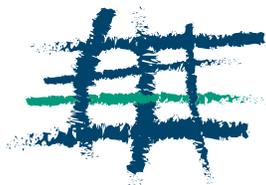


KEEP SCHOOL
SAFE
FOR
EVERYONE



A REPORT ON THE RESTRAINT & SECLUSION
OF CHILDREN WITH DISABILITIES
IN OREGON SCHOOLS



DISABILITY RIGHTS OREGON

Disability Rights Oregon's Policy Recommendations

Details can be found on pp. 9-14. Also see Appendix B, pp. 21-22.

Create enforceable standards with administrative oversight.

- Create an independent complaint resolution process for investigating the inappropriate use of restraint and seclusion and failure to provide required safeguards.
- Require districts to conduct an annual review of restraint and seclusion in their district, including staff and student injury rates. Require districts to submit the review to the Oregon Department of Education and provide access to the public.

Establish limits on the situations leading to restraint and seclusion and the types of restraints used.

- Prohibit the use of prone restraint, mechanical restraint and chemical restraint in the school setting.
- Allow physical restraint and seclusion only when a student's behavior poses a reasonable threat of imminent serious bodily injury to the student or others.
- Ensure that all Oregon students are protected from unnecessary restraint and seclusion.
- Provide for checks on restraints and seclusions lasting more than 30 minutes, including administrator approval and access to bathroom facilities and water.

Provide parents and guardians with pertinent information about interventions being used.

- Prompt verbal and written notice of the details of the incidents.
- Notice time, date and right to attend any debriefing session.
- Immediate notice of a restraint or seclusion lasting longer than 30 minutes.

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INTRODUCTION

State Representative Sara Gelser (D-Corvallis) has introduced House Bill 2939 in the 2011 Oregon legislature to regulate the use of restraint and seclusion in schools. As the Protection & Advocacy agency for Oregon, Disability Rights Oregon (DRO) believes the passage of this bill is imperative.

All children and staff need to be safe at school. Yet children in Oregon schools are repeatedly restrained and secluded in a misguided attempt to manage behavior.

Children are being held down by staff members, strapped into chairs and handcuffed and shackled. They are being secluded in closet-sized rooms, sometimes for hours at a time, without food, water or access to bathroom facilities while staff hold the doors shut.

This is happening in our state even though extensive research proves that restraint and seclusion are counterproductive measures that actually exacerbate the challenging behaviors they purport to address.

The consequences of these events can be grave.

Across the nation, children have died as the result of restraint use and committed suicide in school seclusion rooms. Others, including Oregon students, have suffered a range of physical injuries.

The psychological harm that occurs when a child is held down or forced to stay in a tiny room for hours can be long-lasting and destructive. This does not have to happen.

A behavioral approach called Positive Behavioral Interventions and Supports (PBIS) provides staff with a better way to interact and help children with challenging behaviors. 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. Research consistently shows that when PBIS is properly used, behavior is defused before it becomes unsafe, negating the need for use of restraint and seclusion in the majority of cases.

Despite all of the known risks, the use of restraint and seclusion in Oregon schools was completely unregulated until 2007, when the Oregon Department of Education (ODE) issued its first administrative rules for restraint and seclusion.

R E S T R A I N T
Restriction of a student's movement by one or more persons holding the student or applying physical pressure upon the student.



A school seclusion room in Alaska.



A school seclusion room in Kansas.



A pair of handcuffs.

S E C L U S I O N
Involuntary confinement of a student alone in a room from which the student is prevented from leaving.

The 2007 ODE rules have had minimal impact because they are unenforceable and do not require any state oversight.

Thus, they amount to little more than guidance to the school districts regarding policies districts should have in place when restraint and seclusion happens.

DRO gathered information over the last year from parents and schools about the use of physical restraint and seclusion in the state.

We found many districts had adopted appropriate policies and were trying to follow them. Some districts had not adopted any policies at all, and many had policies that did not comply with the administrative rules. This report details disturbing stories of Oregon children who were restrained and secluded with alarming psychological and physical impacts.

Although DRO's intervention was helpful to the children it represented, many others continue to be repeatedly subjected to lengthy restraints and seclusions.

Only legislation will provide parents and schools the tools they need to alter these practices without attorney intervention.

There is currently no federal law that restricts restraint and seclusion in schools. One year ago, a bill was introduced in both the U.S. House of Representatives and the U.S. Senate that would have helped ensure the safety of students and teachers nationwide. That bill passed the House, but stalled in the Senate and may not fare any better in the next Congress.

This means that Oregon children will continue to be subjected to unmonitored and harmful restraint and seclusion practices unless the Oregon legislature acts.

When school staff members are given the training and the tools they need to support a child, behavior can be managed without ongoing use of physical restraint and seclusion.

House Bill 2939 provides enforceable minimum safety standards, administrative review and independent oversight and will make Oregon's schools safe for all students and staff.

See pp. 9-14 and Appendix B, pp. 21-22 for details.

SERIOUS MISUSE OF RESTRAINT & SECLUSION

CONNOR

Multiple experts have agreed that Connor is unable to control his impulses, although they differ on his exact diagnosis.

In the early months of his first grade year when most students are learning the alphabet and basic addition, Connor was restrained a minimum of 14 times and held in a seclusion room at least 15 times.

His days could be long and hard.

In one, Connor was restrained and placed in the seclusion room for an hour and 20 minutes. At that point, he ran out of the seclusion room and was restrained and returned to the seclusion room for another 25 minutes.

One hour later, he was returned to the seclusion room for an unspecified period of time. He was released, and returned for the fourth time that day, this time for the remainder of the school day.

Of the six hours of this school day, Connor spent the majority of the hours in the seclusion room.

On another day, Connor tore down a play tunnel. This led to a seclusion lasting three hours. When he was released from the seclusion room, staff notes indicate that he “only lasted 40 minutes before he escalated again.” Staff brought him back to the seclusion room. Connor was so upset that he broke his own glasses.

The time Connor spent in seclusion does not tell the whole story.

During one 45-minute seclusion, he hit his head repeatedly against the wall and bit his hand until it bled. He was restrained and secluded twice more that day. During the last seclusion, he cried and hit his head against the wall multiple times.

His parents were not aware of how often these incidents were occurring, or for how long they lasted. Sometimes, staff members were injured in the course of the restraint.

This restraint and seclusion pattern continued for Connor. He was restrained and secluded for running around the classroom, playing with a stapler and slamming the classroom door.

Things came to a head the day Connor wrapped himself in a large piece of cloth and the special education director dragged him in the cloth to the seclusion room, injuring Connor. His parents removed him from school that day.



A seclusion room in an Oregon school.

Connor was placed in a different setting and quickly learned the skills he needed to be successful in an educational environment.

He is now attending his neighborhood school in a general education classroom for the entire school day and is successfully maintaining appropriate behavior in that setting.

EMILY

Emily, a nine-year-old girl with autism spectrum disorder and post-traumatic stress disorder, was placed into state custody due to abuse and neglect in her home, which included being locked in closets for extended periods of time.

In her new school district, she was placed in a self-contained behavior classroom, and was secluded 31 times in a closet-sized seclusion room during a five-month period at school.

These seclusions were particularly difficult for Emily as they triggered memories of her prior abuse.

Not one of those incidents was properly documented by the district staff, so we are unable to ascertain how long the seclusions lasted. We do know that on several occasions she had toileting accidents due to the length of the seclusion.

Emily was transferred to a different school in the regular education setting. While she still experienced some behavioral challenges, they were far less severe and far less frequent.

District staff found ways to successfully manage the behavior without the use of restraint or seclusion.

CARLOS

Carlos, a non-verbal 6-year-old boy with autism, began to cry and resist going to school after staff adopted a zero-tolerance behavior approach that required his immediate removal from the classroom whenever he touched someone inappropriately. This often involved physical restraint and involuntary removal.

Carlos' non-English speaking parents tried to raise concerns over unexplained facial bruises and a huge increase in the frequency and intensity of his nervous self-biting behavior to a point that he drew blood, but they were ignored until a DRO attorney became involved.

A review of his file revealed that during the month of September alone, Carlos had been secluded for at least 70 minutes and the subject of five incident reports that his parents could not read because of the language barrier. Records from subsequent months showed that he had been repeatedly restrained for 20-30 minutes a day.

The district agreed to intervention and extensive staff training by a skilled psychologist who also redefined the zero-tolerance policy so that only unsafe touching triggered removal, and then only for a 2-3 minute timeout.

The number and duration of Carlos' seclusions were cut in half within two months. His parents and staff report that the frequency and intensity of his self-biting are greatly reduced and that restraints are no longer needed.

ALL TOO COMMON

What happened to Connor, Emily and Carlos are not isolated incidents. None of these children had adequate behavior plans, and as a result, the situation continued to escalate, placing all three children and staff at risk.

In Connor's and Emily's cases, their parents did not receive timely, accurate information about the restraint and seclusion their child was experiencing. They were not informed about how long their child was secluded, what precipitated the incident, or how many times they had been restrained or secluded any given day. In Carlos' case, his parents received the information in a language they were not able to read. After DRO's involvement, all three of these cases were positively resolved by adding supports, staff training or a change in educational placement.

The numbers gathered from Oregon school districts that conducted annual reviews of the use of restraint and seclusion are startling.

Only 37 of Oregon's 197 school districts (less than 20%) compiled data on the use of restraint and seclusion for a one-year period. In those districts, there were approximately 4,500 restraint or seclusion incidents.

If these numbers are indicative of the other districts who did not submit data, Oregon's statewide restraint and seclusion rate would top 10,000 incidences for one school year.

In California, a state with 10 times the number of students, officials reported that students were subjected to restraint and seclusion 14,354 times in the course of one year.

One Oregon district reported two elementary school students who were restrained or secluded more than 90 times each in the course of one school year. Another district noted some restraints had lasted up to two hours at a time.

Approximately 75% of these incidents are happening to our youngest elementary school children.

DRO has had success reducing restraint and seclusion by intervening on behalf of children we represent. However, these numbers indicate there are many students subjected to these measures that we are not able to serve.

Legislation that places limits on the use of restraint and seclusion will help districts reach for other solutions for Oregon's children.

THE WAY FORWARD

POSITIVE BEHAVIORAL INTERVENTIONS AND SUPPORTS (PBIS)

Restraint and seclusion are reactive interventions that should be reserved solely for situations where a student’s behavior poses an imminent threat of serious bodily injury.

Schools employ these measures to control unacceptable behavior, with ineffective results. Research shows that restraint and seclusion have no therapeutic value, that they may actually increase the rate of problem behaviors, and that they often cause injuries to staff and children.

There is growing consensus in literature and practice that the use of Positive Behavioral Interventions and Supports (PBIS) is an effective way to prevent problem behaviors.

PBIS is a systematic, school-wide approach to controlling behavior that uses positive techniques designed to help a child learn appropriate behaviors.

It has a proven record of success in reducing patterns of dangerous, disruptive behaviors through the use of a functional behavior assessment (FBA) and a positive behavior support plan (BSP).

Schools where PBIS has been adopted and well-implemented have eliminated the need for restraint and seclusion in most situations, and have identified the need for more specialized supports and services in those rare situations where it is not enough.

PBIS works best in conjunction with state oversight that provides reasonable limits on the use of restraint and seclusion, a fact noted by Arne Duncan, the U.S. Secretary of Education, in a letter to all chief state school officers on July 31, 2009.

It is time for Oregon to enact legislation that provides for adequate oversight and enforcement measures regarding the use of restraint and seclusion in our schools. House Bill 2939 does just that, and will make our schools a truly safe learning environment for all children and staff.

F U N C T I O N A L BEHAVIOR ASSESSMENT

The process of determining the cause, or function, of behavior before developing an intervention intended to address the behavior.

BEHAVIOR SUPPORT PLAN

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

WHY OREGON IS FALLING SHORT

Prior to 2007, there were no limits on the use of physical restraint and seclusion in Oregon schools despite the fact that mental health facilities had previously recognized the ineffectiveness and harm associated with these methods.

The 2007 administrative rules crafted by the Oregon Department of Education (ODE) were a step in the right direction and established a few principles to help limit unnecessary restraints and seclusions in our schools.

Main Principles of the 2007 Rules

1. **Define restraint & seclusion**
2. **Require that school districts have a restraint & seclusion policy**
3. **Set out minimum standards for that restraint & seclusion policy**

For the full text of the rules, see Appendix A, pp. 18-20.

The major flaws of the current rules are the lack of both oversight and enforceability.

LACK OF OVERSIGHT

Presently, if a district fails to adopt a policy regarding restraint and seclusion, or if its policy does not comply with the minimum standards outlined in the administrative rules, neither ODE nor any other agency has the authority to address that problem.

In recognition of the lack of oversight, DRO sent a public records request to each school district in March 2010, requesting a copy of the district's restraint and seclusion policy, and documentation of the district's annual review of restraint and seclusion use. In response, we received information from 130 of Oregon's 197 districts.

Our findings are evidence that the current administrative rules have been minimally effective due to some crucial shortcomings that require a legislative fix.

Fifteen districts acknowledged having no policy in place as of March 2010. An additional 25 districts, including several of our largest school districts, failed to include or misstated a significant provision of the 2007 rules; most were missing more.

Sixty-seven districts did not respond to our public records request, so we don't know if they have a policy, and if they do, whether that policy complies with the administrative rules.

For a complete listing of provisions missing from the district policies, see Appendix C, pp. 23-24.

LACK OF ENFORCEABILITY

Currently, ODE does not have the power to independently review and rectify district failure to follow the rules in individual cases.

Connor's case (see p. 3) provides a telling example. His district violated the restraint and seclusion administrative rules in seven major areas, repeatedly, for much of his first grade year at school. For instance, only two of the 29 incidents involving restraint and seclusion were properly documented by district staff.

To address this situation, DRO filed a complaint with ODE, requesting that they investigate and provide guidance to the district about areas of non-compliance.

ODE'S RESPONSE | November 13, 2009:

“Though Oregon has adopted administrative rules concerning the use of physical restraint and seclusion in Oregon schools, the Department is not authorized to investigate the alleged violation of those rules through the special education complaint investigation process.”

House Bill 2939 seeks to solve these problems and provide school districts with a compelling reason to comply for the first time by establishing minimum standards for districts to meet and providing administrative oversight and enforcement.

HOW TO MAKE SCHOOL SAFE FOR EVERYONE

ENSURE OVERSIGHT & ENFORCEABILITY

House Bill 2939 sets out substantive standards that districts will need to satisfy rather than merely telling districts to adopt a policy.

In addition, when there is a dispute over compliance, the proposed legislation will ensure that parents have access to a meaningful Oregon Department of Education (ODE) complaint procedure to address any violations.

Oversight and enforceability are essential to successfully reducing the use of restraint and seclusion in our schools. When schools are not following the administrative rules or there is a dispute regarding how restraint or seclusion is being used, we need an impartial third party to investigate the issues and determine what needs to change.

Given the stakes, Oregon needs legislation that authorizes and charges ODE with investigating and correcting these violations.

PROHIBIT DANGEROUS PRACTICES

Prone restraints and other restraints that restrict breathing can be deadly. House Bill 2939 will prohibit the use of prone restraint in Oregon schools.

In 2009, the Government Accounting Office (GAO) testified before the U.S. House of Representatives Committee on Education & Labor regarding their investigation of death and abuse of children through the use of restraint and seclusion at schools and treatment centers.

The GAO investigated 10 cases: four involving children who died as a result of being placed in a prone restraint. Eight states have already prohibited the use of restraints that impede a child's ability to breathe due to the inherent risks.¹ Oregon, however, still permits this dangerous method of restraint.

Alex is a nine-year-old, 55-pound foster child. Because of his history of experiencing abuse and neglect, he has difficulty regulating his emotions.

He was placed in a day treatment program when he moved into his adoptive mother's home. At the program, he was repeatedly placed in a prone restraint, face down, with as many as four staff members holding his arms and legs for as long as 20 minutes at a time.

With DRO representation, Alex moved to a different education setting where no prone restraints were used. He has achieved his behavior goals and begun to integrate into the general education setting.

¹ GAO testimony before the Committee on Education and Labor, U.S. House of Representatives. *Seclusions and Restraints: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers* 4.

BAN MECHANICAL & CHEMICAL RESTRAINTS

Mechanical and chemical restraints are not currently covered under the definition of physical restraint in the Oregon administrative rules, and thus do not trigger any of the rules' protections.²

The proposed legislation will end the use of mechanical and chemical restraints as substitutes for effective behavior management.

Under the current administrative rules, these restrictions are not deemed "restraints." Parents are not required to be notified about the use of these methods. There is no requirement for documenting use, and no limits on when students can be mechanically restrained.

Clearly, this is an area that needs regulation.

MECHANICAL RESTRAINTS USED ON OREGON CHILDREN

STRAPPED

INTO a wheelchair

Placed in handcuffs

OR SHACKLES

Duct-taped

TO a CHAIR



Brooke is a 15-year-old girl who experiences autism. She can walk and run as well as most other children. Brooke loves elevators, and looks for them wherever she goes.

Last year, with proper staffing, Brooke could be redirected when she attempted to leave the classroom to find the school's elevator.

This year, when staffing in her classroom was cut and the number of students significantly increased, staff strapped her into a wheelchair for up to 80% of her school day to keep her in the classroom. Brooke is non-verbal and was unable to communicate to her mother what was happening at school.

² Chemical restraints are defined as the use of medications or drugs to modify a student's behavior.

NOTIFY PARENTS: WHY, HOW OFTEN & HOW LONG

Under House Bill 2939, parents must be promptly notified if their child is restrained or secluded. Parents need information about why, how often, and how long their child is being restrained or secluded.

Without this information, it is impossible for parents to be informed team members making decisions about what supports their child might need, whether their child is in the right placement, and whether the behavior supports in place are working.

The current administrative rules' unenforceable requirement regarding parental notification is not working; consistently, schools are failing to inform parents of the frequency or amount of time that their child spends in restraint or seclusion.

In Connor's case (see p. 3), this meant that his parents received phone calls stating that he was having issues at school and they should come and pick him up. When they arrived, they often found him in the seclusion room, but they were never informed how much time he had spent in seclusion before they had been called. Had they known how serious things had become at school they would have pushed for a change in his services far earlier.

Parents need to receive written incident reports that provide the information and context necessary for them to assess what actually occurred.

INCLUDE PARENTS: DEBRIEFING SESSIONS

House Bill 2939 requires that parents be provided notification of the debriefing session that must occur after their child is restrained or secluded and given an opportunity to participate, with adequate notice.

DEBRIEFING

The review of an incident of restraint or seclusion followed by the identification of necessary actions staff will take to reduce the chances that such an incident will reoccur.

Though staff are currently required to debrief incidents involving restraint and seclusion within two days, there is no requirement that parents be invited to participate.

Most parents are not even aware of the required debriefing sessions. This is a mistake. Parents can provide valuable information on de-escalation strategies that are effective in other settings and possible triggers for behaviors. They can also gain important information from staff about the incidents.

ALLOW BATHROOM ACCESS

The proposed legislation will require that children be allowed bathroom access when restrained or secluded.

DRO has seen a number of cases in which very young children were secluded for long periods and denied bathroom access with the predictable and degrading result of the children having toileting accidents.

Jason is a nine-year-old boy who was restrained and/or secluded for more than 24 hours in the first 10 weeks of school.

Twenty-two of those seclusions lasted for more than 30 minutes, and some lasted more than two hours.

At times, he urinated in the seclusion room due to the length of the seclusions.

PROTECT ALL STUDENTS

Presently, only school districts are required to adopt policies regarding restraint and seclusion.

The administrative rules do not apply to therapeutic schools or programs run by the Educational Service Districts (ESDs) that serve many of Oregon's most severely impaired children.

Because these programs are not covered by mental health regulations either, students within them are completely unprotected from inappropriate restraints and seclusions. Predictably, these are some of the children who suffer the most severe consequences of inappropriate restraints and seclusions.

One therapeutic school and one ESD program together accounted for 61% of the restraints and seclusions (248 incidents) logged by three metro-area school districts during the 2008-2009 school year.

Students in these programs deserve the same protections as children in schools operated by their local school districts.

COLLECT & ANALYZE DATA

Under the new legislation, school districts will be required to collect data on the use of restraint and seclusion in their districts and report that data to ODE each year.

Annually reviewing the use of restraint and seclusion allows a district to determine if current district practices have been effective in minimizing its use.

Currently, districts are required to "have a documented process for annual review." That provision is possibly the most neglected and misunderstood component of the 2007 administrative rules, as we found only 37 school districts compiled data.

That means that 160 districts do not reliably collect, report, or analyze data about restraint and seclusion use.

A meaningful annual review that scrutinizes data collected over the course of the year is essential if districts are to effectively strive to reduce the use of restraint and seclusion in their district. Districts that did collect and analyze data on restraint and seclusion use were able to note trends that emerged. These trends included the duration of restraints, the number of untrained staff who used restraints, and the concentration of restraints in one elementary school in the district. Districts were also able to identify holes in their training programs about effective use of sensory rooms, de-escalation techniques, and using restraint as a last resort.

See pp. 15-16 for examples of districts that performed the necessary comprehensive analysis and as a result successfully overhauled their restraint and seclusion use.

TROUBLING TRENDS

DURATION

OF restraints

Numerous

UNTRAINED staff

using restraints

Concentration

OF restraints in ONE

elementary

S C H O O L

EFFECTIVE SOLUTIONS

SENSORY

r o o m s

De-escalation

TECHNIQUES

RESTRAINT AS

a LAST resort

TRACK STAFF INJURIES

The proposed legislation requires districts to report on staff injury in the course of restraints and seclusions, as both pose serious safety issues for staff as well as children. Many staff members have been injured in the course of attempting to restrain a child in Oregon classrooms.

While we want to make sure that children are not restrained and secluded at the current rate, we do not want to achieve that goal at the expense of staff members' safety.

We do not have to sacrifice the safety of staff to ensure that of students.

Other states have found that when restraint and seclusion incidents have been reduced, staff injury rates also fell because staff learned techniques to diffuse escalated behavior before it becomes dangerous.

Staff should be provided with the tools they need to work with students safely, and structures should be in place to allow them to come back to the table, talk about what's not working, and reach for better solutions.

IT CAN BE DONE

EVAN

Evan, a seventh-grader with Down syndrome, was restrained eight times in the first eight weeks of school for hiding in a storage closet when he became over-stimulated by the noise in the classroom, and for attempting to use the school's elevator.

Evan moved to a different class in the district with staff highly skilled in implementing positive behavioral supports, and he thrived.

No physical interventions were required, and he learned skills to ask for breaks when situations were over-stimulating.



A group of elementary school children paying attention to their teacher and enjoying learning.

McMINNVILLE

The McMinnville School District has a population of 6,030 students, a mid-sized district in Oregon. In 2007-08, the district collected data on the use of restraint and seclusion and found that its students had been restrained 72 times and secluded seven times—all at the elementary school level.

The district looked at trends and found that students at one school were restrained more often than at its other elementary schools.

McMinnville took action and began a concerted effort to have its staff rely on more effective behavioral interventions, producing stunning results.

In 2008-2009, restraint numbers fell from 72 the previous year to just 15 in the entire district.

One elementary school that had reported 54 restraints in 2007-2008 had just one the following year.

The district attributes this impressive 84% decline in the use of restraints to:

- Increased staff development in restraint and seclusion policy and procedures
- A switch in the pre-escalation training approach used by the district
- Staff development district-wide in autism strategies and sensory needs

WISCONSIN

McMinnville's story is not an aberration. In Wisconsin, a school that served students with disabilities focused on reducing the use of restraint and seclusion in 2009.

69% DECLINE in restraints

77% decrease IN SECLUSION minutes

38% DROP in assaults

These results were achieved in the first year of a program that included:

- School-wide established expectations
- A social skills curriculum
- Procedures for teaching positive behaviors
- Low-level responses to low-level misbehavior
- Individual behavior plans

The following year, the school completely eliminated physical restraint and seclusions.³

³ DIANNE GREELEY ET AL., *Out of Darkness, Into the Light* 28.

STUDIES CITE DRAMATIC RESULTS

This anecdotal evidence is supported by extensive studies in mental health facilities for youth where similar successes have occurred. In one study, the authors examined residential mental health programs that attempted to reduce the numbers of restraints and seclusions used in their facilities.

Across many settings, the programs accomplished dramatic reductions in the use of those interventions, and as the numbers of restraints dropped, so did the number of physical assaults on peers and adults in the programs.⁴

⁴ RONALD W. THOMPSON ET AL., *A Case Study of an Organizational Intervention to Reduce Physical Interventions*, in FOR OUR OWN SAFETY 167, 178-181 (Michael A. Nunno et al. eds., 2008).

CONCLUSION

Over three years have passed since the administrative rules on restraint and seclusion went into effect.

Ample evidence has mounted in the intervening years that the current rules do not provide adequate protection for our students and staff.

There are districts that have yet to develop policies, and others whose policies fall far short of providing the protections set out in the current administrative rules. The numbers of restraints and seclusions used in Oregon schools are staggering, and students and staff members are being injured in the process.

The time is now to develop and implement approaches that safely and positively address the behavior needs of children and to commit to decreasing the use of restraint and seclusion in our schools.

DRO urges the Oregon legislature to pass House Bill 2939 to prevent and reduce the use of restraint and seclusion in schools so our children and our teachers may enjoy a safe learning and teaching environment.

APPENDIX A: Current Oregon Administrative Rules (OARs)

581-021-0060

Discipline Procedures, Prohibition of Corporal Punishment

- (1) School district boards shall establish fair and reasonable procedures for discipline, suspension, or expulsion.
- (2) No student in Oregon shall be subjected to corporal punishment in any public elementary or secondary school. A school administrator is not authorized to waive the prohibition against corporal punishment based upon the request of a parent or guardian.

Stat. Auth.: ORS 339

Stats. Implemented: ORS 339.250

Hist.: 1EB 132, f. 5-19-72, ef. 6-1-72; 1EB 259, f. 1-31-77, ef. 2-1-77; EB 27-1989(Temp), f. & cert. ef. 9-8-89; EB 19-1990, f. & cert. ef. 4-5-90

581-021-0061

Corporal Punishment Defined

- (1) Corporal punishment is any act which willfully inflicts or willfully causes the infliction of physical pain on a student.
- (2) Corporal punishment does not include the emergency use of reasonable physical force by a school administrator, teacher, school employee, or volunteer as necessary to maintain order or to prevent a student from harming him/herself, other students, and school staff or property.
- (3) Corporal punishment does not include physical pain or discomfort resulting from or caused by:
 - (a) Training for or participation in athletic competition voluntarily engaged in by a student;
 - (b) Recreational activity voluntarily engaged in by a student;
 - (c) Physical exertion shared by all students in a teacher directed class activity, which may include, but is not limited to, physical education exercises, field trips, or vocational education projects; or
 - (d) Physical restraint or seclusion:
 - (A) As part of a behavior support plan in a student's individual education program which has been developed with parent participation as required in Chapter 343, or, with parent participation, in a student's Section 504 plan or other behavior support plan;
 - (B) That includes an individual threshold (number of incidents within a specific time period) for reviewing the plan; and
 - (C) Is carried out according to district policies and procedures under OAR 581-021-0062, which must be provided to the parents upon request when a plan is developed that includes the use of physical restraint and/or seclusion.

Stat. Auth.: ORS 339

Stats. Implemented: ORS 339.250

Hist.: ED 25-1989(Temp), f. & cert. ef. 9-8-89; EB 20-1990, f. & cert. ef. 4-5-90; ODE 17-2006, f. 12-11-06, cert. ef. 12-12-06

581-021-0062

Use of Physical Restraint and Seclusion

(1) Definitions:

(a) "Physical restraint" means the restriction of a student's movement by one or more persons holding the student or applying physical pressure upon the student. "Physical restraint" 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;

(b) "Seclusion" means the involuntary confinement of a student alone in a room from which the student is prevented from leaving. Seclusion does not include "time out" as defined in subsection (c);

(c) "Time out" means a removing a student for a short time to provide the student with an opportunity to regain self-control, in a setting from which the student is not physically prevented from leaving.

(2) Effective September 1, 2007, school district boards must establish written policies and procedures on the use of physical restraint and seclusion. These policies and procedures must include, at a minimum:

(a) The use of physical restraint or seclusion only:

(A) As part of a behavior support plan when other less restrictive interventions would not be effective and the student's behavior poses a threat of imminent, serious, physical harm to the student or others; or

(B) In an emergency by a school administrator, teacher, school employee, or volunteer as necessary to maintain order or to prevent a student from harming him/herself, other students, and school staff or property in accordance with OAR 581-021-0061(2).

(b) The use of physical restraint and/or seclusion only for as long as the student's behavior poses a threat of imminent, serious physical harm to the student or others;

(c) Any room used for seclusion of a student must allow staff full view of the student in all areas of the room, and be free of potentially hazardous conditions such as unprotected light fixtures and electrical outlets;

(d) A provision that staff will continuously monitor a student's status during physical restraint and/or seclusion;

(e) Identification of the training program(s) or system(s) of physical restraints and seclusion selected for use in the district, which must include behavior support, prevention, de-escalation, and crisis response techniques;

(f) A provision that only staff who are current in the required training in accordance with the training program selected under (e) will implement physical restraint or seclusion with a student except as described in OAR 581-021-0061(2)

(g) Verbal or written notification of parents or guardians following the use of physical restraint or seclusion by the end of the day the incident occurred;

(h) Within two school days of use of physical restraint or seclusion, a documented debriefing by appropriate staff, including staff involved in the restraint or seclusion;

(i) Documentation requirements for the use of any physical restraint and seclusion that meets the definitions in subsection (1), including:

- (A) Name of the student;
 - (B) Name of staff member(s) administering the physical restraint or seclusion;
 - (C) Date of the restraint or seclusion, and the time the restraint or seclusion began and ended;
 - (D) Location of the restraint or seclusion;
 - (E) A description of the restraint or seclusion;
 - (F) A description of the student's activity immediately preceding the behavior that prompted the use of restraint or seclusion;
 - (G) A description of the behavior that prompted the use of restraint or seclusion;
 - (H) Efforts to deescalate the situation and alternatives to restraint or seclusion that were attempted;
 - (I) Information documenting parent contact and notification; and
 - (J) A summary of the debriefing in section (h).
 - (j) A documented process for annual review of the use of physical restraint and seclusion in the district to ensure that restraint and seclusion are used in accordance with the district's policies and procedure; and
 - (k) A procedure for receiving and investigating complaints regarding restraint and seclusion practices which may be the same as in OAR 581-022-1940. This does not preclude complaints under other applicable provisions.
- (3) Educational programs that are located in facilities subject to different rules regarding use of physical restraint and seclusion, such as long-term care and treatment programs, youth detention education programs, and youth corrections education programs, are not subject to these rules.

Stat. Auth.: ORS 326.250

Stats. Implemented: ORS 339.250

Hist.: ODE 17-2006, f. 12-11-06, cert. ef. 12-12-06

APPENDIX B: Side-by-Side Comparison of HB 2939 & Current Rules

PROPOSED REFORMS: HOUSE BILL 2939	CURRENT RULES: OAR 581-021-0060 through 0062
Requirements apply to all Public Education Programs including early childhood education, elementary school or secondary school, an educational service district or another educational institution that receives, or serves students who receive, funds from the Department of Education. HB 2939, Section 1, (2)	Current rules only cover school districts. Do not cover early childhood programs unless run by a school district. Do not cover educational services district programs. Do not cover private programs, such as therapeutic day schools that serve public school students. OAR 581-021-0062(2).
Defines physical restraint as the restriction of a student's movement by one or more persons holding the student or applying physical pressure upon the student. Section 1(1).	Same definition. OAR 581-021-0062(1)(a).
Defines seclusion as the involuntary confinement of a student alone in a room from which the student is physically prevented from leaving. Section 1(3).	Same definition. OAR 581-021-0062(1)(b).
Bans the use of mechanical restraint, chemical restraint or prone restraint. Section 2(1).	Do not place any limits on the use of mechanical, chemical or prone restraint.
Allows use of physical restraint or seclusion when a student's behavior poses a reasonable threat of imminent serious bodily injury to the student or others and less restrictive interventions would not be effective. Section 3(1).	Have a two prong standard: 1. Physical restraint and/or seclusion allowed in an emergency when necessary to maintain order or to prevent a student from harming him/herself, others or school property OR 2. as part of a behavior support plan when the student's behavior poses an imminent threat of serious injury to him/herself or others. OAR 581-021-0062(2)(a).
Requires staff utilizing restraint to be trained in State approved training program except in an emergency. Section 3(2)(b).	Require staff to be trained in a training program identified by the district except in an emergency. OAR 581-021-0062(2)(f).
Restraint and seclusion can last only as long as the student is a danger to him/herself or others. Section 3(2)(a).	Same standard. OAR 581-021-0062(2)(b).
Student must be continuously monitored for the duration of the restraint or seclusion. Section 3(2)(c).	Same standard. OAR 581-021-0062(2)(d).
Student must be provided access to the bathroom and water if the restraint or seclusion lasts longer than 30 minutes. Section 3(3)(a).	No similar provision.
Staff must immediately attempt to notify parents/guardians if the restraint or seclusion lasts more than 30 minutes. Section 3(3)(b).	No similar provision.
A school administrator must provide written authorization for the continuation of any restraint or seclusion beyond 30 minutes. Section 3(3)(c).	No similar provision.
Parents/guardians must be verbally or electronically notified by the end of the school day during which a restraint or seclusion occurs. Section 4(2)(a).	Parents/guardians must be notified verbally or in writing by the end of the day an incident occurs. OAR 581-021-0062(2)(g).

PROPOSED REFORMS: HOUSE BILL 2939	CURRENT RULES: OAR 581-021-0060 through 0062
Parents/guardians must be provided written documentation of the incident within 24 hours of the incident. Section 4(2)(b).	Documentation of the incident is required, but districts are not required to provide a copy to parents/guardians, and no timeline is provided for when the documentation is completed. OAR 581-021-0062(2)(i)
If the person administering the restraint or seclusion had not received training, written notice of this fact must be provided to the district superintendent and parents/guardians of the student. Section 4(3).	No similar provision.
Debriefing meeting must be held within two school days. Parents/guardians must be notified of the meeting and their right to attend. Written notes must be taken at the meeting and a copy provided to the parents/guardians. Section 4(4) and (2)(c).	A “documented debriefing” must be held within two school days. Parents/guardians are not notified of the meeting, and there is no requirement to provide notes to parents/guardians. OAR 581-021-0062(2)(h).
If a student is restrained or secluded five times in one school year, a team, including student’s parents/guardians, must review and revise the student’s behavior plan. Section 4(5).	For students who have restraint and seclusion as part of a behavior support plan, the plan must include an individual threshold for review. OAR 581-021-0061(3)(d)(B).
If serious bodily injury or death of a student occurs in relation to the use of physical restraint or seclusion, written notification shall be provided to DHS within 24 hours of the incident. Section 4 (6).	No similar provision.
If serious bodily injury or death of a staff person occurs in relation to the use of physical restraint or seclusion, written notification must be provided within 24 hours to the union representative (if applicable) and the district superintendent. Section 4(7).	No similar provision.
The State Board of Education shall adopt a process for receiving and substantiating a complaint for violations of this section. Section 4(9).	Districts must have a procedure for receiving and investigating complaints regarding restraint and seclusion practices. OAR 581-021-0062(2)(k).
Each district must prepare an annual report detailing the use of physical restraint and seclusion for the preceding school year and submit that report to the Superintendent of Public Instruction. <ul style="list-style-type: none"> • Details the information that must be included in the annual report • Report must be made available to the public. Section 5. 	Districts must have a documented process for annual review of the use of physical restraint and seclusion in the district. There is no requirement for distribution. OAR 581-021-0062(2)(j).
Districts will use training programs approved by the Department of Human Services that: <ul style="list-style-type: none"> • teach evidence based techniques shown to be effective in the prevention and safe use of physical restraint and seclusion and • provide evidence-based skills training related to positive behavior support, conflict prevention, de-escalation and crisis response techniques. Section 6. 	School districts must identify a training program or system of physical restraints and seclusion for use in the district which must include behavior support, prevention, de-escalation, and crisis response techniques. OAR 581-021-0062(2)(e).

APPENDIX C: Table of Non-Compliant School District Policies

Oregon has 197 school districts. **Only the 130 districts that responded to DRO's public records request are reflected in the table below.** This table lists the provisions the 2007 Oregon Administrative Rules (OARs) require districts to include in their restraint and seclusion policies, and the number of districts that failed to include those provisions or misstated those provisions in some material way.

Required Provision	# of Non-Compliant Districts
<p>In an emergency, a school administrator, teacher, school employee, or volunteer can use physical restraint or seclusion to:</p> <ul style="list-style-type: none"> • Maintain order or • Prevent a student from harming him/herself or others, or from damaging district property. 	<p>4</p>
<p>If the student has a behavior support plan that lists restraint or seclusion as an intervention, then restraint or seclusion can only be used when:</p> <ul style="list-style-type: none"> • Other less restrictive interventions would not be effective and • The student's behavior poses a threat of imminent, serious, physical harm to the student or others. 	<p>9</p>
<p>Parents must be notified, either verbally or in writing, that their child was secluded or restrained by the end of the day on which the incident occurred.</p>	<p>17</p>
<p>The policy must identify a state-approved crisis intervention training program the district will use to train staff. That program must include behavior support, prevention, de-escalation, and crisis response techniques.</p>	<p>19</p>
<p>Only staff who have been trained in how to administer physical restraint and seclusion, and are current in that training, can use physical restraint or seclusion, except in emergency situations.</p>	<p>3</p>

Required Provision	# of Non-Compliant Districts
Each incident that involves the use of any physical restraint or seclusion must be documented. ⁵	17
Any room used for seclusion must allow staff to have full view of a student in all areas of the room, and be free of potentially hazardous conditions.	8
Staff must continuously monitor a student's status during physical restraint and seclusion.	8
Restraint and seclusion can only last for as long as the student's behavior poses a threat of imminent, serious physical harm to the student or others. ⁶	125
Within two days of any incident that involves physical restraint or seclusion, the staff involved in the incident must meet to debrief the incident and staff must document that meeting.	18
Districts must have a documented process for conducting an annual review of the use of restraint and seclusion in their district to ensure that restraint and seclusion are used in accordance with the district's policies and procedures.	3
Before restraint or seclusion can be listed as an intervention used on a behavior plan, a functional behavior assessment must be completed.	19

⁵ Documentation must include: names of staff members administering the restraint or seclusion, date and time the restraint or seclusion began and ended, location, and description of restraint or seclusion used.

⁶ The Oregon School Board Association (OSBA) provides districts with sample policies and procedures. The OSBA sample policy complies with all of the current regulations except this provision. OSBA mistakenly states that students can be restrained so long as they pose a threat of imminent serious physical harm to the student, others or **property**. This is clearly a fine point of the law, although not inconsequential.

APPENDIX D: Glossary

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

Debriefing Within two school days of an incident involving restraint or seclusion, the district must discuss the incident with appropriate staff, including staff involved in the restraint or seclusion. Its primary purpose is to review the incident and have staff take any actions necessary to reduce the chances that such an incident will happen again.

Functional behavior assessment (FBA) The process of determining the cause, or function, of behavior before developing an intervention intended to address the behavior.

Positive Behavioral Interventions and Supports (PBIS) System A system that 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 properly used, behavior is defused before it becomes unsafe behavior requiring restraint and seclusion.

Restraint Restriction of a student's movement by one or more persons holding the student or applying physical pressure upon the student.

Seclusion Involuntary confinement of a student alone in a room from which the student is prevented from leaving.

Seclusion room An empty, closet-sized room with a small window in the door that locks from the outside used to seclude a student.



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