Restraint and Seclusion in Oregon: What Districts Need to Know

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OBJECTIVES

• Overview of the issue

• Review of Oregon law/regulations

• Discuss implications for policy/practice in special education
Context: Federal

- Since 2009, several federal bills proposed
- R/S Added to OCR’s Civil Rights Data Collection
- Discussion around including RS policy in ESEA/IDEA reauthorization
CRDC

Diagram: Students subjected to physical restraint, by disability status (IDEA)

- Students enrolled in public schools:
  - 88% with disabilities
  - 12% without disabilities

- Students subjected to physical restraint:
  - 75% with disabilities
  - 25% without disabilities
Students with disabilities subjected to mechanical restraint, by race/ethnicity

- Students with disabilities (IDEA)
- Students with disabilities (IDEA) - subjected to mechanical restraint

- White: 55%
- Two or more races: 2%
- Hispanic/Latino of any race: 2%
- Black/African American: 19%
- Native Hawaiian/Other Pacific Islander: 0.3%
- Asian: 2%
- American Indian/Alaska Native: 1%
<table>
<thead>
<tr>
<th>State</th>
<th>Of the students enrolled, what percent are served by IDEA?</th>
<th>Of the students subject to physical restraint, what percent are served by IDEA?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Montana</td>
<td>11%</td>
<td>62%</td>
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<tr>
<td>Nebraska</td>
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<td>69%</td>
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</table>
• 76th OREGON LEGISLATIVE ASSEMBLY, 2011 passed House Bill 2939.

• Codified at ORS 339.285--294
  • Enacted OARs: 581-021-0550, -0553, -0556, -0559, -0563, -0566.

• 77th Oregon Legislative Assembly, 2013 passed
  • House Bill 2585 (complaints and annual reporting)
  • House Bill 2753 (Repeal of Sunset)
  • House Bill 2756 (remove “Seclusion Cells”)

• Codified at ORS 339.303;308
  • OARs 581-021-0569; 581-021-0570
Physical restraint means the restriction of a student’s movement by one or more persons holding the student or applying physical pressure upon the student … [PR] does not include the touching or holding of a student without the use of force for the purpose of directing the student or assisting the student in completing a task or activity.

Seclusion means the involuntary confinement of a student alone in a room from which the student is physically prevented from leaving…does not include removal of a student for a short period of time to provide the student with an opportunity to regain self control if the student is in a setting from which the student is not physically prevented from leaving.
Oregon R/S Law in a Nutshell

Repealed
• Physical restraints may be used in “an emergency by a school administrator, teacher, school employee, or volunteer as necessary to maintain order or to prevent a student from harming him/herself, other students, and school staff or property in accordance with OAR 581-021-0061(2)” OAR 581-021-0062(2)(a)(B).

Current Law
• RS only if:
  o Student’s behavior poses a reasonable threat of imminent, serious bodily injury to the student or others; and
  o Less restrictive interventions would be effective (OAR 581-021-0553(2)(a)).
Chemical, Mechanical and Prone Restraint prohibited.

Physical Restraint & Seclusion used with conditions (i.e. only for as long as needed, less restrictive measures not effective,

Physical Restraint & Seclusion may not be used for discipline or punishment.

Must be implemented by those who are trained.

Requires ongoing monitoring.

- **Time limits and rules** for seclusion and restraint access to bathroom or water breaks must be established after 30 minutes, along with written justification every 15 minutes after ½ hour and parent notification.

- **Continuous [visual] monitoring** of the situation by staff and administrators.
Programs’ Procedures Regarding the Use of …

- Policies and Procedures must be in place by school district/public education program.
- Verbal or electronic notification to parent by end of day; and
- Written documentation within 24 hours.
- Debriefing meeting within two days. Parents right to attend. Notes shared with parents.
- DHS notified if serious bodily injury or death occurs.
- Team mtg if 5 or more incidents in a SY
Reporting Requirements for the Use of ...

- Each [district] must prepare and submit to the superintendent of public instruction an annual report detailing the use of physical restraint and seclusion for the preceding school year

- Make the report available to its constituents - the public, school board charter school sponsor, parents/guardians.
• The total number of incidents involving physical restraint;
• The total number of incidents involving seclusion;
• The total number of seclusions in a locked room;
• The total number of students placed in physical restraint;
• The total number of students placed in seclusion;
• The total number of seclusion rooms available; and a description, including the location of those rooms, designated solely for seclusion;
• The total number of incidents that resulted in injuries or death to students or personnel as a result of the use of physical restraint or seclusion;
• The number of students who were placed in physical restraint or seclusion more than 10 times in the course of a school year and an explanation of what steps have been taken by the public education program to decrease the use of physical restraint and seclusion for each student;
• The number of incidents in which the personnel of the public education program administering physical restraint or seclusion were not trained; and
• The demographic characteristics of all students upon whom physical restraint or seclusion was imposed, including race, ethnicity, gender, disability status, migrant status, English proficiency, and status as economically disadvantaged, unless the demographic information would reveal personally identifiable information about an individual student.
Training of school personnel in de-escalation techniques and physical restraint is required. Physical Restraint and Seclusion training programs must be approved and compiled by the Oregon Department of Education; and Must meet the standards of the Department of Human Services.

Criteria for the training include the following:

1. Evidence-Based techniques and skills.
4. Consistent with the philosophy and practices of Positive Behavior Support.
5. Consistent with DHS approved programs.
Required Use of Approved Restraint and Seclusion Programs

- A public education program may only use a training program approved by the Oregon Department of Education.
Seclusion rooms; OAR 581-021-0568

(a) Any wall that is part of the room used for seclusion must be part of the structural integrity of the room (not free standing cells or portable units attached to the existing wall or floor), and must be no less than 64 square feet; the distance between adjacent walls must be no less than 7 feet across.

(b) The room must not be isolated from school staff of the facility;

(c) Doors must be unlocked or equipped with immediate-release locking mechanisms;

(d) The door must open outward and contain a port of shatterproof glass or plastic through which the entire room may be viewed from outside; half doors are acceptable options as well where direct visual monitoring can occur.

(e) The room must contain no protruding, exposed, or sharp objects;

(f) The room must contain no free standing furniture.

(g) Windows must be transparent for both staff and the student to see in/out, and made of unbreakable or shatterproof glass or plastic. Non-shatterproof glass must be protected by adequate climb-proof screening;

(h) There must be no exposed pipes or electrical wiring in the room. Electrical outlets must be permanently capped or covered with a metal shield secured by tamper-proof screws. The room must contain lights which must be recessed or covered with screening, safety glass or unbreakable plastic. Any cover, cap or shield must be secured by tamper-proof screws;

(i) The room must meet State Fire Marshal fire, safety, and health standards. If sprinklers are installed, they must be recessed and/or covered with a cage. If pop-down type, sprinklers must have breakaway strength of less than 80 pounds. In lieu of sprinklers, combined smoke and heat detector must be used with similar protective design or installation;

(j) The room must be ventilated; heating and cooling vents must be secure and out of reach;

(k) The room must be designed and equipped in a manner that would not allow a child to climb up a wall;

(l) Walls, floor and ceiling must be solidly and smoothly constructed, to be cleaned easily, and have no rough or jagged portions; and

(m) Seclusion cells are prohibited as provided in OAR 581-021-0569.
Seclusion Cell
OAR 581-021-0570 Complaint procedures

• A complainant may submit to the Superintendent of Public Instruction a written, signed complaint. (OARs 581-021-0550 to 581-021-0570.

• Complainant must first avail themselves of district level complaint process ORS 327.103 and OAR 581-022-1941.

• (2) The organization or individual filing the complaint and the Superintendent shall follow the appeal procedures specified in OAR 581-022-1940.
IDEA Implications

Complaint Investigation 09-054-013

- Violations of the IDEA due to use of restraint and seclusion
- Change of Placement and Least Restrictive Environment Allegations were substantiated by the State
- The student was not allowed to participate with any peers during recess for about three months
- The student was moved from a general education classroom to a separate room away from all peers for about two months.
- Removing student from classroom so often was inconsistent with the Behavior Intervention Plan
- The frequent Removals from class denied the student of FAPE.
Best Practice:

15 Principles - USDE

- Prevent the Use of Restraint & Seclusion (De-Escalation training)
- Never use Mechanical restraint, nor use Drugs or Medications
- Only where Student Poses Imminent Danger of Serious Physical Harm to Self or Others, and other Interventions Ineffective, and should be discontinued when Imminent Danger Dissipates.
- Should apply to all children, not just SWD
- Students’ Rights to be treated with Dignity
Principles continued

• Never used as Punishment, Discipline, Coercion, Retaliation, Convenience
• Never used in Manner that Restricts Breathing (Prone Restraint)
• Repeated Use - Triggers Review, Revise Plan, Implement Positive Behavioral Strategies
• Strategies address Underlying Cause or Function/Purpose of Behavior
• Teachers/School Personnel Trained Regularly
Principles continued

• Every incident Carefully and Continuously Visually Monitored
• Parents should be Informed of Policies & applicable Laws
• Parents Notified as soon as possible each incident
• Policies Reviewed regularly & Updated as appropriate
• Policies requiring Documentation in Writing and for Data Collection (Debriefing)
Considerations for Seclusion & Restraint Use in Schoolwide Positive Behavior Supports

(Horner and Sugai, 2009)

- Seclusion and restraint procedures are inappropriately selected and implemented as “treatment” or “behavioral intervention,” rather than as a safety procedure.
- Seclusion and restraint are inappropriately used for behaviors that do not place the student or others at risk of harm or injury (e.g., noncompliance, threats, disruption).
- Students, peers, and/or staff may be physically hurt or injured during attempts to conduct seclusion and restraint procedures.
- Risk of injury and harm is increased because seclusion and restraint are implemented by staff who are not adequately trained.
- Use of seclusion and restraint may inadvertently result in reinforcement or strengthening of the problem behavior.
- Seclusion and restraint are implemented independent of comprehensive, function-based behavioral intervention plans.
Considerations (Cont.)

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Oregon Best Practice Tips

• Train, Train, and Retrain!
• Ensure your training protocols are robust (and ODE approved)
  o Combination of theory and practical application with demonstration of skills (including physical intervention)
• Ensure certifications do not lapse.
• Communicate, communicate, communicate with parents
• When in doubt, train more staff (maybe non-SPED staff)
• Invest in robust behavior management practices:
  o RJ, PBIS
  o Train staff in proper applications of FBA/BIP, and need for continuous monitoring/revision as appropriate
  o Collect and analyze data regularly as part of continuous improvement and quality assurance (CIQA)


