

Seclusion and Restraint

Legal Issues and
Lessons Learned

Stephen Rawson

THARRINGTON SMITH, LLP

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Candy White



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CURRENTS

WASHINGTON

FAIR

48°

WIND CHILL 43°

\$575K settlement approved after Tippecanoe student alleged he was repeatedly locked in closet

Mat-Su School District sued over restraint and seclusion practices

Justice Department Settles With Maryland County Over Use of Restraint and Seclusion in Schools

An investigation revealed more than 7,000 incidents of seclusion and restraint, with all incidents of seclusion and 99% of the cases of restraint involving a student with disabilities.

Family of child with autism receives \$325,000 in settlement with LaPorte school district

Kansas' largest school district must overhaul student discipline after DOJ probe

Kansas student with special needs locked in cage, compared to 'animal,' lawsuit says



The Obligatory Disclaimer

This is an informational presentation about general legal issues, not specific legal advice on any given case or individual. Answers to questions should be considered responses to general topics or hypothetical scenarios. Please contact your Board's attorney for specific legal advice on individual matters.



Roadmap for Today's Presentation

- Restraint - Legal Definitions and Requirements
- Restraint – Scenarios and Questions
- Seclusion – Legal Definitions and Requirements
- Seclusion – Scenarios and Questions
- Federal and State Reporting Issues
- Building a Sustainable Compliance Model for Seclusion & Restraint

Restraint



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Physical Restraint

Definition (NCGS 115C-391.1(b)(8))

- “the use of physical force to restrict the free movement of all or a portion of a student's body”
 - Physical force
 - Restrict free movement
 - All or a portion

Physical Restraint – Permissible Use

Default rule: physical restraint of a student is NOT a reasonable use of force, except in ten specific circumstances:

- To obtain a weapon or dangerous object from a student
- To maintain order / break up a fight
- For self-defense
- To escort a student safely to another location
- To prevent imminent destruction of property

Physical Restraint – Permissible Use

Default rule: physical restraint of a student is NOT a reasonable use of force, except in ten specific circumstances:

- To ensure safety of another person
- To teach a skill
- To calm or comfort a student
- To prevent self-injurious behavior
- As provided for in a student's IEP or 504 plan or BIP

Physical Restraint – “Reasonably Needed”

All exceptions are limited by reasonableness. This means:

- Only use the type of restraint necessary to achieve the objective
- Use the minimum force necessary to achieve the objective
- End the restraint as soon as possible

Restraint can **NEVER** be used as a disciplinary consequence

Physical Restraint – Specific Scenarios

Scenario: A student physically attacks another in the classroom.

Can the teacher physically restrain the attacker?

YES. The maintain order / break up a fight exception applies.

Can the teacher hold the attacker's hands by his sides after he is calm?

NO. This is a disciplinary consequence and is not permitted.

Physical Restraint – Specific Scenarios

Hold/guide a student's hand while they cut a shape out of a workbook?

YES (teach a skill)

Place hands on a student's shoulders to hold them in their chair when they keep getting up to walk around the classroom?

NO (discipline)

Hold a student by the upper arm while crossing the parking lot to get to a bus?

YES (escort safely)

Hold a student by the upper arm to force them to stand in line while waiting to enter the cafeteria?

NO (discipline)

Mechanical Restraint

Definition (NCGS 115C-391.1(b)(8))

- “the use of any device or material attached or adjacent to a student's body that restricts freedom of movement or normal access to any portion of the student's body and that the student cannot easily remove”

Mechanical Restraint – Examples



- Seat belts
- Handcuffs
- Harnesses
- Weighted Vests
- Leg Braces

Mechanical Restraint – Permissible Use

Default rule: mechanical restraint of a student is NOT a reasonable use of force, except in five specific circumstances:

- To obtain a weapon or dangerous object from a student
- For self-defense
- To ensure safety of another person
- Seat belts / safety restraints during transportation
- Assistive technology device provided for in a student's IEP or 504 plan or BIP or prescribed by medical / related service provider

Mechanical Restraint – “Reasonably Needed”

Exceptions are limited by reasonableness. This means:

- Only use the type of restraint necessary to achieve the objective
- Use the minimum force necessary to achieve the objective
- End the restraint as soon as possible

Restraint can **NEVER** be used as a disciplinary consequence

Mechanical Restraint – Specific Scenarios

Scenario: A student will not remain seated on the bus.

Can the teacher use a seat belt or other harness?

YES. The transportation exception applies.

Can the teacher strap the student's hands down because he keeps trying to unbuckle the harness?

NO. This is a disciplinary consequence and is not permitted.

Physical Restraint – Specific Scenarios

Use a chair strap for a student without the core muscle strength to stay seated upright during class?

YES (assistive device / medically prescribed / IEP)

Tape a student's wrists together to prevent the student from destroying classroom supplies?

NO (discipline)

Strap a student to a mat during naptime?

NO (unless specifically authorized by IEP or medical provider)

Use a rope around the student's waist to keep them in line or prevent elopement?

NO (unless specifically authorized by IEP)

Restraint – “Self Defense”

Self-defense and ensuring the safety of others require professional judgment. Guidelines to consider:

- Address the immediate danger, not anticipated future behavior
- Do not exceed the force presented by the student
- End the restraint as soon as the danger has passed

PAUSE – Questions?



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Seclusion, Isolation, and Time-Out



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Isolation

Definition (NCGS 115C-391.1(b)(5))

- “a behavior management technique in which a student is placed alone in an enclosed space from which the student is not prevented from leaving”
 - Alone
 - Enclosed Space
 - Not prevented from leaving

Isolation – Limitations

The law does not limit when or why isolation may be used as a behavior management technique, but:

- The space must be lighted, ventilated, heated/cooled
- The space must be free of objects that unreasonably expose the student or others to harm
- The length of isolation must be reasonable in light of the purpose of the isolation
- The student must be reasonably monitored while isolated

Isolation – Is This Allowed?

Leaving a student in the counselor's office without an adult for 20 minutes to calm down?

Probably, if an adult is nearby.

Placing a student in a three-sided cubicle in the back of the classroom as a disciplinary consequence?

Yes. Student is monitored and can leave at will.

Leaving a student in a kitchen adjoining the classroom which has a stove for 45 minutes without an adult?

Probably not. Unreasonable risk of harm and no monitoring.

Seclusion

Definition (NCGS 115C-391.1(b)(10))

- “the confinement of a student **alone** in an **enclosed** space from which the student is:
 - a. **Physically prevented from leaving** by locking hardware or other means.
 - b. **Not capable of leaving** due to physical or intellectual incapacity.”

Seclusion – Permissible Use

Default rule: seclusion of a student is NOT a reasonable use of force, except in five specific circumstances:

- To respond to a student in control of a weapon or dangerous object
- To maintain order / break up a fight
- For self-defense
- When a student's behavior poses a threat of imminent physical harm to self or others or imminent, substantial destruction of property
- As specified in the student's IEP, 504 plan, or BIP

Seclusion – IEPs, 504 plans, BIPs

When seclusion is used in accordance with an IEP, 504 plan, or BIP:

- The student must be monitored by an adult who is in close proximity and can see/hear the student at all times
- The student must be released as soon as the behaviors cease or as specified in the IEP/504 plan
- The seclusion space must be approved by the district
- The space must be lighted, ventilated, heated/cooled
- The space must be free of objects that unreasonably expose the student or others to harm

Seclusion – “Reasonably Needed”

All exceptions are limited by reasonableness. This means:

- Only use seclusion when necessary to achieve the objective
- Use the minimum time necessary to achieve the objective
- End the seclusion as soon as possible

Seclusion can **NEVER** be used as a disciplinary consequence

Time Out

Definition (NCGS 115C-391.1(b)(11))

- “a behavior management technique in which a student is separated from other students for a limited period of time in a monitored setting”

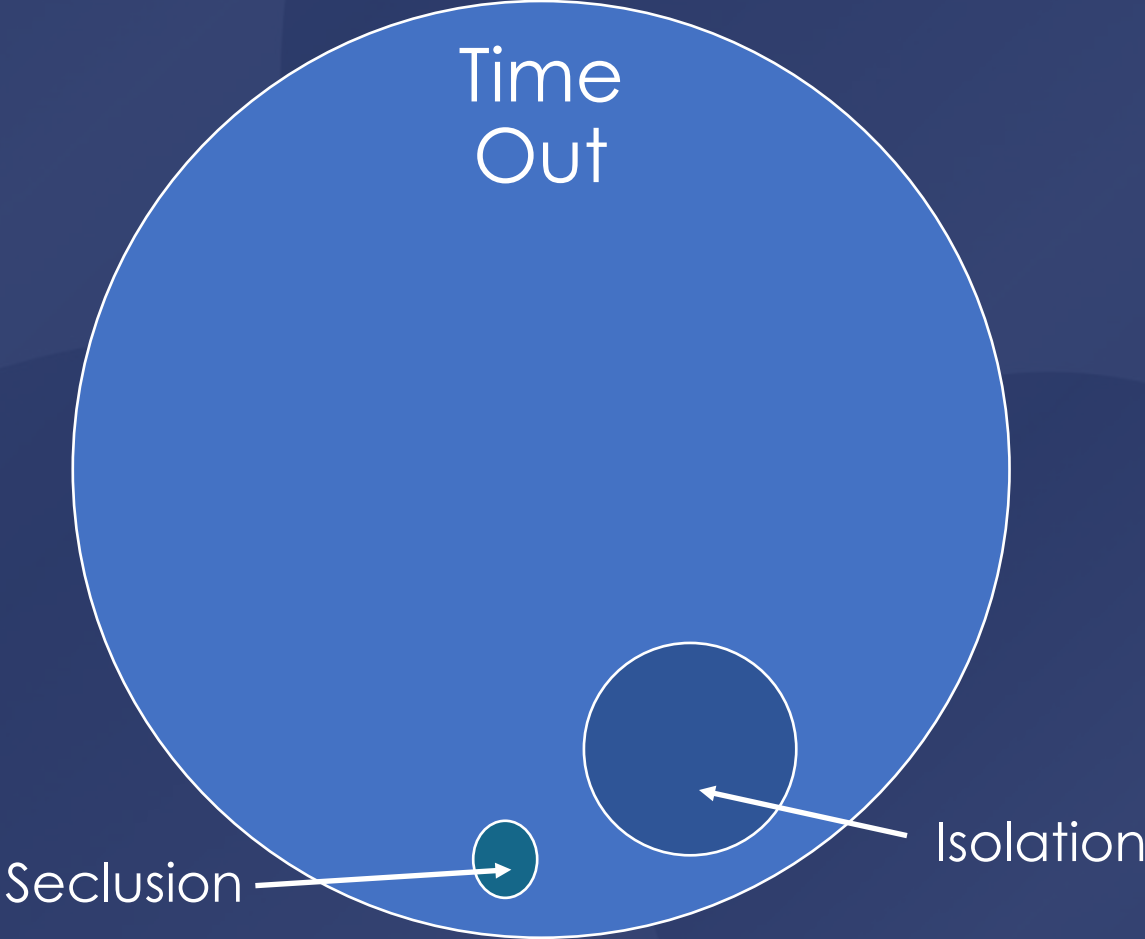
Time Out is not limited by the law – it may be used as deemed appropriate by the school and staff member

Comparing Seclusion, Isolation, Time Out

Seclusion	Isolation	Time Out
<ul style="list-style-type: none">• Alone• Enclosed Space• Unable to Leave• Closely monitored	<ul style="list-style-type: none">• Alone• Enclosed Space• Able to Leave• Reasonably monitored	<ul style="list-style-type: none">• Separated• Able to Leave• In a monitored setting



Comparing Seclusion, Isolation, Time Out



Scenarios

A student becomes very dysregulated and is throwing chairs around the classroom and pulling on bookcases. The student is briefly restrained but breaks free and escalates their destructive behavior.

Seclusion? Yes. Isolation? Yes. Time Out? Yes.

What if the student calms down while being escorted to the seclusion space?

Seclusion? NO. Isolation? Yes. Time Out? Yes.

Scenarios

A student attacks the teacher in class. The student is briefly restrained several times but every time he is released, he continues to attack the teacher.

Seclusion? Yes. Isolation? Yes. Time Out? Yes.

What if the student continues screaming at the teacher but is no longer attacking?

Seclusion? NO. Isolation? Yes. Time Out? Yes.

Aversive Procedures

AVERSIVE PROCEDURES ARE ILLEGAL AND MUST NEVER BE USED

Definition (NCGS 115C-391.1(b)(2))

- “a systematic physical or sensory intervention program for modifying the behavior of a student with a disability which causes or reasonably may be expected to cause one or more of the following...”

Aversive Procedures

AVERSIVE PROCEDURES ARE ILLEGAL AND MUST NEVER BE USED

Definition (NCGS 115C-391.1(b)(2))

- “...
 - a. Significant physical harm, such as tissue damage, physical illness, or death.
 - b. Serious, foreseeable long-term psychological impairment.
 - c. Obvious repulsion on the part of observers who cannot reconcile extreme procedures with acceptable, standard practice.”

Aversive Procedures – Examples from the statute

- Electric shock applied to the body;
- Extremely loud auditory stimuli;
- Forcible introduction of foul substances to the mouth, eyes, ears, nose, or skin;
- Placement in a tub of cold water or shower;
- Slapping, pinching, hitting, or pulling hair;
- Blindfolding or other forms of visual blocking;
- Unreasonable withholding of meals;
- Eating one's own vomit; or
- Denial of reasonable access to toileting facilities.

PAUSE – Questions?



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Reporting Requirements



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Annual Notice to Staff and Parents

At the beginning of the school year, all parents/guardians and school personnel must receive:

- A copy of the statute (NCGS 115C-391.1)
- A copy of any local board policies related to seclusion/restraint

Employee Reports to Administrators

All employees must make prompt reports to the principal of:

- Any use of aversive procedures
- Any prohibited use of a mechanical restraint
- Any use of a physical restraint resulting in observable physical injury to the student
- Any prohibited use of seclusion
- Any seclusion that exceeds 10 minutes or goes beyond the length of time specified in the student's IEP, 504 plan, or behavior intervention plan

Administrator Notice to Parents

The principal/designee must notify the parent/guardian when the principal/designee has personal knowledge or actual notice of:

- Any use of aversive procedures
- Any prohibited use of a mechanical restraint
- Any use of a physical restraint resulting in observable physical injury to the student
- Any prohibited use of seclusion
- Any seclusion that exceeds 10 minutes or goes beyond the length of time specified in the student's IEP, 504 plan, or behavior intervention plan

Administrator Notice to Parents

- Notice must be PROMPT
 - End of the workday if possible
 - No later than end of the next workday
- Notice must include the name of a school employee the parent/guardian can contact regarding the incident
- Initial notice may be verbal or written, BUT...
- A written incident report must be provided within 30 days

Administrator Notice to Parents

The written notice must include:

- Date, time, location, duration, and description of incident and interventions
- Events that led up to the incident
- Nature and extent of any injury to the student
- Name of contact person

No Retaliation for Good Faith Reporting

The school system (and its employees) may not discharge, threaten, or otherwise retaliate against an employee for making a report UNLESS the employee knew or should have know their report was FALSE.

Federal vs. State Reporting

Federal Reporting

Physical Restraint

- Report any use of physical restraint except for “physical escorts,” which are a “temporary touching or holding of the hand, wrist, arm, shoulder or back for the purpose of inducing a student who is acting out to walk to a safe location”

State Reporting

Physical Restraint

- Any use of physical restraint resulting in observable physical injury to a student

Federal vs. State Reporting

Federal Reporting

Mechanical Restraint

- Report any use of mechanical restraint, that does not fall under the following exceptions:
 - Adaptive device / mechanical support
 - Vehicle safety restraints
 - Medical immobilization restraints
 - Orthopedic devices for activity participation
 - Handcuffs if arrest is made (must report otherwise)

State Reporting

Mechanical Restraint

- Report any prohibited use of mechanical restraint, which means it does not fall under the following:
 - Assistive / adaptive technology
 - Transportation safety restraints
 - To obtain a weapon / dangerous object
 - For self-defense
 - To ensure safety of any person present

Federal vs. State Reporting

Federal Reporting

Seclusion

- Report any use of seclusion
- Don't report "timeout," which is defined as a "behavior management technique that is part of an approved program, involves the monitored separation of the student in a non-locked setting, and is implemented for the purpose of calming"

State Reporting

Seclusion

- Any prohibited use of seclusion
- Any use of seclusion that exceeds 10 minutes or the amount of time specified on a student's behavior intervention plan

Biggest Blunders / Legal Liabilities

- Euphemisms for seclusion
 - “time out”
 - “calming space”
 - “quiet room”
- IEP / BIP failures
 - Failure to review BIP if restraints or seclusions are common or increasing
 - Failure to develop and implement alternative interventions
 - Failure to discuss restraint / seclusion openly in IEP meetings



Biggest Blunders / Legal Liabilities

- Failure to Report / Inaccurate Report
 - Classifying reportable events as non-reportable
 - Inconsistent data between federal and state
- Failure to Communicate with Parents
 - If restraint / seclusion is likely to be part of student's experience due to behavioral disabilities, talk about it openly and often
 - Do not sugarcoat behavioral incidents or uses of seclusion/restraint
- Staff Overreactions
 - There is always a camera nearby
 - Staff are the adults and need to keep their heads in a crisis



Pro Tips

- Multiple adults in classrooms with the most severe behavioral needs
- NO makeshift seclusion or restraint systems – administration must be involved in decisions
- Overcommunicate with parents, especially before crises occur
- Train and train again
- Administrative oversight and support of behavioral programs is ESSENTIAL



Building a Sustainable Compliance Model

1. Train administrators on legal and reporting requirements
2. Train staff on legal and reporting requirements
3. Train staff on alternatives to seclusion / restraint
4. Develop a centralized reporting and feedback system
5. Develop protocols for parent communication
6. Develop HR protocols for non-compliance by staff
7. Consistent Refresher/Onboarding training





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THANK YOU

Any Questions?