

ReThinking Behavior and MSLBD



ReThinking Behavior is a free online magazine for professionals serving children and youth with behavioral needs published three times a year.

Articles are written in a non-technical, readable style. The most recent issue is available at:
<https://www.pageturnpro.com/Midwest-Symposium-for-Leadership-in-Behavior-Disorders/93369-ReThinking-Behavior-Winter-2020/flex.html>.

Sign up for a free email subscription, and view previous issues at: <https://mslbd.org/what-we-do/rethinking-behavior.html>. (Email addresses are not shared with anyone else.)

See the Winter, 2018 issue for an article on how to reduce restraint and seclusion by Michael George, p.15.

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SECLUSION AND RESTRAINT OF STUDENTS WITH DISABILITIES: RECENT CASE LAW

MIDWEST SYMPOSIUM FOR LEADERSHIP IN BEHAVIOR DISORDERS
FEBRUARY 28, 2020

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THE KIDS WE LOSE

A DOCUMENTARY FILM



"The Kids We Lose is a 90-minute documentary film about the human side of being a child or student with behavioral challenges, and the struggles faced by parents, educators, and law enforcement professionals in trying to ensure that these kids receive the help they need." ... it portrays the negative long-term impact of restraint and seclusion in schools to control student behavior." If you missed the video a link to view it is on the resource handout.

How many of you saw the video "THE KIDS WE LOSE" last night?

What is your primary role in the schools?

Administrator, sped teacher, classroom teacher, psychologist, social worker, para-educator, other?

How many of you have been trained in one or more of the crisis intervention programs? (Mandt, CPI) ?

How many of you have used seclusion or restraint with a student?



Controversy continues regarding the use of physical restraint and seclusion in schools.

Deaths of students have occurred while students are being physically restrained.

Injuries have also occurred to both students and staff.

Parents and communities have objected to the use of these procedures.

Recently after an expose by ProPublica showing widespread abuse and misuse of restraint and seclusion, the governor of Illinois banned the use of seclusion.

Our Goals

- Update of federal legislation and federal guidance
- Analysis of recent case law regarding restraint and seclusion.
- Focus on –
 - Imminent danger criteria
 - Prevention including positive behavior supports in place
 - Inadequate supervision and training
 - Excessive or abusive use
- Recommendations to school personnel based on case law



FIG. 1F



FIG. 1G

How Many are Restrained or Secluded?

- The only national data is gathered by the Office for Civil Rights (OCR; U. S. Department of Education, 2018),
- Unfortunately this data has been shown to be unreliable & significantly under represent the actual use.
- Students continue to be secluded and restrained at high rates, and often inappropriately and abusively.



Definitions

Office of Civil Rights (OCR) Definitions

Physical Restraint

- **“A personal restriction that immobilizes or reduces the ability of a student to move his or her torso, arms, legs, or head freely.”**
 - “Does not include a physical escort. [...] 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.”



Seclusion

- **“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.”

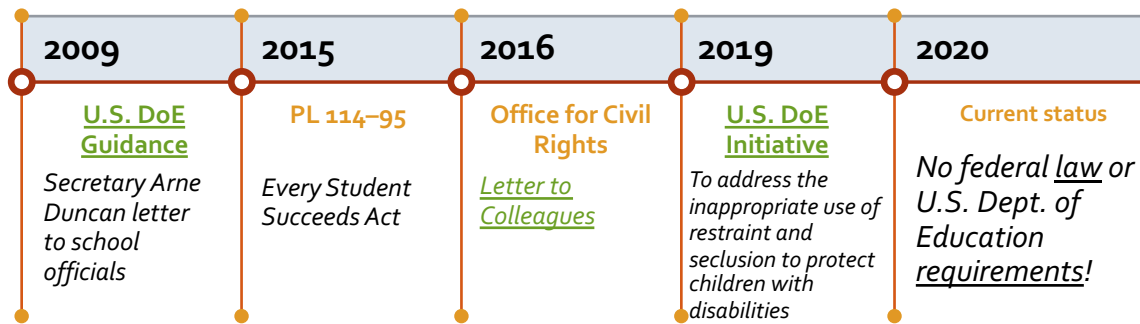
“The Keeping All Students Safe Act”

H.R. 7124, November 11, 2018



- Would make it illegal for any school receiving federal funds to seclude a child.
- Additionally the bill would prohibit schools from physically restraining children, except when necessary...
- Would better equip school personnel with the training they need to address challenging behavior with evidence based strategies.

Timeline of Federal Policies



US DOE 15 Principles (May, 2012)

- Prevent the need for use...
- Never mechanical restraints...
- **Only use when behavior poses imminent danger of serious physical harm to self or others...**
- Policies apply to all children.
- Treat with dignity; free of abuse...
- Never use as a punishment...
- Never use to restrict breathing...
- Repeated/Multiple use triggers review...
- Behavior strategies should address underlying cause...
- Training on effective alternatives... and safe use...
- Use should be monitored...
- Parents should be informed of policies...
- Parents notified following each use...
- Policies reviewed regularly...
- Policies should require documentation.

State Policy Definitions

[An Analysis of State Seclusion & Restraint Laws and Policies](#) (Butler, 2019)

Of the fifty states + the District of Columbia,

- 30 states have laws providing meaning protection
 - 39 states have laws specific to SWD
- 22 states by law require that an **emergency threatening physical danger** exist before restraint can be used
- 26 states have laws specific to SWD



Steps when a Dispute Occurs

Dispute occurs

IEP team discusses dispute

Possible mediation if parties agree

State hearing with hearing officer

Case goes directly to federal court

Once in court, settlement agreements can be reached

If not, case continues to trial

Discussion here is based on those instances of disputes which went to trial. It is likely many were settled before that step!

This study examined cases which reached trial with a ruling

Issues Examined

- Which party was successful in court?
- Were positive behavioral interventions as required by IDEA 2004 discussed?
- Were de-escalation or other preventive measures employed?
- Was the criteria of imminent danger to someone applied?
- Were FBAs, and BIPs in place for these students? If so were the appropriateness of the IEP or BIP reviewed?
- Were appropriate professional training, supervision, and monitoring in place?

Results: There were five cases in 2018 and 2019 where families were the prevailing party.

Case	Court	Relevant Law(s)	Student(s)	PBS: FBA / BIP / IEP	De-escalation	Imminent danger
J.S.X., C.P.X., and K.N.X. v. Foxhoven et al. (2019)	U.S.D.C. Southern District of IA	Motion for Class Certification	Various-aged males with mental health disorders	X	X	X
J.T. v. Tehachapi Unified School District (2019)	U.S.D.C. Eastern District of CA	ADA, IDEA, Section 504	8 year-old male with multiple disabilities	X	X	X
E.R. v. Stroudsburg Area School District (2018)	U.S. Court of Appeals, 3 rd Circuit	IDEA	4 th grade male with ASD, ID, & SLI	X	Included but not specified	Included but not specified
A.M. v. San Juan Unified School District, et al. (2018)	U.S.D.C., Eastern District of CA	Section 1983	17 year-old male with ASD, bladder exstrophy, epilepsy, & sensory processing disorder	X	X	X
Spring Branch Independent School District v. O.W. (2018)	U.S.D.C., Southern District of TX	IDEA – failure to evaluate and to use PBS	5 th grade male, twice exceptional with ADHD, EBD, and mental health disorders	Included not implemented	X	Staff created

J.S.X., C.P.X., & K.N.X. v. Foxhoven et al. (2019)

- U.S. District Court, Southern District of Iowa
- Students: Teenage males with mental health disorders
- Setting: State Training School for Boys
- Type of case: Motion for class certification



J.T. v. Tehachapi Unified School District (2019)

- U.S. District Court, Eastern District of California
- Student: 8 year-old male
 - average to low-average cognition
 - ADHD
 - Autism spectrum disorder
 - receptive & expressive speech delays
 - possible history of trauma
 - possible psychosis
- Relevant laws: Americans with Disabilities Act, IDEA, & Section 504



A.M. v. San Juan Unified School District, et al. (2018)

- U.S. District Court, Eastern District of California
- Student: 17 year-old male
 - ASD
 - bladder exstrophy
 - epilepsy
 - sensory processing disorder
- Relevant law: Section 1983



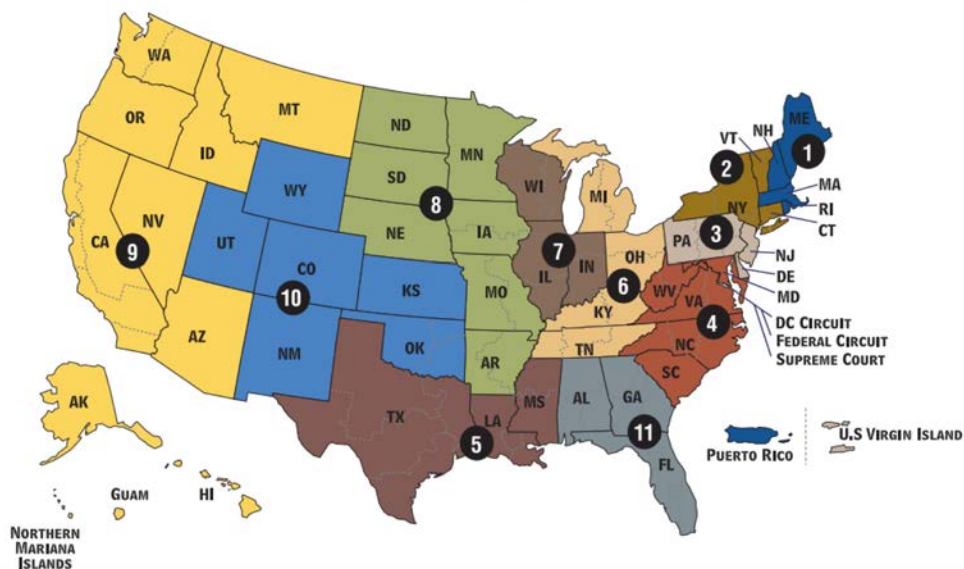
Spring Branch Independent School District v. O.W. (2018)

- U.S. District Court, Southern District of TX
- Student: 5th grade male
 - ADHD
 - EBD
 - Gifted
 - mental health disorders
- Relevant law: IDEA



Geographic Boundaries

of United States Courts of Appeals and United States District Courts



E.R. v. Stroudsburg Area School District (2018)

- U.S. Court of Appeals, 3rd Circuit
- Student: 4th grade male
 - autism spectrum disorder
 - intellectual disability
 - speech-language impairment
- Relevant law: IDEA



Recommendations from Case Law

- Failure to follow the IEP may result in escalated behaviors that create emergency situations (*Spring Branch Independent School District v. O.W.*, 2018)
- Behavior plans should include **prevention** strategies. If the BIP primarily addresses steps for when the child misbehaves – including physical restraint – it may be an ineffective plan (*Pottsgrove School District v. D.H.*, 2018).





Recommendations from Case Law

- Restraint and seclusion practices may violate the rights of students under multiple federal laws (*J.S.X., C.P.X., and K.N.X. v. Foxhoven et al., 2019*)
- Regularly confining a student may result in emotional distress (*A.M. v. San Juan Unified School District, et al., 2018*)
- Parents of a child with an IEP must first exhaust their administrative rights under the IDEA (*J.T. v. Tehachapi Unified School District, 2019*)



Recommendations

- Regardless of state or district policies ONLY use restraint when there is imminent danger of serious physical harm to that student or to others.
- Given recent federal bills, reduce or eliminate the use of seclusion.
- Insure that appropriate positive behavioral supports are in place for students with disabilities.
- If restraint is used, insure that staff
 - Have appropriate training
 - Insure that IEPs, FBAs, and BIPs are in place and up-to-date
 - Have employed appropriate de-escalation procedures
 - Document immediately what occurred; keep detailed records.
 - Notify parents soon after each incident



Resources

For links to U.S. Department of Education documents, the current U.S. Senate bill, other references, media reports and a link to view The Kids We Lose video see the "Resources" handout.

Contact us!

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References

- Butler, J. (2019). How safe is the schoolhouse? An analysis of state seclusion and restraint laws and policies. South Burlington, VT: Autism National Committee.
- Individuals with Disabilities Education Improvement Act (IDEA), P. L. 114-38, 20 U.S.C. § 1414 *et seq.* (2006).
- Individuals with Disabilities Education Improvement Act Regulations, 34 C.F.R. §300 *et seq.* (2012).
- Scheuermann, B., Peterson, R., Ryan, J. B., & Billingsley, G. (2015). Professional practice and ethical issues related to physical restraint and seclusion in schools. *Special Education and Communication Disorders Faculty Publications, 95*. Retrieved from <http://digitalcommons.unl.edu/specedfacpub/95>
- U.S. Department of Education, Office of Civil Rights (2018). 2015-16 Civil Rights Data Collection. *School Climate and Safety*. Retrieved from <https://www2.ed.gov/about/offices/list/ocr/docs/school-climate-and-safety.pdf>