. The Student was held in a face down position with his arms and legs immobilized for an average of 29 minutes each time. In addition to his own experience of being restrained, the Student reported that he heard the cries of other students being restrained on a nearly daily basis.

Based upon the foregoing, OCR concluded that Anova’s use of prone restraints against the Student was sufficiently serious to deny or limit the Student’s ability to participate in or benefit from the educational program and created a hostile environment on the basis of the Student’s disability.

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6 For more information, see Resource Document at p. 16. “Return to Main Document”
The District placed the Student at Anova and was responsible for knowing that the Student was experiencing a hostile environment at the NPS, stopping and remedying the harassment, and preventing such incidents in the future. The contract between the District and Anova contained a provision that gave the District the right to audit Anova with or without cause including reviewing core compliance areas of health and safety; curriculum/instruction; related services; and contractual, legal, and procedural compliance. The District did not conduct an audit of Anova during the Student’s placement and did not take steps to obtain Anova’s compliance with non-discrimination obligations; instead, it continued to provide Anova with significant assistance even as Anova continued to subject the Student to a hostile environment on the basis of the Student’s disability.

In addition to having constructive notice, the preponderance of the evidence shows that the District had early actual notice that the Student was being subjected to harassment in the form of prone restraint. The District received copies of behavior incident reports which documented the use of prone restraint and stated that the Student had experienced suicidal ideation in conjunction with the restraint. Moreover, IEP notes document that the Student’s parent and legal advocate raised concerns about the use of prone restraint against the Student throughout his placement at Anova. The District knew that Anova staff had prone restrained the Student by the Student’s May 22, 2013 IEP meeting which was held to review the Student’s initial 30 days at Anova. The only action the District took in response to the concerns raised about the use of prone restraint against the Student was to agree to have an FAA which took nine months to complete. Even if the FAA were timely conducted, by itself, it would have been an insufficient response to the hostile environment.

The District’s response should have been tailored to promptly stop the harassment, eliminate the hostile environment, and remedy the effects of the harassment on the Student. The District should have conducted an impartial inquiry designed to reliably determine what was occurring by taking steps such as interviewing the Student and observing him and staff at Anova, and interviewing the Student’s parents and Anova staff. The District failed to conduct an investigation, did not take steps to stop the use of prone restraints against the Student, did not seek to identify and remedy the harm to the Student, and did not take effective steps to
prevent future use of prone restraints against the Student. The use of prone restraint against the Student only ended when the Student's family refused to allow him to return to Anova. Therefore, OCR concluded that the preponderance of the evidence is sufficient to support a conclusion that the District allowed the Student to be subjected to a hostile environment at Anova and failed to take prompt, thorough, and effective responsive action in violation of Section 504 and Title II.

c. Different Treatment for Defiant and Disruptive Behavior

To determine whether an individual has been discriminated against on the basis of disability under Section 504 and Title 11, OCR looks at whether there is evidence that the individual was treated differently than non-disabled individuals under similar circumstances, and whether the treatment has resulted in the denial or limitation of services, benefits, or opportunities. If there is such evidence, OCR examines whether the school district provided a nondiscriminatory reason for its actions and whether there is evidence that the stated reason is a pretext for discrimination. For OCR to find a violation, the preponderance of the evidence must establish that the school district's actions were based on the individual's disability.

The District has implemented SWPBIS in its schools to address primarily defiant and disruptive student misconduct with positive behavior interventions rather than suspension or expulsion. Prone restraint is not a positive behavior intervention; prone restraint does not remove triggers or teach pro-social replacement behaviors. Anova's application of prone restraint to the Student was frequently in response to disruptive or defiant, but not dangerous behavior such as "too much silly," cursing, hiding under a desk, expressing frustration, inappropriately bouncing a ball, not following directions, pushing desks, and ripping up assignments. These behaviors are within the range of defiant and disruptive behaviors that the District addresses through SWPBIS. If a student engaged in such misconduct in a District school, under the District's disciplinary/SWPBIS protocol the District would have applied a range of positive interventions and supports in response to the behavior, not prone restraint. Prone restraint is not used in District schools for defiant or disruptive behavior or for any other misconduct.

In contrast, the District allowed Anova to routinely use prone restraint in response to the behavior of the Student that was defiant and disruptive, but
not dangerous. According to the District, prone restraint use against its students is only permissible for those it places at an NPS. Only students with disabilities are placed in NPSes. Thus, the only students the District allows to be prone restrained for non-dangerous defiant and disruptive behavior are students with disabilities. OCR determined that the District allowed the Student to be treated differently for non-dangerous, defiant and disruptive behavior on the basis of disability and that for the reasons stated above, this was adverse treatment that denied and/or limited his educational benefits and opportunities.

The District did not proffer a legitimate, non-discriminatory reason for allowing Anova to respond to the Student’s defiant/disruptive, but non-dangerous behavior with prone restraint. Even if the District had asserted that the reason it allowed Anova to prone restrain the Student was safety, the preponderance of the evidence is sufficient to support a conclusion that such a justification was a pretext for different treatment on the basis of disability. Many of the behaviors that led to the Student to being prone restrained were not unsafe or dangerous. Moreover, more effective responses than prone restraint exist, such as the Safe Environments hold utilized by LCC, which do not have potentially lethal consequences.

Therefore, OCR concluded that the preponderance of the evidence is sufficient to support a conclusion that the District allowed the Student, on the basis of disability, to be subjected to different treatment for non-dangerous, defiant and disruptive behavior than his non-disabled peers in violation of Section 504 and Title II. Based upon the foregoing, OCR determined that the preponderance of the evidence was sufficient to support a conclusion that the District violated Section 504 and Title with respect to Issue 1 and Issue 2.

The enclosed resolution agreement contains individual student remedies to evaluate the Student for adverse effects caused by the repeated use of prone restraint against the Student and determine appropriate compensatory education and services for the period of time the Student was removed from the instructional setting while he was at Anova. The agreement also contains provisions to ensure that restraint use against District students with disabilities is consistent with the principles set forth in the Department of Education’s Restraint and Seclusion Resource Document.
This concludes the investigation of this complaint. OCR's determination in this matter should not be interpreted to address the Recipient's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

Please be advised that the Recipient may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the Complainant may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by the law, personal information that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact Jessica Plitt (jessica.plitt@ed.gov ) at 415-486-5525 or Gloria Guinto (gloria.guinto@ed.gov ) at 415-486-5519.

Sincerely,

Zachary Pelchat Team Leader

Enclosure

U:\BAY\SHARED\SUZANNE\OCR-Findings Report Re OUSD - Complaint 94-14-1465 dtd 2016Jun24.docx
RESOLUTION AGREEMENT

Oakland Unified School District

OCR Case Number 09-14-1465

In order to resolve the findings of non-compliance made by the U.S. Department of Education, Office for Civil Rights (OCR) under Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990, the Oakland Unified School District (District) agrees to implement this Resolution Agreement (Agreement).

Actions and Reporting:

I. Individual Student Remedies

A. Evaluation

Contingent on the parents' consent, the District will arrange for an appropriately qualified individual, who has expertise and experience in identifying and evaluating adverse effects caused by seclusion from classroom instruction and repeated use of prone restraint on children with autism and anxiety disorder, to conduct a psycho-educational evaluation of the Student for harm related to all instances in which the Student was placed in a prone restraint and the related instances of seclusion during the eleven months he was enrolled in Anova Center for Education, Contra Costa campus (Anova), the non-public school (NPS) in which the District placed the Student.

1. The Student will be evaluated for adverse effects related to the frequency and duration of being placed in prone restraint and seclusion with respect to the Student's intellectual development, academic achievement, and social-emotional development.

2. The District will provide the evaluator with relevant information about the Student including a copy of this Agreement, the resolution letter in this case, copies of all relevant records within the District's control that are requested by the evaluator, and by facilitating access to the Student for interviews and observation.

3. The evaluation report will include recommendations for addressing any area of identified harm related to the use of restraints against the Student while he was placed at Anova. The District will provide a copy of the report to OCR.
B. **IEP Meeting.**

Upon receipt of the completed evaluation report, the District will provide proper written notice to the Student's parents and other IEP team members, including the evaluator, of the mutually agreeable date on which the District will convene an IEP team meeting to consider the evaluation report described in Item I.A. and to develop a plan for appropriate compensatory education and services for the denial of educational benefit, loss of academic and other instruction, as well as any necessary mental health, counseling and/or other support services related to the Student's being held in prone restraint and removed from the instructional setting during his placement at Anova. The IEP team will consider the evaluation report recommendations, the actual restraint time, time in the Anova resource room and front office recovering, and the period of time between the Student's last date of attendance at Anova and his first day in his current placement as lost instructional time. The IEP team shall determine whether a revision of or an amendment to Student's current IEP is appropriate. The District will provide a copy of any revised or amended IEP to OCR. An offer of compensatory education and services may be memorialized in a separate agreement, and will not be considered a part of Student's applicable IEP. The District will provide to OCR a copy of any agreement providing compensatory education and services to Student.

C. **Procedural Safeguards.**

The District will provide the Student's parents notice of the procedural safeguards, including the right to challenge the IEP team's determination through an impartial due process hearing.

**Reporting Requirements for Section 1**

1) Within 45 days of execution of this Agreement, the District will provide OCR with documentation that shows that it sought the consent of the Student's parents for the evaluation described in Item I.A., and the name, contact information, and a description of the relevant expertise and experience of the individual who will conduct the evaluation.

2) Within 60 days of receipt of the completed evaluation described in Item I.A., the District will provide for OCR's review documentation showing the attendees of the IEP team meeting described in I.B., the information considered at the IEP team meeting, IEP team meeting notes, and any revised or amended IEP. The District shall also
provide for OCR's review and approval an agreement providing any compensatory education and services for the denial of educational benefit, loss of academic and other instruction, as well as any necessary mental health, counseling and/or other support services to the Student (Compensatory Education Agreement). Prior to approving the District's Compensatory Education Agreement, OCR shall review the documentation to ensure that the District met the procedural requirements of the regulation implementing Section 504, at 34 C.F.R. sections 104.34, 104.35 and 104.36, in making these determinations.

II. Prone Restraint Use

A. Effective immediately, the District will not make any new referrals to or new offers of placement for District students at Anova unless Anova agrees and the District has substantiated that Anova has: 1) discontinued the use of prone restraint; 2) implemented a practice to review and revise strategies in place when an individual student is subjected to physical restraint, when there are multiple uses of physical restraint within the same classroom, or multiple uses of physical restraint by the same individual; (3) implemented positive behavior intervention plans which identify, with specificity, problem behaviors, triggers for those behaviors and comprehensive support designed to meet an individual student's needs.

B. The District will review, and revise as necessary, all relevant District policies and procedures to be consistent with the fifteen principles set forth in the U.S. Department of Education's Restraint and Seclusion: Resource Document.

C. The District will take steps to ensure that NPSs with which the District enters into new contracts, for new placements of District students, do not use prone restraints against District students or otherwise utilize restraints as a substitute for individualized positive behavior planning, and that the NPSs have strategies in place to identify and address the needs of students who are subjected to a physical restraint and a system and strategy for identifying and remedying multiple uses of physical restraint within the same classroom, or multiple uses of physical restraint by the same individual.

D. Upon renewal and execution of new NPS master contracts, the
District shall engage in good faith to include the following modifications which will be applicable to those contracts into which the District enters following the effective date of this Agreement:

1. The NPS will not use prone restraint against District students who are placed at the NPS.

2. Restraint practices must be reviewed and revised when they have an adverse effect on a student and are used repeatedly for an individual child, either on multiple occasions within the same classroom or multiple uses by the same individual.

3. The protocol for reporting to the District the use of any type of physical or mechanical restraint against or seclusion of a District student that includes the timeframe for filing the report with the District and the identification of the individual(s) in the District who should receive the report.

4. The NPS is responsible for notifying a District student's parent/guardian of the use of any type of physical or mechanical restraint or seclusion and the timeframe in which the non-public school should notify the parent/guardian.

E. The District will develop a written protocol to be followed whenever it receives a report from a NPS that it has subjected a District student to physical or mechanical restraint or seclusion. The protocol will include:

1. How the District will monitor the reports for the manner, frequency and duration of restraint use.

2. How the District will analyze the information on the manner, frequency and duration of restraint use to prompt the need to evaluate the student's behavior and convene an IEP team or Section 504 team meeting to review and revise strategies in place for a student.

3. How the District will ensure that the student's behaviors are appropriately analyzed and that a comprehensive plan of support is put into place that eliminates or
substantially reduces the use of restraint. Among other things this process should:

a. Define the behavior with observable precision;

b. Conduct a formal process (interviews, direct observation and, if necessary, functional analysis) to determine the context (when, where, with whom) the problem behavior is most and least likely to occur;

c. Define the primary maintaining consequence for the problem behavior in that context; and

d. Determine whether all other appropriate alternative strategies have been identified and tried and the effectiveness of each alternative strategy.

4. How the District will ensure that the student has a comprehensive plan of support that addresses the identified behavior that:

a. Includes strategies for arranging the student's learning environment for academic and social success on a continuous basis;

b. Includes strategies for avoiding situations that are likely to lead to problematic behavior;

c. Teaches socially appropriate behaviors that achieve the same effect for the student as the problem behavior;

d. Ensures that the student has immediate and regular access to reinforcers/rewards for pro-social behavior;

e. Minimizes the likelihood that the problem behavior is rewarded;

f. Ensures that adequate safety procedures are in place for the student, staff and peers;

g. Include a data system for continuous monitoring of the fidelity of staff implementation of the plan,
intervention effects, and impact on student outcomes which will be used to improve the support being provided to the student; and

h. Ensures that staff working with the student is trained on implementing the plan of support.

F. Training

1. The District will hire an expert who has expertise and experience regarding the adverse effects caused by repeated use of restraint, including prone restraint, on children diagnosed with autism or who have other disabilities that may affect their behavior, as well as successful non-restraint strategies, to provide training on positive, pro-social, non-aversive alternatives interventions and strategies for addressing serious maladaptive behaviors ("Training"). The Training will include information about the trauma caused by the use of restraints on students. The Training will be provided to District special education administrators and staff who are responsible for monitoring children placed at NPSs. The District will offer to make the Training available to staff of local NPSs with which it has contracts.

   a. The training will be conducted no later than November 1, 2016.

   b. The materials from the training will be made available to the District to train newly hired District staff who are responsible for monitoring children placed at NPSs, who must be trained within three months of hire.

2. The District will provide training to special education administrators and staff with responsibilities for students placed at NPSs on the protocol described in Item II. E.

Reporting Requirements for Section II:

1) Within 45 days of the date this Agreement is signed, the District will provide OCR with the following:

   a. documentation that it has implemented Item II.A.;
b. a list of the policies and procedures that need to be revised in accordance with Item 11.B, and proposed revisions for OCR review and approval;

c. a list of the non-public schools with which the District has contracts; and

d. identification of the expert described in Item F.1.

2) Within 60 days of the date this Agreement is signed, the District will provide OCR with the following:

a. documentation that shows it has implemented Item 11.C.; and

b. the draft protocol described in Item 11.E for OCR's review and approval.

3) Within 90 days of the date this Agreement is signed, the District will provide OCR with documentation that shows it has implemented Item 11.B.

4) By November 1, 2016, the District will provide OCR with documentation that shows it has implemented Items 11.D and 11.F.

**Monitoring**

The District understands that OCR will not close the monitoring of this Agreement until OCR determines that the District has fulfilled the terms of this Agreement in compliance with Section 504 and Title II.

The District understands that by signing this Agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this Agreement. Further, the District understands that during the monitoring of this Agreement, if necessary, OCR may visit the District, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the District has fulfilled the terms of this Agreement and is in compliance with Section 504 and Title II.

The District understands and acknowledges that OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of this Agreement. Before initiating administrative enforcement (34 C.F.R. sections 100.9, 100.10), or judicial proceedings to enforce this Agreement, OCR shall give the District written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.
By:  
James Harris  
President, Board of Education  

date: 4/24/16

By:  
Antwan Wilson  
Superintendent & Board Secretary  

date: 4/24/16

Approved as to Form

By:  
Michael L. Smith  
Deputy General Counsel  

date: 4/24/16
This document was produced under U.S. Department of Education Contract No. ED-OSE-09-O-0058 with the American Institutes for Research. Renee Bradley served as the contracting officer’s representative. This resource document contains websites and resources created by a variety of organizations. These websites and resources are provided for the user’s convenience. No official endorsement by the U.S. Department of Education of any product, commodity, service or enterprise mentioned in this report or on websites referred to in this report is intended or should be inferred. The views expressed herein do not necessarily represent the positions or policies of the Department of Education and no official endorsement of them by the Department is intended or should be inferred.

U.S. Department of Education
Arne Duncan
Secretary

May 2012

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This resource is available on the Department’s Web site at: www.ed.gov/policy/restraintseclusion

On request, this publication is available in alternate formats, such as Braille, large print or compact disc. For more information, contact the Department’s Alternate Format Center at 202-260-0852 or 202-260-0818.

All photos are from Getty Images.
As education leaders, our first responsibility must be to ensure that schools foster learning in a safe and healthy environment for all our children, teachers, and staff. To support schools in fulfilling that responsibility, the U.S. Department of Education has developed this document that describes 15 principles for States, school districts, schools, parents, and other stakeholders to consider when developing or revising policies and procedures on the use of restraint and seclusion. These principles stress that every effort should be made to prevent the need for the use of restraint and seclusion and that any behavioral intervention must be consistent with the child’s rights to be treated with dignity and to be free from abuse. The principles make clear that restraint or seclusion should never be used except in situations where a child’s behavior poses imminent danger of serious physical harm to self or others, and restraint and seclusion should be avoided to the greatest extent possible without endangering the safety of students and staff. The goal in presenting these principles is to help ensure that all schools and learning environments are safe for all children and adults.

As many reports have documented, the use of restraint and seclusion can have very serious consequences, including, most tragically, death. Furthermore, there continues to be no evidence that using restraint or seclusion is effective in reducing the occurrence of the problem behaviors that frequently precipitate the use of such techniques. Schools must do everything possible to ensure all children can learn, develop, and participate in instructional programs that promote high levels of academic achievement. To accomplish this, schools must make every effort to structure safe environments and provide a behavioral framework, such as the use of positive behavior interventions and supports, that applies to all children, all staff, and all places in the school so that restraint and seclusion techniques are unnecessary.

I hope you find this document helpful in your efforts to provide a world-class education to America’s children. Thank you for all you do to support our schools, families, and communities and for your work on behalf of our nation’s children.

Arne Duncan
Contents

Restraint and Seclusion: Resource Document .............................................. 1
Background .................................................................................................. 4
Other Significant Federal Activity Regarding the Use of Restraint and Seclusion in Schools ................................................................. 6
U.S. Government Accountability Office Report ........................................ 6
Congressional Hearings and Proposed Legislation ....................................... 7
Congressional Research Service Report ..................................................... 8
Terms Used in This Document .................................................................... 9
The CRDC defines physical restraint as: ................................................... 10
The CRDC defines mechanical restraint as: ............................................. 10
The CRDC defines seclusion as: ............................................................... 10
Fifteen Principles ....................................................................................... 11
Fifteen Principles ....................................................................................... 12
Federal Agency Efforts to Address Concerns ............................................... 24
Department of Education Efforts .............................................................. 25
Letters from the Secretary .......................................................................... 25
Review of State Policies and Procedures .................................................... 25
Office for Civil Rights ............................................................................... 25
Office of Special Education Programs ....................................................... 26
Department of Health and Human Services Efforts ................................... 27
Children’s Health Act ............................................................................... 27
SAMHSA .................................................................................................... 28
Attachment A .............................................................................................. 29
Attachment B .............................................................................................. 33
Federal Resources ...................................................................................... 34
Associated Resources .................................................................................. 36
Restraint and Seclusion: Resource Document

School should be a safe and healthy environment in which America’s children can learn, develop, and participate in instructional programs that promote high levels of academic achievement.
The foundation of any discussion about the use of restraint and seclusion is that every effort should be made to structure environments and provide supports so that restraint and seclusion are unnecessary. As many reports have documented, the use of restraint and seclusion can, in some cases, have very serious consequences, including, most tragically, death. There is no evidence that using restraint or seclusion is effective in reducing the occurrence of the problem behaviors that frequently precipitate the use of such techniques.

Physical restraint or seclusion should not be used except in situations where the child’s behavior poses imminent danger of serious physical harm to self or others and restraint and seclusion should be avoided to the greatest extent possible without endangering the safety of students and staff. Schools should never use mechanical restraints to restrict a child’s freedom of movement.² In addition, schools should never use a drug or medication to control behavior or restrict freedom of movement unless it is (1) prescribed by a licensed physician, or other qualified health professional acting under the scope of the professional’s authority under State law; and (2) administered as prescribed by the licensed physician or other qualified health professional acting under the scope of the professional’s authority under State law. Teachers, administrators, and staff understand that students’ social behavior can affect their academic learning. In many high-performing schools effective academic instruction is combined with effective behavior supports to maximize academic engagement and, thus, student achievement. Students are more likely to achieve when they are (1) directly taught school and classroom routines and social expectations that are predictable and contextually relevant; (2) acknowledged clearly and consistently for their displays of positive academic and social behavior; and (3) treated by

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¹ The U.S. Department of Education issues this Resource Document to provide guidance, and describe fifteen principles that States, school districts, school staff, parents, and other stakeholders may find helpful to consider when States, localities, and districts develop practices, policies, and procedures on the use of restraint and seclusion in schools. Our goal in providing this information is to inform States and school districts about how they can help to ensure that schools are safe learning environments for all students. As guidance, the extent to which States and school districts implement these principles in furtherance of that goal is a matter for State and local school officials to decide using their professional judgment, especially in applying this information to specific situations and circumstances. This document does not set forth any new requirements, does not create or confer any rights for or on any person or require specific actions by any State, locality, or school district.

² As the definition on page six of this document makes clear, “mechanical restraint” as used in this document does not include devices implemented by trained school personnel, or utilized by a student that have been prescribed by an appropriate medical or related services professional and are used for the specific and approved purposes for which such devices were designed.
others with respect. (Algozzine, R., Wang, C., and Violette, C., 2011; McIntosh, K., Chard, D., Boland, J., and Horner, R., 2006). Building effective behavioral supports in schools also involves several ongoing interrelated activities, including (1) investing in the whole school rather than just students with problem behavior; (2) focusing on preventing the development and occurrence of problem behavior; (3) reviewing behavioral data regularly to adapt school procedures to the needs of all students and their families; and (4) providing additional academic and social behavioral supports for students who are not making expected progress (Sugai, G., Horner, R., Algozzine, R., Barrett, S., Lewis, T., Anderson, C., Bradley, R., Choi, J. H., Dunlap, G., Eber, L., George, H., Kincaid, D., McCart, A., Nelson, M., Newcomer, L., Putnam, R., Riffel, L., Rovins, M., Sailor, W., Simonsen, B. (2010)).

Positive behavior interventions and supports (PBIS) is a multi-tiered school-wide approach to establishing the social culture that is helpful for schools to achieve social and academic gains while minimizing problem behavior for all children. Over 17,000 schools across the country are implementing PBIS, which 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 the behaviors that lead to 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 (Bradshaw, C., Mitchell, M., and Leaf, P. (2010); Muscott, H., and Mann, E. (in press); Lassen, S., Steele, M., and Sailor, W. (2006)). However, PBIS is an important preventive framework that can increase the capacity of school staff to support all children, including children with the most complex behavioral needs, thus reducing the instances that require intensive interventions.

Restraint or seclusion should not be used as routine school safety measures; that is, they should not be implemented except in situations where a child’s behavior poses imminent danger of serious physical harm to self or others and not as a routine strategy implemented to address instructional problems or inappropriate behavior (e.g., disrespect, noncompliance, insubordination, out of seat), as a means of coercion or retaliation, or as a convenience.
Background

On July 31, 2009, Secretary of Education Arne Duncan sent a letter to Chief State School Officers stating that he was deeply troubled about the current use and effects of restraint and seclusion, which were the subject of testimony before the Education and Labor Committee in the U.S. House of Representatives’ hearing examining the abusive and potentially deadly application of restraint and seclusion techniques in schools.
In his letter, Secretary Duncan encouraged each State to review its current policies and guidelines on the use of restraint and seclusion in schools to help ensure that every student is safe and protected, and, if appropriate, to develop or revise its policies and guidelines. In addition, Secretary Duncan urged the Chiefs 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 occur; provide the resources needed to successfully implement the policies; and hold school districts accountable for adhering to the guidelines. The letter went on to highlight the use of PBIS as an important preventive 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.

Subsequently, the U.S. Department of Education (the Department) asked its regional Comprehensive Centers to collect each State’s statutes, regulations, policies, and guidelines regarding the use of restraint and seclusion, and posted that information on the Department’s Web site. Additionally, the Department’s Office for Civil Rights revised the Civil Rights Data Collection beginning with school year 2009-2010 to require reporting of the total number of students subjected to restraint or seclusion disaggregated by race/ethnicity, sex, limited English proficiency status, and disability, and to collect the total number of times that restraint or seclusion occurred.

Additionally, in 2009, the Substance Abuse and Mental Health Services Administration (SAMHSA) of the U.S. Department of Health and Human Services (DHHS), asked the Department’s Office of Special Education Programs (OSEP) to review a paper commissioned by SAMHSA (with the assistance of an expert work group) addressing the issue of restraint and seclusion in schools. Based on Secretary Duncan’s letter to the Chief State School Officers and the experiences of SAMHSA with reducing, and in some cases eliminating, the use of restraint and seclusion in mental health facilities, the Department determined that it would be beneficial to all children if information and technical assistance were provided to State departments of education, local school districts, and preschool, elementary, and secondary schools regarding limiting the use of restraint and seclusion to situations involving imminent danger of serious physical harm to children or others.

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3 A revised version of that information is included in this document as Attachment A.

4 These data are available at http://ocrdata.ed.gov.

5 More detail about these efforts is included later in this document.
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. The principles are based on the nine principles that Secretary of Education Arne Duncan articulated in a 2009 letter to Chairman Christopher Dodd, Chairman George Miller, and Representative Cathy McMorris Rodgers in response to proposed legislation on restraint and seclusion. In his letter, the Secretary affirmed the Department’s position that restraint and seclusion should not be used except when necessary to protect a child or others from imminent danger of serious physical harm. Since the Secretary issued his 2009 letter, the Department, working with the Department of Health and Human Services, further developed and refined the principles. The Department and the Department of Health and Human Services urge States, local districts, and schools to adopt policies that consider these 15 principles as the framework for the development and implementation of policies and procedures related to restraint and seclusion to help ensure that any use of restraint or seclusion in schools does not occur, except when there is a threat of imminent danger of serious physical harm to the student or others, and occurs in a manner that protects the safety of all children and adults at a school. The goal in presenting these principles is to help ensure that all schools and all learning environments are safe for all children and adults. 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. Additionally, this document provides a synopsis of ongoing efforts by Federal agencies to address national concerns about using restraint and seclusion in schools. Two attachments at the end of this document provide information about State policies on the use of restraint and seclusion in our nation’s public schools and an annotated resource guide on the use of restraint and seclusion in schools.

**OTHER SIGNIFICANT FEDERAL ACTIVITY REGARDING THE USE OF RESTRAINT AND SECLUSION IN SCHOOLS**

**U.S. Government Accountability Office Report**

The U.S. House of Representatives’ Committee on Education and Labor requested the U.S. Government Accountability Office (GAO) to review the available evidence on the use of restraint and seclusion...
that resulted in death and abuse at public and private schools and treatment centers. The GAO reviewed applicable Federal and State laws, interviewed knowledgeable State officials and recognized experts, and examined available evidence of abuse allegations from parents, advocacy organizations, and the media for the period between 1990 and 2009. These evidence reviews also involved the examination of selected closed cases, including police and autopsy reports and school policies on restraint or seclusion related to these cases.

The GAO report, titled *Examining the Abusive and Deadly Use of Seclusion and Restraint in Schools* (issued May 19, 2009), included three sets of findings. First, the GAO found that there were no current Federal regulations, but a wide variety of divergent State regulations, governing the use of restraint and seclusion in public and private schools. Second, the GAO reported that there were no reliable national data on when and how often restraint and seclusion are being used in schools, or on the extent of abuse resulting from the use of these practices in educational settings nationally. However, the GAO identified several hundred cases of alleged abuse, including deaths that were related to the use of restraint or seclusion of children in public and private schools. Finally, the GAO provided detailed documentation of the abuse of restraint or seclusion in a sample of 10 closed cases that resulted in criminal convictions, findings of civil or administrative liability, or a large financial settlement. The GAO further observed that problems with untrained or poorly trained staff were often related to many instances of alleged abuse.

**Congressional Hearings and Proposed Legislation**

The GAO report was presented to the U.S. House of Representatives’ Committee on Education and Labor at a hearing on restraint and seclusion on May 19, 2009. Testimony at this and other hearings, together with related work by the Committee, led to the drafting of proposed Federal legislation on the use of restraint and seclusion in schools.

The 111th Congress considered legislation on the use of restraint and seclusion in schools. The House bill (H.R. 4247) was titled *Keeping All Students Safe Act*, and two Senate bills were introduced, *Preventing Harmful Restraint and Seclusion in Schools Act* (S. 2860) and *Keeping All Students Safe Act* (S. 3895). In April, 2011, H.R. 4247 was reintroduced in the 112th Congress as H.R. 1381. And in December, 2011, S. 2020, *Keeping All Students Safe Act*, was introduced in the 112th Congress. The shared purposes of these bills were to (1) limit the use of restraint and seclusion in schools to cases where there
First, the GAO found that there were no current Federal regulations, but a wide variety of divergent State regulations, governing the use of restraint and seclusion in public and private schools.

is imminent danger of physical injury to the student or others at school; (2) provide criteria and steps for the proper use of restraint or seclusion; and (3) promote the use of positive reinforcement and other, less restrictive behavioral interventions in school. These measures also would have authorized support to States and localities in adopting more stringent oversight of the use of restraint and seclusion in schools, and would have established requirements for collecting data on the use of these practices in schools. Both the House and Senate bills were introduced and debated by their respective chambers in the 111th Congress, but only the House bill had passed when the Congressional session ended in December 2010. Therefore, no legislation related to restraint and seclusion in schools was enacted by the 111th Congress, nor has action on such legislation been taken, to date, in the 112th Congress.

Congressional Research Service Report

In October, 2010, the Congressional Research Service issued a report to Congress titled *The Use of Seclusion and Restraint in Public Schools: The Legal Issues*. The report focused on the legal issues regarding the use of seclusion and restraint in schools, including their use with children covered by the Individuals with Disabilities Education Act (IDEA) and with children not covered by IDEA. The report addressed (1) definitions (*Civil Rights Data Collection* definitions); (2) constitutional issues; (3) IDEA judicial decisions related to seclusion and restraint; (4) State laws and policies; and (5) Federal legislation.
The Department’s Office for Civil Rights (OCR) began collecting data on the use of restraint and seclusion in schools as part of the Department’s 2009-2010 Civil Rights Data Collection (CRDC) and defined key terms related to restraint and seclusion.
References in this document to “restraint” encompass the terms “physical restraint” and “mechanical restraint” as defined in the CRDC. References to “seclusion” encompass “seclusion” as defined in the CRDC. According to the GAO report, each of these types of restraint is currently being used in schools.

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.

The CRDC defines mechanical restraint as:

- The use of any device or equipment to restrict a student’s freedom of movement. This term does not include devices implemented by trained school personnel, or utilized by a student that have been prescribed by an appropriate medical or related services professional and are used for the specific and approved purposes for which such devices were designed, such as:
  - Adaptive devices or mechanical supports used to achieve proper body position, balance, or alignment to allow greater freedom of mobility than would be possible without the use of such devices or mechanical supports;
  - Vehicle safety restraints when used as intended during the transport of a student in a moving vehicle;
  - Restraints for medical immobilization; or
  - Orthopedically prescribed devices that permit a student to participate in activities without risk of harm.

The CRDC defines seclusion as:

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

A copy of the 2009-2010 CRDC and the OCR definitions of restraint and seclusion can be found at the following Web site: http://www2.ed.gov/about/offices/list/ocr/whatsnew.html. Restraint and seclusion data are available at http://ocrdata.ed.gov.6

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6 As these terms are used in this document, “restraint” does not include behavioral interventions used as a response to calm and comfort (e.g., proximity control, verbal soothing) an upset student and “seclusion” does not include classroom timeouts, supervised in-school detentions, or out-of-school suspensions.
Fifteen Principles

The Department, in collaboration with SAMHSA, has identified 15 principles that we believe States, local school districts, preschool, elementary, and secondary schools, parents, and other stakeholders should consider as the framework for when States, localities, and districts develop and implement policies and procedures, which should be in writing related to restraint and seclusion to ensure that any use of restraint or seclusion in schools does not occur, except when there is a threat of imminent danger of serious physical harm to the student or others, and occurs in a manner that protects the safety of all children and adults at school.
The Department recognizes that States, localities, and districts may choose to exceed the framework set by the 15 principles by providing additional protections from restraint and seclusion.

**FIFTEEN PRINCIPLES**

1. Every effort should be made to prevent the need for the use of restraint and for the use of seclusion.

2. Schools should never use mechanical restraints to restrict a child’s freedom of movement, and schools should never use a drug or medication to control behavior or restrict freedom of movement (except as authorized by a licensed physician or other qualified health professional).

3. Physical restraint or seclusion should not be used except in situations where the child’s behavior poses imminent danger of serious physical harm to self or others and other interventions are ineffective and should be discontinued as soon as imminent danger of serious physical harm to self or others has dissipated.

4. Policies restricting the use of restraint and seclusion should apply to all children, not just children with disabilities.

5. Any behavioral intervention must be consistent with the child’s rights to be treated with dignity and to be free from abuse.

6. Restraint or seclusion should never be used as punishment or discipline (e.g., placing in seclusion for out-of-seat behavior), as a means of coercion or retaliation, or as a convenience.

7. Restraint or seclusion should never be used in a manner that restricts a child’s breathing or harms the child.

8. The use of restraint or seclusion, particularly when there is repeated use for an individual child, multiple uses within the same classroom, or multiple uses by the same individual, should trigger a review and, if appropriate, revision of strategies currently in place to address dangerous behavior; if positive behavioral strategies are not in place, staff should consider developing them.

9. Behavioral strategies to address dangerous behavior that results in the use of restraint or seclusion should address the underlying cause or purpose of the dangerous behavior.

10. Teachers and other personnel should be trained regularly on the appropriate use of effective alternatives to physical restraint and seclusion, such as positive behavioral interventions and supports and, only for cases involving imminent danger of serious physical harm, on the safe use of physical restraint and seclusion.

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7 This Resource Document addresses the restraint or seclusion of any student regardless of whether the student has a disability. Federal laws, including the IDEA, the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, as amended, must be followed in any instance in which a student with a disability is restrained or secluded, or where such action is contemplated. This Resource Document does not, however, address the legal requirements contained in those laws.

8 As used in this document, the phrase “dangerous behavior” refers to behavior that poses imminent danger of serious physical harm to self or others.
11. Every instance in which restraint or seclusion is used should be carefully and continuously and visually monitored to ensure the appropriateness of its use and safety of the child, other children, teachers, and other personnel.

12. Parents should be informed of the policies on restraint and seclusion at their child’s school or other educational setting, as well as applicable Federal, State, or local laws.

13. Parents should be notified as soon as possible following each instance in which restraint or seclusion is used with their child.

14. Policies regarding the use of restraint and seclusion should be reviewed regularly and updated as appropriate.

15. Policies regarding the use of restraint and seclusion should provide that each incident involving the use of restraint or seclusion should be documented in writing and provide for the collection of specific data that would enable teachers, staff, and other personnel to understand and implement the preceding principles.

Following is additional information about each of the 15 principles.

1. **Every effort should be made to prevent the need for the use of restraint and for the use of seclusion.**

   All children should be educated in safe, respectful, and non-restrictive environments where they can receive the instruction and other supports they need to learn and achieve at high levels. Environments can be structured to greatly reduce, and in many cases eliminate, the need to use restraint or seclusion. SAMHSA notes in its *Issue Brief #1: Promoting Alternatives to the Use of Seclusion and Restraint*, that with leadership and policy and programmatic change, the use of seclusion and restraint can be prevented and in some facilities has been eliminated. One primary method is to structure the environment using a non-aversive effective behavioral system such as PBIS. Effective positive behavioral systems are comprehensive, in that they are comprised of a framework or approach for assisting school personnel in adopting and organizing evidence-based behavioral interventions into an integrated continuum that enhances academic and social behavioral outcomes for all students. The PBIS prevention-oriented framework or approach applies to all students, all staff, and all settings. When integrated with effective academic instruction, such systems can help provide the supports children need to become actively engaged in their own learning and academic success. Schools successfully implementing comprehensive behavioral systems create school-wide environments that reinforce appropriate behaviors while reducing instances of dangerous behaviors that may lead to the need to use restraint or seclusion. In
schools implementing comprehensive behavioral systems, trained school staff use preventive assessments to identify where, under what conditions, with whom, and why specific inappropriate behavior may occur, as well as implement de-escalation techniques to defuse potentially violent dangerous behavior. Preventive assessments should include (1) a review of existing records; (2) interviews with parents, family members, and students; and (3) examination of previous and existing behavioral intervention plans. Using these data from such assessments helps schools identify the conditions when inappropriate behavior is likely to occur and the factors that lead to the occurrence of these behaviors; and develop and implement preventive behavioral interventions that teach appropriate behavior and modify the environmental factors that escalate the inappropriate behavior. The use of comprehensive behavioral systems significantly decreases the likelihood that restraint or seclusion would be used, supports the attainment of more appropriate behavior, and, when implemented as described, can help to improve academic achievement and behavior.

2. **Schools should never use mechanical restraints to restrict a child’s freedom of movement, and schools should never use a drug or medication to control behavior or restrict freedom of movement (except as authorized by a licensed physician or other qualified health professional).**

Schools should never use mechanical restraints to restrict a child’s freedom of movement. In addition, schools should never use a drug or medication to control behavior or restrict freedom of movement unless it is (1) prescribed by a licensed physician, or other qualified health professional acting under the scope of the professional’s authority under State law; and (2) administered as prescribed by the licensed physician or other qualified health professional acting under the scope of the professional’s authority under State law.

3. **Physical restraint or seclusion should not be used except in situations where the child's behavior poses imminent danger of serious physical harm to self or others and other interventions are ineffective and should be discontinued as soon as imminent danger of serious physical harm to self or others has dissipated.**

Physical restraint or seclusion should be reserved for situations or conditions where
there is imminent danger of serious physical harm to the child, other children, or school or program staff. These procedures should not be used except to protect the child and others from serious harm and to defuse imminently dangerous situations in the classroom or other non-classroom school settings (e.g., hallways, cafeteria, playground, sports field), and only should be used by trained personnel. Physical restraint or seclusion should not be used as a response to inappropriate behavior (e.g., disrespect, noncompliance, insubordination, out of seat) that does not pose imminent danger of serious physical harm to self or others, nor should a child be restrained and secluded simultaneously as this could endanger the child. In addition, planned behavioral strategies should be in place and used to: (1) de-escalate potentially violent dangerous behavior; (2) identify and support competing positive behavior to replace dangerous behavior; and (3) support appropriate behavior in class and throughout the school, especially if a student has a history of escalating dangerous behavior.

4. Policies restricting the use of restraint and seclusion should apply to all children, not just children with disabilities.

Behavior that results in the rare use of restraint or seclusion -- that posing imminent danger of serious physical harm to self or others -- is not limited to children with disabilities, children with a particular disability, or specific groups of children (e.g., gender, race, national origin, limited English proficiency, etc.) without disabilities. Thus, to the extent that State and local policies address the use of restraint or seclusion, those policies, including assessment and prevention strategies, should apply to all children in the school, all staff who work directly or indirectly with children, and across all settings under the responsibility of the school.

5. Any behavioral intervention must be consistent with the child's rights to be treated with dignity and to be free from abuse.

Every child deserves to be treated with dignity, be free from abuse, and treated as a unique individual with individual needs, strengths, and circumstances (e.g., age, developmental level, medical needs). The use of any technique that is abusive is illegal and should be reported to the appropriate authorities. Schools should consider implementing an evidence-based school-wide system or framework of positive behavioral interventions and supports. Key elements of a school-wide system or framework include (1) universal screening to identify children at risk for behavioral problems; (2) use of a continuum of increasingly intensive behavioral and academic interventions for children identified as being at risk; (3) an emphasis on teaching and acknowledging school-wide and individual expected behaviors and social skills; and (4) systems to monitor the responsiveness of
individual children to behavioral and academic interventions. Increases in children’s academic achievement and reductions in the frequency of disciplinary incidents can be realized when school-wide frameworks are implemented as designed and are customized to match the needs, resources, context, and culture of students and staff.

6. **Restraint or seclusion should never be used as punishment or discipline (e.g., placing in restraint for out-of-seat behavior), as a means of coercion, or retaliation, or as a convenience.**

Restraint or seclusion should not be used as routine school safety measures; that is, they should not be implemented except in situations where a child’s behavior poses imminent danger of serious physical harm to self or others and not as a routine strategy implemented to address instructional problems or inappropriate behavior (e.g., disrespect, noncompliance, insubordination, out of seat), as a means of coercion or retaliation, or as a convenience. Restraint or seclusion should only be used for limited periods of time and should cease immediately when the imminent danger of serious physical harm to self or others has dissipated. Restraint or seclusion should not be used (1) as a form of punishment or discipline (e.g., for out-of-seat behavior); (2) as a means to coerce, retaliate, or as a convenience for staff; (3) as a planned behavioral intervention in response to behavior that does not pose imminent danger of serious physical harm to self or others; or (4) in a manner that endangers the child. For example, it would be inappropriate to use restraint or seclusion for (1) failure to follow expected classroom or school rules; (2) noncompliance with staff directions; (3) the use of inappropriate language; (4) to “punish” a child for inappropriate behavior; or (5) staff to have an uninterrupted time together to discuss school issues.

7. **Restraint or seclusion should never be used in a manner that restricts a child's breathing or harms the child.**

Prone (i.e., lying face down) restraints or other restraints that restrict breathing should never be used because they can cause serious injury or death. Breathing can also be restricted if loose clothing becomes entangled or tightened or if the child’s face is covered by a staff member’s body part (e.g., hand, arm, or torso) or through pressure to the abdomen or chest. Any restraint or seclusion technique should be consistent with known medical or other special needs of a child. School districts should be cognizant that certain restraint and seclusion techniques are more restrictive than others, and use the least restrictive technique necessary to end the threat of imminent danger of serious physical harm. A child’s ability to communicate (including for those children who use only sign language or other
forms of manual communication or assistive technology) also should not be restricted unless less restrictive techniques would not prevent imminent danger of serious physical harm to the student or others. In all circumstances, the use of restraint or seclusion should never harm a child.

8. **The use of restraint or seclusion, particularly when there is repeated use for an individual child, multiple uses within the same classroom, or multiple uses by the same individual, should trigger a review and, if appropriate, a revision of behavioral strategies currently in place to address dangerous behavior; if positive behavioral strategies are not in place, staff should consider developing them.**

In cases where a student has a history of dangerous behavior for which restraint or seclusion was considered or used, a school should have a plan for (1) teaching and supporting more appropriate behavior; and (2) determining positive methods to prevent behavioral escalations that have previously resulted in the use of restraint or seclusion. Trained personnel should develop this plan in concert with parents and relevant professionals by using practices such as functional behavioral assessments (FBAs) and behavioral intervention plans (BIPs). An FBA is used to analyze environmental factors, including any history of trauma (e.g., physical abuse), that contribute to a child’s inappropriate (e.g., disrespect, noncompliance, insubordination, out-of-seat) behaviors. FBA data are used to develop positive behavioral strategies that emphasize redesigning environmental conditions, which may include changes in staff approaches and techniques, so that appropriate behavior is more likely to occur and inappropriate and dangerous behavior is less likely to occur.

When restraint or seclusion is repeatedly used with a child, used multiple times within the same classroom, or used multiple times by the same individual, a review of the student’s BIP should occur, the prescribed behavioral strategies should be modified, if needed; and staff training and skills should be re-evaluated. The need for the review is based on the individual needs of the child and the determination should include input from the family; a review could be necessitated by a single application of restraint or seclusion. This review may entail conducting another FBA to refine the BIP or examining the implementation of the current plan. If the student has a history of dangerous behavior and has been subjected to restraint or seclusion, a review and plan should be conducted prior to the student entering any program, classroom, or school. In all cases the reviews should consider not only the effectiveness of the plan, but also the capability of school staff to carry out the plan. Furthermore, if restraint or seclusion was used with a child who does not have an FBA and BIP, an FBA should be conducted and, if needed, a BIP developed and implemented that incorporates positive behavioral strategies for that child, including teaching positive behaviors. The long-term goal of FBAs and BIPs is to develop and implement preventive behavioral interventions, including increasing appropriate positive behaviors, that reduce the likelihood that restraint or seclusion will be used with a child in the future.
9. Behavioral strategies to address dangerous behavior that results in the use of restraint or seclusion should address the underlying cause or purpose of the dangerous behavior.

Behavioral strategies, particularly when implemented as part of a school-wide program of positive behavioral supports, can be used to address the underlying causes of dangerous behavior and reduce the likelihood that restraint or seclusion will need to be used. Behavior does not occur in a vacuum but is associated with conditions, events, requirements, and characteristics of a given situation or setting. An FBA can identify the combination of antecedent factors (factors that immediately precede behavior) and consequences (factors that immediately follow behavior) that are associated with the occurrence of inappropriate behavior. Information collected through direct observations, interviews, and record reviews help to identify the function of the dangerous behavior and guide the development of BIPs. 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.

10. Teachers and other personnel should be trained regularly on the appropriate use of effective alternatives to physical restraint and seclusion, such as positive behavioral interventions and supports and, only for cases involving imminent danger of serious physical harm, on the safe use of physical restraint and seclusion.

Positive behavioral strategies should be in place in schools and training in physical restraint and seclusion should first emphasize that every effort should be made to use positive behavioral strategies to prevent the need for the use of restraint and seclusion. School personnel working directly with children should know the school’s policies and procedures for the safe use of physical restraint and seclusion, including both proper uses (e.g., as safety measures to address imminent danger of physical harm) and improper uses (e.g., as punishment or to manage behavior) of these procedures. In addition, school personnel should be trained in how to safely implement procedures for physical restraint and seclusion and only trained personnel should employ these interventions; as well as how to collect and analyze individual child data to determine the effectiveness of these procedures in increasing appropriate behavior and decreasing inappropriate behavior. These data
should inform the need for additional training, staff support, or policy change, particularly when data indicate repeated use of these interventions by staff.

School personnel also should receive training on the school’s policies and procedures for the timely reporting and documentation of all instances in which restraint or seclusion are used. At a minimum, training on the use of physical restraint and seclusion and effective alternatives should be provided at the beginning and middle of each school year. However, such training should be conducted more often if there are enrolled students with a history or high incidence of dangerous behavior who may be subjected to physical restraint or seclusion procedures. In addition, school administrators should evaluate whether staff who engage in multiple uses of restraint or seclusion need additional training. All school personnel should receive comprehensive training on school-wide programs of positive behavioral supports and other strategies, including de-escalation techniques, for preventing dangerous behavior that leads to the use of restraint or seclusion. Training for principals and other school administrators should cover how to develop, implement, and evaluate the effectiveness of school-wide behavioral programs. Training for teachers, paraprofessionals, and other personnel who work directly with children should be ongoing and include refreshers on positive behavior management strategies, proper use of positive reinforcement, the continuum of alternative behavioral interventions, crisis prevention, de-escalation strategies, and the safe use of physical restraint and seclusion.

Behavioral strategies, particularly when implemented as part of a school-wide program of positive behavioral supports, can be used to address the underlying causes of dangerous behavior and reduce the likelihood that restraint or seclusion will need to be used.

Use and prevention training should be accompanied by regular supervised practice. Like quarterly fire drills, all staff members should be expected to regularly and frequently review and practice approaches to prevent the conditions that result in the use of restraint or seclusion and in the use of specific and planned physical restraint or seclusion procedures. A team of trained personnel should monitor practice sessions to check for adherence to and documentation of planned procedures.

11. Every instance in which restraint or seclusion is used should be carefully and continuously and visually monitored to ensure the appropriateness of its use and the safety of the child, other children, teachers, and other personnel.

If restraint or seclusion is used, the child should be continuously and visually observed and monitored while he or she is restrained or placed in seclusion. Only school personnel who
have received the required training on the use of restraint and seclusion should be engaged in observing and monitoring these children. Monitoring should include a procedural checklist and recordkeeping procedures. School staff engaged in monitoring should be knowledgeable regarding (1) restraint and seclusion procedures and effective alternatives; (2) emergency and crisis procedures; (3) strategies to guide and prompt staff members engaged in restraint or seclusion procedures; and (4) procedures and processes for working as a team to implement, monitor, and debrief uses of restraint or seclusion. Monitoring staff should receive training to ensure that the use of physical restraint or seclusion does not harm the child or others, and that procedures are implemented as planned.

For example, those observing the application of a restraint should confirm that the restraint does not cause harm to the child, such as restricting the child’s breathing. Continuous monitoring of restraint includes, for example: (1) continuous assessment of staff and student status, including potential physical injuries; (2) termination of restraint or seclusion when imminent danger of serious physical harm to self or others has dissipated; (3) evaluation of how procedures are being implemented; and (4) consideration of opportunities for redirection and defusing the dangerous behavior. In developing procedures, States, districts, and schools should consider having school health personnel promptly assess the child after the imposition of restraints or seclusion.

Trained school staff should also inspect and prepare the seclusion area before a child is placed in seclusion. For example, the area should be free of any objects a child could use to injure him- or herself or others. School staff should either be inside the area or outside by a window or another adjacent location where staff can continuously observe the child and confirm that the child is not engaging in self-injurious behavior. When a child is in seclusion, trained school staff should constantly watch the child. Such observation and monitoring is critical in determining when the imminent danger of serious physical harm to self or others has dissipated so that the restraint or seclusion can be immediately discontinued. Proper observation and monitoring and written documentation of the use of restraint or seclusion helps to ensure the continued safety of the child being restrained or secluded as well as the safety of other children and school personnel.

12. **Parents should be informed of the policies on restraint and seclusion at their child’s school or other educational setting, as well as applicable Federal, State or local laws.**

All parents should receive, at least annually, written information about the policies and procedures for restraint and seclusion issued by the State, district, or school. This information should be included, for example, in the district’s or school’s handbook of policies and procedures or other appropriate and widely distributed school publications. Schools, districts, and States are encouraged to involve parents when developing policies and procedures on restraint and seclusion. These written descriptions should include the following: (1) a statement that mechanical restraint should not be used, that schools should never use a drug or medication to control behavior or restrict freedom of movement (except as authorized by a licensed
In addition, preventive strategies to reduce the likelihood that restraint or seclusion will need to be used with a child should be established, documented, and communicated to the child’s parents.

and family members should be notified immediately. In addition, preventive strategies to reduce the likelihood that restraint or seclusion will need to be used with a child should be established, documented, and communicated to the child’s parents. Parents also should be encouraged to work with schools and districts to ensure planned behavioral strategies are in place and used to (1) de-escalate potentially violent dangerous behavior; (2) identify and support competing positive behavior to replace dangerous behavior; and (3) support appropriate behavior in class and throughout the school, especially if a student has a history of escalating dangerous behavior.

13. **Parents should be notified as soon as possible following each instance in which restraint or seclusion is used with their child.**

Parents should be informed about the school’s procedures for promptly notifying parents and documenting each time that restraint or seclusion is used with their child. The meaning of “as soon as possible” notification should be determined by the State, district, or school and included in the information on restraint and seclusion that is provided to parents. Documenting that parents have been notified as soon as possible, ideally on the same school day, when restraint or seclusion has been used ensures that parents are fully informed about their child’s behavior and the school’s response and helps parents participate as informed team members who can work with their child’s teachers and other school staff to determine whether the behavioral supports at school and at home, including prevention and de-escalation strategies, are effective.
14. Policies regarding the use of restraint and seclusion should be reviewed regularly and updated as appropriate.

States, districts, and schools should not only establish and publish policies and procedures on the use of restraint and seclusion, but also should periodically review and update them as appropriate. This review should be conducted by a team (that includes parents) with expertise related to PBIS, and educating and supporting students with dangerous behaviors in schools and community settings. The review should consider and examine (1) available data on the use of these practices and their outcomes (i.e., the review should examine the frequency of the use of restraint and the use of seclusion across individual children, groups of children (e.g., gender, race, national origin, disability status and type of disability, limited English proficiency, etc.)), settings, individual staff, and programs and consider whether policies for restraint and seclusion are being applied consistently; (2) the accuracy and consistency with which restraint and seclusion data are being collected, as well as the extent to which these data are being used to plan behavioral interventions and staff training; (3) whether procedures for using these practices are being implemented with fidelity; (4) whether procedures continue to protect children and adults; and (5) whether existing policies and procedures for restraint and seclusion remain properly aligned with applicable State and local laws. The school should maintain records of its review of restraint and seclusion data and any resulting decisions or actions regarding the use of restraint and seclusion.

15. Policies regarding the use of restraint and seclusion should provide that each incident involving the use of restraint or seclusion should be documented in writing and provide for the collection of specific data that would enable teachers, staff, and other personnel to understand and implement the preceding principles.

Each incident of the use of restraint and of the use of seclusion should be properly documented for the main purposes of preventing future need for the use of restraint or seclusion and creating a record for consideration when developing a plan to address the student’s needs and staff training needs. For example, a school should maintain a written log of incidents when restraint or seclusion is used. Appropriate school staff should prepare a written log entry describing each incident, including details of the child’s dangerous behavior, why this behavior posed an imminent danger of serious physical harm to self or others, possible factors contributing to the dangerous behavior, the effectiveness of restraint or seclusion in de-escalating the situation and staff response to such behavior. Best practices and existing State policies and
procedures indicate that documentation of each use of restraint or seclusion frequently includes
(1) start and end times of the restraint or seclusion; (2) location of the incident; (3) persons
involved in the restraint or seclusion; (4) the time and date the parents were notified; (5) pos-
sible events that triggered the behavior that led to the restraint or seclusion; (6) prevention, re-
direction, or pre-correction strategies that were used during the incident; (7) a description of the
restraint or seclusion strategies that were used during the incident; (8) a description of any
injuries or physical damage that occurred during the incident; (9) how the child was monitored
during and after the incident; (10) the debriefing that occurred with staff following the incident;
(11) the extent to which staff adhered to the procedural implementation guidelines (if estab-
lished by the State, district, or school); and (12) follow-up that will occur to review or develop
the student’s BIP.

For individual children, these data should be periodically reviewed to determine whether
(1) there are strategies in place to address the dangerous behavior at issue; (2) the strategies
in place are effective in increasing appropriate behaviors; and (3) new strategies need to be
developed, or current strategies need to be revised or changed to prevent recurrences
of the dangerous behavior(s).

Data on the frequency of use of restraint and seclusion for all children should be periodic-
ally reviewed at school leadership meetings, grade-level meetings, and other meetings of
school staff. Data to be reviewed at these meet-
ing includes information, consistent with privacy laws, about the frequency and duration
of restraint and seclusion incidents across indi-
vidual children, groups of children (e.g., gender,
race, national origin, disability status and type
of disability, limited English proficiency, etc.),
settings, individual staff, and programs, as well
as the number and proportion of children who
were restrained or placed in seclusion since
the last meeting and for the year to date. Such

States, districts, and schools should not only establish and publish policies and procedures
on the use of restraint and seclusion, but also should periodically review and update them as
appropriate.

reviews should be used to determine whether state, district, and school policies are being
properly followed, whether procedures are being implemented as intended, and whether
the school staff should receive additional training on the proper use of restraint and seclusion
or PBIS. States, districts, and schools should consider making these data public, ensuring that
personally identifiable information is protected.
To date, Federal efforts to address concerns about the use of restraint and seclusion in schools have included the following four interrelated policy initiatives: (1) articulating principles to emphasize that physical restraint and seclusion should not be used except to protect a child or others from imminent danger of serious physical harm; (2) developing a dear colleague letter and this Resource Document that will be used to provide States, districts, and schools with information related to the proper and improper use of restraint and seclusion; (3) collecting, analyzing, and publishing restraint and seclusion incident data from every State; and (4) publishing State regulations, policies, and guidance on the use of restraint and seclusion.
A summary of these Federal efforts is presented below.

**DEPARTMENT OF EDUCATION EFFORTS**

**Letters from the Secretary**

Secretary of Education Arne Duncan issued two letters articulating the Department’s position on the use of restraint and seclusion.

The first letter was sent to Chief State School Officers on July 31, 2009 urging each State to review its current policies and guidelines on the use of restraint and seclusion in schools, and, if appropriate, to develop or revise them to ensure the safety of students. The letter highlighted a school-wide system of PBIS as an important preventive approach that can increase the capacity of school staff to support children with complex behavioral needs, thus reducing the instances that require the use of restraint and seclusion. The letter also explained that the Department would be contacting each State to discuss the State’s plans to ensure the proper use of restraint and seclusion to protect the safety of children and others at school.

On December 8, 2009, the Secretary sent a letter to Chairman Dodd, Chairman Miller, and Representative McMorris Rodgers. This letter expressed the Department’s appreciation of Congressional efforts to limit the use of restraint and seclusion. The letter also articulated a list of nine principles that the Secretary believed would be useful for Congress to consider in the context of any legislation on restraint and seclusion. Additionally, the letter informed Congress that the Department was reviewing information about each State’s laws, regulations, policies, and guidance on restraint and seclusion.

**Review of State Policies and Procedures**

The Department’s Regional Comprehensive Technical Assistance Centers collected information on the policies and procedures on restraint and seclusion in each of the 50 States, eight territories, Bureau of Indian Education, and District of Columbia. These data were summarized and presented in a public report released in February 2010 and updated through a review of State Web sites in August 2011.

The first letter was sent to Chief State School Officers on July 31, 2009 urging each State to review its current policies and guidelines on the use of restraint and seclusion in schools, and, if appropriate, to develop or revise them to ensure the safety of students.

**Office for Civil Rights**

The Department’s OCR enforces certain civil rights laws prohibiting discrimination on the basis of race, color, national origin, sex, and disability by recipients of Federal financial assistance from the Department and certain public entities. In September 2009, OCR announced in the Federal Register that it would include, for the first time, questions on restraint and seclusion in the Civil Rights Data Collection (CRDC). The CRDC now collects school- and district-level information about students in public schools that includes (1) the number of...
students by race/ethnicity, sex, Limited English Proficiency (LEP) status, and disability status subjected to physical restraint; (2) the number of students by race/ethnicity, sex, LEP status, and disability status subjected to mechanical restraint; (3) the number of students by race/ethnicity, sex, LEP status, and disability status subjected to seclusion; and (4) the total number of incidents of physical restraint, mechanical restraint, and seclusion by disability status. The data collection tables can be found at http://ocrdata.ed.gov/Downloads.aspx. The CRDC restraint and seclusion data are available at http://ocrdata.ed.gov. The data were released in two parts, in September 2011 and March 2012.

**Office of Special Education Programs**

OSEP has a long history of investments in national centers and projects that support school-wide behavioral frameworks in schools. Notably, in 1997, OSEP began funding the Technical Assistance Center on Positive Behavioral Interventions and Supports. The ongoing work of this center has led to the development and implementation of School-wide Positive Behavioral Interventions and Supports (SWPBIS). Now widely used throughout the country, SWPBIS is a framework for organizing evidence-based behavioral interventions into an integrated, multi-tiered continuum that maximizes academic and behavioral outcomes for all students.

SWPBIS is organized around six core principles: (1) invest first in the prevention of the social behavior that impedes student academic and social success in schools; (2) build a positive whole-school social culture by defining, teaching, and acknowledging clearly defined behavioral expectations for all students; (3) establish and apply consistently a continuum of consequences for problem behavior that prevents the inadvertent reward of problem behavior; (4) establish and apply consistently a multi-tiered continuum of evidence-based behavioral practices that supports behavioral success for all students, especially those students with more complex behavior support challenges; (5) collect and use data continuously to screen and monitor progress of all students, make instructional and behavioral decisions, and solve problems; and (6) invest in the organizational infrastructure and capacity to enable effective, efficient, and relevant implementation of evidence-based practices. These six core principles offer school administrators, teachers, and other school staff practical guidelines for implementing comprehensive behavioral systems that help prevent the need to use restraint and seclusion in school.

A growing body of evaluation and experimental research supports the following conclusions about the impact of SWPBIS implementation. Schools throughout the country are able to adopt and implement SWPBIS practices. When SWPBIS is implemented as intended, schools experienced reductions in problem behaviors (e.g., behavior that results in office referrals, suspensions). SWPBIS implementation enhances the impact of effective instruction on
academic outcomes. When SWPBIS is implemented as intended, students and staff members report improved school safety and organizational health. Furthermore, SWPBIS is sustainable when initial implementation is done as intended.

OSEP’s Technical Assistance Center on PBIS has assisted States and local districts with the implementation of SWPBIS in over 17,000 schools across the United States. Each of these schools has a team that has gone through, or is going through, formal training on SWPBIS practices. Teams benefit from local coaching provided by district school psychologists, social workers, counselors, administrators, and special educators. States and districts have been successful in implementing and sustaining SWPBIS by actively and formally developing State, local, and school capacity for coordination, training, coaching, and evaluation. This capacity building, in turn, supports continual improvement, effective outcomes, and efficient and accurate implementation, and maximizes student academic and behavior outcomes for all students. The center’s technical assistance supports participating local districts and schools in identifying, adopting, and sustaining SWPBIS effectively.

DEPARTMENT OF HEALTH AND HUMAN SERVICES EFFORTS

Children’s Health Act

Although restraint and seclusion have been used in mental health settings and other medical facilities for many years, these practices have become more controversial because of tragic outcomes such as deaths and serious injuries. In 2000, Congress passed the Children’s Health Act, which required DHHS to draft regulations under Title V of the Public Health Service Act for the use of restraint and seclusion in medical facilities and in residential non-medical community-based facilities for children and youth. The Act set minimum standards for the use of restraint and seclusion, which stipulate that (1) restraint and seclusion are crisis response interventions and may not be used except to ensure immediate physical safety and only after less restrictive interventions have been found to be ineffective; (2) restraint and seclusion may not be used for discipline or convenience; (3) mechanical restraints are prohibited; (4) restraint or seclusion may be imposed only by individuals trained and certified in their application; and (5) children being restrained or secluded must be continuously monitored during the procedure. The Children’s Health Act also required DHHS to draft regulations for States to use in training individuals in facilities covered under the Federal law.9

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9 Regulations implementing Part H (Requirements Relating to the Rights of Residents of Certain Facilities) of Title V of the Public Health Service (PHS) Act have been promulgated, although regulations implementing Part I (Requirements relating to the rights of Residents of Certain Non-Medical, Community-Based Facilities for Children and Youth) of Title V of the PHS Act have not yet been promulgated. Moreover, regulations have not been issued regarding training of facility staff.
The Children’s Health Act of 2000 (CHA) (Pub. L. 106-310) amended title V of the PHS Act to add two new parts (Parts H and I) that established minimum requirements for the protection and the promotion of rights of residents of certain facilities to be free from the improper use of seclusion or restraint. Consistent with section 3207 of the Children’s Health Act, the Centers for Medicare and Medicaid Services (CMS) issued regulations setting forth patient rights to be free of medically unnecessary restraint and seclusion in several types of health care facilities and programs, including: hospitals, in a final rule published at 71 Fed. Reg. 71378 (Dec. 8, 2006) that also applies to critical access hospitals; hospices, in a final rule published at 73 Fed. Reg. 32088 (June 5, 2008); Medicaid managed care, in a final rule published at 67 Fed. Reg. 40989 (June 14, 2002); programs of all-inclusive care for the elderly (PACE), in a final rule published at 71 Fed. Reg. 71244 (Dec. 8, 2006); and psychiatric residential treatment facilities for individuals under age 21, in an interim final rule published at 66 Fed. Reg. 7148 (Jan. 22, 2001). CMS has also proposed regulations governing the use of restraint and seclusion in Community Mental Health Centers, at 76 Fed. Reg. 35684 (June 17, 2011).

**SAMHSA**

As part of SAMHSA’s continuing efforts to provide guidance on the Children’s Health Act, in 2002, the agency developed the Six Core Strategies\(^\text{10}\) model, which defines specific interventions to prevent or reduce the use of restraint and seclusion in healthcare settings. This model curriculum includes the following six core components:

- Leadership toward organizational change
- The use of data to inform practice
- Workforce Development: In-service training, supervision, and mentoring
- Use of primary prevention tools
- Supporting roles for persons served and advocates in programs
- Debriefing tools

While mainly used for training in healthcare settings, these six components have been found to be applicable in school settings. Furthermore, the policy concerns exemplified in these core components have contributed to the Department’s interagency collaboration with SAMHSA to address the use of restraint and seclusion in school settings across the country.

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\(^{10}\) NASMHPD published the first training curriculum on *Six Core Strategies*\(^\circledast\) to Reduce the Use of Seclusion and Restraint in Inpatient Facilities in 2002. Since then, the Six Core Strategies\(^\circledast\) have been formally evaluated, and the evidence indicates they likely meet criteria for inclusion on SAMHSA’s National Registry of Evidence-Based Programs and Practices. [http://www.grafton.org/Newsletter/art%20lebel.pdf](http://www.grafton.org/Newsletter/art%20lebel.pdf)

Attachment A

Revised Summary of Restraint and Seclusion Statutes, Regulations, Policies and Guidance, by State: Information as Reported to the Regional Comprehensive Centers and Gathered from Other Sources

This attachment is intended to be accessed through the Internet. If this document is being printed, pages 30-32 will not contain URLs.
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**NOTE:** In August 2009, the Regional Comprehensive Centers conducted research on each state’s laws, regulations, guidance, and policies regarding the use of restraint and seclusion in schools and confirmed the information obtained with the states. The information in this report was updated by researchers at the American Institutes for Research in May 2012 and was current as of this date.

* Proposed or enacted laws and supporting regulations describing the implementation of the laws, originating from the State legislature.

* Statements or documents that set out the state views and expectations related to school district duties and responsibilities, originating from the State executive office.

* State restraint and seclusion statutes, regulations, policies, or guidance are still in development.
Attachment B

Restraint and Seclusion: Resource Document Resources with Annotations

This document contains links to Web sites and information created and maintained by public and private organizations other than the U.S. Department of Education. This information is provided for the reader’s convenience. The U.S. Department of Education does not control or guarantee the accuracy, relevance, timeliness, or completeness of this outside information. Some of this information is presented as examples of information that may be relevant. Further, the inclusion of information or addresses, or Web sites for particular items does not reflect their importance, nor is it intended to endorse any views expressed, or products or services offered.
Federal Resources


In this letter to the CCSSO, Education Secretary Arne Duncan responds to the testimony issued by the Government Accountability Office on “Seclusions and Restraints: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers.” He encourages the CCSSO to develop or review and, if appropriate, revise their State policies and guidelines to ensure that every student in every school under their jurisdiction is safe and protected from being unnecessarily or inappropriately restrained or secluded. He also urges them 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; provide the resources needed to successfully implement the policies and hold school districts accountable for adhering to the guidelines; and to have the revised policies and guidance in place prior to the start of the 2009–2010 school year.


In this letter, Education Secretary Arne Duncan applauds the efforts of Chairman Christopher J. Dodd, Chairman George Miller, and Representative Cathy McMorris Rodgers to develop legislation to limit the use of physical restraint and seclusion in schools and other educational settings that receive Federal funds, except when it is necessary to protect a child or others from imminent danger. He reports that the U.S. Department of Education has identified a number of principles that may be useful for Congress to consider in the context of any legislation on this issue. These principles are listed in the letter.

The following legislation was introduced in the 111th and 112th Congresses, concerning limitations on the use of restraint and seclusion in schools and other educational settings:

- S. 2020, 112th Congress
- H.R. 1381, 112th Congress
- S. 3895, 111th Congress
- H.R. 4247, 111th Congress
- S. 2860, 111th Congress


This research report was prepared by the Congressional Research Service for the members and committees of Congress. It was prepared because of congressional interest in the use of seclusion and restraint in schools, including passage of H.R. 4247 and the introduction of S. 2860, 111th Congress, first session. This report focuses on the legal issues concerning the use of seclusion and restraint in schools, including their application both to children covered by the
Individuals with Disabilities Education Act (IDEA) and to those not covered by IDEA. It refers to reports that document instances of deaths and injuries resulting from the use of seclusion or restraint in schools. This report notes that the IDEA requires a free appropriate public education for children with disabilities, and an argument could be made that some uses of seclusion and restraint would violate this requirement. The passage of S. 2860 in the Senate would establish minimum safety standards in schools to prevent and reduce the inappropriate use of restraint and seclusion.


This report addresses the recent testimony of the Government Accountability Office (GAO) before the Congressional Committee on Education and Labor regarding allegations of death and abuse at residential programs for troubled teens. It cites other reports that indicate that vulnerable children are being abused in other settings, through the use of restraint and seclusion in schools. This report provides an overview of seclusion and restraint laws applicable to children in public and private schools, discusses whether allegations of student death and abuse from the use of these methods are widespread, and examines the facts and circumstances surrounding cases in which a student died or suffered abuse as a result of being secluded or restrained. The report is a review of Federal and State laws and abuse allegations from advocacy groups, parents, and the media from the past two decades. The report found no Federal law restricting the use of seclusion and restraint, and found hundreds of cases of alleged abuse and death related to the use of these methods on school children; examples are provided.


This summary documents the results of the Department of Education’s 2009 request that the States report on their laws, regulations, guidance, and policies regarding the use of seclusion and restraints in schools. The document includes the descriptive information as verified by each State and territory, and a summary of this information.


This document asserts that restraint and seclusion are violent, expensive, largely preventable, adverse events. The document also makes a number of claims, including the following: (1) the rationale for the use of restraint and seclusion is inconsistently understood and contribute to a cycle of workplace violence that can reportedly claim as much as 23 to
50 percent of staff time, account for 50 percent of staff injuries, increase the risk of injury to consumers and staff by 60 percent, and increase the length of stay, potentially setting recovery back at least 6 months with each occurrence; (2) restraint and seclusion increases the daily cost of care and contributes to significant workforce turnover reportedly ranging from 18 to 62 percent, costing hundreds of thousands of dollars to several million; (3) restraint and seclusion procedures raise the risk profile to an organization and incur liability expenses that can adversely impact the viability of the service; (4) many hospitals and residential programs, serving different ages and populations, have successfully reduced their use and redirected existing resources to support additional staff training, implement prevention-oriented alternatives, and enhance the environment of care; and (5) significant savings result from reduced staff turnover, hiring and replacement costs, sick time, and liability-related costs.

Department of Education is preparing to gather more objective information, and asks the House to wait for these objective results. The AASA also describes the report recently released by the U.S. Department of Education, which confirms that 31 States already have policies in place to oversee the use of seclusion and restraint and 15 more are in the process of adopting policies and protections. Given this substantial State action, AASA questions the need for Federal involvement on this issue. Finally, the letter protests the tone of H.R. 4247, which it describes as relentlessly negative toward teachers and administrators.


This document is a summary of policy recommendations from two longer and more detailed documents available from the Council for Children with Behavioral Disorders (CCBD) regarding the use of physical restraint and seclusion procedures in schools. CCBD is the division of the Council for Exceptional Children (CEC) committed to promoting and facilitating the education and general welfare of children and youth with emotional or behavioral disorders. In this document, CCBD states that while restraint and seclusion can be effective when dealing with children with behavioral issues, they should not be implemented except as a last resort when a child or others are in immediate danger. CCBD further recommends that new legislation or regulations be established to formally require that data on restraint and seclusion be reported to outside agencies, such as State or provincial departments of education.
The document also notes that additional research is needed on the use of physical restraint and seclusion with children or youth across all settings.


The purpose of this document is to review what constitutes restraint and seclusion, what should be done as an alternative, and discuss positive strategies that can be used to prevent behaviors that could lead to considerations of these invasive and potentially-dangerous practices.


This interview discusses a Wisconsin State capitol hearing on how best to deal with students with special needs who become disruptive. The organization, Disability Rights Wisconsin, claims that the State’s department of education is not doing enough to curtail excessive use of restraint and seclusion; the State department of education disagrees. The interview reports that the State Senate is discussing legislation to restrict the use of restraint and seclusion, but the department of education is arguing that this legislation will go too far and prevent teachers and administrators from maintaining a safe classroom. The Senate intends to require that all teachers and other personnel be required to receive training in PBIS to reduce the need for seclusion and restraint, and claims that this will make schools safer and improve academic performance. The piece also notes concerns about the costs to districts of implementing additional training, as well as potential lawsuits.


The PBIS Center defines seclusion and restraint as safety procedures in which a student is isolated from others (seclusion) or physically held (restraint) in response to serious problem behavior that places the student or others at risk of injury or harm. This document expresses concern regarding these procedures being prone to misapplication and abuse, potentially placing students at equal or more risk than their problem behavior. The specific concerns are listed and recommendations are made to promote effective policies. School-wide positive behavior support (SWPBS) is one of the major recommendations, defined as a systems approach to establishing the whole-school social culture and intensive individual behavior supports needed for schools to achieve social and academic gains while minimizing problem
behavior for all students. SWPBS emphasizes four integrated elements: socially valued and measurable outcomes, empirically validated and practical practices, systems that efficiently and effectively support implementation of these practices, and continuous collection and use of data for decision-making. These elements are described in detail along with supporting research.


The Legal Center for People with Disabilities and Older People (the Legal Center) is the Protection and Advocacy System for Colorado. This report presents the results of the investigation conducted by the Legal Center into the circumstances surrounding the use of seclusion and restraint of five elementary school students. The Legal Center received complaints that students with a range of emotional, mental health, and developmental disabilities were subjected to improper use of restraint and seclusion by school staff at Will Rogers Elementary School. The information produced in the course of this investigation supports the conclusion that the five students were repeatedly subjected to improper restraint and seclusion in violation of the Colorado Department of Education restraint/seclusion rules. Based on this, the Legal Center recommends a number of actions be taken by District 11 and staff at Will Rogers Elementary school.


PAI conducted an in-depth investigation into allegations of abusive restraint and seclusion practices involving seven students in five public schools and one non-public school in California. The investigations revealed both the failure of school personnel to comply with existing regulations and the inability of current law to sufficiently regulate the use of these dangerous practices. PAI released this report to reinforce compliance with current regulatory requirements and to challenge schools and the education system to bring standards regarding behavioral restraint and seclusion of students into line with current practices in all other settings. The report notes that there are strict guidelines limiting the use of restraint and seclusion to extreme situations where there is an imminent risk of serious physical harm to an individual and only for the duration and to the extent necessary to protect the individual.


This planning tool guides the design of a seclusion and restraint reduction plan that incorporates the use of a prevention approach, includes six core strategies to reduce the use of seclusion and restraint described in the NASMHPD curriculum, and ascribes to the principles of continuous quality improvement. It
may also be used as a monitoring tool to supervise implementation of a reduction plan and identify problems, issues barriers and successes.


This report is divided into two sections. The first identifies the problems attributed to restraint or seclusion. It includes a “Chronicle of Harm” detailing treatment of children of all ages and in every corner of the nation – urban, suburban, and rural, in wealthy and poor school districts, as well as in private schools. It outlines the problems associated with the use of restraint or seclusion, and details the proven risks to children associated with the use of these aversive techniques. Contributing factors are identified, such as the lack of appropriate training for teachers and other school personnel in the use of positive behavioral supports that address children’s behavioral and other issues in a humane and effective way.

The second section of this report proposes solutions to the use of restraint or seclusion by highlighting the best practices in education and the use of positive behavioral supports. Included is a catalogue of advocacy activities that have been undertaken by P&As to protect children with disabilities. These activities range from educating parents, students, and school personnel, to investigating and litigating when abuses occur, to working for strong State and federal laws to protect these vulnerable children. An update to this report and follow-up letter are available at: National Disability Rights Network,


This article reports that many States lack policies related to seclusion or restraint in schools, and that the Federal government does not require record-keeping on the practices. The article details the efforts of advocacy groups for people with disabilities to keep the issue of restraint and seclusion as a priority for the Federal government and the national media. Organizations are trying to get Federal economic stimulus funds as a source of money to pay for the professional development that they say would foster a positive school environment. Advocates believe that such training for educators would prevent problems from escalating to the point that secluding students or physically restraining them is needed. Advocates, as well as educational organizations, agree that more training is necessary to reduce the use of restraint and seclusion in school. The article presents a discussion by several organizations’ representatives on ways to provide this training.

The Disability Rights Oregon (DRO) gathered information from parents and schools about the use of physical restraint and seclusion in Oregon and provided policy recommendations on the use of these practices in the State. The DRO report found that the use of physical restraint and seclusion varied considerably across Oregon school districts. For example, some Oregon districts had adopted appropriate policies and were trying to follow them. Other districts, however, had not adopted any policies at all. Furthermore, many Oregon districts were found to have policies that were inconsistent with their own administrative rules. This report also details stories of Oregon children who were restrained and secluded and had experienced psychological and physical injuries resulting from the use of these practices at school. In addition, the report provides a list of policy recommendations on physical restraint and seclusion. The report notes that its recommended policies are generally consistent with policies contained in Federal legislation. The DRO concludes that its recommended policies will provide enforceable minimum safety standards, provide administrative review and independent oversight, and help make Oregon’s schools safe for all students and staff.


This document responds to reports by families and advocates indicating a pattern of discriminatory treatment toward children with disabilities who are neglected or abused in non-residential public schools in New York. The document notes that, under New York law, these schools are allowed to use physical restraints, including straps, “take-downs,” and “time-out rooms,” for unlimited periods of time as punishment for minor infractions, including any behavior that may “disrupt the order of the school.” However, such restraints are often used by poorly trained staff, and the potential for serious injury is high. The document states that experts in special education universally agree that restraints should not be used except as emergency measures for children who are immediately and seriously dangerous to themselves or others, and that use of restraints under those circumstances should trigger an immediate comprehensive response to investigate antecedents to the problem behavior and develop proactive plans to address it. Thus, the STIC argues that New York State needs to enact stringent legislation to regulate the use of physical restraint, provide training requirements for public non-residential school aides that are strictly enforced, and empower State and local police and child-protective authorities to immediately accept and promptly investigate all complaints of abuse and neglect and to file criminal charges when warranted.
The Department of Education’s mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

www.ed.gov
Dear Colleague Letter:

Restraint and Seclusion of Students with Disabilities

Notice of Language Assistance: If you have difficulty understanding English, you may, free of charge, request language assistance services for this Department information by calling 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), or email us at: Ed.Language.Assistance@ed.gov.

Aviso a personas con dominio limitado del idioma inglés: Si usted tiene alguna dificultad en entender el idioma inglés, puede, sin costo alguno, solicitar asistencia lingüística con respecto a esta información llamando al 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), o envíe un mensaje de correo electrónico a: Ed.Language.Assistance@ed.gov.

致英语能力有限人士：如果您不懂英语，或者使用英语有困难，您可以要求获得向大眾提供的语言协助服务，帮助您理解教育部资讯。这些语言协助服务均可免费提供。如果您需要有关口译或笔译服务的详细资讯，请致电1-800-USA-LEARN (1-800-872-5327) (听语障人士专线：1-800-877-8339)，或电邮：Ed.Language.Assistance@ed.gov.

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Уведомление для лиц с ограниченным знанием английского языка: Если вы испытываете трудности в понимании английского языка, вы можете попросить, чтобы вам предоставили перевод информации, которую Министерство Образования доводит до всеобщего сведения. Этот перевод предоставляется бесплатно. Если вы хотите получить более подробную информацию об услугах устного и письменного перевода, звоните по телефону 1-800-USA-LEARN (1-800-872-5327) (служба для слабослышащих: 1-800-877-8339), или отправьте сообщение по адресу: Ed.Language.Assistance@ed.gov.
Notice of Significant Guidance. The U.S. Department of Education (Department) has determined that this letter is significant guidance under the Office of Management and Budget’s Final Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. 3432 (Jan. 25, 2007). See www.whitehouse.gov/sites/default/files/omb/memoranda/fy2007/m07-07.pdf. Significant guidance is non-binding and does not create or impose new legal requirements. The Department is issuing this guide and the accompanying letter to provide State and local educational agencies, including charter schools, with information to assist them in meeting their obligations under Federal civil rights laws, including Section 504 of the Rehabilitation Act of 1973, and implementing regulations that it enforces. 29 U.S.C. § 794; 34 C.F.R. Part 104. This document also provides members of the public with information about their rights under the law and regulations.

If you are interested in commenting on this letter or have questions, please send them to OCR by email at OCR@ed.gov, by phone at 800-421-3481 (TDD 800-877-8339), or by mail to the Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue SW, Washington, DC 20202. For further information about the Department’s guidance processes, please visit www.ed.gov/policy/gen/guid/significant-guidance.html.

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

December 28, 2016

Dear Colleagues:

I write to explain the limits that Federal civil rights laws enforced by the U.S. Department of Education’s Office for Civil Rights (OCR) impose on the use of restraint and seclusion by public elementary and secondary school districts. In particular, this guidance informs school districts how the use of restraint and seclusion may result in discrimination against students with

1 In this document, school district and public elementary and secondary school systems are used synonymously and include all local educational agencies (LEAs) and public charter schools. Charter schools are subject to the same Federal civil rights obligations as all other public schools. The use of the term charter schools includes schools that are public schools of a school district as well as charter schools that operate as LEAs under State law. For additional information about the applicability of Federal civil rights laws to charter schools, see OCR and Office of Special Education and Rehabilitative Services, Dear Colleague Letter about the Rights of Students with Disabilities in Public Charter Schools (Dec. 28, 2016), www.ed.gov/ocr/letters/colleague-201612-504-charter-school.pdf, and OCR, Frequently Asked Questions about the Rights of Students with Disabilities in Public Charter Schools under Section 504 of the Rehabilitation Act of 1973 (Dec. 28, 2016), www.ed.gov/ocr/docs/dcl-faq-201612-504-charter-school.pdf.
disabilities, thereby violating Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (Title II) (both as amended).²

In broad terms, restraint of a student means restricting the student’s ability to move his or her torso, arms, legs or head freely, and seclusion of a student is confining a student alone in a room or area that he or she is not permitted to leave (see detailed definition below in the accompanying questions and answers). OCR’s Civil Rights Data Collection (CRDC), which includes self-reported data on 99 percent of the public school districts in the nation, indicates that schools restrain and seclude students with disabilities at higher rates than students without disabilities.³

According to the CRDC, during the 2013-14 school year, students with disabilities were subjected to mechanical and physical restraint and seclusion at rates that far exceeded those of other students.⁴ Specifically, students with disabilities served by the Individuals with Disabilities Education Act (IDEA) represented 12% of students enrolled in public schools nationally, but 67% of the students who were subjected to restraint or seclusion in school.⁵ Based on data reported to OCR, approximately 100,000 students were placed in seclusion or involuntary confinement or were physically restrained at school to immobilize them or reduce their ability to move freely, including more than 69,000 students with disabilities served by the IDEA.⁶ Data disparity alone does not prove discrimination. The existence of a disparity, however, does raise a question regarding whether school districts are imposing restraint or seclusion in discriminatory ways.

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² Section 504 is a Federal law that prohibits discrimination against individuals with disabilities in programs or activities of entities, such as public schools and charter schools, that receive Federal financial assistance. 29 U.S.C. § 794; 34 C.F.R. pt. 104. OCR enforces Section 504 against entities that receive Federal financial assistance from the Department, including public school districts. Title II is a Federal law that prohibits discrimination against individuals with disabilities in State and local government services, programs, and activities (including public schools and public school districts), regardless of whether they receive Federal financial assistance. In the education context, OCR shares in the enforcement of Title II with the U.S. Department of Justice (DOJ). Section 504 and Title II use the same definition of disability. 29 U.S.C. § 705(9) (B), (20) (B) (definition of disability under Section 504 is the same as under the ADA); 42 U.S.C. § 12102. As a general rule, because Title II provides no less protection than Section 504, violations of Section 504 also constitute violations of Title II. 28 C.F.R. § 35.103. Accordingly, this guidance will not directly address Title II requirements. To the extent that Title II provides additional or greater protection, covered entities must also comply with Title II’s substantive requirements. 42 U.S.C. § 12201(a).


⁵ Id.

⁶ Id.
A school district discriminates on the basis of disability in its use of restraint or seclusion by (1) unnecessarily treating students with disabilities differently from students without disabilities; (2) implementing policies, practices, procedures, or criteria that have an effect of discriminating against students on the basis of disability or defeating or substantially impairing accomplishment of the objectives of the school district’s program or activity with respect to students with disabilities; or (3) denying the right to a free appropriate public education (FAPE). When investigating a school district, OCR would examine any available data as well as the school district’s policies, practices, procedures, and criteria to determine whether unlawful discrimination has occurred and, if so, would craft an appropriate remedy with the school district.

Through a series of questions and answers below, OCR provides a summary of the disability discrimination laws that it enforces and seeks to clarify for schools, school districts, States, parents, students and other stakeholders how the use of restraint and seclusion can violate these Federal laws. While this guidance addresses the circumstances under which the use of restraint or seclusion can violate Section 504 and Title II, a May 15, 2012, Restraint and Seclusion: Resource Document publication by the U.S. Department of Education on this issue offers further information on the topic, including discouraging the use of restraint or seclusion more generally. OCR notes that in the Resource Document, as a part of fifteen guiding principles, the Department recommended that school districts never use mechanical restraint, that school districts never use physical restraint or seclusion for disciplinary purposes, and that trained school officials should use physical restraint or seclusion only if a child’s behavior poses imminent danger of serious physical harm to self or others. This guidance, however, is intended to clarify Federal laws, but does not add additional requirements for complying with existing statutes.

OCR is committed to ensuring equal access to education, and to promoting educational excellence throughout the nation, through vigorous enforcement of civil rights. An important part of our mission is to ensure that students with disabilities are not subjected to discrimination. We look forward to working with you to achieve this shared goal.

Sincerely,

/s/

Catherine E. Lhamon
Assistant Secretary for Civil Rights

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7 34 C.F.R. §§ 104.4, 104.33-35.

TABLE OF CONTENTS

Introduction....................................................................................................................................5

How OCR Defines the Practices of Restraint and Seclusion

1. What is restraint?..................................................................................................................... 6
2. What is seclusion?.................................................................................................................. 7

OCR’s Authority to Protect Students with Disabilities

3. What is OCR’s jurisdiction with respect to the rights of students with disabilities? .......... 7
4. Who is protected by Section 504?....................................................................................... 8

The Legal Standards OCR Uses to Determine Whether the Use of Restraint or Seclusion Has Violated Section 504

5. What is a school district’s Section 504 evaluation obligation and how does the use of restraint or seclusion of a student implicate that obligation? .................................................. 9
6. How does the use of restraint or seclusion of a student who was already identified as a student with a disability implicate a school’s Section 504 reevaluation obligation? .......... 11
7. Does Section 504 prohibit the use of restraint or seclusion in all situations? ................. 12
8. When does Section 504 require a school to treat a student with a disability differently from students without disabilities?.......................................................... 13
9. How could a school’s use of restraint or seclusion be different treatment that violates Section 504? ................................................................................................................. 13
10. Could a school’s use of restraint or seclusion have a discriminatory effect on students with disabilities in violation of Section 504? ................................................................. 16
11. Can the use of restraint or seclusion deny a student’s receipt of Section 504 FAPE Services? ......................................................................................................................................... 16
12. Does Section 504 require the school to assess the effects of restraint or seclusion on a student’s receipt of FAPE? .................................................................................................. 17
13. How must a school respond if a student has been denied Section 504 FAPE by the use of restraint or seclusion? ........................................................................................................ 21

Resources Concerning the Use of Restraint and Seclusion

14. Where can school districts turn in order to learn how to reduce or eliminate the use of restraint or seclusion in their schools? ................................................................. 22
15. Are there other Departmental resources on the use of restraint and seclusion? .......... 23
**Introduction**

In the questions and answers and illustrative examples below, the Office for Civil Rights (OCR) of the U.S. Department of Education (Department) seeks to inform school districts about how the use of restraint or seclusion may result in discrimination against qualified students with disabilities in violation of Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (Title II). This guidance document sets forth OCR’s interpretation of these laws and regulations.

If you would like information about the Department’s suggested best practices to prevent the use of restraint or seclusion, please see the Department’s May 15, 2012, *Restraint and Seclusion: Resource Document*. That document recommended that school districts never use physical restraint or seclusion for disciplinary purposes and never use mechanical restraint, and that trained school officials use physical restraint or seclusion only if a child’s behavior poses imminent danger of serious physical harm to self or others.

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Even though this guidance focuses on the elementary and secondary education context, educators should be aware that restraint and seclusion can impact a student’s access to a program at the preschool level, and educators have nondiscrimination obligations under Federal disability civil rights laws to these students as well. See, e.g., 34 C.F.R. § 104.38 (preschool education). Section 504 obligations to preschool students with disabilities are not the same as the obligations to elementary or secondary school students with disabilities. Id.

For the purposes of this document, all references to students with disabilities means elementary and secondary school students who meet the relevant definition of qualified student with a disability in the Department’s Section 504 regulation. 34 C.F.R. § 104.3(j). With respect to public elementary or secondary educational services, a qualified person with a disability is one who is (i) of an age during which persons without disabilities are provided such services, (ii) of any age during which it is mandatory under state law to provide such services to persons with disabilities, or (iii) to whom a state is required to provide a free appropriate public education under the Individuals with Disabilities Education Act (IDEA). 34 C.F.R. § 104.3(l)(2).

This letter focuses on the laws that OCR is responsible for enforcing, which do not include the IDEA. The Office of Special Education Programs in the Department’s Office of Special Education and Rehabilitative Services (OSERS) administers the IDEA. All students with disabilities who are eligible for special education and related services under the IDEA, however, are also protected by Section 504 and Title II. Consequently, OCR enforces the Section 504 and Title II rights of students with disabilities who are also covered by the IDEA. For general information about the IDEA, please see [www.osepideasthatwork.org](http://www.osepideasthatwork.org).


How OCR Defines the Practices of Restraint and Seclusion

1. **What is restraint?**

In general, OCR uses the following definitions for mechanical restraint and physical restraint.\(^{12}\)

*Mechanical restraint* refers to the use of any device or equipment to restrict a student’s freedom of movement.\(^{13}\) The term does not include devices implemented by trained school personnel, or utilized by a student that have been prescribed by an appropriate medical or related services professional and are used for the specific and approved purposes for which such devices were designed, such as:

- Adaptive devices or mechanical supports used to achieve proper body position, balance, or alignment to allow greater freedom of mobility than would be possible without the use of such devices or mechanical supports;
- Vehicle safety restraints when used as intended during the transport of a student in a moving vehicle;
- Restraints for medical immobilization; or
- Orthopedically prescribed devices that permit a student to participate in activities without risk of harm.\(^{14}\)

*Physical restraint* refers to 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.

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\(^{13}\) For example, if a school relies on law enforcement personnel to handcuff students to obtain compliance (but not for the sole purpose of arrest), such students are “subjected to mechanical restraint” under OCR’s definition. *See OCR, 2015-16 CRDC School Form*, Section X, [www.ed.gov/ocr/docs/crdc-2015-16-all-schools-form.pdf](http://www.ed.gov/ocr/docs/crdc-2015-16-all-schools-form.pdf). Further, stakeholders have reported mechanical restraints such as tape, straps, tie downs, ropes, weights, weighted blankets and a wide variety of other devices have been used by educators to attempt to control student behavior. *See Council for Children with Behavioral Disorders, Council for Exceptional Children, The Use of Physical Restraint Procedures in School*, 2 (July 2009), [casecec.org/pdf/seclusion/Accepted.%20CCBD%20on%20Use%20of%20Restraint.%207-8-09.pdf](http://casecec.org/pdf/seclusion/Accepted.%20CCBD%20on%20Use%20of%20Restraint.%207-8-09.pdf).

\(^{14}\) Note that items used in a therapeutic manner for a particular student in one context could be used as a mechanical restraint in a different context; the proper inquiry, therefore, to determine whether an item is a mechanical restraint is not based solely on what the item is, but also how the item is used.
2. **What is seclusion?**

In general, OCR uses the following definition for seclusion.\(^{15}\)

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

**OCR’s Authority to Protect Students with Disabilities**

3. **What is OCR’s jurisdiction with respect to the rights of students with disabilities?**

OCR enforces Section 504 and Title II in schools and both Federal laws prohibit disability discrimination. Section 504 prohibits disability discrimination by recipients of Federal financial assistance.\(^{16}\) OCR has Section 504 enforcement authority over entities that receive Federal financial assistance from the Department, including all public schools, school districts, public charter schools and magnet schools.\(^{17}\) Under Section 504, recipients of Federal funds from the Department that operate a public elementary or secondary education program or activity must provide students with disabilities equal educational opportunities, including needed regular or special education and related aids and services that are designed to meet the needs of students with disabilities as adequately as the needs of students without disabilities are met.\(^{18}\)

Title II prohibits disability discrimination by public entities, including all public schools, school districts, public charter schools and magnet schools, regardless of whether they receive Federal financial assistance.\(^{19}\) OCR, along with the U.S. Department of Justice (DOJ), enforces Title II in public elementary and secondary schools.\(^{20}\)


\(^{17}\) In this document, *schools* and *school districts* are used synonymously and refer to public elementary and secondary schools, including public charter schools and magnet schools, which receive Federal financial assistance from the Department.

\(^{18}\) 34 C.F.R. §§ 104.4, 104.33.


\(^{20}\) As noted, this document focuses on OCR’s work in public elementary and secondary schools. Readers should be aware, however, that Section 504 and Title II, as well as the IDEA, also generally apply also apply to recipients of Federal financial assistance that are responsible for the education of students in juvenile justice facilities. See OCR and DOJ, *Dear Colleague Letter: Civil Rights of Students in Juvenile Justice Residential Facilities* (Dec. 8, 2014), [www.ed.gov/policy/gen/guid/correctional-education/cr-letter.pdf](http://www.ed.gov/policy/gen/guid/correctional-education/cr-letter.pdf). In addition, readers should be aware that DOJ has jurisdiction to investigate and litigate cases involving whether seclusion or restraint violates youths’ constitutional right to reasonably safe conditions of confinement in juvenile justice or adult facilities. See [www.justice.gov/crt/rights-juveniles](http://www.justice.gov/crt/rights-juveniles) and [www.justice.gov/crt/special-litigation-section-cases-and-matters0#juv](http://www.justice.gov/crt/special-litigation-section-cases-and-matters0#juv).
Title II is generally construed to provide no less protection than Section 504. For ease of reference, the remainder of the document will focus on Section 504.

4. **Who is protected by Section 504?**

Section 504 protects students with disabilities. Under Section 504, in the context of public elementary and secondary education, a student is considered to have a disability if the student: (1) has a physical or mental impairment that substantially limits one or more major life activities; or (2) has a record of such an impairment; or (3) is regarded as having such an impairment.

Section 504 requires that students with disabilities receive a free appropriate public education (FAPE). The Section 504 regulation defines FAPE as the provision of regular or special education and related aids and services that are designed to meet the individual needs of students with disabilities as adequately as the needs of students without disabilities are met.

A school district has an obligation under Section 504 and Title II to make reasonable modifications in criteria, policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability.

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21 42 U.S.C. § 12201(a).


23 34 C.F.R. § 104.33. In this letter, the term *Section 504 FAPE services* is used to refer to the regular or special education and related aids and services provided to students with disabilities as specified in 34 C.F.R. § 104.33(b). Implementation of an individualized education program (IEP), developed in accordance with the IDEA, is one means of meeting the FAPE standard under Section 504. 34 C.F.R. § 104.33(b)(2). The Department has previously stated that while the “IDEA emphasizes and encourages the use of positive behavioral interventions and supports, [it] does not prohibit the use of other measures, such as seclusion, non-emergency restraint, or aversive behavioral intervention, when appropriate to address student behavior.” Letter to Weiss (National Leadership Consortium on Developmental Disabilities) from Secretary Arne Duncan, 55 IDELR 173 (Jan. 26, 2010), [www.ed.gov/policy/speced/guid/idea/letters/2010-1/weiss012610seclusionandrestraints1q2010.doc](http://www.ed.gov/policy/speced/guid/idea/letters/2010-1/weiss012610seclusionandrestraints1q2010.doc). More recently, the Department has stated that there continues to be no evidence that using restraint or seclusion is effective in reducing the occurrence of the problem behaviors that frequently precipitate the use of such techniques, and that every effort should be made to prevent the need for the use of restraint and seclusion. See U.S. Department of Education, *Restraint and Seclusion: Resource Document*, iii (May 15, 2012), [www.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf](http://www.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf).

All persons protected by Section 504, including students with disabilities who are covered by the Individuals with Disabilities Education Act (IDEA), are protected from discrimination under the Section 504 general nondiscrimination regulatory provisions, as well as under the regulatory provisions addressing program and physical accessibility requirements and retaliation.

The Legal Standards OCR Uses to Determine Whether the Use of Restraint or Seclusion Has Violated Section 504

5. What is a school district’s Section 504 evaluation obligation and how does the use of restraint or seclusion of a student implicate that obligation?

Section 504 requires a school district to evaluate any student who needs or whom the district has reason to believe needs special education or related services because of a disability. A student’s behavioral challenges, such as those that lead to an emergency situation in which a school believes restraint is a justified response, could be a sign that the student has a disability and needs special education and related services. OCR would likely find it to be a justified response to restrain or seclude a student with a disability in situations where the student’s behavior poses imminent danger of serious physical harm to self or others. OCR would likely not, however, find the repeated use of restraint and seclusion to be a justified response where alternative methods also could prevent imminent danger to self or others. When a student exhibits behavior that interferes with the student’s education or the education of other students in a manner that would reasonably cause a teacher or other school personnel to believe or suspect that the student has a disability (i.e., to suspect that the behavior is caused by or related to a disability), the school district must evaluate the student to determine if the student has a disability and needs special education or related services because of that disability.

A student who experiences behavioral challenges in school may have a disability, even if the behavioral challenges are not accompanied by academic challenges. If school officials are restraining or secluding a student for behavioral challenges, that student could be a student with a disability in need of special education or related services to address those behavioral challenges. Some students, due to an as yet unidentified disability, may engage in behaviors that do not conform to school conduct codes because they are not receiving needed educational services,

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25 Students with disabilities who are IDEA-eligible also have rights under Section 504 and Title II.

26 34 C.F.R. §§ 104.4, 104.21-23, 104.61 (incorporating 34 C.F.R. § 100.7(e)).

27 34 C.F.R. § 104.35(a). In some circumstances, the IDEA evaluation process may provide the school district with the necessary information, required by Section 504, to determine whether a student has a disability, and whether that student needs related aids and services or supplementary aids and services in the regular education environment because of that disability. If school districts choose to adopt a separate process for evaluating the needs of students under Section 504, they must follow the requirements for evaluation specified in Section 504. 34 C.F.R. § 104.35(b).

28 34 C.F.R. § 104.35(a). Non-disruptive behaviors, such as staring into space, failing to engage in class activities, or poor hygiene can also be indications of a need for a disability evaluation. This document, however, focuses on aggressive or disruptive behaviors that could trigger the need for an evaluation.
including services to address the student’s needs related to his or her behavior. Evidence that the student’s behavior is out of the expected range of behaviors of students that age could trigger a school district’s obligation to evaluate that student for a disability and need for special education and related services.

Alternatively, there could be circumstances in which a school restrains or secludes a student for behavior not caused by or related to a disability. For example, a student might be experiencing a crisis, such as due to a divorce in the family, a recent death, or other traumatic incident. Such a crisis could cause a student to engage in behavior that might lead a school to believe restraint or seclusion is a justified response. (The fact that a student is undergoing a traumatic event, such as a parental divorce, would not excuse the school district from its obligation to evaluate in those cases in which the student’s behavior or other information provides the school with reason to suspect the student has a disability.29)

When a school district suspects a student may have a disability because of social, emotional, or behavioral needs, and requires special education or related services to address those needs, the evaluation and placement process must draw upon information from a variety of sources and include an assessment of the student’s social, emotional, or behavioral needs to address the identified concerns.30

29 34 C.F.R. § 104.35(a).

30 Under Section 504, an evaluation must: consist of more than mere intelligence quotient (IQ) tests; and measure specific areas of educational need, such as speech processing issues, inability to concentrate, and behavioral needs. Also, as part of the evaluation, Section 504 requires that tests are selected and administered to the student in a manner that best ensures that the test results accurately reflect the student’s aptitude or achievement or other factor being measured, rather than reflect the student’s impaired sensory, manual, or speaking skills, except where those skills are the factors being measured; that tests and other evaluation materials are validated for the specific purpose for which they are used; and that tests are appropriately administered by trained personnel. 34 C.F.R. §§ 104.33, 104.35(b); 34 C.F.R. pt. 104, App. A (discussing Subpart D, ¶ 23) (“Recipients must also pay for psychological services and those medical services necessary for diagnostic and evaluative purposes.”)
6. **How does the use of restraint or seclusion of a student who was already identified as a student with a disability implicate a school’s Section 504 reevaluation obligation?**

For a student already identified as a student with a disability, a school’s use of restraint or seclusion could be evidence that the student’s current array of regular or special education and related aids and services is not addressing the student’s needs. Because the Section 504 FAPE obligation is ongoing, when a school district has reason to believe that the student’s educational needs are not being met, it must consider different or additional approaches or services to address the student’s behavioral needs, and if necessary, reevaluate the student, which could include evaluating the need for positive behavioral interventions and supports and other strategies to address the student’s behavior that could mitigate or eliminate the need for restraint and seclusion.

In OCR’s view, persuasive indicators that a student’s needs are not being met appropriately would include: situations that would impede the student’s learning or that of others, such as new or more frequent emotional outbursts by the student, or an increase in the frequency or intensity of behavior; a sudden change into withdrawn, non-communicative behavior; and/or a significant rise in missed classes or sessions of Section 504 services. A notable drop in academic performance, such as a sudden decline in grades, could also be an indicator of the need to consider different or additional approaches or services, but a change in a student’s academic performance is not a necessary indicator in every instance. Alternatively, a student’s current array of services might only address the student’s academic challenges but now must be modified to address new or changed disability-related behavioral challenges that the student may be experiencing. These and other indicators that the student’s behavior is out of the expected range of behaviors of students that age could trigger a school district’s Section 504 obligation to determine if the student’s needs are being met appropriately, and whether a reevaluation is needed under Section 504.

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31 As stated earlier, there could be circumstances in which a school restrains or secludes a student in an emergency for behavior not caused by or related to a disability, such as behavior in response to a personal crisis.

32 34 C.F.R. § 104.33(b). Section 504 requires placement decisions to be made by a group of knowledgeable persons often known as a Section 504 team (which, for an IDEA-eligible student, would be an IEP or placement team). 34 C.F.R. § 104.35(c). In this document, the **Section 504 team** refers to the group of knowledgeable persons that determines for a qualified student with a disability the appropriate Section 504 FAPE services and the appropriate setting to receive those services.

33 The IDEA specifically requires IEP teams to consider the use of positive behavioral interventions and supports, and other strategies, to address behavior for any child with a disability whose behavior impedes his or her learning or that of others. 34 C.F.R. §§ 300.320(a)(4), 300.324(a)(2)(i) and (b)(2). For further discussion on positive behavioral interventions and supports, please see OSERS, *Dear Colleague Letter: Ensuring Equity and Providing Behavioral Supports to Students with Disabilities* (Aug. 1, 2016), [www.ed.gov/policy/gen/guid/school-discipline/files/dcl-on-pbis-in-ieps--08-01-2016.pdf](http://www.ed.gov/policy/gen/guid/school-discipline/files/dcl-on-pbis-in-ieps--08-01-2016.pdf).

34 In OCR’s view, if a student is provided FAPE consistent with the requirements of Section 504, it would result in reduced frequency of those situations in which school districts believe the use of restraint or seclusion is justified.
If such a reevaluation is conducted that identifies additional needs, then the school has an obligation under Section 504 to reconvene the Section 504 team (or IEP team) to (1) determine whether and to what extent additional or different interventions or supports and services are needed; (2) ensure that any needed changes are made promptly; and (3) remedy any negative effects that may have resulted from the school’s prior use of restraint or seclusion that, if left unaddressed, would result in a denial of FAPE.  

School districts must also establish and implement a system of procedural safeguards for parents to appeal district actions regarding the identification, evaluation, or educational placement of students with disabilities who need or are believed to need special education or related services. The school district must tell parents and guardians about this system, notify them of any evaluation or placement actions, allow them to examine their child’s records, afford them an impartial hearing with opportunity for parent or guardian participation and representation by counsel, and provide them a review procedure.  

7. **Does Section 504 prohibit the use of restraint or seclusion in all situations?**

No. Section 504 prohibits the use of restraint or seclusion that constitutes disability discrimination. As explained in the following questions and answers, the use of restraint or seclusion could violate Section 504 in several ways, if the restraint or seclusion of a student with a disability: (1) constitutes unnecessary different treatment (discussed in Q&As 8 and 9); (2) is based on a policy, practice, procedure, or criterion that has a discriminatory effect on students with disabilities (discussed in Q&A 10) or (3) denies a student’s right to FAPE (discussed in Q&As 5-6 and 11-13).

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35 34 C.F.R. §§ 104.33, 104.35; see also 34 C.F.R. § 300.324(b) (IEP review and revision procedures for IDEA-eligible students). Additionally, as part of that reevaluation process and in determining where the student shall receive the changed Section 504 FAPE services, school districts must remain aware of their obligation to ensure that Section 504 FAPE services are provided in an educational setting with persons who do not have disabilities to the maximum extent appropriate to the needs of the student with a disability. This is the regular educational environment unless it is demonstrated that the education of the student in the regular educational environment with the use of supplementary aids and services cannot be achieved satisfactorily. 34 C.F.R. § 104.34; see also 34 C.F.R. § 300.114-116 (IDEA least restrictive environment and placement provisions); OSERS, Dear Colleague Letter: Ensuring Equity and Providing Behavioral Supports to Students with Disabilities (Aug. 1, 2016), www.ed.gov/policy/gen/guid/school-discipline/files/dcl-on-pbis-in-ieps--08-01-2016.pdf.

36 34 C.F.R. § 104.36.

37 Id.

38 The use of restraint or seclusion may, of course, be prohibited by State law or local school district policy.

39 Depending upon the circumstances, a school district’s use of restraint or seclusion could constitute disability-based harassment, and OCR has made such a finding in the past. Disability harassment under Section 504 is intimidation or abusive behavior toward a student based on disability that creates a hostile environment by interfering with or denying a student’s participation in or receipt of benefits, services, or opportunities in the school’s program. In the context of restraint or seclusion, for example, a teacher could create a hostile environment by subjecting a student to unjustified physical restraint because of conduct related to the student’s disability, with the result that the student tries to avoid school, such as through increased absences. If the school determines that the use
8. **When does Section 504 require a school to treat a student with a disability differently from students without disabilities?**

Section 504 requires different treatment of a student with a disability when different treatment is necessary to ensure that a student with a disability has an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as a student without a disability.40 In order to ensure equal opportunity in the elementary and secondary school setting, schools must, among other things, provide FAPE to students with disabilities.41 As part of the FAPE requirement, Section 504 requires reevaluations to be conducted periodically, and before a significant change in placement.42

Though not explicitly required by the Department’s Section 504 regulations, school districts often record the elements of an individual student’s FAPE under Section 504 in a document, typically referred to as a *Section 504 Plan*. A written plan is often a useful way to document that the school district engaged in a process that included a group of knowledgeable persons to identify and address the needs of a student with disabilities and to communicate, to school personnel, the information needed for successful implementation.43 OCR would also consider the provision of services and supports to ensure the provision of FAPE to be necessary different treatment.

9. **How could a school’s use of restraint or seclusion be different treatment that violates Section 504?**

When a school district restrains or secludes a student with a disability for behavior that would not result in the restraint or seclusion of peers without disabilities, OCR would likely find that the school district engaged in unnecessary different treatment on the basis of disability prohibited by Section 504.44 Similarly, a school district that subjects a student to restraint or seclusion on
the basis of assumptions or stereotypes about disability also engages in conduct prohibited by Section 504.45

**Example 1:** Student A, an eighth-grader in junior high school, has a panic disorder. She was evaluated under Section 504 and receives Section 504 FAPE, including assistance with medication administration. One day, after lunch, she and a classmate were running around the classroom carrying sharp scissors and waving their arms. Eventually, they put the scissors away and sat down after repeated requests by their teacher, who was also Student A’s homeroom teacher for her seventh-grade year. The school’s restraint and seclusion policy states that school personnel have the discretion to restrain a student if staff deem it to be a justified response to ensure the safety of the student or others and to enlist the assistance of a school resource officer (SRO) to do so. Even though the students stopped running and waving the scissors, the teacher called the SRO and asked that the SRO restrain Student A, which the SRO did by pinning Student A’s arms to her torso, thus preventing her from moving. The SRO then escorted Student A to the principal’s office where she was told she would stay until she could “chill out.” The other student with whom Student A was running, who did not have a disability, was not restrained.

Upon investigation, the teacher reported that she knew of Student A’s disability from Student A’s time in the teacher’s homeroom class; Student A used the homeroom period to regularly visit the nurse’s office to receive medication to treat her panic disorder. The teacher further reported that she viewed herself as generally knowledgeable about panic disorders and believed students with those disorders have a difficult time following directions and become upset easily. The teacher believed that having the SRO restrain Student A and allowing her time by herself in the principal’s office was the best way to help Student A calm down. This student’s Section 504 FAPE services do not address actions the school needs to take when the student runs or waves sharp objects.

Both Student A and the other student were later equally disciplined. Both were prohibited from attending the upcoming school-sponsored field trip that both students had previously planned to attend.

*Given these facts, OCR would likely find that the restraint of Student A constituted unlawful different treatment in violation of Section 504.*

In this instance, the teacher treated Student A differently than the other student involved in the running and waving the scissors behavior based on the teacher’s generalizations and assumptions about individuals who have a panic disorder, not because of any individualized knowledge of the

45 34 C.F.R. § 104.4. Additionally, even if the use of restraint or seclusion does not constitute unnecessary different treatment, if a school knows or believes that a student’s behavior is caused by or related to the student’s disability, the school must consider whether the FAPE services the student is receiving are appropriate to address the student’s behavior. 34 C.F.R. § 104.33. Please see Q&As 5-6 and 11-13 for further discussion about these FAPE obligations.
nature of Student A’s disability or specific action that occurred at that time. In this situation, restraining Student A constitutes unnecessary different treatment on the basis of disability, and therefore violates Section 504.\textsuperscript{46} A school district that operates its programs or activities on the basis of generalizations, assumptions, prejudices, or stereotypes about disability generally or specific disabilities in particular is likely in violation of Section 504.

The same result would be true if the SRO, rather than the teacher, made the decision to treat Student A differently than the other student involved in the same behavior. Section 504 covers school officials, school employees, and everyone over whom a school exercises some control, whether through contract or other arrangement, including SROs, whether they are school district employees or work for a non-district law enforcement agency.\textsuperscript{47} Schools cannot divest themselves of responsibility for the nondiscriminatory administration of school policies, including restraint, by relying on SROs, school district police officers, contract or private security companies, security guards or other contractors, or other law enforcement personnel to administer school policies.\textsuperscript{48}

Furthermore, in this example, the use of restraint violated school policy. The policy allowed for the use of restraint if a justified response to ensure the safety of the student or others. Even if restraint would have been a justified response, to ensure the safety of the student or others at the time of the incident when the students were running around the classroom and waving the scissors, the student had stopped her behavior and had returned to her seat before the teacher called the SRO. Any safety concern had already been resolved, and therefore restraint of either student would have also violated school policy.

An appropriate remedy for the school’s violation of Section 504 could include training its teachers and staff, as well as SROs, to implement its policies in a neutral, nondiscriminatory manner. To ensure future compliance with Section 504, the training could focus on prevention of the use of restraint and incorporate de-escalation strategies so that staff and SROs are equipped to accurately identify, and respond to, emergencies in ways that are safe for all involved. Where SROs are employed by a non-school law enforcement agency, an appropriate remedy could also include creating a memorandum of understanding or other similar document between the school district and the law enforcement agency to clarify when it is and is not appropriate for school personnel to seek the assistance of an SRO.\textsuperscript{49} As discussed in Q&A 12, the school would also

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{46} 34 C.F.R. § 104.4(b)(1)(iv).
\item \textsuperscript{47} 34 C.F.R. § 104.4(b)(1).
\item \textsuperscript{48} The nondiscrimination requirements of Section 504 extend to conduct undertaken by entities that carry out some or all of the schools’ functions through contractual or other arrangements. 34 C.F.R. § 104.4(b).
\item \textsuperscript{49} OCR notes that DOJ’s Office of Community Oriented Policing Services (COPS Office) requires that jurisdictions that receive COPS grant funding to hire SROs must have a Memorandum of Understanding between schools and law enforcement that clearly documents the roles, responsibilities, and expectations of the individuals and partners involved. See Office of Community Oriented Policing Services, \textit{Memorandum of Understanding Fact Sheet} (May 2015), cops.usdoj.gov/pdf/2015AwardDocs/chp/CHP_MOU_Fact_Sheet.pdf.
\end{itemize}
\end{footnotesize}
have an obligation to monitor the student who was restrained or secluded to observe any adverse changes that could occur in her academic performance or behavior, and ensure current supports and services are being properly implemented. If there were any adverse changes observed, the school would be required to take action to ensure the continued provision of FAPE under Section 504, as discussed in Q&A 13.50

10. **Could a school’s use of restraint or seclusion have a discriminatory effect on students with disabilities in violation of Section 504?**

Yes. Section 504 prohibits a school from using criteria, policies, practices, or procedures that are neutral in language and evenhandedly implemented with respect to students with and without disabilities but that nonetheless have the effect of discriminating against students with disabilities on the basis of disability, or defeating or substantially impairing accomplishment of the objectives of the school’s programs with respect to students with disabilities.51 This prohibition applies even when schools adopt the criteria, policies, practices, and procedures without the intent to discriminate. The resulting discriminatory effect is commonly referred to as *disparate impact* discrimination.52

11. **Can the use of restraint or seclusion deny a student’s receipt of Section 504 FAPE Services?**

Yes. There are multiple ways in which the use of restraint or seclusion might deny FAPE. For example, the use of restraint or seclusion may have a traumatic impact on that student,53 such that even if she were never again restrained or secluded, she might nevertheless have new academic or behavioral difficulties that, if not addressed promptly, could constitute a denial of FAPE. Depending on the nature of his or her disability, a student with a disability may be especially physically or emotionally sensitive to the use of such techniques.54 That traumatizing effect could manifest itself in new behaviors, impaired concentration or attention in class, or increased absences, any of which could, if sufficiently severe and unaddressed, result in a denial

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50 34 C.F.R. § 104.33(a).
51 Recipients of Federal financial assistance are prohibited from utilizing criteria or methods of administration that have the effect of subjecting qualified students with disabilities to discrimination on the basis of disability, or that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient’s program or activity with respect to persons with disabilities. 34 C.F.R. § 104.4(b)(4). See also 28 C.F.R. § 35.130(b)(3), (8).
52 See, e.g., Choate, 469 U.S. at 299.
54 See generally id.
of FAPE for that student. Other effects could include socially withdrawn behavior, or diminished interest or participation in class.

Furthermore, the repeated use of restraint or seclusion in school could deny a student’s receipt of FAPE in another way. Consider a student with a disability who engages in behavior in response to which the school secludes him for extended periods and on multiple occasions. While secluded, the student does not receive educational instruction or services. Cumulatively, the school’s repeated use of seclusion with that student could result in the school’s failure to comply with the Section 504 team’s decision about the regular or special education, related aids and services, or supplemental services and modifications that the student needs, or the appropriate setting in which to receive those services and therefore may constitute a denial of FAPE.

12. **Does Section 504 require the school to assess the effects of restraint or seclusion on a student’s receipt of FAPE?**

If there is reason to believe that the provision of Section 504 FAPE services to the student has been adversely affected by the use of restraint or seclusion, such that the student’s needs are not being met, a school has an obligation under Section 504 to: (1) determine the extent to which additional or different interventions or supports and services, including positive behavioral interventions and supports and other behavioral strategies may be needed; (2) determine if current 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. A school might need to provide counseling, as a related service, to specifically address any new education-related needs that may have arisen from use of the restraint or seclusion on a student.

*Example 2:* In the second grade, Student C was evaluated as having a disability due to oppositional defiant disorder. He receives special education and related aids and services, in a regular education setting through an individualized education program (IEP), including a one-on-one aide. The last IEP notes that, instead of verbally communicating with teachers when frustrated, the Student would lose control, start tearing out pages from textbooks and notebooks, and sometimes verbally threaten to injure staff. That IEP, therefore, noted that the IEP team would identify and implement positive behavioral

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56 Id.

57 34 C.F.R. § 104.33. Section 504 requires placement decisions to be made by the Section 504 or IEP team. 34 C.F.R. § 104.35(c).
supports and interventions. The IEP team,\textsuperscript{58} however, never revised the IEP to include additional interventions and supports and other strategies to address these behaviors.

In the third grade, Student C begins experiencing difficulty concentrating in class and begins to run around the classroom whenever he is unable to follow his teacher’s instructions. Running around is new behavior for him, and the teacher with the assistance of the one-on-one aide, responds each time by sending him to the school’s seclusion room to calm down. The seclusion room has no furniture in it, no desk, chair or any other object. The staff state they only use the seclusion room when Student C presents a danger to himself or others, however, the seclusion room logs that are maintained contemporaneously with use indicate that Student C is placed in the seclusion room for a variety of behaviors, including destroying textbooks, refusing to return to his seat, and speaking in a loud voice. The teacher is aware of Student C’s disability and the IEP but believes seclusion is the preferred method for calming down any student. Student C’s one-on-one aide did not provide any support or intervention other than placing the student in the seclusion room.

Over the course of one month, Student C is sent to the isolation room six times, for varying lengths of time. The student’s parent never gave the school permission to put Student C in any type of seclusion and the IEP does not provide for seclusion. The student becomes anxious about going to school and the possibility that he will be secluded, and therefore, he often convinces his parents to keep him at home. The student’s parent reported to the assistant principal that Student C was avoiding school because he was apprehensive about being secluded. The assistant principal never followed up with the teacher and the school never convened the IEP team.

\textit{In light of these facts, OCR would likely find that the school violated its FAPE responsibilities.}

When the school has reason to believe a student’s needs have changed based on behaviors that interfere with learning and contemplates the need for changes to the student’s IEP, the school has an obligation to reconvene the IEP team to determine the extent to which additional or different services, including positive behavioral interventions and supports, are needed,\textsuperscript{59} and the school must ensure that any needed changes are made promptly to ensure the continued provision of FAPE and that the changes are reflected in the student’s IEP.\textsuperscript{60}

Here, the school personnel had reason to believe that the current FAPE services may not have been addressing all of the student’s disability-related behavioral needs. Despite a documented

\textsuperscript{58} In this example, the Section 504 group of knowledgeable persons is an IEP team. Here, the school is providing Section 504 FAPE through the implementation of an IEP. 34 C.F.R. § 104.33(b)(2).

\textsuperscript{59} A reevaluation would not necessarily be needed unless there is a reason to believe the student’s underlying disability or disabilities have changed, the student has an additional disability that has not been identified previously, or the student requires a significant change in placement. 34 C.F.R. § 104.35(a) and (d).

\textsuperscript{60} 34 C.F.R. § 104.33(a), (b)(2).
need to do so, the IEP team never developed or implemented positive behavioral interventions and supports. Student C began engaging in new behavior (running around the class and yelling) that the teacher found disruptive, in addition to other noncompliant behavior, and in the course of one month was repeatedly removed from the classroom (due to seclusion). School personnel also knew that the student was avoiding school and had missed instruction by convincing his parents to keep him at home on several occasions.

Under these circumstances, the school’s repeated use of seclusion was most likely an indication that Student C was not receiving sufficient or appropriate behavioral interventions and supports to address his disability-related needs and that his IEP needed to be revised to address these needs. (As the Department has stated previously, there is no evidence that using restraint or seclusion is effective in reducing the occurrence of the problem behaviors that frequently precipitate the use of such techniques. 61)

Further, in light of the change in the student’s attendance, school avoidance, and the frequency with which seclusion was used, the school should have convened Student C’s IEP team. Because the school had evidence suggesting that this student’s needs changed such that the student may no longer have been receiving FAPE, the school had an obligation to convene the team to determine whether that student’s FAPE services should have been changed to include other aids or services to address his behavior and avoid the unjustified use of seclusion, and to determine if the student needed counseling services to address the student’s reluctance to attend school. In taking these steps, the school would have ensured it was meeting the educational needs of Student C. 62 The IEP team could have investigated the behaviors or circumstances which gave rise to the perceived need for seclusion and considered alternative approaches, such as implementation of positive behavioral interventions and supports to help change or minimize Student C’s inability to focus. By failing to convene the IEP team, the school was unable to determine appropriately if it was providing FAPE and if not, to correct its failure to provide appropriate Section 504 services to Student C. If the student had been denied FAPE, the school could also specify compensatory education services to remedy such denial and include these services in Student C’s IEP.

In addition, if Student C had been secluded for longer amounts of time, or on a repeated basis, that in and of itself could have resulted in a denial of FAPE. (Note, the analysis regarding the use of seclusion in this document applies regardless of what name the school uses to call the space in which the student is secluded. Seclusion that leads to a denial of FAPE can occur in settings that are named, or intended to serve, as therapeutic spaces (i.e., there is sometimes no difference between what occurs in a “seclusion room” vs a “calm down room” or “reset room.”)) Student C’s current placement called for FAPE to be provided in the regular education setting. If he was


62 34 C.F.R. §§ 104.33-104.35.
being effectively removed from that setting, due to repeated seclusion, he was not receiving his needed FAPE services. In that event, a reconvening of the IEP team, or a reevaluation could be required. For example, had the IEP team consulted with a behavior specialist, the team could have devised appropriate positive behavioral interventions and supports to use with Student C to help him develop skills to positively address his difficulty focusing. The IEP team could also have determined that additional academic supports were needed. For example, if the student were having difficulty following a sequence of instructions, the teacher might have been able to devise an effective system of breaking down instructions.

**Example 3:** A third grade student with autism, Student D, has an IEP prescribing that he receive special education services in a separate special education class for students with similar disabilities and that also includes the following positive behavioral interventions and supports and other strategies: cueing and prompting strategies for effective transitions between activities, the opportunity to refocus in a quiet part of the classroom, and verbal and written instructions, repeated as necessary, for activities and assignments. These strategies have been generally effective in managing Student D’s behaviors in class.

One afternoon, Student D becomes very agitated when the class transitions from a computer activity to a paper and pencil lesson. Although the teacher implemented the strategies called for in Student D’s IEP to smoothly transition the student into the different lesson, he nevertheless becomes extremely upset and begins banging his head against a wall, repeatedly. The teacher attempts to step between the student and the wall to stop the behavior, but the student continually goes around the teacher to continue to beat his head against the wall. The teacher then restrains Student D, using a standing restraint technique for which she and other staff had received prior training. When Student D no longer presents an imminent risk of seriously harming himself, the teacher discontinues the use of the restraint consistent with prior training. The teacher then immediately takes him to the school nurse to determine whether the student suffered any physical injury, and to the school counselor, who, after speaking with the student, then notifies Student D’s parent. The teacher timely documents the use of restraint consistent with the school district’s policy.

Within ten school days, Student D’s IEP team, including Student D’s parent, meet to discuss the circumstances that led to the self-injurious behavior, whether the current strategies in place in the IEP are adequate or should be augmented, whether another evaluation is warranted, and what sort of alternative, appropriate behaviors could be taught to Student D to help him self-regulate his emotions. Also, the IEP team decides it will monitor the student’s future behavior and academic performance to determine whether any additional measures are needed to ensure the student continues to receive FAPE.
In this example, OCR would likely not find that the school’s use of restraint violated Section 504. The school first implemented the interventions and supports called for in the student’s IEP in an attempt to smoothly transition the student to the next activity and avoid the problematic behavior. Despite those actions, the student nevertheless became upset enough that he was in imminent danger of serious physical harm to himself. The student was restrained in response to that emergency, and the restraint was discontinued as soon as the imminent danger of physical harm had passed. Furthermore, OCR would likely not find a Section 504 FAPE violation, in light of the school’s reconvening of the IEP team to review and examine the current positive behavioral interventions and supports and other strategies, with input from the family, to determine its effectiveness. By taking prompt and effective steps to ensure that Student D’s FAPE services were appropriate to his needs, the school met its obligations under Section 504.

13. **How must a school respond if a student has been denied FAPE by the use of restraint or seclusion?**

When the Section 504 team or the IEP team determines that the use of restraint or seclusion resulted in a denial of FAPE for the student, the team must determine whether the provision of compensatory educational services or other appropriate relief is warranted in order to ensure the student’s continued equal access to the school’s educational program. If compensatory services are warranted, the school must offer and provide them to the affected student.

The Section 504 team (or IEP team) may also need to consider other placement options – including a self-contained classroom, a private setting, or a separate school – if the student’s education “cannot be achieved satisfactorily in the regular education environment with the use of supplementary aids and services.” Before changing a student’s placement, however, the team must consider whether any supplementary aids, services or supports could be provided to maintain the student’s placement in the regular education setting to the maximum extent appropriate to the needs of the student with a disability. The team must conduct a reevaluation of the student if they believe a significant change in placement is necessary.

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63 34 C.F.R. §§ 104.4, 104.33(a).
64 34 C.F.R. § 104.33(a).
65 34 C.F.R. § 104.34 (a school district must place a student with a disability in the regular educational environment unless the district can demonstrate that the education of that student cannot be achieved satisfactorily in the regular education environment with the use of supplementary aids and services).
66 *Id.* Placement in the regular education setting may be inappropriate if the student’s behavior due to disability impedes the learning of others. As noted above, the IDEA specifically requires IEP teams to consider the use of positive behavioral interventions and supports, and other strategies, to address behavior for any child with a disability whose behavior impedes his or her learning or that of others. 34 C.F.R. §§ 300.320(a)(4), 300.324(a)(2)(i) and (b)(2). For further discussion on positive behavioral interventions and supports, please see OSERS, *Dear Colleague Letter: Ensuring Equity and Providing Behavioral Supports to Students with Disabilities* (Aug. 1, 2016), [www.ed.gov/policy/gen/guid/school-discipline/files/dcl-on-pbis-in-ieps--08-01-2016.pdf](http://www.ed.gov/policy/gen/guid/school-discipline/files/dcl-on-pbis-in-ieps--08-01-2016.pdf).
67 34 C.F.R. § 104.35(a).
Where can school districts turn in order to learn how to reduce or eliminate the use of restraint or seclusion in their schools?

Schools may wish to consider the following:

- The Positive Behavioral Interventions and Supports Implementation Blueprint and Self-Assessment is a guide for leadership teams in the assessment, development, and execution of action plans. The outcome is the development of local capacity for sustainable, culturally and contextually relevant, and high fidelity implementation of multi-tiered practices and systems of support for supporting and responding to behavior. For further information, see www.pbis.org.

- Students who have experienced trauma in the past may be vulnerable in ways that some of their peers are not, and could therefore be impacted by the use of coercive practices in a much more significant way. The U.S. Department of Health and Human Services’ Substance Abuse and Mental Health Services Administration’s National Center for Trauma-informed Care and Alternatives to Seclusion and Restraint (NCTIC) offers consultation and technical assistance to develop trauma-informed care to eliminate the use of restraints, seclusion, and other coercive practices. NCTIC is also working to develop a knowledge base related to implementing trauma-informed approaches. Trauma-informed care is an approach to engaging people with histories of trauma that recognizes the presence of trauma symptoms and acknowledges the role that trauma has played in their lives. For further information, see www.samhsa.gov/nctic.

- The National Child Traumatic Stress Network, funded by the Substance Abuse and Mental Health Services Administration, provides several resources for educators, parents and children on the serious impact of traumatic stress on children. The Network works with established systems of care, including the health, mental health, education, law enforcement, child welfare, juvenile justice, and military family service systems, to ensure that there is a comprehensive trauma-informed continuum of accessible care. For further information, see www.nctsn.org/resources/audiences/school-personnel.

- “Supporting and Responding to Behavior: Evidence-Based Classroom Strategies for Teachers” summarizes evidence-based, positive, proactive, and responsive classroom behavior intervention and support strategies for teachers. These strategies could be used classroom-wide, or intensified to support small group instruction, or amplified further for individual students. For further information, see www.osepideasthatwork.org/evidencebasedclassroomstrategies.
15. **Are there other Departmental resources on the use of restraint and seclusion?**

Yes. Please consider and consult:


- Then-Secretary of Education Arne Duncan’s December 2009 letter to Congress regarding guiding principles that the Department believes would be useful in considering legislation on this issue, at [www.ed.gov/policy/gen/guid/secletter/091211.html](http://www.ed.gov/policy/gen/guid/secletter/091211.html).


Technical assistance about the requirements of Section 504 and other laws enforced by OCR is available, upon request, from the OCR enforcement office for the State in which a particular recipient or public entity is located. Contact information for these offices and for OCR’s Customer Service Office is available at [wdrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm](http://wdrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm). Alternatively, interested persons may contact OCR’s Customer Service Office by phone at 1-800-421-3481; TDD: 1-800-877-8339.

OCR’s website, [www.ed.gov/ocr](http://www.ed.gov/ocr), also provides information on a variety of topics related to the rights of persons with disabilities and the obligations of recipients under Section 504 and public entities under Title II.

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OSEP Dear Colleague Letter on Supporting Behavior of Students with Disabilities:
A Summary for Stakeholders

The U.S. Department of Education’s Office of Special Education Programs (OSEP) has released a Dear Colleague Letter to provide significant guidance for schools and other agencies to clarify their responsibility under the Individuals with Disabilities Education Act (IDEA) to provide children with disabilities appropriate behavioral interventions and supports that are necessary to ensure they have meaningful access to their education. Doing so ensures that eligible children with disabilities who have behavioral needs receive a free appropriate public education (FAPE) and placement in the least restrictive environment (LRE). This guidance is not intended to limit schools’ and agencies’ appropriate use of disciplinary removals that are necessary to protect children; instead, it is intended to provide alternatives, which schools can use to effectively support and respond to problem behaviors so that disciplinary removals are infrequent or unnecessary. By following this guidance, schools and agencies can increase the opportunity for children with disabilities with behavioral needs to participate in instruction, avoid the negative impacts of inappropriate disciplinary removals, and maintain access to their LRE. The main points of the guidance are summarized below.

- **IDEA** requires individualized education program (IEP) Teams to consider the use of positive behavioral interventions and supports for children with disabilities whose behavior interferes with their learning or the learning of others.

- When a child displays inappropriate behavior, such as violating a code of student conduct or disrupting the classroom, this may indicate that behavioral supports should be included in the child’s IEP; this is especially true when the child displays inappropriate behavior on a regular basis or when the behavioral incidents result in suspensions or other disciplinary measures that exclude the child from instruction.

- If a child displays inappropriate behavior despite having an IEP that includes behavioral supports, this may indicate that the behavioral supports in the IEP are not being appropriately implemented, or the behavioral supports in the IEP are not appropriate for the child. In these situations, the IEP Team would need to meet to discuss amending the current IEP to ensure that the interventions and supports in the IEP can be implemented, or to revise the behavioral interventions and supports that are currently in place.

- **IDEA** requires that needed behavioral supports in the IEP, whether provided as special education, related services, or supplementary aids and services, be based on peer-reviewed research to the extent practicable. The supports chosen should be individualized to the child’s needs. Some

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1 This document is a summary of the OSEP DCL on Supporting Behavior of Students with Disabilities to share with Stakeholders. To read the official DCL please see: [www2.ed.gov/policy/gen/guid/school-discipline/files/dcl-on-pbis-in-ieps--08-01-2016.pdf](http://www2.ed.gov/policy/gen/guid/school-discipline/files/dcl-on-pbis-in-ieps--08-01-2016.pdf).
examples of supports that schools may use include instruction on, and reinforcement of, school expectations for behavior, violence prevention programs, anger management groups, counseling for mental health issues, life skills training, social skills instruction, meetings with a behavioral coach, or other approaches.

- In addition to behavioral supports for children with disabilities, it may also be necessary, and consistent with IDEA requirements, to provide supports for school personnel and training on the use of positive behavioral interventions and supports in order to appropriately address the behavioral needs of a particular child.

- While providing individualized behavioral supports to students with disabilities who need them through the IEP process is required as part of IDEA, research has shown that these supports are typically most effective when they are delivered within a school-wide evidence-based multi-tiered behavioral framework that provides all children with clear expectations, targeted intervention for small groups who do not respond to the school-wide supports, and individualized supports for those children who need the most intensive behavioral services.

- It is important for schools and agencies to keep in mind that, in general, placement teams may not place a child with a disability in special classes, separate schooling, or other restrictive settings outside of the regular educational environment solely due to the child's behavior if the child's behavior can be effectively addressed in the regular education setting with the provision of behavioral supports. The failure to make behavioral supports available throughout a continuum of placements, including in a regular education setting, could result in an inappropriately restrictive placement and may violate IDEA's LRE requirements. Doing so may constitute failure to provide the child with access to the LRE.

- Schools should exercise caution in using disciplinary measures that remove a child from his or her current placement, such as suspension. Research has shown that exclusionary measures, in general, are not only ineffective at reducing or eliminating the reoccurrence of the misbehavior but may even be harmful to the child, possibly leading to lower academic performance, disengagement from school, and the decision to drop out.

- Parents have the right to request an IEP Team meeting at any time, and public agencies generally must grant a reasonable request from a parent for an IEP Team meeting.

- Parents may want to request an IEP Team meeting following disciplinary removal or changes in the child's behavior that impede the child's learning or that of others, as these likely indicate that the IEP may not be properly addressing the child's behavioral needs or is not being properly implemented.

A copy of the Dear Colleague Letter, which includes helpful resources, can be found here:

The following resources were shared in the document:

1) Supporting and Responding to Behavior: Evidence-Based Classroom Strategies for Teachers
www.osepideasthatwork.org/evidencebasedclassroomstrategies

2) Positive Behavioral Interventions and Supports: Implementation Blueprint and Self-Assessment
www.pbis.org/blueprint/implementation-blueprint
To: Superintendents, Member School Districts (K-12)

From: Carl D. Corbin, Associate General Counsel

Subject: Functional Analysis Assessment (aka “Hughes Bill”) is Repealed
Memo No. 11-2013

On July 1, 2013, the Governor approved an education omnibus trailer bill, Assembly Bill (“AB”) 86, which among other issues, effectively repealed the mandate for Local Education Agencies (“LEAs”) to complete a Functional Analysis Assessment (“FAA” aka “Hughes Bill”) for students who receive special education services and have behavior issues. As urgency legislation, AB 86 was effective on July 1, 2013.

AB 86 removed all additional requirements under California law (except for a few reporting requirements and other issues discussed further below) that were in addition to the requirements contained in the Individuals with Disabilities Education Act (“IDEA”) for addressing the behavior of special education students. Specifically, AB 86 repealed the following sections of Title 5 of the California Code of Regulations (“CCR”):

3001(d) – Which provided a definition for “behavioral emergency;”
3001(e) – Which provided a definition for “behavioral intervention;”
3001(f) – Which provided a definition for “behavioral intervention case manager;”
3001(g) – Which provided a definition for “behavioral intervention plan;”
3001(ab) – Which provided a definition for “serious behavioral problems;” and
3052 – Which provided detailed requirements for positive behavior interventions.

1 See the following link for AB 86: http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_0051-0100/ab_86_bill_20130701_chaptered.pdf.
Essentially, LEAs will now only be required to comply with the Functional Behavioral Assessment (“FBA”) and Behavioral Intervention Plan (“BIP”) requirements of the IDEA.\(^2\) However, LEAs will continue to have a duty to ensure, when a special education student’s behavior impedes the student’s learning or the learning of others, the student’s Individualized Education Program (“IEP”) team determines appropriate positive behavioral interventions to address inappropriate behavior.\(^3\)

### BIP vs. BSP

Please note that an IDEA level BIP had been referred to in California as a Behavior Support Plan (“BSP”) to distinguish a California FAA “more intensive” BIP from an IDEA “less intensive” BIP. Now that the FAA mandate has repealed in California it makes sense to refer to the IDEA behavior plan as a BIP instead of a BSP. In addition, the language of AB 86 refers to a “Behavioral Intervention Plan” and not to a “Behavioral Support Plan.”

### Emergency Intervention

AB 86 codified in Education Code section 56521.1 that emergency interventions “may only be used to control unpredictable, spontaneous behavior that poses clear and present danger of serious physical harm to the individual with exceptional needs, or others, and that cannot be immediately prevented by a response less restrictive than the temporary application of a technique used to contain the behavior.” AB 86 does not provide a definition of an “emergency intervention” except to state that an emergency intervention should not be used as a substitute for a plan to eliminate a targeted inappropriate behavior and the emergency intervention should only be used as long as necessary to contain the behavior. AB 86 also codified at Education Code section 56521.1(d) limits on permissible emergency interventions:

(d) Emergency interventions shall not include:

1. Locked seclusion, unless it is in a facility otherwise licensed or permitted by state law to use a locked room.
2. Employment of a device, material, or objects that simultaneously immobilize all four extremities, except that techniques such as prone containment may be used as an emergency intervention by staff trained in those procedures.
3. An amount of force that exceeds that which is reasonable and necessary under the circumstances.

Please note that prone containment of a student by trained staff is permissible as an emergency intervention. There is no definition as to the specific training required for staff to use prone containment; however, any comprehensive training program for appropriately managing student behavior should be legally sufficient.

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\(^2\) The IDEA procedures for a FBA are not described in great detail: 34 CFR 300.530(d)(1)(ii) and 34 CFR 300.530(f). Case law has upheld a variety of behavioral procedures to satisfy the legal requirements of an IDEA FBA and an IDEA BIP.

\(^3\) See Education Code section 56341(b)(2).
Impermissible Interventions

AB 86 codified at Education Code section 56521.2 a list of impermissible behavioral interventions for special education students:

Any intervention that is designed to, or likely to, cause physical pain, including, but not limited to, electric shock.
(2) An intervention that involves the release of noxious, toxic, or otherwise unpleasant sprays, mists, or substances in proximity to the face of the individual.
(3) An intervention that denies adequate sleep, food, water, shelter, bedding, physical comfort, or access to bathroom facilities.
(4) An intervention that is designed to subject, used to subject, or likely to subject, the individual to verbal abuse, ridicule, or humiliation, or that can be expected to cause excessive emotional trauma.
(5) Restrictive interventions that employ a device, material, or objects that simultaneously immobilize all four extremities, including the procedure known as prone containment, except that prone containment or similar techniques may be used by trained personnel as a limited emergency intervention.
(6) Locked seclusion, unless it is in a facility otherwise licensed or permitted by state law to use a locked room.
(7) An intervention that precludes adequate supervision of the individual.
(8) An intervention that deprives the individual of one or more of his or her senses.

Reporting and Meeting Requirements

AB 86 codified at Education Code sections 56521.1(e)-(h) reporting and meeting requirements following the use of an emergency intervention with a special education student:

• Within one school day following the use of an emergency intervention or serious property damage⁴ the student’s parent/guardian/residential care provider shall be notified of the event. There is no requirement that the parent/guardian/residential care provider receive any formal incident report – only notification is required.

• A Behavioral Emergency Report (“BER”) shall “immediately”⁵ be completed and maintained in the special education student’s school file that shall include at least all of the following:
  - The name and age of the special education student;
  - The setting of the incident;

⁴ There is no definition provided within AB 86 for “serious property damage.” Our office advises that the actual destruction of expensive school equipment or serious damage to the school facility should trigger the reporting requirement.

⁵ Our office advises that the BER should be developed and placed in the student’s file the same school day as the use of the emergency intervention.
- The name of the staff member(s) and any other persons involved (e.g. other students, parents, etc.);
- A description of the incident and the emergency intervention used and whether the student has a BIP; and
- Details of any injuries sustained by the student, staff, or others during the incident.

- The BER shall immediately be forwarded to and reviewed by a designated and responsible administrator.⁶

- If a BER was written regarding a special education student who did not have a BIP, then within two days⁷ an IEP meeting shall be scheduled by the designated responsible administrator to 1) review the BER, 2) determine if a FBA should be conducted, and 3) determine the need for an interim BIP pending the completion of the BIP. The IEP team must document the reasons for not conducting a FBA and/or developing an interim BIP.

- If a BER was written regarding a special education student who did have a BIP, then the student’s IEP team shall review and determine if the incident constitutes a need to modify the BIP.⁸

### Training

AB 86 does not provide any specific training or credential requirements for the staff that will develop and review a BIP for a special education student. As discussed above, the definition of a “behavioral intervention case manager” in 5 CCR 3001(f) was repealed. While Education Code section 56525 allows a Board Certified Behavior Analyst (“BCBA”) to conduct a FBA and provide behavior intervention services, there is no requirement that a LEA employ a BCBA to provide these services. Title 5 of the CCR section 3065 provides a list of staff qualified to provide behavior intervention services to special education students (which includes but is not limited to school psychologists, school counselors, and special education teachers).

### Policy Review and Revision

Our office strongly suggests that LEAs review and revise their policies to remove any reference to FAA and other “Hughes Bill” requirements and to incorporate the BER and meeting requirements of AB 86.

For your convenience, attached is a copy of selected portions of AB 86 regarding behavioral interventions with special education students.

Please contact our office with questions regarding this or any other legal matter.

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⁶ Our office advises that the BER be provided the same school day to an administrator responsible for overseeing the LEA’s special education issues.

⁷ While not specifically stated in AB 86, the reference to “two days” appears to refer to school days and the absence of the qualifier “school” appears to be a legislative drafting oversight.

⁸ Our office advises that this IEP meeting be scheduled no later than 30 calendar days after the incident, although sooner is better.
LEGAL UPDATE

October 31, 2018

To: Superintendents, Member School Districts (K-12)

From: Jennifer E. Nix  
Associate General Counsel

Subject: New Law Requires Schools to Limit Use of Restraint and Seclusion for All Students and to Collect Related Data

Memo No. 37-2018

Governor Brown recently signed into law Assembly Bill 2657, also known as the Weber Law. AB 2657, which is attached to this Legal Update, added sections 49005 through 49006.4 to the Education Code.

New law prohibits use of behavioral restraints by any educational providers unless it is necessary to control student behavior that poses a clear and present danger of serious physical harm to the student or others, and that harm cannot be immediately prevented by a response that is less restrictive. This bill applies to all students, not only students with disabilities.

AB 2657 provides that restraint and seclusion of students should be used as a “last resort,” and can never be used as punishment or discipline or for staff convenience. Newly added section 49005.8 of the Education Code details what actions are now impermissible as to all students. Of note is the explicit requirement that no student can be held in a prone (facedown) restraint if his or her hands are held or restrained behind his or her back.

For purposes of this law, “behavioral restraints” includes both mechanical and physical restraints. Mechanical restraints do not include adaptive devices or restraints used by peace officers or security officers for detention or public safety purposes. Physical restraints include any action that immobilizes or reduces the ability of a student to move his or her torso, arms, legs, or head. However, an

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1 “Educational providers” is defined to include any person who provides educational or related services, support, or other assistance to any student enrolled in a local educational agency, nonpublic school, or nonpublic agency.

2 Existing law prohibited corporal punishment of students.

3 This bill did not amend the portions of the Education Code related to behavioral interventions and students with disabilities, located at Education Code §§ 56520 to 56525.
educational provider is still permitted to physically escort a student who is acting out for the purpose of inducing that student to walk to a safe location, which can involve temporarily touching or holding that student’s hand, wrist, arm, shoulder, or back.

For purposes of this law, “seclusion” includes any involuntary confinement of a child by himself or herself, where the child is physically prevented from leaving. Educational providers may continue to use “timeout” so long as the timeout is monitored, not locked, and is used only for the purpose of calming.

The new law also requires annual reporting of the use of behavioral restraints and seclusion. All school districts, county offices of education, and charter schools are required to report to the CDE the number of behavioral restraints and seclusions for students enrolled in or served by the local educational agency. This reporting must be disaggregated into the both the number of times and the number of students, and separate counts must be provided in each category for students with Individualized Education Plans, students with 504 plans, and all other students. This reporting must include information on students placed in non-district programs, such as nonpublic schools.

Please contact our office with questions regarding this Legal Update or any other legal matter.

*The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.*

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Assembly Bill No. 2657

CHAPTER 998

An act to add Article 5.2 (commencing with Section 49005) to Chapter 6 of Part 27 of Division 4 of Title 2 of the Education Code, relating to pupil discipline.

[Approved by Governor September 30, 2018. Filed with Secretary of State September 30, 2018.]

LEGISLATIVE COUNSEL'S DIGEST


Existing law prohibits a person employed by or engaged in a public school to inflict, or cause to be inflicted, corporal punishment upon a pupil.

This bill would authorize an educational provider, as defined, to use behavioral restraints, which includes physical and mechanical restraints, or seclusion, as defined, only to control behavior that poses a clear and present danger of serious physical harm to the pupil or others that cannot be immediately prevented by a response that is less restrictive, and if other specified conditions are met. The bill would prohibit an educational provider from using a behavioral restraint or seclusion in certain circumstances, including, but not limited to, using seclusion or a behavioral restraint for the purpose of coercion, discipline, convenience, or retaliation, and would prohibit the use of certain restraint and seclusion techniques. The bill would require a local educational agency that meets a specified federal definition to collect and, no later than 3 months after the end of a school year, report to the State Department of Education annually on the use of behavioral restraints and seclusion for pupils enrolled in or served by the local educational agency for all or part of the prior school year, as specified. The bill would require that the data collection and reporting requirements be conducted in compliance with specified federal law, and would prohibit those requirements from being construed to impose a new program or higher level of service on local educational agencies or nonpublic schools or agencies.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.
The people of the State of California do enact as follows:

SECTION 1. Article 5.2 (commencing with Section 49005) is added to Chapter 6 of Part 27 of Division 4 of Title 2 of the Education Code, to read:

Article 5.2. Restraint and Seclusion

49005. The Legislature finds and declares all of the following:
(a) While it is appropriate to intervene in an emergency to prevent a student from imminent risk of serious physical self-harm or harm of others, restraint and seclusion are dangerous interventions, with certain known practices posing a great risk to child health and safety.
(b) United States Department of Education guidelines specify that the use of restraint and seclusion must be consistent with the child’s right to be treated with dignity and to be free from abuse.
(c) Restraint and seclusion should only be used as a safety measure of last resort, and should never be used as punishment or discipline or for staff convenience.
(d) Restraint and seclusion may cause serious injury or long lasting trauma and death, even when done safely and correctly.
(e) There is no evidence that restraint or seclusion is effective in reducing the problem behaviors that frequently precipitate the use of those techniques.
(f) Students with disabilities and students of color, especially African American boys, are disproportionately subject to restraint and seclusion.
(g) Well-established California law already regulates restraint techniques in a number of settings, including general acute care hospitals, acute psychiatric hospitals, psychiatric health facilities, crisis stabilization units, community treatment facilities, group homes, skilled nursing facilities, intermediate care facilities, community care facilities, and mental health rehabilitation centers. These minimal protections should be provided to all students in schools.
(h) It is the intent of the Legislature to ensure that schools foster learning in a safe and healthy environment and provide adequate safeguards to prevent harm, and even death, to children in school.
(i) This article is intended to be read to be consistent with, and does not change any requirements, limitations, or protections in, existing law pertaining to students with exceptional needs.
(j) It is the intent of the Legislature to prohibit dangerous practices. Restraint and seclusion, as described in this article, do not further a child’s education. At the same time, the Legislature recognizes that if an emergency situation arises, the ability of education personnel to act in that emergency to safeguard a student or others from imminent physical harm should not be restricted.
49005.1. The following definitions apply to this article:
(a) “Behavioral restraint” means “mechanical restraint” or “physical restraint,” as defined in this section, used as an intervention when a pupil
presents an immediate danger to self or to others. “Behavioral restraint” does not include postural restraints or devices used to improve a pupil’s mobility and independent functioning rather than to restrict movement.

(b) “Educational provider” means a person who provides educational or related services, support, or other assistance to a pupil enrolled in an educational program provided by a local educational agency or a nonpublic school or agency.

(c) “Local educational agency” means a school district, county office of education, charter school, the California Schools for the Deaf, and the California School for the Blind.

(d) (1) “Mechanical restraint” means the use of a device or equipment to restrict a pupil’s freedom of movement.

(2) (A) “Mechanical restraint” does not include the use of devices by peace officers or security personnel for detention or for public safety purposes.

(B) “Mechanical restraint” does not include the use of devices by trained school personnel, or by a pupil, prescribed by an appropriate medical or related services professional, if the device is used for the specific and approved purpose for which the device or equipment was prescribed, which shall include, but not be limited to, all of the following:

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

(2) Vehicle safety restraints when used as intended during the transport of a pupil in a moving vehicle.

(3) Restraints for medical immobilization.

(4) Orthopedically prescribed devices that permit a pupil to participate in activities without risk of harm.

(e) “Nonpublic school or agency” means any nonpublic school or nonpublic agency, including both in-state and out-of-state nonpublic schools and nonpublic agencies.

(f) (1) “Physical restraint” means a personal restriction that immobilizes or reduces the ability of a pupil to move his or her torso, arms, legs, or head freely. “Physical restraint” does not include a physical escort, which means a temporary touching or holding of the hand, wrist, arm, shoulder, or back for the purpose of inducing a pupil who is acting out to walk to a safe location.

(2) “Physical restraint” does not include the use of force by peace officers or security personnel for detention or for public safety purposes.

(g) “Prone restraint” means the application of a behavioral restraint on a pupil in a facedown position.

(h) “Pupil” means a pupil enrolled in preschool, kindergarten, or any of grades 1 to 12, inclusive, and receiving educational services from an educational provider.

(i) “Seclusion” means the involuntary confinement of a pupil alone in a room or area from which the pupil is physically prevented from leaving. “Seclusion” does not include a timeout, which is a behavior management
technique that is part of an approved program, that involves the monitored separation of the pupil in a nonlocked setting, and is implemented for the purpose of calming.

49005.2. A pupil has the right to be free from the use of seclusion and behavioral restraints of any form imposed as a means of coercion, discipline, convenience, or retaliation by staff. This right includes, but is not limited to, the right to be free from the use of a drug administered to the pupil in order to control the pupil’s behavior or to restrict the pupil’s freedom of movement, if that drug is not a standard treatment for the pupil’s medical or psychiatric condition.

49005.4. An educational provider may use seclusion or a behavioral restraint only to control behavior that poses a clear and present danger of serious physical harm to the pupil or others that cannot be immediately prevented by a response that is less restrictive.

49005.6. An educational provider shall avoid, whenever possible, the use of seclusion or behavioral restraint techniques.

49005.8. (a) An educational provider shall not do any of the following:

(1) Use seclusion or a behavioral restraint for the purpose of coercion, discipline, convenience, or retaliation.

(2) Use locked seclusion, unless it is in a facility otherwise licensed or permitted by state law to use a locked room.

(3) Use a physical restraint technique that obstructs a pupil’s respiratory airway or impairs the pupil’s breathing or respiratory capacity, including techniques in which a staff member places pressure on a pupil’s back or places his or her body weight against the pupil’s torso or back.

(4) Use a behavioral restraint technique that restricts breathing, including, but not limited to, using a pillow, blanket, carpet, mat, or other item to cover a pupil’s face.

(5) Place a pupil in a facedown position with the pupil’s hands held or restrained behind the pupil’s back.

(6) Use a behavioral restraint for longer than is necessary to contain the behavior that poses a clear and present danger of serious physical harm to the pupil or others.

(b) An educational provider shall keep constant, direct observation of a pupil who is in seclusion, which may be through observation of the pupil through a window, or another barrier, through which the educational provider is able to make direct eye contact with the pupil. The observation required pursuant to this subdivision shall not be through indirect means, including through a security camera or a closed-circuit television.

(c) An educational provider shall afford to pupils who are restrained the least restrictive alternative and the maximum freedom of movement, and shall use the least number of restraint points, while ensuring the physical safety of the pupil and others.

(d) If prone restraint techniques are used, a staff member shall observe the pupil for any signs of physical distress throughout the use of prone restraint. Whenever possible, the staff member monitoring the pupil shall not be involved in restraining the pupil.
49006. (a) A local educational agency that meets the definition of a “local educational agency” specified in Section 300.28 of Title 34 of the Code of Federal Regulations shall collect and, no later than three months after the end of a school year, report to the department annually on the use of behavioral restraints and seclusion for pupils enrolled in or served by the local educational agency for all or part of the prior school year.

(b) The report required pursuant to subdivision (a) shall include all of the following information, disaggregated by race or ethnicity, and gender:

1. The number of pupils subjected to mechanical restraint, with separate counts for pupils with a plan pursuant to Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794), pupils with an individualized education program, and pupils who do not have a plan pursuant to Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794) or an individualized education program.

2. The number of pupils subjected to physical restraint, with separate counts for pupils with a plan pursuant to Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794), pupils with an individualized education program, and pupils who do not have a plan pursuant to Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794) or an individualized education program.

3. The number of pupils subjected to seclusion, with separate counts for pupils with a plan pursuant to Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794), pupils with an individualized education program, and pupils who do not have a plan pursuant to Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794) or an individualized education program.

4. The number of times mechanical restraint was used on pupils, with separate counts for the number of times mechanical restraint was used on pupils with a plan pursuant to Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794), pupils with an individualized education program, and pupils who do not have a plan pursuant to Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794) or an individualized education program.

5. The number of times physical restraint was used on pupils, with separate counts for the number of times physical restraint was used on pupils with a plan pursuant to Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794), pupils with an individualized education program, and pupils who do not have a plan pursuant to Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794) or an individualized education program.

6. The number of times seclusion was used on pupils, with separate counts for the number of times seclusion was used on pupils with a plan pursuant to Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794), pupils with an individualized education program, and pupils who do not have a plan pursuant to Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794) or an individualized education program.
(c) Notwithstanding any other law, the data collected and reported pursuant to this section shall be available as a public record pursuant to Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code.

(d) No later than three months after the report is due to the department pursuant to subdivision (a), the department shall post the data from the report annually on its Internet Web site.

49006.2. Notwithstanding Section 49006, the data collection and reporting requirements contained in this article shall be conducted in compliance with the requirements of the Civil Rights Data Collection of the United States Department of Education’s Office for Civil Rights imposed pursuant to Sections 100.6(b) and 104.61 of Title 34 of the Code of Federal Regulations, and shall not be construed to impose a new program or higher level of service on local educational agencies or nonpublic schools or agencies.

49006.4. (a) This article applies with regard to all pupils, including individuals with exceptional needs. For an individual with exceptional needs, if a behavioral restraint or seclusion is used, the procedures for follow-up contained in subdivisions (e), (f), (g) and (h) of Section 56521.1 shall also apply.

(b) For purposes of this section, “individual with exceptional needs” has the same meaning specified in Section 56026.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIIIB of the California Constitution because this act implements a federal law or regulation and results in costs mandated by the federal government, within the meaning of Section 17556 of the Government Code.