

Seclusion & Restraint of Students with Disabilities: Recent Case Law

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U.S. Department of Education (U.S. DoE)

- Secretary of Education Arne Duncan July 31, 2009 letter which calls on states and schools to develop and clarify policies: <http://bit.ly/30QibZh>
- The U.S. Department of Education (2012) issued a publication that outlines principles for educators, parents and other stakeholders to consider when developing or refining policies and procedures to support positive behavioral interventions and avoid the use of restraint and seclusion. Access the PDF at <http://bit.ly/2RfXWWq>
- The U.S. DoE, Office for Civil Rights (December 2016) [Letter to Colleagues: Restraint and Seclusion of students with Disabilities](#). Contains data gathering information, definitions and goals for use of information.
- On January 7, 2019, the U.S. DoE announced in an initiative to address the inappropriate use of restraint and seclusion to protect children with disabilities, and to ensure compliance with federal laws. Information about the initiative can be found at <http://bit.ly/2tKJpJk>
- In 2020, OCR and OSERS provided a webinar, [Students with Disabilities and the Use of Restraint and Seclusion in K-12 Public Schools](#), as technical assistance to both support children with disabilities — and support the needs of those within school systems serving students. The recording is intended to explain how federal laws apply to the use of restraint and seclusion. It is available at <http://bit.ly/36iNX7h>

U.S. Congress

- Senate bill in the current session of congress [S. 2020](#). Link to text of the bill: <http://bit.ly/2Gde0lo>

Other 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.
- Couvillon, M. Kane, E. J., Peterson, R. L., Ryan, J. B., Scheuermann, B. (2018). Policy and program considerations for choosing crisis intervention programs. *Journal of Disability Policy Studies*, 30(1), 353-45. <https://doi.org/10.1177/1044207318793158>
- 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).
- Prince, A.M.T. & Gothberg, J.E. (2019). Seclusion and restraint of students with disabilities: A one-year legal review. *Journal of Disability Policy Studies*, 30(2), 118 – 124. <https://doi.org/10.1177/1044207319854182>
- Scheuermann, B., Peterson, R.L., Ryan, J.B. & Billingsley, G. (2015). Professional practice and ethical issues related to physical restraint and seclusion in schools. *Journal of Disability Policy Studies*, 1-10. Access for free at <http://digitalcommons.unl.edu/spcedfacpub/95>
- U.S. Department of Education, Office of Civil Rights (2018). 2015-16 Civil Rights Data Collection. [School Climate and Safety](#). Retrieved from <http://bit.ly/3bTvL7X>

Media Reports on Physical Restraint and Seclusion

ProPublica and Chicago Tribune reports on [physical restraint](#) and [seclusion](#) in Illinois schools: <https://twitter.com/ProPublicaIL/status/1212797752209543168>. Within a day of publishing the story on seclusion in Illinois schools, the state issued an emergency ban on the practice.

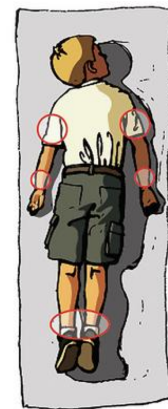
Video Resources

“[The Kids We Lose](#) (TKWL) 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, staff in facilities, mental health clinicians, and judicial and law enforcement professionals in trying to ensure that these kids receive the help they need.” TKWL uses dramatic classroom videos and interviews to portray the negative long-term impact of restraint and seclusion in schools to control student behavior. “The film’s thesis is poignantly supported by interviews with identified students who don’t understand or benefit from being restrained or secluded. They learn to dislike school, learning, and educators. I hope the film will serve to open a discussion and search for effective alternatives to restraint and seclusion...” For more information about the video go to: <http://www.thekidswelose.com/>.



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).
- 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

