

# Restraint and Seclusion

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# Legal Disclaimer

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These materials have been created for training and discussion purposes only.

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Nothing in these materials should be construed as legal advice.

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For specific guidance, please consult a qualified attorney.

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In addition, it is incumbent on users of these materials to properly cite and attribute content to Civil Rights Solutions, LLC, when using in papers, projects, trainings, and all other works.

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## Federal Law

Federal law does not expressly address restraint and seclusion, but improper use of restraint and seclusion could result in violations of federal civil rights laws:

- ***Individuals with Disabilities Education Act*** (“IDEA”)
  - Requires the use of positive behavior interventions and supports for any student whose behavior interferes with their learning or the learning of others
- ***Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973***
  - Prohibits discrimination on the basis of disability
- ***Title VI of the Civil Rights Act of 1964***
  - Prohibits discrimination on the basis of race, color, national origin

# Federal Guidance

Department of Education Restraint  
and Seclusion: Resource  
Document

**May 15, 2012**

**December 28, 2016**

OCR Dear Colleague Letter:  
Restraint and Seclusion of  
Students with Disabilities

# Definitions

## Physical Restraint

- Personal restriction that immobilizes or reduces the ability of a student to move his or her torso, arms, legs, or head freely. The term physical restraint does not include a physical escort. Physical escort means a temporary touching, or holding of the hand, wrist, arm, shoulder, or back for the purpose of inducing a student who is acting out to walk to a safe location.

## Mechanical Restraint

- The use of any device or equipment to restrict a student's freedom of movement. The term does not include devices implemented by trained school personnel or used 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.

## Seclusion

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

## Guiding Principles

1. Every effort should be made to prevent the need for the use of restraint and for the use of seclusion.
  - Schools need effective behavior intervention systems in place such as PBIS
  - Use evidence-based frameworks:
    - Center on Positive Behavioral Interventions and Supports (PBIS)
    - The National Child Traumatic Stress Network - provides several resources for educators, parents and children on the serious impact of traumatic stress on children
    - OSEP Ideas that Work – Tiered Behavioral Support Resources

## Guiding Principles

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).



## Guiding Principles

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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.

School policy should make clear that restraint/seclusion will only be used in these emergency circumstances – never as a response to inappropriate behavior like insubordination, noncompliance, disrespect, being out of seat, etc.

Only trained personnel should implement restraint/seclusion

De-escalation strategies and interventions should always be attempted and/or considered before restraint/seclusion

## Guiding Principles

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 (i.e. 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.

## Guiding Principles

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.

Child Find

Denial of FAPE

# Child Find

Behavior challenges that lead to use of restraint/seclusion could be a sign that child has a disability needs to be evaluated for special education

Repeated use of restraint/seclusion should prompt evaluation

Child find duty may not be triggered when there is another explanation for the behavior

- For example, if student is experiencing a crisis like a divorce, recent death or other traumatic incident
- In that case, school should put interventions in place and monitor student response – if problems persist then evaluation may be warranted

# Denial of FAPE

Failure to address impact that restraint/seclusion has on student

Inability to access educational services due to repeated restraint/seclusion

Students with IEPs/504 Plans who exhibit behaviors that require restraint/seclusion may not be getting the appropriate supports and services

- IEP/504 Meeting should be held after each restraint to review and adjust plans in place
- FBA/BIP should be completed or reviewed/revised
- Consider need for additional evaluations
- Consider need for additional or change in services

## Guiding Principles

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.

Consider need for FBA/BIP, counseling services

## Guiding Principles

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.

All staff who work directly with children need training on:

- Restraint/seclusion policy
- School-wide behavior intervention system
- Crisis intervention/de-escalation

More specific training needed for different individuals depending on their roles

## Guiding Principles

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.

At least two trained adults should be present for any restraint/seclusion

## Guiding Principles

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.

### Policy should include

- Definition of restraint/seclusion
- Prohibition on use of mechanical restraint
- Circumstances in which restraint/seclusion may be used
- Procedures for documenting restraint/seclusion and notifying parents
- Description of crisis intervention/de-escalation methods used
- Description of restraint/seclusion training protocols and systems used
- Reiterate guiding principles

# Guiding Principles

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



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

## Guiding Principles

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.
  - Incident reports should include:
    - Start and end times of restraint/seclusion
    - Location of the incident
    - People involved in the restraint/seclusion
    - Interventions attempted prior to restraint/seclusion
    - Description of attempts to de-escalate prior to restraint/seclusion
    - Description of the student's behavior that promoted the need for restraint/seclusion
    - Description of restraint/seclusion including how child was monitored
    - Description of any injuries sustained by the student or staff during the restraint/seclusion
    - Date/time that parents were notified
    - Follow up to occur

# Disproportionality and Discrimination

Students with disabilities are disproportionately subjected to restraint and seclusion

“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.”

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)

School may be liable for discriminatory acts of SROs, school police, contracted security, or other outside individuals that school relies on to support with behavior intervention

# Unnecessary Different Treatment

- Only using restraint/seclusion for students with disabilities
- Use of restraint/seclusion for behavior that would not result in use of restraint/seclusion for students without disabilities
  - For example, two students (one with an IEP, one without) running around a classroom with scissors – only student with IEP is restrained
- Use of restraint/seclusion on the basis of assumptions or stereotypes about a disability

# Discriminatory Effect

Is there a disparate impact on students with disabilities that could be remedied by policy revision and/or change in restraint/seclusion practices

Regular data/policy review key