

School Law Update

September 24, 2014

Restraints and Seclusion



Greg Perry & Josh Schauer

**Perry, Guthery, Haase &
Gessford, P.C., L.L.O.**

Reason for R/S Policy

- Rule 10
 - 011.01E Each school system has a seclusion and restraints policy approved by the school board or local governing body.
- Statement of Assurances
 - Train staff on district's policies and procedures regarding use of R/S with children with disabilities

Reason for R/S Policy

- US Department of Education—focus on restraints and seclusions following recent studies and Congressional hearings on student deaths and injuries from restraints & seclusions.
 - Commissioner Duncan: Develop policies; prefer Illinois model

Possible Federal Law

- Preventing Harmful Restraint and Seclusion in the Schools Act
 - HR 4247 introduced on Dec. 9, 2009
 - Senator Dodd introduced nearly identical Bill in the Senate on same date

Possible Federal Law

- Conditions for use of Physical restraint (physical restriction that immobilizes or reduces ability to move arms, legs or head; does not include a physical escort) or Seclusion (locked isolation; not time-out)
 - Imminent danger of physical injury
 - Less restrictive intervention would not be effective
 - End when no longer a danger of physical injury
 - Continuously monitor – direct visual
 - Trained/certificated staff (State –approved training)
 - Not written in IEP or other student plan
 - Prompt reporting to parents – debriefing of staff
 - Annual reporting to State

US DOE 7-29-14

- Prince Williams (Fairfax, VA)
- Policy on R/S
 - When use, documentation, parent reporting
 - Imminent danger of physical injury
 - Less restrictive intervention would not be effective
 - Continuously monitor – direct visual + camera
 - Trained staff annually
 - Prompt reporting to parents – approved form

US DOE 7-29-14

- Denial of FAPE
 - Extensive R/S; extended length of time
 - Denied access to curriculum during R/S
 - No systematic reviews of incidents
 - No individual consideration of less restrictive interventions
 - No reevaluations of placement in program
 - Reporting to parents – but verbal, not using the approved form

M.M. v. Lincoln PS (12/28/12)

- 3rd Grade at Sheridan Elem.
- Summer at KKI in Baltimore, Dr. Kahng
- Return to school in Sept.
- Multiple IEP meetings
- Prairie Hill Mont. Sch.
- Litigation



Least restrictive
environment/mainstream

Hospital or
Institution

← Most restrictive

Home
Instruction

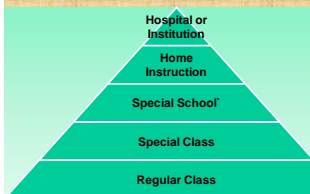
Special School

Special Class

Regular Class

← Least Restrictive

Least restrictive
environment/mainstream



Place in least
restrictive
environment at
which he can receive
a FAPE =
“Some Educational
Benefit”

FAPE

- The Act requires that the Tullahoma schools provide the educational equivalent of a **serviceable Chevrolet**
- The board is **not required to provide a Cadillac**

Doe v. Bd. of Educ. of Tullahoma City Schools, (6th Cir. 1993)

Behavioral Plan

- KKI – 5 aggressive behaviors, then 30 second baskethold



- LPS – aggressive behaviors, then calming strategies, then calm area for 1 minute

Methodology



- IEP team required to consider a behavioral plan since LM's behaviors impede his learning,
- IEP team required to consider KKI's outside evaluation/plan)
- But only required to consider, not to adopt it in its entirety
- Choice of methodology is up to the school

Procedural

- Parents entitled to meaningful participation in development of IEP
 - But parental preference is not mandated
- Predetermination of IEP content prohibited
 - But pre-meeting discussions among school staff not prohibited
 - So long as don't refuse to listen to parents and their advocates
 - **Note:** Watch your E-mails!

Restraints

C.N. (D. Minn. 2008)

- Test for legality: “substantial departure from professional judgment, practice or standards
- Test met if use of restraint and seclusion methods are **in the IEP**
- Otherwise teachers would be exposed to litigation for not following the IEP



Angellika Arndt – Wisconsin

Restraints

G.C. (MD. Fla. 2009)—student with autism

- Teacher Kathy Garrett’s act of placing her leg over G.C.’s legs while at the bus stop, to prevent him from attempting to run away, did not violate constitutional due process rights
- **Criminal case:** “Ms. Garrett placed her body weight upon a child with enough force and for a long enough period of time until he **turned blue** from a lack of oxygen. The jury was entitled to find that her conduct exceeded the scope of appropriate discipline and constituted **child abuse**.”
- Board settled 4 students’ claims for over **\$2 million**

Seclusion Case – Neb. SD

➤ Feb. 8, 2011

- 9:05 kicked para, placed in seclusion
- Took off his clothes and urinated on them
- Gave new clothes—put on but then disrobed again
- 11:45 called Mom

Seclusion

NDE Rule 51 Complaint

1. Stmt of Assurances—“Staff are trained”—not met
2. Prior Written Notice—Parents had removed, then wanted full day, team suggested transition, parents agreed to shortened schedule—PWN required, even tho all agreed to shortened day

Seclusion

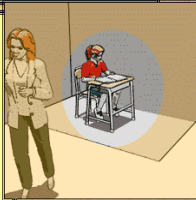
District Court Complaint

1. Negligence—failure to follow policy and train staff
2. Claimed injuries—emotional distress

Seclusion

D.L. (D. Iowa 2008)

- Timeouts of
 - 3 hours 12 minutes; plus 25 min.
 - 2 hours 10 minutes
 - 5 hours 10 minutes
 - 1 hour 16 minutes
- Valid claim for violation of constitutional rights and Section 504



Jonathan King - Georgia

OCR Complaint-Neb SD

- L. and T.—Alleged denial of free appropriate public education
 - Not educated to maximum extent appropriate with nondisabled students b/c of extended/numerous seclusions
 - IEP minutes not provided b/c of extended/numerous seclusions
 - Failed to provide teachers trained in use of seclusion & restraint

Best Practices

- Written policy/guidelines for use
- Training—when and how to use
- Time-out—appropriate supervision, duration & facility
- IEP or written parent authorization
- Parents informed
- Documentation

Off-Topic—State Wards

79-215(9)

- Child remains resident of SD in which resided when became a state ward
- Unless move to a foster home in another SD **AND** court or person in charge determines not in his best interests to attend his home SD



Division of Children and Family Services

State of Nebraska
Department of Health and Human Services

September 24, 2013

RE: [REDACTED]

DOB: [REDACTED]

I am [REDACTED]'s case manager with the Nebraska Department of Health and Human Services.

It is in [REDACTED]'s educational best interest to attend [REDACTED] Public Schools. It is not in [REDACTED]'s educational best interests to attend [REDACTED] Public Schools at the time.

Please let me know if you have any further concerns or questions. Thank you.

Respectfully,

[REDACTED]
Children and Family Services Specialist
Department of Health and Human Services

cc: [REDACTED]
Fax: [REDACTED]

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September 25, 2013

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