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KEEPING STUDENTS SAFE:

Using Positive Behavior Supports to Prevent Restraint & Seclusion in Schools

Every student should be safe and protected while in school. But a recent investigation by the U.S. Government Accountability Office found hundreds of allegations that students have been abused, and some even died, as a result of misuses of restraint and seclusion in schools, often at the hands of untrained staff. Many of these interventions were used disproportionately on students with disabilities.

Unlike in hospitals and other facilities that receive federal funding, there are no federal laws that address how and when restraint or seclusion can be used in schools. It is also impossible to determine the full extent to which these interventions are used because there is currently no consistent reporting of data.

In recent years, some states have implemented laws restricting the use of seclusion and restraint in schools. Ohio is one of those states. Through the advocacy efforts of Disability Rights Ohio and others, the Ohio Department of Education (ODE) developed a rule limiting the use of restraints and seclusion and requiring the implementation of positive behavior supports for students. On August 1, 2013, Ohio Admin. Code 3301-35-15 became effective. The rule is titled "Standards for the implementation of positive behavior intervention supports and the use of restraint and seclusion." It has a number of important features that restrict the use of seclusion and restraint to situations that pose an immediate risk of physical harm and prohibit the use of prone restraint. The rule also has specific timelines for reporting incidents to parents.

Additionally, under the federal Individuals with Disabilities Education Act (IDEA) and state special education law, schools must provide students with disabilities who need specialized instruction a free appropriate public education (FAPE).

The school's duty to provide FAPE includes addressing negative behaviors with appropriate behavior intervention plans and services. Where behavior impedes the student's learning or that of others, schools must consider the use of



positive behavioral interventions and supports to address that behavior.

While the IDEA and state special education law currently do not prohibit the use of aversive interventions, except as outlined in the restraint and seclusion rule, the use of these strategies can result in a denial of FAPE.

What must the school do if my child's behavior gets in the way of the child's learning or the learning of others?

Where behavior impedes the student's learning or the learning of others, schools must consider the use of positive behavioral interventions, supports, and other strategies to address that behavior. The IEP can include services to be provided to the student, or on behalf of the student, and a statement of the program modifications or supports for school personnel that will be provided.

What positive steps can schools take to address inappropriate behavior without using restraint or seclusion?

Schools should:

- 1. Teach appropriate behavior** - show the student what behavior is expected and teach how to do it.
- 2. Provide necessary related services to the child and others** - examples of related services include speech-language and audiology assessments and services, interpreter services, psychological services, physical and occupational therapy, recreation, counseling, social work services, and parent counseling and training.
- 3. Provide needed supplementary supports and services** - provide what a student needs to stay in the least restrictive setting so the student can be educated with students who do not have disabilities.
- 4. Provide specially designed instruction/goals to improve behavior** - change the content, method, or delivery of services to improve behavior.
- 5. Assess communication deficits and provide appropriate services or assistive technology** - help students develop better skills in communicating instead of resorting to negative behavior to 'communicate' their needs. Assistive technology devices and services include assessments, and training for staff and parents.
- 6. Assess function of behavior and develop a positive behavior intervention plan (PBIP)** - figure out when and why behaviors occur and develop a plan to teach the student how to meet needs in a desirable way.
- 7. Take appropriate data on behavior and behavior goals and revise as necessary** - figure out the functions of behavior (for example, to avoid work, seek attention), take detailed data to measure the effects of interventions, and change if they are not working.
- 8. Provide appropriate and ongoing training to staff, parents and the student about the disability and plan** - make sure everyone involved understands how to help the student and how to assess progress.

School district staff told me that they have to address only academic subjects. Is this true?

No. If the student has negative behaviors related to his or her disability and those behaviors adversely affect educational progress, the school must include strategies and services to address those behaviors in the student's written IEP.

What does the term "adversely affecting" educational progress mean?

Adverse affects may include more than low grades. Some examples are problems with: attendance, paying attention, staying in his or her seat, and social interaction.

What can happen if the inappropriate behavior is not related to a disability?

If the student's behavior is not related to a disability, the school can impose the same discipline it imposes on students without disabilities, but after 10 school days of no services (suspension) the school must provide services that provide the student with an appropriate education, although this may be in a different educational setting. For more information see the DRO Fact Sheet, ***What Can I Do If My Child with a Disability is Having Behavior Problems in School?***

Are there agencies that can investigate the school's practices?

Yes. These are some agencies that can investigate the use of restraint and seclusion in schools:

- You can file a complaint with the U.S. Department of Education, Office for Civil Rights (OCR) for disability-based discrimination, for example:
 - There may be discrimination if restraint and seclusion are used on students with disabilities for behaviors, but not used on students who do not have disabilities. For information about how to file a discrimination complaint with OCR: ***How to File a Discrimination Complaint with the Office for Civil Rights***, www2.ed.gov/about/offices/list/ocr/docs/howto.html
 - The Americans with Disabilities Act (ADA) may require schools to provide appropriate modifications and accommodations that could have prevented the use of restraint and seclusion.
- The Ohio Department of Education (ODE), Office for Exceptional Children:
 - You can file an impartial due process hearing and request a preliminary order to protect the child.
 - You can also request mediation or a facilitated IEP meeting to get the school to address behavior positively through the IEP/PBIP instead of restraint and seclusion.
 - You can file a state complaint with the ODE.

I thought the ODE will only decide complaints involving violations of procedures and not those involving the appropriateness of services. Is this true?

No, the ODE must also investigate complaints that schools are violating the FAPE requirement. The federal court case, *Doe v. State of Ohio Consent Order, Case No. 2:91-cv-464* provides:

Complaints alleging injuries to the child or the use of restraints or seclusion shall not be deemed insufficient on the face of the complaint if they are framed within the context of IDEA.

Such matters include:

- *a pattern of challenging behaviors that are related to the child's disability;*
- *whether the child has had or should have had a functional behavioral assessment (FBA) and a positive behavior intervention plan (PBIP);*
- *whether the FBA and PBIP are appropriate;*
- *whether the child's behavior and interventions are addressed or should have been addressed in the IEP; and*
- *whether staff has been sufficiently trained in de-escalation and restraint techniques.*

What are some warning signs of physical abuse or the use of excessive force?

Warning signs of abuse or excessive force include:

- **Injuries:** bruising; abraded, reddened skin; fingernail marks; rug burns.
- **Incident reports:** too many entries and "rough day" remarks.
- **Behavior changes:** sudden regression in behavior; new and unexplained behavior, for example sleeplessness; increased anxiety; fear of going to school; self-injurious behavior; sudden change in weight; increased aggression or emotional outbursts; fear of objects related to being restrained or secluded, for example, fear of belts or closets.

See a professional to rule out other causes, for example, sexual assault.

What can I do if warning signs appear?

Things you can do include:

- **Review your child's records**, including "incident reports."
- **Ask to observe your child in school** and to meet with school staff to discuss concerns.
- **Document and date** anything your child says or does that concerns you.
- **Take and date photos** of injuries.

- **Consider a medical and/or psychological examination** by your child's provider.
- **Agree on an outside consultant** to review and recommend services/plan.
- **Sign a "No Consent" form** denying permission to use restraint and seclusion and give it to the school.
- **Call the police and/or contact your local child welfare agency** if you have witnessed or have evidence of abuse.

Where can I get more information about the use of restraint and seclusion in schools?

If your child has a disability, has or should have an IEP and has been restrained or secluded without your permission, you can contact Disability Rights Ohio Intake:

Disability Rights Ohio Intake Department

Voice: 614-466-7264 or 1-800-282-9181

TTY: 614-728-2553 or 1-800-858-3542