The Use Of Physical Restraint & Seclusion in Schools

Claudette Rushing, Esquire
Legal Specialist
Oregon Department of Education
Office of Learning - Student Services
503-947-5689
claudette.rushing@state.or.us

Michael Mahoney,
Safe & Healthy Schools Coordinator
Oregon Department of Education
Office of Learning – Student Services
503-947-5628
michael.mahoney@state.or.us

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History

- 76th OREGON LEGISLATIVE ASSEMBLY, 2011 passed House Bill 2939: [http://www.leg.state.or.us/11reg/measpdf/hb2900.dir/hb2939.en.pdf](http://www.leg.state.or.us/11reg/measpdf/hb2900.dir/hb2939.en.pdf)
- Enacted OARs 581-021-0550, -0553, -0556, -0559, -0563, -0566.

- 77th Oregon Legislative Assembly, 2013 passed
  - House Bill 2585 (complaints, seclusion room standards & annual reporting): [http://landru.leg.state.or.us/13reg/measures/hb2500.dir/hb2585.en.html](http://landru.leg.state.or.us/13reg/measures/hb2500.dir/hb2585.en.html)
  - House Bill 2753 (Repeal of Sunset): [http://landru.leg.state.or.us/13reg/measures/hb2700.dir/hb2753.1sa.html](http://landru.leg.state.or.us/13reg/measures/hb2700.dir/hb2753.1sa.html)
  - House Bill 2756 (remove “Seclusion Cells”): [http://landru.leg.state.or.us/13reg/measures/hb2700.dir/hb2756.en.html](http://landru.leg.state.or.us/13reg/measures/hb2700.dir/hb2756.en.html)

OAR 581-021-0550

Definitions

- Chemical Restraint
- Mechanical Restraint
- Physical Restraint
- Prone Restraint
- Public Education Program
- Seclusion
- Serious Bodily Injury

Physical restraint: the restriction of a student's movements by one or more persons holding them.

1. The behavior imposes a threat to their safety or the safety of others (imminent risk of serious bodily injury), and
2. Other less restrictive methods of controlling the behavior are ineffective. (OAR 581-021-0553)

Seclusion: the involuntary confinement of students in rooms:

1) Alone,
2) Physically prevented from leaving and/or have the perception that they are prevented from leaving (HB 2585, 2013 Legislative session).

(7) ‘Seclusion cell’ means a freestanding, self-contained unit that is used to: Isolate the student from other students; or Physically prevent a student from leaving the unit or cause the student to believe that the student is physically prevented from leaving the unit.
OAR 581-021-0553

Use of Physical Restraint & Seclusion in Public Education Programs:
- 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.
- Requires water and bathroom breaks if occurs for more than 30 minutes; and
- Administrator must provide written authorization for it to continue; and
- Parent or guardian must be notified.

- 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.
- Continuous [visual] monitoring of the situation by staff and administrators.
- Parents or guardians of students who are restrained or secluded must be notified by the end of the school day, and in writing within 24 hours.

OAR 581-021-0556

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 notification within 24 hours.
- Debriefing meeting within two days.
- Provisions if serious bodily injury or death occurs.

- Written documentation of the incident provided within 24 hours.
- School personnel must meet for a debriefing meeting within two school days to discuss and document the incident; and
- The notes from the meeting must be shared with the parent or guardian.
OAR 581-021-0559

Reporting Requirements for the Use of...

- The entity in charge of public education program must complete an annual report; and
- Make the report available to its constituents - the public, public education program, ESD and its component school districts, charter school, parents or guardians.

- School districts and Education Service Districts must prepare an annual report detailing the use of physical restraint and seclusion for the previous school year.
  - Reporting at local level for 2011-12 & 2012-13;
  - Reporting to the state required beginning with the 2013-14 school year.

(1) Each entity that has jurisdiction over a public education program 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,…

OAR 581-021-0563

- 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.
OAR 581-021-0566

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.

Amendments & New Rules

- OARs 581-021-0550, -0553, -0556, -0559, -0563, & -0566, -0568, -0569, -0570.
- New OARs:
  - OAR 581-021-0568 Standards for Seclusion Rooms
  - OAR 581-021-0569 Use of Seclusion Cells Prohibited
  - OAR 581-021-0570 Complaint procedures
- Draft OARs – open for Public Comment through November 2013
HB 2585

- **Process to submit Complaints** regarding the use of Physical Restraint and Seclusion.

- Entities with jurisdiction over a Public Education Program to submit annual report to the Superintendent of Public Instruction detailing the use of Physical Restraint and Seclusion.

  1. Total # of incidents of Physical Restraint.
  2. Total # of incidents of Seclusion.
  3. Total # Seclusion in a locked room.
  4. Total # of students placed in Physical Restraint.
  5. Total # of students placed in Seclusion.
  7. # of students placed in PR or S more than 10 times.
  8. Explanation of steps to decrease the use of PR & S with students over 10 times per year.
  9. # of incidents of PR or S by staff who were not trained.
  10. Total # of incidents resulting in injuries or death.
  11. Total # of rooms available for seclusion & description of design.

- **SECTION 3.** Minimum standards for any rooms used by a public education program for seclusion of a student.
  - The Standards must:
    - (a) Take into account the health and safety of students and personnel of the public education program and the respect and dignity of students; and
    - (b) Include consideration of the size, safety features, lighting and ventilation of the rooms.

- **SECTION 3 continued.** The minimum standards adopted by the State Board of Education for rooms used by a public education program for seclusion of a student, as provided by section 2 (3) of this 2013 Act, first apply to the 2014-2015 school year. The State Board of Education may not apply or enforce standards related to rooms used for seclusion until on or after July 1, 2014.
Amendments: chapter 665, Oregon Laws 2011

- **HB 2585**

- **HB 2753**
  - Repeals Sunset of Physical Restraint & Seclusion statutes (section 7, June 2017).
  - Maintains Section 1-6, chapter 665, Oregon Laws 2011

- **HB 2756**
  - Prohibits public education programs from purchasing, building, possessing, or using Seclusion Cells.
  - Directs removal of seclusion cells from classrooms by July 1, 2013.
  - Directs removal of seclusion cells from school premises by September 1, 2013.
  - Allows current seclusion rooms that are not seclusion cells and do not meet all the specific standards, and as long as the size restrictions are safe (i.e., adjacent walls 7 feet apart), can be used through June 30, 2014. Must meet all standards by July 1, 2014.
Draft Standards – *Seclusion rooms

- The room must be of adequate size to permit three adults to move freely and allows for one of those adults to lie down.
- Any structural remodeling or newly constructed rooms must be part of the structural integrity of the room (not free-standing cells or portable units) and must be no less than 8 x 8 feet (64 square feet); the distance between adjacent walls must be no less than 7 feet across.
- The room must not be isolated from regular program staff of the facility.
- Doors must be unlocked or equipped with immediate-release locking mechanisms;
- 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.
- The room must contain no protruding, exposed, or sharp objects;
- The room must contain no furniture.
- Any windows must be of unbreakable or shatterproof glass or plastic. Non-shatterproof glass must be protected by adequate climb-proof screening;
- 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. Ceiling and wall lights must be recessed and/or covered with screening, safety glass or unbreakable plastic. Any cover, cap, or shield must be secured by tamper-proof screws;
- 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 under 80 pounds. In lieu of sprinklers, combined smoke and heat detector must be used with similar protective design or installation;
- The room must be ventilated; heating and cooling vents must be secure and out of reach;
- The room must be designed and equipped in a manner that would not allow a child to climb up a wall;
- Walls, floor and ceiling must be solidly and smoothly constructed, to be cleaned easily, and have no rough or jagged portions;
- “Freestanding”, self-contained units that are not part of the structural integrity of the school building and/or classroom, even if they are bolted to the wall, are prohibited.

Recent Decision regarding Seclusion in 9th Circuit

- August 30, 2013: Court held...use of isolation room/safe room on an autistic student violated his constitutional rights & teacher and school district were not entitled to qualified immunity.
- 4th Amendment – “to be free from unreasonable searches and seizures”...“students do not shed their constitutional rights at the schoolhouse door” & “student’s right to be free from excessive force was clearly established since 1990.”
- 14th Amendment – Student’s right to due process...“...student locked in the room until he defecated & was made to clean up his own feces as punishment”;
- School District Liability: “...district failed to train and supervise the teacher’s use of ‘aversive therapy’...the district knew of and permitted the teachers’ use of the isolation room/safe room over time, and therefore, ratified her conduct...amounting to the ‘deliberate indifference’ standard and thus, the district being the ‘moving force’ behind the constitutional violations.”
- “...Schools have a clear duty to protect its students from reasonably anticipated dangers.”
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.

(*Remember - Restraint & Seclusion Statute applies to all students)

Complaint Procedures - 581-022-1941
- (1) ...school district must establish a process...prompt resolution of a complaint by a person who resides in the district or by any parent or guardian of a student who attends school in the school district.... process must be in writing and state clearly who...within school district has the responsibility for responding to the complaint.
- (2) ...school district’s complaint procedure must specify the time period during which the complaint will be addressed and a final decision issued.... the procedure must establish the time period for each step as well as overall time period for completing...
- (3) ...school district’s complaint procedure...distinguish between...complaints that may be appealed under OAR 581-022-1940 & -1941 and other complaints.
- (4) ...school district’s complaint procedure may include mediation or other alternative dispute resolution processes.
- (5) The procedure for hearing and acting on complaints that may be appealed, under OAR 581-022-1940 & -1941, must include the following:
  - (a) A point at which the decision is final
  - (b) A provision for the complainant receiving written notice that the district’s decision may be appealed to the State Superintendent of Public Instruction under OAR 581-022-1940 & -1941; and
  - (c) A written decision that clearly establishes the legal basis for the decision, findings of fact and conclusions of law.
Best Practices, proposed Federal bills

- Provides ‘Meaningful Protection’ [1/29]
- Defines ‘Seclusion’; student cannot exit
  - (locked or blocked) [1/32]
- When ‘Less Intrusive Methods Ineffective’ [1/16], and
- Only until the ‘Emergency Ends’ [1/14]
- Prohibits Mechanical, Prone & Chemical Restraint
  - [1/15 & 1/10]
- Notify the Parents Same Day of Incident [1/12]
- Data Collection [1/13]
Best Practices continued

• Statute/Rules apply to All Children.

• Debriefing – analyze, cause, triggers, plan, positive interventions.

• Training Required [1/21]
  • Evidence-Based Practices
  • De-Escalation Training
  • Positive Behavior Supports
  • Prevention
  • Conflict Resolution

15 Principles - USDE

1. Prevent the Use of Restraint & Seclusion (De-Escalation training)
2. Never use Mechanical restraint, nor use Drugs or Medications
3. 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.
4. Policies restricting use for All Children.
5. Students’ Rights to be treated with Dignity
Principles continued

6. Never used as Punishment, Discipline, Coercion, Retaliation, Convenience
7. Never used in Manner that Restricts Breathing (Prone Restraint)
9. Strategies address Underlying Cause or Function/Purpose of Behavior
10. Teachers/School Personnel Trained Regularly

Principles continued

11. Every incident Carefully and Continuously Visually Monitored
12. Parents should be Informed of Policies & applicable Laws
13. Parents Notified as soon as possible each incident
14. Policies Reviewed regularly & Updated as appropriate
15. Policies requiring Documentation in Writing and for Data Collection (Debriefing)

- Oregon is aligned with Federal Proposals, Best Practices, and the 15 Principles.
Q & As: Best Practices

Alternatives to Restraint/Seclusion

• **Key points:**

  • Identify triggers for students' aggression.
  • Teach students replacement behaviors to reduce need for seclusion.
  • Encourage educators to use eye contact, personal details to connect with students.

1. Determine the Antecedent
   • Time of day; Day of the week; Certain subjects; Certain activities or work tasks; Boredom -- too much downtime or MH; Transitions; Certain smells; Certain people being near or absent

2. Replace Challenging Behavior
   • Teach the new behavior; Imprint the new behavior by modeling it; & Practice new behavior – what it looks, sounds & feels like; Praise new behavior – specific praise

3. Consequence Modification:
   How are you going to act/behave differently?
Connecting with Students

• **Check In/Check Out (CICO):** First thing in the AM and last thing in the PM.
• **Use Eye Contact** appropriately & be **aware of body language, verbal, and voice tone.**
• **Comment about something personal & positive,** what you like about the student; i.e. “Nice shirt”, “Great haircut.”
• **Use Positive Greetings,** i.e. – “Great to see you today.”
• **Use a form of touch;** i.e. – **high five, fist bump…**
• **Use Specific Praise:** i.e. – “Great job sitting in your chair and raising your hand to answer a question,” “Thank you for not interrupting and waiting your turn, Way to go!”, “Excellent job on your seat work today: you finished all the problems.”
• **[SW Positive Discipline Strategies (per HB 2192)].**

Small Groups

• What are some ways that you de-escalate situations and prevent the need to use physical restraint and seclusion with students?

• What specific methodologies do you use or promote to positively engage students and staff and address discipline?
Resources

- [http://landru.leg.state.or.us/13reg/measures/hb2500.dir/hb2585.en.html](http://landru.leg.state.or.us/13reg/measures/hb2500.dir/hb2585.en.html)
- [http://landru.leg.state.or.us/13reg/measures/hb2700.dir/hb2753.1sa.html](http://landru.leg.state.or.us/13reg/measures/hb2700.dir/hb2753.1sa.html)
- [http://landru.leg.state.or.us/13reg/measures/hb2700.dir/hb2756.en.html](http://landru.leg.state.or.us/13reg/measures/hb2700.dir/hb2756.en.html)
- [http://landru.leg.state.or.us/13reg/measures/hb2100.dir/hb2192.en.html](http://landru.leg.state.or.us/13reg/measures/hb2100.dir/hb2192.en.html)
- [http://www.ode.state.or.us/home/](http://www.ode.state.or.us/home/)
- [http://www.ode.state.or.us/search/results/?id=107](http://www.ode.state.or.us/search/results/?id=107)
- Jessica Butler (2012). How safe is the schoolhouse?: An analysis of State seclusion and restraint laws and policies. jessica@jnba.net

For the Good of the Order

- Final thoughts, comments, questions?
- Thanks for coming!