



DISABILITY RIGHTS OREGON

SECOND EDITION

Restraint & Seclusion  
of Children in Special Education

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NOTICE: This publication contains general information about legal issues and legal rights; however, it is not a substitute for legal advice. For specific information about restraint and seclusion of children in special education, contact Disability Rights Oregon or your attorney.

## Purpose of this Handbook

The purpose of the Handbook is to provide general information about the rights and protections of students with disabilities regarding restraint and seclusion in schools under the law.

In 2007, at our urging, the Oregon Department of Education (ODE) enacted rules limiting the use of restraint and seclusion to situations in which a student's behavior poses a threat of imminent, serious physical harm to the student or others. These rules also directed school districts to establish written policies and procedures with provisions for staff training, debriefing, and notification of the parent or guardian on the day of a restraint or seclusion incident.

A national investigation in 2009 by the National Disability Rights Network (NDRN) found that hundreds of students had been abusively restrained and secluded in their classrooms. Many were traumatized and humiliated. Some even died as a result. The victims were disproportionately students with disabilities.

Arne Duncan, the U.S. Secretary of Education, stated in a 2009 letter to school superintendents that the use of Positive Behavioral Interventions and Supports (PBIS), together with state rules strictly limiting the use of restraint and seclusion, could drastically reduce restraint and seclusion incidents in schools. The PBIS system looks at the reason the student is engaging in particular behaviors and then focuses on positive ways for the student to get those needs met. When PBIS is properly used, behavior is defused before it becomes unsafe behavior requiring restraint and seclusion.

While we believed many districts were trying to follow these rules, and to provide PBIS, we were concerned that some were not. DRO's Keep School Safe for Everyone Campaign, launched in 2010, had four objectives: educate parents of children with disabilities about the issue; examine the policies & procedures of all 197 school districts; monitor the implementation of those policies & procedures; and push for new legislation that includes enforceable standards regarding use of restraint and seclusion in Oregon's schools.

Our efforts culminated in an investigative report, *Keep School Safe for Everyone: A Report on the Restraint & Seclusion of Children with Disabilities in Oregon Schools*. The report made the case for passage of House Bill 2939 to regulate the use of restraint and seclusion in schools and was introduced by State Representative Sara Gelser (D-Corvallis) in the 2011 Oregon legislature.

HB 2939 passed, promoting school safety by requiring planning, training and parental involvement to regulate the use of restraint and seclusion in schools. It goes into effect in July 2012 and regulations at the state level should be in place at that time.

This Handbook summarizes Oregon Administrative Rules (OAR) 581-021-0061 through 581-021-0062. It is not a substitute for legal advice. Federal and state law can change at any time. Contact Disability Rights Oregon or consult with an attorney in your community if you require further information.

## What is restraint?

Oregon Administrative Rule (OAR) 581-021-0062(1)(a) defines "physical restraint" as "the restriction of a student's movement by one or more persons holding the student or providing physical pressure upon the student" and notes that "this does not include touching or holding a student without the use of force for the purpose of directing the student or assisting the student in completing a task or activity."

## What is seclusion?

OAR 581-021-0062(1)(b) defines "seclusion" as "the involuntary confinement of a student alone in a room from which the student is prevented from leaving" and notes that seclusion does not include "time out."

## What is a time out?

OAR 581-021-0062(1)(c) defines "time out" as "removing a student for a short time to provide the student with an opportunity to gain self-control, in a setting from which the student is not prevented from leaving."

## What is a functional behavior assessment (FBA)?

An FBA, also referred to as a functional behavior analysis, is the process of determining the cause, or function, of behavior before developing an intervention intended to address the behavior.

## What is a behavior support plan (BSP)?

A BSP is a comprehensive plan outlining specific steps based on the student's needs to promote success and participation in daily activities, routines and academics.

## Can my child be physically restrained or secluded away from other students while at school?

Yes, but only under strictly limited conditions that are now defined by regulations.

## When may restraint or seclusion be used?

For any student not on a BSP that includes restraint and/or seclusion, reasonable physical force may be used in an emergency, to maintain order or to prevent a student from harming him/herself, other students, and school staff or property.

If your child is on a BSP that includes restraint and/or seclusion, your child can only be restrained or secluded when your child's behavior poses a threat of imminent, serious, physical harm to him/herself or others and less restrictive interventions are not effective.

## What steps must be taken before restraint and/or seclusion can be included on my child's BSP?

Before restraint and/or seclusion can be included on your child's BSP, the district must first conduct a functional behavior analysis (FBA) of your child's behavior.

A thorough FBA conducted by a behavior specialist coupled with careful adherence to a positive BSP should eliminate the need for restraint and seclusion in most cases. If your child's BSP is to include restraint and/or seclusion, then all staff who work with your child must first be trained and certified.

## If it is likely that my child may be restrained or secluded, should restraint and/or seclusion be part of my child's BSP?

We recommend careful consideration before agreeing to have restraint and seclusion included on your child's BSP. It should be included as a last resort, only after other strategies have been found ineffective.

Every BSP that includes restraint and/or seclusion must include other effective, less restrictive measures that should be tried before restraint or seclusion are used, and it must include a threshold, which when reached, prompts a review of the BSP.

Students who have restraint and seclusion listed in their BSP do receive one additional protection: schools are not permitted to restrain or seclude them to maintain order or for property damage to the school.

## How long may restraint or seclusion last?

Only as long as your child poses a threat of imminent, serious physical harm to self or others.

Your child should not be restrained or secluded for extended periods of time. These are emergency interventions that should not be used to manage behavior on a regular basis.

If this is occurring, the team should be looking at what other changes can be made to your child's Individualized Education Program (IEP), placement and behavior plan.

## Is it OK for the school to use restraint or seclusion to make my child obey staff?

No. Restraint and seclusion may not be used to punish your child or force compliance with other staff demands such as sitting still or apologizing.

Even when there is a proper BSP that includes restraint and/or seclusion, your child cannot be restrained or secluded unless the behavior poses a serious threat of imminent, serious, physical harm to self or others and other less restrictive interventions are not effective.

## If my child's BSP includes restraint and/or seclusion, what training is required for teachers and staff who work with my child?

If your child's BSP includes restraint and/or seclusion, then all staff who work with your child must be trained and certified through an approved physical restraint and seclusion training program. Properly trained staff should be available to implement restraint or seclusion when necessary. ODE Q&A, pp. 10-11.

Staff training must include behavior support, prevention, de-escalation, and crisis response techniques.

## What happens after my child is restrained or secluded?

First, the school is required to give you verbal or written notification before the end of the day the incident occurred.

Then, within two school days, the district must discuss the incident with appropriate staff, including staff involved in the restraint or seclusion. This is called a debriefing. Its primary purpose is to review the incident and take any actions necessary to reduce the chances that such an incident will happen again.

You can ask to attend and are entitled to receive documentation (see below) of what was decided and discussed whether you attend or not.

The district must document the incident and provide you with the following information, at minimum:

- Who implemented the restraint or seclusion
- How long it lasted
- Where it happened
- A description of what your child was doing beforehand
- A description of the specific behavior that led to the restraint or seclusion
- What efforts were taken to de-escalate the situation
- What alternatives to restraint or seclusion were tried
- A summary of the debriefing

## Does my child have to be in special education or on a Section 504 plan to have a BSP?

According to ODE, a student who is not in special education or on a 504 plan and who is frequently restrained or secluded should be promptly referred for consideration of eligibility under the Individuals with Disabilities Education Act (IDEA) or Section 504 of the Rehabilitation Act.

Even if the student is not found eligible for either, the team should consider the development of a BSP. ODE Q&A, p. 13.

## What can I do if I think my child is being unnecessarily restrained or secluded?

Request an IEP meeting. Contact your district's special education director or the appropriate special education supervisor and explain your concerns, including any specific violations of the requirements discussed above. If this is unsuccessful, contact DRO or a local parent advocate for advice about further steps.

For more detailed information on special education, call us or visit our website for a copy of *Special Education: A Guide for Parents & Advocates*.

## RESOURCES

**Disability Rights Oregon (DRO) Report**, *Keep School Safe for Everyone: A Report on the Restraint & Seclusion of Children with Disabilities in Oregon Schools* (February 2011)

Website: [www.disabilityrightsoregon.org](http://www.disabilityrightsoregon.org)

**Government Accounting Office (GAO) Report**, *SECLUSIONS AND RESTRAINTS: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers* (GAO-09-719T May 19, 2009)

Website: [www.gao.gov](http://www.gao.gov)

**National Disability Rights Network (NDRN) Report**, *School is Not Supposed to Hurt: Update on Progress in 2009 to Prevent and Reduce Restraint and Seclusion in Schools*

Website: [www.ndrn.org](http://www.ndrn.org)

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**OSEP Technical Assistance Center on Positive Behavioral Interventions & Supports (PBIS)**

Website: [www.pbis.org](http://www.pbis.org)





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