

Analyzing Risk: When is Physical Restraint and Seclusion Warranted in Schools?

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Agenda

- Dangers; Definitions;
- When is the use of these warranted?
- Brief video
- What is “Clear and Imminent Risk of Bodily Injury?”
 - Understanding “Imminent”, “Risk” and “Serious Injury”
 - Examples
 - Nonexamples
- Federal Guidance
- State, Local and District Policies
- Crisis Intervention Training Definitions
- Reconsider the video, and Recommendations

Deaths and Injuries

Children and adolescents continue to be killed or seriously injured by the use of physical restraint procedures in schools & treatment settings.

Children continue to be subjected to inappropriate seclusion.

(Eldeib, D. 2016; Kentucky Protection and Advocacy, 2016; Pillsbury et al, 2017; Samuels, 2017; see resource list).

Lack of clear understanding of the situations which may warrant use of these procedures has likely contributed to these problems

Physical Restraint

Office of Civil Rights (OCR) Definition

“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.”

Seclusion

Office of Civil Rights (OCR) Definitions

“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.”



Discussion? Is restraint warranted?



When is the Use of Restraint and Seclusion Warranted?

- Procedures carry risk and have no evidence for behavior change, “last resort procedures
- **Common consensus:** physical restraint procedures are only warranted in cases of clear and imminent danger
- Act when risk of not intervening outweighs risk of using a restraint
- Not warranted for other circumstances (e.g., to obtain compliance; as a punishment)

US DOE Guidance Document (Principle 3)

Restraint and Seclusion Resource Document: US Department of Education' 2012

<https://www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf>

“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.”

What is “Clear and Imminent Risk of Bodily Injury”?

Key Components:

- Imminent
- Risk or Danger
- Serious ‘bodily injury’ or ‘physical harm’

“Imminent”:

Happening now or in the immediate future.

The student is in close enough proximity to injure and poised to injure in the immediate future.

Examples

A student threatens to stab his peer. He is within 1 ft of the student with his arm raised holding a pair of scissors pointed toward the student.

A student is screaming and picks up a chair and raises it over her head in a position to throw the chair. She is facing a group of students seated at their desks 4 ft away.

Nonexamples

•A student threatens to stab a peer but his arms are at his sides and there are no shar objects in the vicinity.

A student has a chair raised over his head in a position to throw the chair but he is angled toward the back of the room where no staff or students are located.

“Risk”/“Danger”:

There is a high probability that the student’s behavior will result in injury to self or others.

The student has the means or capability to cause serious bodily injury.

Examples

A student is cursing loudly and throwing objects off the teacher’s desk toward classmates including heavy and sharp objects (e.g., scissors, stapler, text books)

A 200 lb 6th grader has his arm cocked and hand in a fist standing in front of a small framed female teacher and says he’s going to punch her in the face.

Nonexamples

•A student is laughing with a peer and flipping a pencil in the air.

A kindergartener has his arm cocked and hand in a fist standing in front of a female teacher and says he’s going to punch her. The student’s height limits the area he can punch below the teacher’s waist.

“Serious Bodily Injury” or “Serious Physical Harm”:

Bodily injury which involved substantial risk of death, obvious disfigurement, or protracted loss or impairment of the function of a bodily member or organ or mental faculty.

Examples

Two middle school students are fighting outside the school building, one is much larger than the other and is punching the smaller student repeatedly on the face.

A student begins pushing another student in shop class. He has not responded to verbal redirects or antecedent strategies. There are several extremely dangerous tools and sharp items within the vicinity.

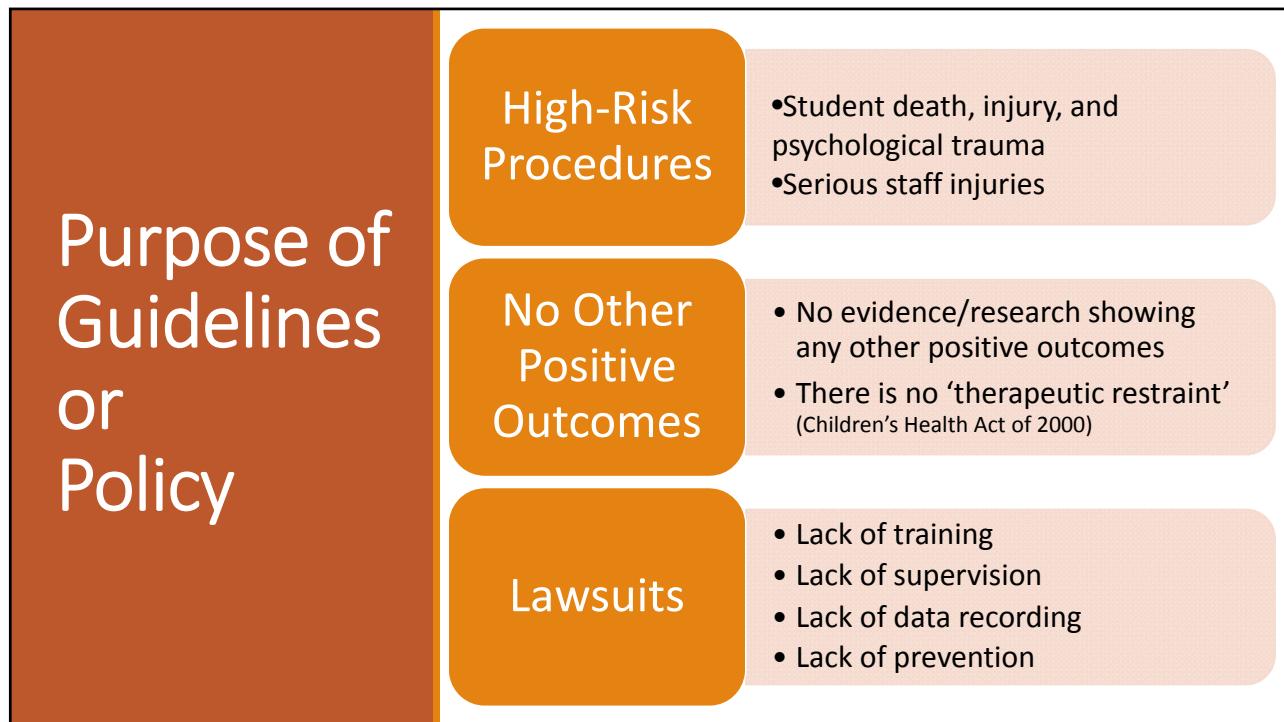
Nonexamples

•A 45 lb 1st grader begins hitting and kicking a male PE teacher.

In the cafeteria a fight breaks out between a bunch of students. Many students are yelling and it is hard to see what is going on. When you get to the middle of the students you observe one female student slap another student very hard on her cheek.

Is there “imminent risk of serious physical harm”?

- 1) A large 15-year-old student runs at full speed toward a teacher with her head down and rams her in the stomach. She then attempts to repeatedly punch the teacher in the chest.
- 2) A student pushes all the materials off his desk with peers sitting nearby. The objects include pencils, pens, and scissors.
- 3) Two students begin to throw paper airplanes across the classroom including the area where their classmates are seated.
- 4) A student tells a peer that he is going to shoot him. The student is standing near the peer but does not have a gun in his possession.
- 5) A student is angrily ripping and throwing textbooks across the classroom. The class is lined up at the door and 15 ft away from the student.
- 6) A 1st grader tells his teacher he’s going to hit her in the head. The teacher is seated and the student has a stapler raised above his head and is standing next to the teacher.



Federal Policy

No federal law or U.S. Dept. of Education requirements!

Federal guidance-

- Dept. of Education -technical assistance (Jan. 2019)
- Bills in Congress since 2009- Most recent November 2018 (HR 7124)
- OCR Letter to Colleagues (minority over representation; 2016)
- Every Student Succeeds ACT (state plans to reduce; 2015)
- U.S. DOE Resource Document (2012)
- Secretary Arnie Duncan letter to school officials (2009)

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

“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.

State Policy Definitions

A Study of State Policies By Marx & Baker, 2017

38 states have legislation and 45 have policy

“When behavior poses imminent danger of serious physical harm to self or others...”
(US DOE Principle 3)

- 35 states’ legislation aligns
- 41 states’ policy aligns

Missouri

- Has a model policy document
- “...response to emergency or crisis situations and should: (a) not be viewed as a behavior change or intervention strategy, (b) be implemented **only under extreme situations and as a matter of last resort...**”

State Policy Definitions

Iowa

- **...in order to accomplish any of the following:**
 - To quell a disturbance or prevent an act that threatens physical harm to any person
 - To obtain possession of a weapon or other dangerous object within a pupil’s control
 - For the purposes of self-defense or defense of others
 - For the protection of property
 - To remove a disruptive pupil from class or any area of school premises, or from school-sponsored activities
 - To prevent a student from the self-infliction of harm
 - To protect the safety of others

Kansas

- Emergency safety interventions shall **be used only when a student presents a reasonable and immediate danger of physical harm** to such student or others **with the present ability to effect such physical harm.**
- Use shall cease as soon as the immediate danger of physical harm ceases to exist
- Violent action that is destructive of property may meet standard
- Purposes of discipline, punishment or for the convenience of employees does not meet the standard of immediate danger of physical harm

State Policy Definitions

Nebraska

- No meaningful Nebraska policy or legislation on physical restraint or seclusion
- Policy and guidance is mostly left up to individual districts

A Study of Nebraska District Policies

- Random sample of 90 district polices divided into small, medium, large districts
- 94% (n=85) of districts in sample had a policy
- 5 major groups of nearly identical polices (92%)
- District size did not appear to impact content or completeness of polices

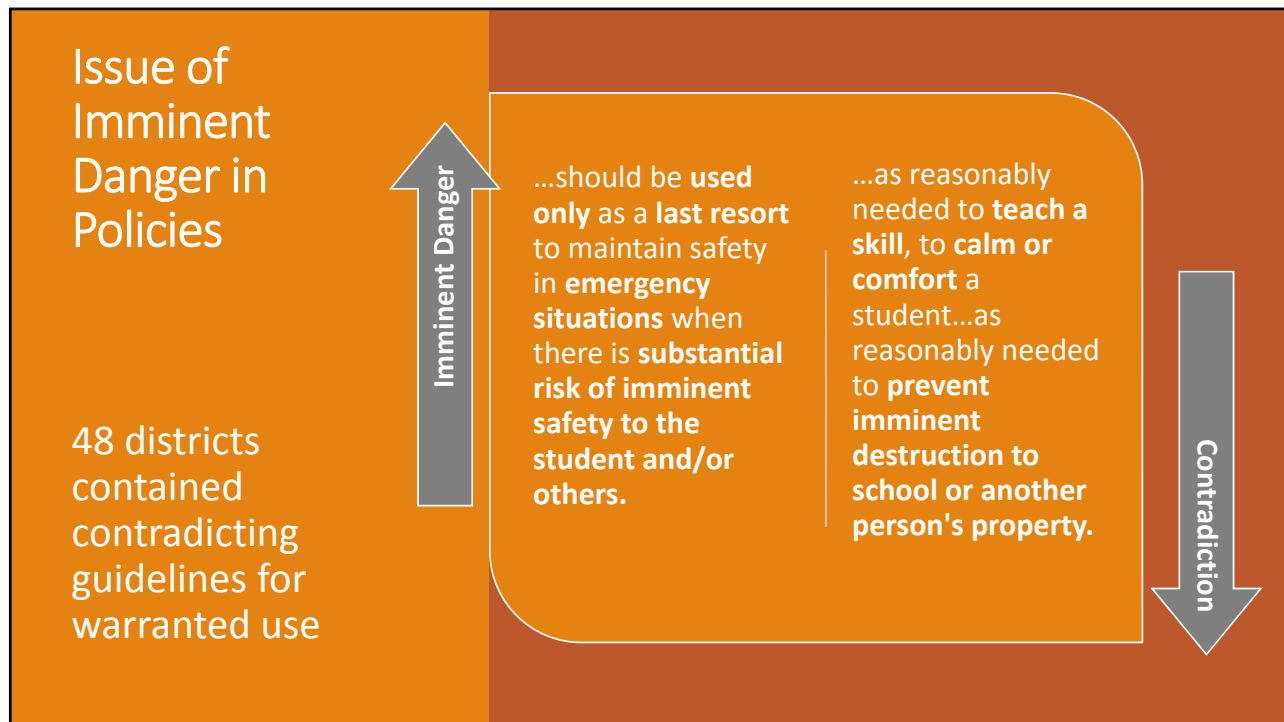
Warranted Use vs. Imminent Danger



56 districts (66% of the sample) provided a statement that restraint and seclusion are to be use only as emergency procedures.



However, only 8 districts (9% of the sample) explicitly limited the use of these procedures to situations of clear and imminent danger of serious bodily injury.



Crisis Intervention Training Program Definitions – Do they help?

Note: Explanations change;
these may not be current

“a person: has the ability to injure seriously, shows an intent to injure seriously and immediately, and the threat or attempt would create a need for immediate, professional, medical attention” (PRO-ACT)

“It is when people are no longer able to maintain self-control due to a perception that they are unable to cope with the demands presented” (RIGHT RESPONSE)

“A restrictive physical intervention should only be considered an option when the inherent risk in its use is eclipsed by the physical danger presented in the risk behavior of the individual” (CPI)



Crisis Intervention Training Program Definitions

“Immediately Dangerous’ situations are those which ‘put self or others at risk of imminent and serious harm, and verbal instructions have failed”
(TACT 2)

“Acute physical behavior that is likely to result in injury”
(Therapeutic Crisis Intervention)



“An immediate threat of harm exists when [it is] ‘not separated in time, acting or happening at once, next in order.’ (Harper, 2010) The words that characterize such situations are “severe” and “out of control”
(MANDT)



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More Discussion?

When are restraint or seclusion warranted?

Conclusions & Recommendations

Regardless of state or district policies
ONLY use restraint when there is
**imminent danger of serious physical
harm to self or others**



Questions/
Discussion