SECLUSION AND RESTRAINT OF STUDENTS WITH DISABILITIES IN PENNSYLVANIA SCHOOLS

The use of restraints and seclusion in schools has rightfully been a focus of national attention for the last several years. According to a recent report issued by the U.S. Senate’s Health, Education, Labor, and Pensions (HELP) Committee, “there is no evidence that physically restraining or putting children in unsupervised seclusion in the K-12 school system provides any educational or therapeutic benefit to a child. In fact, use of either seclusion or restraints in non-emergency situations poses significant physical and psychological danger to students.”¹ While there is currently no federal law specifically addressing limitations on the use of these practices in the nation’s schools, there are regulations in Pennsylvania that address the use of restraint and seclusion in schools within the Commonwealth.

What Is a Physical Restraint?

A physical restraint occurs when someone uses physical force to restrain the free movement of a student’s body.

Not all physical contact between an adult and a student meets the legal definition of a restraint. For example, it is not a restraint for someone to briefly hold a student, without force, to calm or comfort him, guide him to an activity, or hold his hand to safely escort him. It is also not a restraint for someone to provide hand-over-hand assistance with feeding or completing a task, or to use techniques that have been prescribed by a medical professional for safety, therapeutic or medical reasons (such as physical therapy techniques) as long as those techniques have been agreed to by the student’s parents in his IEP.

When Is It Legal to Use Physical Force to Restrain a Student?

Restraints are a measure of last resort. They can only be used after other less restrictive measures, including de-escalation techniques (strategies to calm the student or situation) have been used.

An adult can restrain a student only when the student is acting in a way that is a clear and present danger to himself, other students or employees, and only when less restrictive measures and techniques have proven to be less effective.
What Is a Mechanical Restraint?

A mechanical restraint is another type of restraint. Mechanical restraints involve the use of a device – such as a device used for physical or occupational therapy, a seatbelt in a wheelchair or on a toilet for balance and safety, a safety harness on a bus, or a functional positioning device. Mechanical restraints are used to control involuntary movement or to assist with lack of muscular control.

When Is It Legal to Use a Mechanical Restraint on a Student?

Mechanical restraints may be used to prevent a student from injuring himself or others or to promote normative body positioning and physical functioning. They can only be used when recommended by a qualified medical professional and when agreed to by the student’s parents and listed in the IEP. They should not be used for behavioral reasons.

Are There Other Legal Requirements Related to the Use of Restraints?

Yes. Again, restraints are considered a measure of last resort and can be used only after other less restrictive measures are found to be ineffective.

Schools are required to use positive, rather than negative measures in responding to behaviors. A student with a disability who has behaviors that interfere with learning must have a positive behavior support plan. This plan must be developed by the student’s IEP team, must be based on a functional behavior assessment, and becomes part of the student’s IEP. The plan must utilize positive reinforcement and techniques to shape a
student’s behavior, ranging from positive statements to specific rewards. Behavior support plans must include research based practices that will enhance the student’s opportunity for learning and self-fulfillment. When a behavioral intervention is needed, it should be the least intrusive necessary.

To that end, the use of restraints can only be included in a student’s IEP if the student’s parent agrees and when all of the following conditions are met: 1) they are utilized with specific elements of positive behavior support; 2) they are used in conjunction with teaching socially acceptable alternative skills to replace the problem behavior; 3) staff are authorized and trained to use restraint; and 4) there is a plan for eliminating the use of restraint through the application of positive behavior support.

Restraints may not be included in a student’s IEP for the convenience of staff and may not be employed as punishment. When an IEP Team determines that it is necessary to include the use of restraints in an IEP, the types of restrictive procedures to be used should be fully explained and documented. It is not acceptable for the IEP to simply include an abbreviated reference, for example, the initials of a particular safety intervention technique or program.

Some schools insist on including restraints in IEPs as part of the school’s pre-designed program for all students, even if the student’s behavior is not dangerous to himself or others. This is not appropriate. Parents who encounter this problem should contact DRN or another advocacy resource.
What Happens After a Student with a Disability Is Restrained in School?

The school must notify the child’s parents. The Pennsylvania Department of Education recommends that schools notify parents of restraints within one school day. It is important to discuss the issue of when and how restraints will be reported with your child’s IEP team and to designate a timeframe within your child’s IEP. You want to be promptly informed so that you can determine whether your child needs medical care after he or she has been physically restrained.

Additionally, after a restraint has occurred, the school must schedule an IEP team meeting within 10 school days. The parents can waive their right to this meeting in writing. At the meeting, the IEP team must consider whether a functional behavior assessment, reevaluation, or both should be completed, whether to revise the student’s positive behavior support plan, and whether a change in school placement is necessary.

Importantly, the school must also report the restraint to the Pennsylvania Department of Education through their Restraint Information System of Collection (RISC), a secure website. The Pennsylvania Department of Education recommends that all school districts designate a person who will be responsible for reporting restraints to parents, key administrators, and PDE through the RISC website. PDE also recommends that any restraint that results in an injury to a student, staff person, or both be reported by e-mail to the Bureau of Special Education, sent to ezeisloft@state.pa.us within three school days.
**Are Certain Types of Restraints Legally Prohibited in Pennsylvania?**

Yes. Prone restraints – restraints where a student is held face down on the floor – are prohibited in Pennsylvania.

Additionally, Pennsylvania schools cannot use “aversive techniques” to address behaviors. Aversive techniques include: corporal punishment, punishment for behaviors that are a manifestation of the student’s disability, noxious substances, deprivation of basic human rights (such as withholding meals, water, or fresh air), suspensions that constitute a pattern, treatment of a demeaning nature, or electric shock.

Schools are also prohibited from secluding students with disabilities. Secluding a student in a locked room, box, or another space from which the student cannot readily exit is considered an aversive technique.

**Do the Rules Discussed Above Apply to Pre-School Special Education Programs for Eligible Young Children?**

Yes, the same rules apply to early intervention programs serving children who are three years old through school age.

**Do the Rules Discussed Above Apply to Charter Schools, Approved Private Schools and Licensed Private Academic Schools?**

If your child’s school district placed him in a private school through his IEP, all of the rules above apply. The rules also apply to charter schools.
What Can I Do If My Child’s School Does Not Seem Knowledgeable About These Requirements or Properly Trained to Conduct Restraints?

The law requires that school staff who conduct physical restraints be appropriately trained. The Pennsylvania Department of Education’s position is that “physical intervention should only be undertaken by staff persons who have successfully completed a comprehensive crisis management course that covers: crisis definition and theory; the use of de-escalation techniques; crisis communication; anger management; passive physical intervention techniques; the legal, ethical, and policy aspects of physical intervention use; decision making related to physical interventions and debriefing strategies.” (The Pennsylvania Department of Education’s Guidelines for De-Escalation and the Use of and Reporting of Restraints in Educational Programs: http://pattan.net-website.s3.amazonaws.com/files/materials/handouts/docs/De-Escalation.pdf).

If an adult restrains your child and you do not know whether that person is appropriately trained, ask what training the person has and ask for proof.

If you are not satisfied with the school’s response, you can file a complaint with the Pennsylvania Department of Education’s Bureau of Special Education, asking them to determine whether the person has received appropriate training. In fact, you can file a complaint with the Bureau of Special Education anytime your child’s school fails to comply with a legal requirement related to his IEP. The complaint form can be found at: http://odr-pa.org/wp-content/uploads/2012/11/Complaint-Form.pdf.
If you want to ask that your school district receive training and guidance on the use of positive behavior support and restraint, you can also contact your local Intermediate Unit (https://www.paiu.org/ius.php), your local PaTTAN Office (http://www.pattan.net/category/About/Offices/index.php), or Elizabeth Zeisloft at the Bureau of Special Education (717-783-6894).

What Can I Do If I Do Not Agree That the Use of Restraint Should Be Included in My Child’s IEP?

If you do not agree that the use of restraint should be included in your child’s IEP, believe the school is failing to provide appropriate positive behavior support, or do not believe the school is providing your child with an appropriate special education services from which he can meaningfully benefit, you have the right to request changes to his educational program (IEP) or to otherwise disagree with the program. When your school district refuses to make a change you have requested or proposes a change, they have to you a Notice of Recommended Educational Placement (NOREP). On the NOREP, there is a place where you can disagree with the school’s decision by requesting mediation or due process.

For more information on mediation and due process, and other ways to resolve special education disputes, go to the following publication, “How to Resolve Special Education Disputes,” at: http://drnpa.org/wp-content/uploads/2012/10/how-to-resolve-special-education-disputes.pdf.
Is the Law on Restraint and Seclusion the Same in Every State?

No. The legal requirements described above are specific to Pennsylvania. They can be found in Title 22, Chapter 14 of the Pennsylvania Code (Section 14. 133).

The use of restraint and seclusion on students with disabilities is an issue that has received national attention because of the number of students with disabilities who have been seriously injured in school. For more information, go to: http://www.ndrn.org/en/issues/abuse-and-neglect/restraint-and-seclusion.html.

Contact Information

If you need more information or need help, please contact the intake unit of the Disability Rights Network of Pennsylvania (DRN) at 800-692-7443 (voice) or 877-375-7139 (TDD). The email address is: intake@drnpa.org.

The mission of the Disability Rights Network is to advance, protect, and advocate for the human, civil, and legal rights of Pennsylvanians with disabilities. Due to our limited resources, the Disability Rights Network cannot provide individual services to every person with advocacy and legal issues. The Disability Rights Network prioritizes cases that have the potential to result in widespread, systemic changes to benefit persons with disabilities. While we cannot provide assistance to everyone, we do seek to provide every individual with information and referral options.
IMPORTANT: This publication is for general informational purposes only. This publication is not intended, nor should be construed, to create an attorney-client relationship between the Disability Rights Network and any person. Nothing in this publication should be considered to be legal advice.

PLEASE NOTE: For information in alternative formats or a language other than English, contact the Disability Rights Network at 800-692-7443 Ext. 400, TDD: 877-375-7139, or drnpa-hbg@drnpa.org.

This project is funded by Protection and Advocacy for Individuals with Mental Illness Act ($1.1 million) and Developmental Disabilities Assistance and Bill of Rights Act ($1.4 million) 100%.