

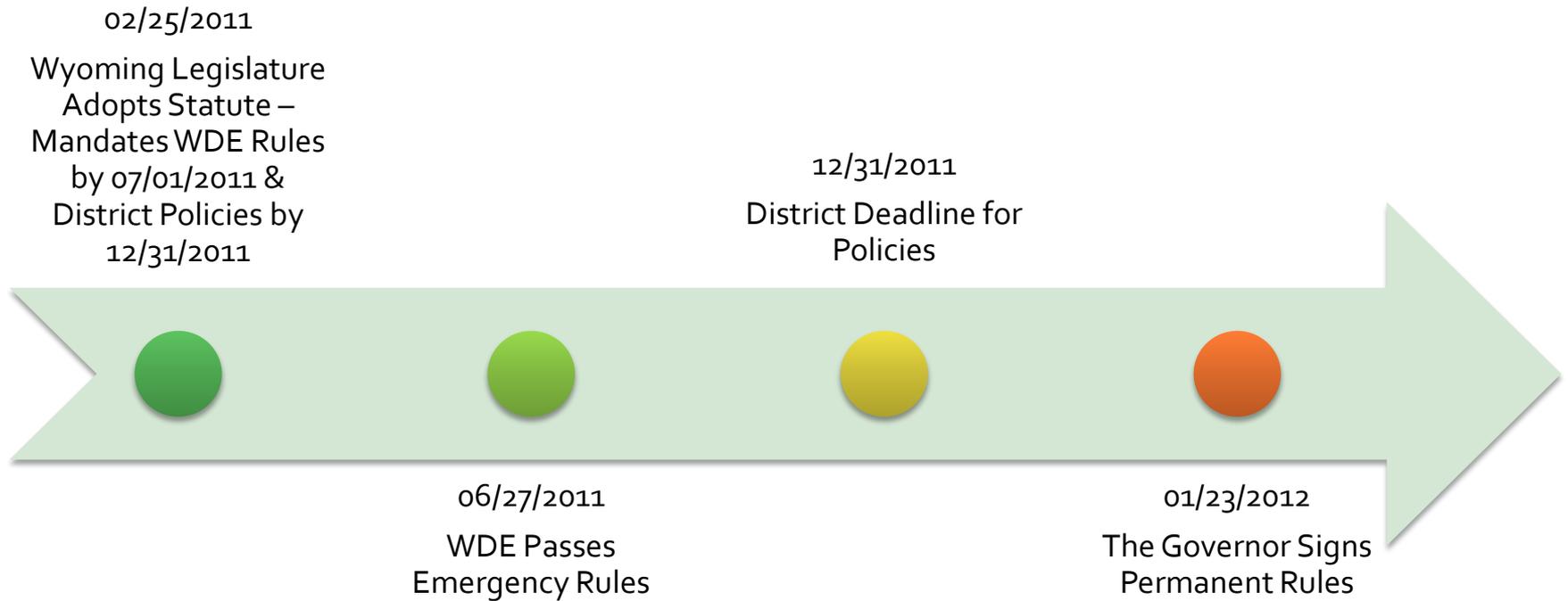
Wyoming Leadership Symposium 2012

Seclusion and Restraint in Wyoming and Beyond

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The Timeline



The Statute

- W.S. §21-2-102(a)(xxxii): **The superintendent shall:**
 - **By rule and regulation adopted not later than July 1, 2011 establish requirements for school district policies and training** regarding the use of seclusion and restraint in schools as required under W.S. 21-3-110(a)(xxx). The state superintendent shall review the policy of each district for compliance with the requirements of W.S. 21-3-110(a)(xxx) and rules and regulations promulgated pursuant to this paragraph. If the state superintendent determines that the policy is not in compliance under this paragraph the superintendent shall direct the board of trustees to revise the policy and shall, upon request, assist the board in the adoption of the policy;

The Statute

- W.S. §21-3-110(a)(xxxi): The board of trustees of each school district shall:
 - Not later than **December 31, 2011, adopt a policy and training procedures** regarding the use of seclusion and restraint in schools. In addition to any requirements provided by rule and regulation of the state superintendent pursuant to W.S. 21-2-202(a)(xxxii), **the policy shall require that the parent or legal guardian of the student shall be notified each time that seclusion or restraint is utilized for the student. The policy shall prohibit the use of locked seclusion.** The policy shall not be limited to any specified group of students and shall apply any time that seclusion or restraint is used for any student. The district shall submit a copy of the policy to the state superintendent for review as provided in W.S. 21-2-202(a)(xxxii) after the initial adoption of the policy and any time thereafter that the policy is substantially revised.

The Statute

- W.S. §21-3-110(a)(xxxi): As used in this paragraph:
 - "Restraint" means the use of physical force, with or without the use of any physical device or material, to restrict the free movement of all or a portion of a student's body. "Restraint" does not include comforting or calming a student, holding the hand or arm of a student to escort the student if the student is complying, intervening in a fight or using an assistive or protective device prescribed by an appropriately trained professional or professional team;

The Statute

- W.S. §21-3-110(a)(xxxi): As used in this paragraph:
 - "Seclusion" means removing a student from a classroom or other school activity and isolating the student in a separate area. "Seclusion" does not include a student requested break or in-school suspension, detention or other appropriate disciplinary measure.

The Rule

- WDE Chapter 42 Seclusion and Restraint In Schools.
- Authority:
 - These rules govern and regulate the use of seclusion and restraint with students in public school districts providing education to children ages five (5) through the completion of the school year in which the child turns twenty-one (21) pursuant to Wyoming law.
- Scope:
 - All provisions W.S. §21-2-202(a)(xxxii) and W.S. §21-3-110(a)(xxxi), including any subsequent amendments or revisions of the law and/or rules, apply to every school district as defined in W.S. §§21-3-102 through 21-3-104.

The Rule

ALL KIDS

ALL SCHOOL DISTRICTS

NOT JUST SPECIAL ED.

The Rule

- Purpose:
 - Schools should ensure that students are treated with respect and dignity in an environment that provides for the physical safety and security of students and staff. Each student has a right to be free from seclusion or restraint used as a means of coercion, punishment, convenience, or retaliation. **Seclusion and restraint are not instructional tools for the development of prosocial behavior.** Proactive and preventative behavioral interventions should be initiated and ongoing to diffuse disruptive and volatile situations.

Seclusion Speak



Regulated vs. Prohibited

- The Wyoming statute and WDE rules **regulate** the use of seclusion and restraint in schools.
- The regulation of seclusion and restraint is directed at standardizing the language we use to describe the practice, minimizing its use, adequately training staff, and informing parents.
- Few actions are **prohibited**.

Prohibited Practices

- “Prohibited Practices” means that certain activities or objects are prohibited from being utilized with students under any circumstances. Prohibited elements include:
- “Aversives” means an intervention that is intended to induce pain or discomfort to a student for the purpose of eliminating or reducing maladaptive behaviors.

Prohibited Practices

- “Locked Seclusion” means a seclusion room with a locking device that is engaged by leverage of an inanimate object, key, or other mechanism to keep the door closed without constant human contact. The term does not include a securing mechanism requiring constant human contact, which upon release immediately permits the door to be opened from the inside.

Prohibited Practices

- “Mechanical Restraints” include devices or equipment designed or utilized to restrict the free movement of all or a portion of a student’s body. The term does not include assistive or protective devices or equipment prescribed by an appropriately trained professional or professional team that are used for the specific and approved purposes for which such devices or equipment were designed and prescribed.

Prohibited Practices

- “Prone Restraints” include holding a student in a face down position or in any position that will:
 - Obstruct a student’s airway or otherwise impair the ability to breathe;
 - Obstruct a staff member’s view of a student’s face;
 - Restrict a student’s ability to communicate distress;
 - Place pressure on a student’s head, neck, or torso; or
 - Straddle a student’s torso.

Definitions

- “Emergency” means a situation constituting an imminent risk to health or safety.
- “Imminent Risk” means an immediate and impending threat of a person causing substantial physical injury to self or others.

Definitions

- “Escort” includes guiding a student by touching his/her back, arm, or hand, or holding the student’s arm or hand to escort the student safely from one area to another as long as the student is not refusing to comply with the escort. The term does not include the use of coercion or force to move a student from one location to another.

Definitions

- “Restraint” means the use of physical force, with or without the use of any device or material, to restrict the free movement of all or a portion of a student’s body. Restraint does not include comforting or calming a student, holding the hand or arm of a student to escort the student if the student is complying, intervening in a fight or using an assistive or protective device prescribed by an appropriately trained professional or professional team. The term does not encompass any of the prohibited practices described in this rule.

Definitions

- “Isolating” means visually, auditorally, or physically separating a student from the learning environment, school activity, or peers.

Definitions

- “Seclusion” means removing a student from a classroom or other school activity and isolating the student in a separate area. Seclusion occurs when a student is placed in a room or location by school personnel, purposefully separated from peers, and prevented from leaving that location. Separation in an area where the student is prevented from leaving is always considered seclusion. There are two distinct categories:
 - i) Seclusion from the Learning Environment, and
 - ii) Isolation Room.
- The term does not include a student requested break or in-school-suspension, detention or other appropriate disciplinary measure.

Seclusion: Two Types

- “Seclusion from the Learning Environment” means visually or auditorially isolating the student from the classroom or other school activity, away from peers in an area that obstructs the student’s ability to participate in regular classroom or school activities. The student is prevented from rejoining the learning environment or school activity until directed by staff.
- “Isolation Room” means purposefully placing the student in an enclosed room built in compliance with all relevant health and safety codes. The student is not released from the Isolation Room and permitted to rejoin the learning environment or school activity until directed by staff. An Isolation Room is not the same as locked seclusion, which is a prohibited practice.

What is not regulated?

- Time-out.
- “Time-out” means providing the student with a brief opportunity to regain self-control in a setting that does not physically remove the student from peers or the learning environment, and the student is not physically prevented from leaving the time-out area. The use of time-out without seclusion is not regulated by these rules.

Policy Mandates

- ① Staff training and professional development;
- ② Procedures;
- ③ Mandatory documentation; and
- ④ Parent notification.



Staff Training and Professional Development

- ALL STAFF TRAINING:
 - Evidence-based techniques effective in the prevention of physical restraint and seclusion, including –
 - Positive behavior supports;
 - Safe physical escort;
 - Conflict prevention;
 - De-escalation; and
 - Conflict management.

Staff Training and Professional Development

- RATION OF CLASSIFIED AND NONCLASSIFIED STAFF:
 - Evidence-based techniques in the safe use of physical restraint.
- ANNUAL PROFESSIONAL DEVELOPMENT REQUIREMENT.

Procedures for Restraint

- **PLANNED BEHAVIOR INTERVENTION:** (IEP, behavior plan, individual learning plan, etc.)
 - Only trained, certified staff can utilize restraint as part of a planned behavior intervention, **UNLESS** a bona fide emergency situation constituting an imminent risk to health or safety exists.
- **EMERGENCY SITUATION, IMMINENT HEALTH OR SAFETY RISK:**
 - Any staff may intervene to establish safety.

Training Amount

- The minimum amount of training required for all staff shall be the number of hours recommended by the evidence-based training program selected by the school.
- Ongoing training shall be provided as recommended by the training program.

Training Amount

- The minimum amount of training required for the ration of staff shall be the number of hours necessary to obtain certification by the evidenced-based training program selected by the school.
- Certification shall be maintained as prescribed by the evidence-based training program selected by the school.

Restraint Duration

- Restraint shall be utilized for the minimum amount of time necessary to permit the student to regain control and for staff to restore safety.
- Schools must develop restraint duration guidelines, including a release strategy.

Restraint Duration

- Restraints exceeding the durational limits set forth in the school's guidelines shall require immediate administrative review to determine if and under what conditions the restraint may continue.

Incident Review or Debriefing

- Schools shall develop an incident review strategy or debriefing strategy.
- The incident review or debriefing process shall address what, if any, subsequent actions need to be taken.

Mandatory Documentation

- Schools must complete the mandatory documentation for all use of Restraint and Isolation Room seclusion.
- Incident Report: At a minimum, the incident report must include:
 - Antecedents, interventions, and other relevant factors;
 - Description of the regulated intervention utilized;
 - Time and duration;
 - Student's response;
 - Administrative review, if necessary;
 - Status assessment;
 - Release or reentry factors;
 - Injuries, if any;
 - Debriefing

Parent Notification

- The school shall develop a parent notification procedure to include, at a minimum, written notification within 24 hours of the use of a regulated procedure, or other timeframe as agreed upon by the school and parent. Written notification shall be complete upon mailing, personal delivery, or electronic transmission of the written notice.

Restraint Process



Procedures for Seclusion

Seclusion from the Learning Environment

- Planned behavior intervention strategy ONLY.
- Durational guidelines necessary.
- Incident report is NOT required.

Isolation Room

- Bona Fide emergency use ONLY.
- Durational guidelines AND reentry strategy.
- Administrative review.
- Incident review strategy or debriefing.
- Physical space requirements.

Physical Space Requirements

- The room must provide a means of **continuous visual and auditory** monitoring of the student.
- The room must be adequately lighted, with switches to control lighting located outside the room.
- The room must be adequately ventilated, with switches to control fans or other ventilation devices located outside the room.
- The room must maintain a temperature within the normal comfort range and consistent with the rest of the building, with temperature controls located outside of the room.

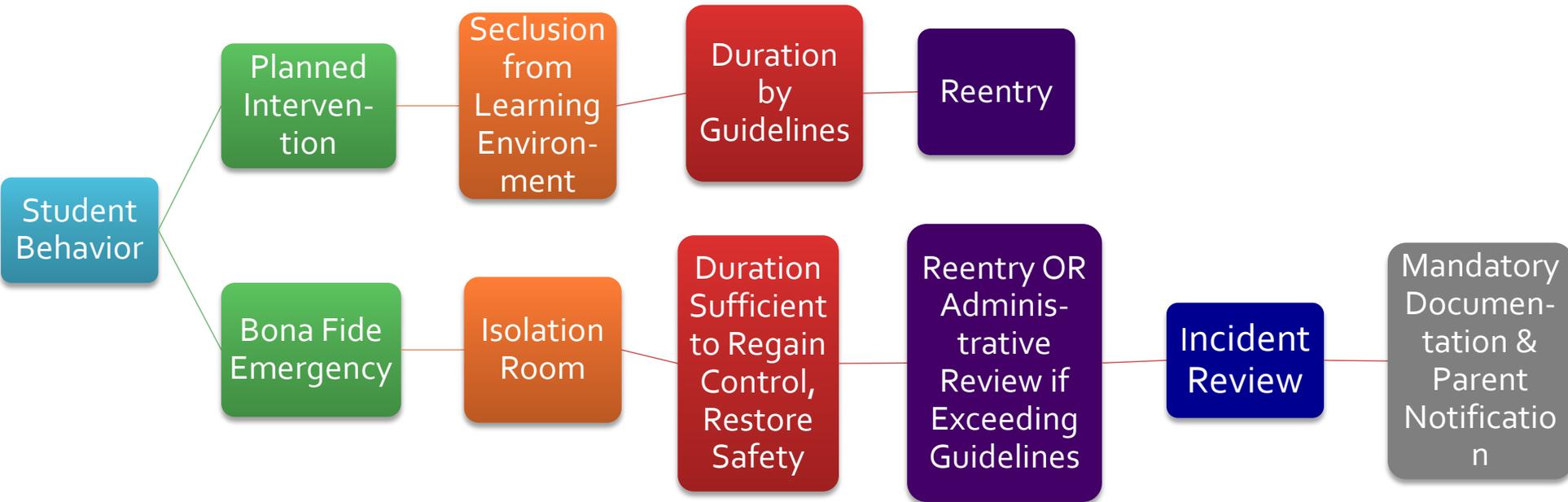
Physical Space Requirements

- The room must be clean and free of objects and fixtures that could be potentially dangerous to a student and must meet all fire and safety codes.
- The room must be constructed of materials safe for the intended use, including wall and floor coverings designed to prevent injury to the student.
- The room must be able to be **opened from the inside immediately upon the release of the security mechanism held in place by constant human contact.**
- The dimensions of the room must be of adequate width, length and height to allow the student to move about and recline comfortably.

Seclusion Musts:

- While in seclusion:
 - Staff must be able to see and hear at all times.
 - Students must be permitted access to normal meals and personal hygiene opportunities.

Seclusion Process





DEAR

PARENTS

Parent Notification

- Parents must be notified –
 - Within **24 hours** of the use of a regulated procedure, UNLESS
 - Other timeframe has been agreed upon by the school and the parent.
 - Written notification shall be complete upon mailing, personal delivery, or electronic transmission of the written notice.

Enforcement

- Schools shall specify a procedure for the lodging and investigation of complaints regarding misuse of the school district's policy on seclusion and restraint.

Publication

- Schools shall provide for the manner in which the policy is to be publicized within the school community.

Data

Schools shall collect and report annually to the WDE the **WISER ID** for each student involved in the use of a regulated intervention, the **number of incidents** of seclusion and restraint for each student, and the **type of regulated intervention** utilized for each student.



Violations

- School districts are responsible for determining the course of action if an internal investigation substantiates a violation of its policy.
- WDE may investigate and determine corrective action if it receives a complaint alleging that a school's use of seclusion or restraint resulted in a denial of FAPE.

A Broader Perspective



true colors

USDOE Resource and Guidance

- USDOE, *Restraint and Seclusion: Resource Document*, Washington, D.C., 2012.

- Restraint and seclusion should not be used as routine school safety measures.
- R and S should only be used for “imminent danger of serious physical harm to self or others and not as a routine strategy implemented to address instructional problems or inappropriate behavior....”

- Secretary Duncan urged states:
 - to review and revise their existing policies and procedures on R and S.
 - to publicize policies and guidelines so that:
 - staff are aware of requirements and techniques
 - parents are notified when interventions occur
 - resources are available for implementation and
 - school districts are held accountable for compliance.

- Report referred to the GAO report on *Examining the Abusive and Deadly Use of Seclusion and Restraint in Schools* (issues May 19, 2009).
 - No current federal regulations
 - Widely divergent state regulations
 - No reliable national data on use and abuse
 - Review of 10 cases that resulted in criminal convictions, civil liability or a financial settlement.

USDOE Principles regarding Restraint and Seclusion

- 1. Use every effort to prevent the need for restraint and seclusion.
- 2. Never use mechanical restraints to restrict movements or drugs/medication to control behavior or restrict movement (unless authorized by health care professional).
- 3. Use restraint and seclusion only in cases where the behavior of the student poses imminent danger of serious physical harm to self or others and other interventions are ineffective. Discontinue use quickly.

- 4. Policies should be applicable to all students, not just students with disabilities.
- 5. Interventions must be consistent with the child's right to be treated with dignity and to be free from abuse.
- 6. Never use restraint or seclusion as punishment or discipline.
- 7. Restraint and seclusion should never interfere with breathing or cause harm to the child.
- 8. There should be a review of the restraint and seclusion use and revision of strategies to address the behavior, including the use of positive behavioral strategies.

- 9. Behavioral strategies should address the underlying behavior.
- 10. Teachers and other personnel should be regularly trained.
- 11. Restraint and seclusion 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 policies and applicable federal, state and local laws.
- 13. Parents should be notified as soon as possible following the use of restraint or seclusion.
- 14. There should be a regular review and update of policies and regulations.
- 15. Each incident of restraint and seclusion should be documented in writing and provide for data collection to understand and implement these principles.

Other Federal Guidance

- *Letter to Chief State School Officers*, (USDOE July 31, 2009)
- OCR collects information on restraint and seclusion through *Civil Rights Data Collection (CRDC)*. <http://ocrdata.ed.gov>.
- OSEP has funded Technical Assistance Centers on Positive Behavioral Interventions and Supports known as School-wide Positive Behavioral Interventions and Supports (SWPBIS).

- Children's Health Act which addresses restraint and seclusion in medical facilities and in non-medical residential communities. This is an effort of DHHS.
- The report contains a chart on the status of restraint and seclusion in each state.

How Safe is the Schoolhouse?

Jessica Butler (Jan. 20, 2012), jessica@jnba.net, p.6

- In December 2009, Congressman George Miller (then-Chair of the Education & Labor Committee), introduced a House bill to protect children from restraint, seclusion, and other aversives.
- Although it passed the House, the bill did not become law.
- In April 2011, he reintroduced the Keeping All Students Safe Act, H.R. 1381.
- In December 2011, Senator Tom Harkin (Chair, Senate Health Education Labor and Pensions Committee) introduced a Senate bill, also named the Keeping All Students Safe Act, S. 2020.

Keeping All Students Safe Act

S.2020

Latest Title: Keeping All Students Safe Act

Sponsor: [Sen Harkin, Tom](#) [IA] (introduced 12/16/2011) Cosponsors (None)

Related Bills: [H.R.1381](#)

Latest Major Action: 12/16/2011 Referred to Senate committee. Status: Read twice and referred to the Committee on Health, Education, Labor, and Pensions.

All Information (except text)	Text of Legislation	CRS Summary	Major Congressional Actions All Congressional Actions All Congressional Actions with Amendments With links to <i>Congressional Record</i> pages, votes, reports
Titles	Cosponsors (None)	Committees	
Related Bills	Amendments		
CBO Cost Estimates	Subjects		

Keeping All Students Safe Act

- **PHYSICAL ESCORT.**—The term “physical escort” means the temporary touching or holding of the hand, wrist, arm, shoulder, waist, hip, or back for the purpose of inducing a student to move to a safe location.

Keeping All Students Safe Act

- **PHYSICAL RESTRAINT.**—The term “physical restraint” means a personal restriction that immobilizes or reduces the ability of an individual to move the individual’s arms, legs, body, or head freely. Such term does not include a physical escort, mechanical restraint, or chemical restraint.

Keeping All Students Safe Act

- SECLUSION.—The term “seclusion” means the isolation of a student in a room, enclosure, or space that is—
 - (A) locked; or
 - (B) unlocked and the student is prevented from leaving.

Keeping All Students Safe Act

- STUDENT.—The term “student” means a student who—
 - (A) is enrolled in a public school;
 - (B) is enrolled in a private school and is receiving a free appropriate public education at the school under subparagraph (B) or (C) of section 612(a)(10) of the Individuals with Disabilities Education Act (20 U.S.C. 1412(a)(10)(B), (C));
 - (C) is enrolled in a Head Start or Early Head Start program supported under the Head Start Act (42 U.S.C. 9831); or
 - (D) receives services under section 619 or part C of the Individuals with Disabilities Education Act (20 U.S.C. 1419, 1431 et seq.).

Keeping All Students Safe Act

- PROHIBITION OF CERTAIN ACTION.—School personnel, contractors, and resource officers are prohibited from imposing on any student—
 - (A) seclusion;
 - (B) mechanical restraint;
 - (C) chemical restraint;
 - (D) aversive behavioral interventions that compromise health and safety;
 - (E) physical restraint that is life-threatening, including physical restraint that restricts breathing; and
 - (F) physical restraint if contraindicated based on the student’s disability, health care needs, or medical or psychiatric condition.

Keeping All Students Safe Act

- PHYSICAL RESTRAINT.—
 - (A) IN GENERAL.—Physical restraint may only be implemented if—
 - (i) the student’s behavior poses an immediate danger of serious bodily injury to self or others;
 - (ii) the physical restraint does not interfere with the student’s ability to communicate in the student’s primary language or mode of communication; and
 - (iii) less restrictive interventions have been ineffective in stopping the immediate danger of serious bodily injury to the student or others, except in a case of a rare and clearly unavoidable emergency circumstance posing immediate danger of serious bodily injury.

Keeping All Students Safe Act

- PROHIBITION ON USE OF PHYSICAL RESTRAINT AS PLANNED INTERVENTION.—
 - The use of physical restraints as a planned intervention shall not be written into a student's education plan, individual safety plan, plan developed pursuant to section 504 of the Rehabilitation Act of 1973, individualized education program or individualized family service plan (as defined in section 602 of the Individuals with Disabilities Education Act), or any other planning document for an individual student.

Keeping All Students Safe Act

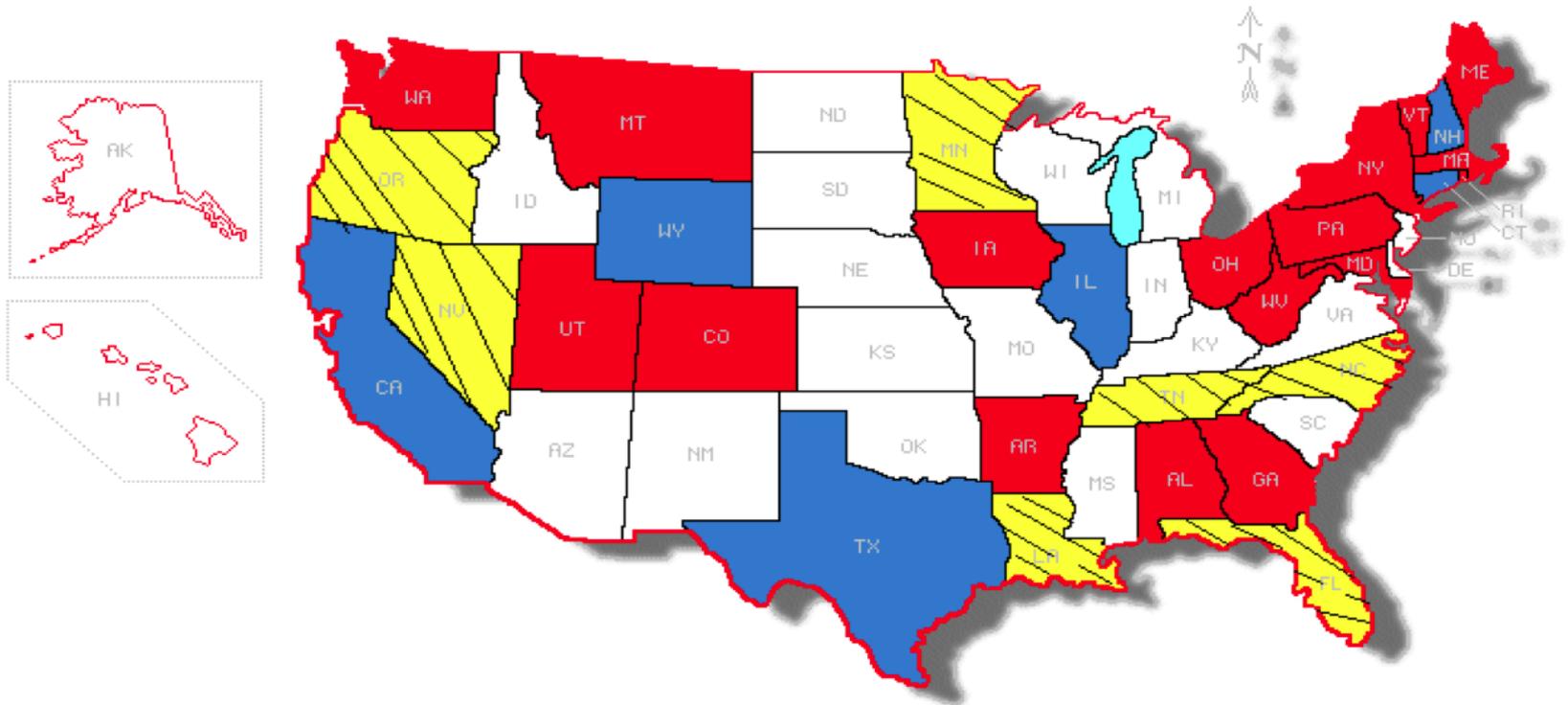
- DENIAL OF A FREE APPROPRIATE PUBLIC EDUCATION.—
 - Failure to meet the minimum standards of this Act as applied to an individual child eligible for accommodations developed pursuant to section 504 of the Rehabilitation Act of 1973 or for education or related services under the Individuals with Disabilities Education Act shall constitute a denial of a free appropriate public education.

What happens to Wyoming's Law?

- In the event that Wyoming's state statute conflicts with Federal legislation becomes law, Wyoming must revise its statute to be in conformity with that Federal law.

Does the State Have a Statute, Regulation, or Both?

- - Regulation
- - Both
- - Statute



In this map, red (dark) is regulation; blue (medium) is both; yellow (light, slash marks) is statute.

Jessica Butler, jessica@jnba.net. Please copy, share, and distribute as long as my name remains on the map.

Justice



Clark v. Special Sch. Dist. of St. Louis County, 112 LRP 9536 (E.D. Mo. 2012).

- Because a grade schooler with ADHD engaged in violent and dangerous behaviors, a Missouri district did not violate the IDEA by developing an IEP that allowed for the use of a small, padded seclusion room.
- Safety concerns may justify a district's decision to temporarily separate a child with a disability from peers and staff members. However, because the use of seclusion rooms often gives rise to litigation, the district must be careful to follow the terms of the child's IEP. In addition, the district should consider seclusion to be a "last resort" to be used only when less restrictive interventions are unsuccessful.
- Evidence that a grade schooler made progress toward his academic and behavioral goals only when a Missouri district coupled in-class supports with the use of a seclusion room helped demonstrate that the seclusion room was an appropriate and necessary component of the child's IEP.

A.B. v. Adams-Arapaho 28J Sch. Dist., 58 IDELR 14 (D. Colo. 2011).

- A parent could sue the district under Section 504 and Title II for her daughter's allegedly improper restraint by a kindergarten teacher. The U.S. District Court held that officials' failure to investigate reports of teacher misconduct could amount to disability discrimination.
- Districts should investigate all reports of improper restraint by classroom personnel, even if a child's BIP specifically allows the use of restraint. A teacher's failure to follow a behavior plan as written could expose a district to liability for disability discrimination. The parent here alleged that the consultant supervising the life skills classroom and the principal failed to investigate three paraprofessionals' claims that the teacher was using the restraint chair in a manner not sanctioned by the student's BIP.
- Allegations that school officials failed to investigate reports that a special education teacher regularly placed a kindergartner with developmental delays in a restraint chair for extended periods of time allowed the child's parent to seek damages from the district under Section 504 and Title II. The District Court held that the allegations, if true, indicated that the district acted with deliberate indifference.

W.A. v. Patterson Joint Unified Sch. Dist., **57 IDELR 38 (E.D. Cal. 2011).**

- The parents of a grade schooler with autism failed to show that a teacher and a special education director violated their son's Fourth Amendment rights when they physically restrained him on several occasions. Concluding that each incident of restraint was reasonable under the circumstances, the U.S. District Court granted judgment for the employees on the parents' Section 1983 claim.
- District employees must use caution when restraining a student with disabilities -- even if the student's IEP allows for the use of restraint. Employees can minimize their potential liability for wrongful restraint by documenting the type of restraint used, the duration of the restraint, and the events that led to the use of restraint.
- Here, records showed that the teacher and special education director restrained the student after he started hitting, kicking, and swatting staff members and classmates. Given the potential harm to others, the court ruled that the employees' brief use of restraint was not unreasonable.

M.G. v. Caldwell-West Caldwell Bd. of Educ., 57 IDELR 11 (D.N.J. 2011).

- The U.S. District Court dismissed claims brought by the parents of a child with autism against a district and several staff members over a teacher's use of restraints. The court held that the teacher's conduct did not shock the conscience for purposes of establishing a substantive due process violation.
- In states where restraint is permitted, a district must still ensure that any use of restraint is no more than necessary to serve a legitimate pedagogical interest. Otherwise, the district could cause the child more harm than good and could be held liable for using excessive force in violation of the 14th Amendment.
- Here, the teacher applied a "basket hold" and shoulder touching when a 6-year-old became aggressive. The fact that the teacher used minimal force to prevent dangerous, disruptive behavior blocked the parents' claim that the force deprived the child of his constitutional rights.

C.N. v. Willmar Pub. Schs., 53 IDELR 251 (8th Cir. 2010).

- A special education teacher did not violate a third-grader's constitutional rights when she used seclusion and restraint to manage the child's behaviors. Noting that the child's BIP allowed the teacher to use such techniques, the 8th Circuit affirmed a decision that dismissed the parent's Section 1983 claim.
- The court noted that the child's BIP expressly permitted the use of seclusion and restraint to manage problem behaviors. Although the parent allegedly objected to the use of aversives, the court pointed out that she did not challenge the child's IEP until after the child left the district. The court explained that the BIP set the standard for the teacher's use of seclusion and restraint.
- "Because [the IEP] authorized such methods, [the teacher's] use of those and similar methods ..., even if overzealous at times and not recommended by [the independent evaluator], was not a substantial departure from accepted judgment, practice or standards, and was not unreasonable in the constitutional sense."
- Thus, the court observed, the teacher's use of seclusion and restraint did not amount to a Fourth Amendment violation.

Couture v. Bd. of Educ. Of the Albuquerque Pub. Schs., 50 IDELR 183 (10th Cir. 2008).

- A first-grader with an emotional disturbance may have spent a substantial amount of time in a small room adjacent to his classroom, but that did not expose his teacher to liability for constitutional violations. The 10th Circuit concluded that the time-outs were reasonable given the seriousness and duration of the child's conduct.
- The court focused on whether the time-outs were reasonable at the time they were imposed, and whether they exceeded the scope of his misconduct. The court noted that the child repeatedly swore at his teacher and classmates, physically attacked them, and threatened serious bodily harm. Not only did his conduct frighten his classmates, the court explained, but it interfered with learning. "Temporarily removing [the child] given the threat he often posed to the emotional, psychological and physical safety of the students and teachers, was eminently reasonable."
- Furthermore, the court pointed out that the child's IEP expressly permitted the teacher to use time-outs to manage the child's behavior.

Letter to Anonymous, **50 IDELR 228 (OSEP 2008).**

- OSEP advised that the IDEA does not expressly prohibit the use of physical restraints or other aversives on students with disabilities. Nonetheless, OSEP observed that the use of aversives may be limited by either state law or the provisions of a student's IEP.
- The IDEA states that if a student's behavior impedes his own learning or the learning of others, the IEP team must consider the use of positive intervention strategies and supports to address that behavior. 34 CFR 300.324(a)(2)(i). "While [the IDEA] emphasizes the use of positive behavioral interventions and supports to address behavior that impedes learning, [it] does not flatly prohibit the use of mechanical restraints or other aversive behavioral techniques."
- If state law permits the use of physical restraints, the district must consider whether the use of restraints or other aversives is consistent with the terms of the student's IEP. OSEP further noted that IEP teams should consider the use of positive behavioral interventions tailored to a child's unique needs regardless of whether state law permits the use of aversives.

Nicholson v. Freeport Union Free School District, 110 LRP 34093 (N.Y. App. Div. 2010)

- School district not liable for use of aversives where there was no proof that it knew of their use.
- The electronic decelerator was written into the student's behavior plan.
- NY law did not prohibit the use of aversives.

T.W. v. School Board of Seminole County, Fl., **110 LRP 37523 (11th Cir. 2010)**

- Student's constitutional rights were not violated when his teacher restrained him. The parent of a fourteen year old student with autism filed suit against his teacher claiming that T.W. was restrained, called names and used profanity around him. The suit was brought on constitutional claims and disability discrimination.
- The teacher did have a history of abusive name-calling ("lazy," "pig" and "jerk") and reciting that the students were too "stupid" to go home and report her to the parents. The teacher was also a strict disciplinarian.

- “She used physical force against several of her students, including T.W. [The teacher] spanked one student and hit another student on the back of the head multiple times after the students had urinated on themselves; she flicked a student’s ears until they were ‘blood red’; she bent a student’s thumb backwards until the student screamed; she raised her fists at a student; and she restrained several students in an inappropriate manner.” She also did not protect the students from their head-banging behaviors.

- The teacher used a prone restraint on T.W. for five minutes and restrained him two other times. There was also the assertion that the teacher beat him one time claiming from behind a closed door that she was hurting him.
- The court found that the use of restraint was in keeping with the need for some physical force and ceased when the student became compliant.
- The Section 504 claim against the School Board was also dismissed because there was no evidence the teacher's actions were motivated by intentional discrimination solely due to the disability.

Brown by Brown v. Ramsey and Hart, **121 F. Supp. 911 (E.D. Va. 2000).**

- The suit was brought against two teachers following their use of a “basket hold” to restrain a 6-year old autistic student. The parent claimed that the teachers used the hold approximately 40 times and that the restraint caused the student to have difficulty with breathing. The teachers stated that they performed the restraint only when the student posed a danger to himself or others. The teachers reported that the student threw items around the classroom, jumped onto desks and tables, and scratched or struck other students. The parent claimed that the student suffered from Post-Traumatic Stress Disorder.

- The court could not find “any reported corporal punishment case that has survived a summary judgment motion where the plaintiff has not sustained a physical injury.” The court held that the parent failed to show that the use of the restraint was not appropriate to address the student’s actions. The court noted that the student’s IEP contained a behavior management plan that allowed for restraint in some instances. Finally, the court determined that the teachers’ use of the hold was not “so inspired by malice or sadism” that it was “literally shocking to the conscience.”

Summary

- Generally speaking, use of seclusion or restraint is not a constitutional violation, a Section 504 violation, or an IDEA violation if –
 - The regulated procedure is used consistent with state laws and statutes;
 - The regulated procedure is implemented in a reasonable manner consistent with a student's IEP; and
 - Sufficient documentation exists to verify what actually occurred.

However . . .

- Keep in mind that the position of states regarding the use of seclusion and restraint can drastically and rapidly change with the passage of Federal legislation.

Questions?

A black and white photograph showing a hand holding a marker, writing the words "Thank you" in a cursive script on a white surface. The marker is positioned at the end of the word "you".

Thank you