

Public Policy on Physical Restraint of Children with Disabilities in Public Schools

James K. McAfee

Christopher Schwilk

Megan Mitruski

The Pennsylvania State University

Abstract

The US Constitution, federal and state legislatures, courts, and regulations permit physical restraint for both therapeutic (i.e., behavior change) and risk prevention purposes. Although most venues limit restraint as punishment, no government entity prohibits use of physical restraint as a response to imminent danger. This paper provides a comprehensive view of public policy of the most common form of restraint- an educator using his or her body to limit movement of a student so as to reduce risk of harm during an episode of dangerous behavior. Such restraint has been upheld by courts and requires quick decisions following careful training of educators. The intent of this paper is to provide a policy framework within which public educators (administrators, teachers and others) may develop specific practices to protect themselves and others from injury and legal action. Discussion concludes with recommendations for policies and procedures.

* * * * *

Concerns about use of physical restraint for individuals with disabilities have been expressed in legal and professional venues for decades. These concerns reached a zenith in the 1960s and 1970s with a series of lawsuits aimed at practices in large institutions (see for example, *Wyatt v. Stickney*, 1971). Previous reviews of restraint are generally broad and include analysis of the use of mechanical devices such as jackets, special chairs and clothing, chemicals, seclusion, and bodily force (Lohrmann-O'Rourke & Zirkel, 1998; Ryan, 2004). Furthermore, existing literature incorrectly addresses restraint in residential and psychiatric facilities, and restraint in nonresidential public schools as though the legal requirements were the same (Ryan, 2004). The purpose of this analysis is to answer the question, "What

Correspondence to James K. McAfee, PhD, Special Education Program, 208 Cedar, The Pennsylvania State University, University Park, PA 16802; e-mail: jqm@psu.edu.

are the legal requirements imposed on public school educators who respond to situations involving risk of physical harm by applying restraint in the form of blocking or holding?" Thus, our analysis is based on consistent court rulings that physical restraint as a response to student behavior that may cause harm to the student or others is not only permissible, but may be a duty in certain circumstances. Unlike the broader Ryan analysis, the current inquiry is not designed to probe questions of efficacy, therapeutic value, position statements, or research. Instead, it is intended to provide an analysis of the status of public policy for one form of restraint in public schools. The ensuing discussion is designed to inform educational practitioners (teachers, administrators, related services personnel, and paraprofessionals) and policy makers (superintendents and school boards) about the procedural and substantive legal requirements so that they may create local practices in conformance with the law.

The Individuals with Disabilities Education Improvement Act (IDEIA or IDEA) of 2004 (20 USC 1400 et seq.) and its predecessors require both positive behavioral interventions (20 USC 1415) and "same treatment." This means that " ... disciplinary procedures applicable to children without disabilities may be applied ... to children with disabilities..." (20 USC 1415(k)) as long as appropriate positive interventions have been implemented and a free appropriate public education (FAPE) continues to be provided to the student. Physical restraint as a response to student behaviors is often used in public schools despite widespread misinformation that physical restraint is legally prohibited for children with disabilities (McAfee, 2004). Given that (a) IDEA provides no absolute prohibition on physical restraint, (b) educators often mistakenly assert that all restraint is prohibited, and (c) a review of current teacher training texts of special education law and education of children with behavioral disorders revealed virtually no discussion of restraint, a systematic analysis of policy is needed in order to inform practitioners.

The definition of physical restraint used herein is, "Bodily force designed to limit a student's freedom of movement." We excluded mechanical devices (cuffs, straps, etc.), chemical restraint (psychotropic medications), and seclusion/timeout (separate and locked or closed space away from class) from our analysis. Our intent was to analyze policy related to immediate and short-term application of bodily force during a behavioral incident because previous research indicated that educators were most confused and misinformed about this form of restraint (McAfee, 2004).

The ensuing analysis proceeds through four stages: (1) Constitutional principles, (2) IDEA, (3) state and federal litigation, and (4) state

regulations. Analysis concludes with a discussion and recommendations for practice and policy. The discussion starts with the broadest policies (the Constitution) and proceeds to more specific and operational policies (court orders and state regulations) so that the practitioner will understand both the broader foundations under civil rights and the variations of specific procedures that result from policy.

Constitutional Issues

The Supreme Court ruled that, unlike institutions, Constitutional restrictions on restraint do not generally apply in public schools. The Court in *Ingraham v. Wright* (1977) concluded that the openness of the school and family watchfulness were sufficient protections against potential abuse of overzealous restraint. Furthermore, the court stated, "Public school teachers and administrators are subject to civil and criminal liability for excesses under the common law" (p. 1412). Thus, the Court saw no need to extend the protections of the Constitution to restraint in public schools as it had for institutions.

Although federal courts have been reluctant to create specific policy on restraint in public schools, they have provided general guidelines that form the basis for much of the specific policy created subsequently. For example, the Supreme Court in *Addington v. Texas* (441 U.S. 418, 99 S.Ct. 1804 (1979)) ruled that physical restraint is legally limited to protection of self and others and the District Court for the Middle District of Alabama provided more specificity to limitations on liberty rights impinged by restraint when it introduced consideration for the least intrusive alternative into the procedural requirements (*Lynch v. Baxley*, 386 F.Supp. 378 (1974)).

Concern for procedural soundness and least intrusive alternative are reflected in more detail in *Halderman v. Pennhurst* (446 F.Supp.1295 (1978)), *Mills v. Board of Education* (348 F.Supp. 866 (D.D.C., 1972)) and *The Pennsylvania Association for Retarded Children V. Pennsylvania* (334 F.Supp. 1257 (E.D. Pa, 1971)). At least two principles derived from federal court decisions have been applied in public schools:

1. Restraints may not be used as an alternative to adequate staff. This principle is reflected in IDEA as the requirement for an adequate supply of trained special educators and related services personnel.
2. Restraint may be used only when aggressive behavior interferes with an individual's own ability to benefit from programming, or poses physical threat to others. Programming must be instituted to make it less likely for an individual to require restraint. Most outbursts of violence can be prevented with adequate programming. This principle is reflected in the emphasis on an

appropriate education in IDEA and the defensible assumption that appropriate programs reduce the need for restraint.

The two general statements above provide the broad framework for more specific substantive (i.e., What is permitted and what is prohibited?) and procedural (What specific steps must be followed?) requirements incorporated in IDEA and then articulated in much greater detail in court decisions and state policies. Thus, the next step to understanding restraint policy is analysis of related IDEA provisions.

IDEA

The provisions of IDEA that set broad policy related to restraint are least restrictive environment (LRE), qualified personnel, and risk of harm.

As recognized by the Supreme Court, placement in the least restrictive environment provides assumed protection to the student in terms of visibility and opportunities for parental vigilance. However, when local education agencies (LEAs) place students in more restrictive environments such as residential schools and hospitals, greater scrutiny is required. Thus IDEA expresses preference for less restrictive placements.

The second protection infused in IDEA is adequately trained personnel. Specifically the provisions of 34 CFR§300.23 and 34 CFR §300.382 require states and the Office of Special Education and Rehabilitative Services (OSERS) to ensure an adequate supply of trained educators and related services personnel. The obvious implication is - if restraint is used, personnel must be trained. The regulations provide further specificity at 34 CFR §300.382 when they state:

[States will] enhance the ability of teachers and others to use strategies, such as behavioral interventions, to address the conduct of children with disabilities that impedes the learning of children with disabilities and others.

Thus, disputes about application of physical restraint and standards for its use will be judged against an expectation for effective training for teachers, administrators, and other staff.

Recognition that restraint and a more restrictive environment are viable options designed to reduce risk of harm is evidenced in 34 CFR§300.521, which states:

A hearing officer under section 615 of the Act may order a change in the placement of a child with a disability if the public agency has demonstrated by substantial evidence that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

This provision is also evidence that Congress and the US Department of Education recognize that restraint “cuts both ways.” Failure to restrain (in a general sense- to place in a more restrictive environment) may also produce risk. Thus, risk of harm is the compelling factor in implementing any kind of restraining action.

Thus, IDEA builds upon very limited and conceptual Constitutional provisions for staff training and adequate programming and begins to articulate procedural specificity:

1. States must have a comprehensive and detailed program for staff training. Staff training must address competencies required to meet the needs of students including restraint.
2. IEP teams must develop educational and behavioral programs for students to minimize the need for restraint.
3. IEP teams must create an IEP that balances students’ rights to safety against placement in the least restrictive environment.

Litigation and Due Process

Although it is possible to extrapolate some broad guidelines and structure for restraint from Constitutional law and IDEA, specific policy and procedure have been left to the lower courts and state agencies using statutory law and regulations respectively. Courts and other deliberative bodies (such as state administrative due process systems) have addressed both substantive and procedural requirements for physical restraint. The process is an iterative one in which statutes are created and interpreted by courts; interpretations by courts then result in new statutes codifying the courts’ decisions. In many cases, courts have articulated specific policy in the absence of statutes when more general rules governing the use of force exist. Although courts are more likely to impose procedural expectations, they have also identified a limited number of substantive restrictions such as prohibiting excessive force, time limits for restraint holds, and even the type of restraint permissible. Decisions of courts and administrative bodies may be grouped under three topics: (a) those in which permissible uses of restraint are identified, (b) substantive limitations, and (c) procedural requirements.

Permissible Uses of Restraint

A search of a number of legal data-bases revealed no decisions in which a court or other deliberative body ruled that physical restraint is impermissible in public schools. The US Office for Civil Rights (OCR) has issued a number of opinions in response to civil rights complaints pertaining to restraint. For example, OCR issued an opinion that physical restraint does not violate Section 504 of the Vo-

cational Rehabilitation Act of 1973 (*Ohio County Public Schools*, 1989). In addition, OCR determined that restraint in the form of holding or blocking is not the equivalent of excessive force but is measured and reasonable force (*Wells-Orgunquit Community School District*, 1990). In another OCR determination (*Florence County*, 1987), OCR added additional specificity when it ruled (a) restraint is not corporal punishment when used to prevent harm, and (b) restraint used to prevent harm does not violate state laws on corporal punishment or Section 504. Thus, educators who apply restraint properly (i.e., to prevent harm and with reasonable force) are not in violation of civil rights laws.

Courts have further clarified permissible restraint when the Eighth Circuit of the U.S. Court of Appeals specifically declined to create a rule prohibiting restraints because the technique "may help prevent bad behavior from escalating to a level where a suspension is required" (*CJN by SKN v. Minneapolis Public Schools; Special School District No. 1; Minneapolis Board of Education; Shreeves and Johnson*, 2003, p. 833). In this case, restraints were applied for a minute to five minutes and only after the student was kicking and hitting others and banging his head against a wall. The court ruled that although the District was not employing sufficient positive behavior procedures, the student was not denied a free, appropriate public education because the parent has refused to permit implementation of the school's proposed behavior plan.

Procedural Issues

Courts have enumerated procedures that must be followed and placed specific restrictions on the manner of restraint. Following precedent set by federal courts applying constitutional standards, few cases involve restraint in public schools; the majority concern institutions and community living arrangements. For those few cases occurring in public schools, courts have consistently ruled that mechanical restraints such as rope, duct tape, and manacles (except when used by a law enforcement officer) are prohibited procedures, but holds and blocks are permissible.

Other decisions address issues such as training, documentation, time restrictions, form of restraint, and behavior plans. A series of OCR rulings reveals the importance of assessment and planning as essential elements of properly applied restraint. In 1995, OCR examined a student's IEP and the extent to which district personnel adhered to the IEP in determining that restraint was properly applied (*Gateway Unified School District*, 1995). In *Orange Unified School District* (1993) OCR ruled that failure to conduct a comprehensive behavioral assessment prior to application of restraint violated Section 504 and

the Americans with Disability Act. In keeping with the LRE principles enumerated by the Supreme Court and further developed in IDEA, OCR ruled that districts are responsible for monitoring conditions at private schools when restraint is applied (*Chicago Public School District 299*, 1993).

Procedural concerns are reflected in an OCR ruling that further established the requirements for a restraint plan that is responsive to the multidisciplinary evaluation and is deemed necessary by the multidisciplinary team to protect the safety of the student and others (*Framingham Public Schools*, 2001). OCR in this case not only reviewed the multidisciplinary evaluation and subsequent behavior plan, but also the District's policy on restraint ruling that such planning was required. In a similar case, the Ohio Court of Appeals determined that restraint for a student who had head butted and kicked several teachers was proper in that his IEP allowed such restraint in "crisis situations." The Court further determined that the district violated the student's due process rights when the principal suspended the student without any notification or opportunity for a hearing (*Grine v. Sylvania Schools Board of Education*, 2004).

Finally two cases involving restraint by law enforcement officials provide additional insight into the complexity of the issues. In the first case, an OCR ruling concerned a student who was fighting in school, refused to leave the school premises and then struggled with the assistant principal and the school resource officer (police officer). The student injured the assistant principal, was restrained, handcuffed and subsequently arrested. OCR ruled that the arrest and prosecution did not violate the student's right to FAPE. Again, OCR examined the district's procedures, determined that the procedures had been followed and that once the student was placed under the jurisdiction of the resource officer and the juvenile justice system he was out of the district's jurisdiction (*Citrus County School District*, 2000). In the second case involving law enforcement, a due process hearing officer for Alabama ruled that a student's restraint and removal were not subject to a manifestation hearing because the removal was for safety reasons, not discipline. The hearing officer determined that a behavior program designed to prevent the student's violent outbursts was delayed by the parent's opposition and attempts to undermine the plan. Restraint and removal occurred after the student made death threats, threw tools at other students, and attempted to wrest a gun away from a police officer. In his decision the hearing officer chided the district for not taking action sooner (*Florence City Board of Education*, 2004).

Substantive Issues

Many substantive decisions revolve around issues of excessive force, and the nature of the restraint used. In *Sylvester v. Canicenne and Assumption Parish School Board* (1995) the Louisiana Court of Appeal relied upon substantive limitations to render a decision in a case of a principal charged with improper restraint. Teachers in the school testified that they were able to calm a five year-old student who became aggressive by using a "scissor grip" restraint for approximately 20 minutes. The principal had used rope and duct tape, and bound the student for two hours. The court determined that even in the absence of a formal district policy, previous practice evidenced the unnecessary and excessive force used by the principal. In another case a federal court ruled that it would allow a case to proceed because there was sufficient question about the actions of a teacher who restrained a student riding in a school van. Although the teacher had followed the prescribed procedures, the fact that the student suffered a broken elbow led to doubt as to whether the teacher responded with excessive force (*James S., Barbara S., and Justin S. v. Fond Du Lac School District and Kohlman*, 2001). In contrast, the District Court in Virginia ruled that a "basket hold" applied to a student with Asperger Syndrome was an appropriate restraining technique for the student when he presented a danger to himself or others (*Brown by Brown v. Ramsey and Hart*, 2000). This case included a review of both substantive and procedural issues. The court determined that the basket hold was part of the behavior management plan and that it was "not inspired by malice or sadism." Furthermore, the student suffered no injuries and the procedure was used sparingly. Importantly, the teacher had received specific training in the technique. The court also enumerated additional considerations to determine if restraint is properly applied:

1. Was force necessary?
2. Did the level of force match the need?
3. Did injury occur? If so, was the injury severe?
4. Was force applied as a good faith effort to maintain or restore discipline or for the purpose of causing harm to the student?

The U.S. District Court in Connecticut applied similar logic to a case involving a student who was yelling, grabbing and biting during a fire drill (*M.H. by Mr. and Mrs. H v. Bristol Board of Education, Bourgault, Ives, Maher, Palingi, Wininger, Wasta and Marchesi*, 2002). In this case, the teacher's actions were held to be reasonable force and not malicious or sadistic. Furthermore they were designed to protect the student and others from harm. In addition, the behavior management plan (including a plan for restraint) for the student was based on a re-

port developed for a professional organization by a behavior analyst and was designed to produce a safe environment.

Implications

Analysis of the above cases produces a set of emerging principles and procedures that set the framework for more systematic policies produced by the states. These principles and procedures are:

1. Restraint may be used when a threat to safety is present.
2. Force must be minimal, reflecting the force applied by the student.
3. Districts must have policies and procedures in place. Educators must be informed of the procedures. Procedures must be followed carefully.
4. Educators must receive training in the use of restraint. Some forms of restraint such as the basket hold and the scissors hold have been accepted as appropriate. Others involving rope, tape and striking are not.
5. Coordination must be planned between law enforcement and educators for situations where law enforcement is called into the school to apply restraint.
6. If a multidisciplinary team determines that restraint is likely to be required for a specific student, the team is responsible for developing a plan for restraint. The plan should be part of the IEP.
7. Restraint must be time limited. It must be removed as soon as the safety threat has subsided.

State Regulations

Although court, OCR, and due process rulings are more instructive than constitutional law and IDEA, they also lack specificity to provide sufficient substantive and procedural guidance to educators seeking to protect students and themselves both physically and legally. However, such specificity is provided in a number of state statutes and regulations. Unfortunately, fewer than half the states have promulgated specific regulations on physical restraint in public schools. Other states have either left the issues unaddressed, or enacted a general policy permitting educators to use reasonable force when a student's behavior presents a danger to self or others. Several states have produced comprehensive regulations and procedures (see for example, Massachusetts and Illinois Codes). Although state regulations are legally applicable only in the respective state, collectively they provide a body of policies and procedures that may be adapted to form a defensible and comprehensive system of policies for an

LEA. In the absence of comprehensive state policy, an LEA should develop its own procedures to protect its students and reduce its risks of liability.

Analysis of a sample of state regulations reveals many common threads and some unique policies on restraint. State regulations generally reflect principles enumerated by courts, but they do so in much greater detail. Some policy statements are very brief, consisting of one or two sentences within a broader policy on discipline or corporal punishment. Others are highly detailed and comprise twenty or more pages of text. Space prevents a detailed analysis of all state regulations, thus this discussion proceeds in two main sections- common policies/procedures and unique policies and procedures. Common policies are those contained in the majority of regulations reviewed. Unique policies are those that appear in one state, but not others and may reflect a unique history of the issue in that state. Analysis of selected regulations is presented in Tables 1 and 2.

In the following sections, both the substantive and procedural elements of restraint policies are discussed. A policy that prohibits or permits restraint or a specific form of restraint is a substantive policy. Procedural policies are those designed to ensure that the process of restraint is conducted through a set of documented and specified steps. Procedural policies include parental notification, staff training, and incident follow up. Procedural aspects are designed to provide a set of checks on substantive compliance.

Substantive regulations. Only five states provide a specific regulatory definition of restraint. Others rely upon the common meaning of the word. Several states (Pennsylvania, Massachusetts, Illinois) also differentiate different forms of restraint (e.g., mechanical, physical, escort) in their definitions. The specific definition is critical to an effective policy because it sets the tone for the policy. For example, a number of states (e.g., Hawaii, New York) include the restraint policy under the broader policy of discipline or corporal punishment. Others clearly view restraint as a safety rather than discipline issue. Given the differential treatment of safety restraint and disciplinary restraint by the courts, such a characterization may be critical to a determination of propriety under the law.

Every state with a regulation establishes specific limits on restraint. The most common limit is "to prevent injury." Thus, in states where restraint is clearly permitted, educators are not given carte blanche authority to use restraint in any situation. Other limits include "emergency situation" (Massachusetts), and "least intrusive response" (Maryland, Pennsylvania). One of the specific limitations identified in the regulations of seven states is the prohibition against

Table 1
Substantive Policies on Physical Restraint

[illegible]

Table 2
Procedural Policies on Physical Restraint

Procedure	State											
	CO	DE	HI	IL	MA	MD	MI	NY	PA	OR	TX	VT
Staff training	x			x	x	x			x		x	
Local policy	x	x		x	x		x		x	x	x	
Parental consent						x	x			x		
Review by human rights committee									x			
Individual plan					x	x			x			
Post-incident review	x		x	x	x	x	x					
Individual reporting	x		x	x	x	x						
Annual reporting	x			x	x							
Monitoring of breathing and communication	x			x	x							
Law enforcement involvement					x						x	

restraint as a punishment. Those regulations clearly identify the function of restraint as preventing harm rather than as retribution for a rules infraction. Finally, each of the state regulations analyzed specifically permits "reasonable force." Few states define reasonable force, except by inference by differentiating restraint to prevent movement from restraint to inflict pain (Massachusetts, Illinois, Colorado)

Massachusetts is the only state to differentiate forms of restraint by purpose: (a) to escort a student to another area, (b) to prevent body movements, and (c) to seclude. Hawaii's regulations include the sole state endorsement of specific restraining techniques such as the basket and scissor holds.

Like the courts, states are divided on the application of physical restraint to situations where the risk is one of property rather than personal injury. Each of the five states identified in Table 1 contains a specific provision permitting application of restraining force to prevent property damage. None of the five states differentiates procedures or the amount or type of force that may be used for personal or property protection.

Time limits on restraint are identified in the regulations of three states. Massachusetts places additional safeguards (reporting and training) on restraint lasting beyond 20 minutes; Colorado places a limit of 15 minutes except in unusual circumstances; and Illinois requires release as soon as imminent danger has passed.

Interestingly, regulations of three states (Delaware, Hawaii and Michigan) address not only the rights of students, but liability protections of educators with each of those states specifically expressing protection from legal liability for personnel acting within the scope of employment following prescribed procedures and applying reasonable force.

Procedural regulations. Although specific training in appropriate restraint techniques would appear to be indicated by court decisions and IDEA, only six states establish that requirement in regulations. Of those six, Massachusetts and Illinois have the most comprehensive procedures with each including (a) de-escalation procedures, (b) simulated exercises, (c) documentation of incidents, (d) medical contraindications, (e) specific restraint techniques such as the basket hold, and (f) identification of dangerous behaviors and precursors. Illinois requires retraining every two years while Massachusetts requires demonstration and certification of proficiency. The other four states require training, but provide little prescription for the content.

Courts routinely examine written policies of educational entities to determine if a damage award is appropriate and eight states require LEAs to develop local procedures and policies in addition to

the state regulation. Interestingly, the states with extensive state regulations are also likely to require more specific local procedures including identification of specific personnel who are responsible for reporting and training.

Three states require parental consent before restraint can be applied, although each of those also allows restraint without parental consent in the case of imminent danger. Two additional states (Massachusetts and Pennsylvania) indirectly require parental consent by limiting restraint to students who have an individual behavior plan in which restraint procedures are delineated. Yet, even those states permit restraint outside of the behavior plan for imminently dangerous situations. Interestingly and perhaps dangerously, few states identify the role of the IEP team and process in developing and reviewing restraint plans and incidents. Pennsylvania permits, but does not require oversight of restraint procedures and data by a local human rights committee as an additional check.

Six states require specific forms of review and reporting of restraint incidents. Five require individual reports for each incident and three require annual summaries of incidents. The most comprehensive review and reporting procedures are found in regulations from Massachusetts, Maryland, Colorado, and Illinois. Common elements among those four states include (a) reviewing the incident with the student and others involved, (b) reporting injuries of both students and staff, (c) informing administrators and parents, (d) a description of the event including precipitating behaviors, other interventions used, type of restraint used, time, and reaction of student, (e) property damage, (f) plans for future incidents, and (g) filing of written report. Colorado and Illinois also require evaluation of the adequacy of the response and recommendations for adjustments (both for the individual and in more general terms such as training or communication).

Colorado, Illinois, and Massachusetts, the three states with the most comprehensive policies, specifically require monitoring of the student's ability to communicate (orally and manually) and breathe during the restraint incident. These three states have obviously responded to the reports of the Government Accounting Office on deaths of children during restraint (GAO, 1999). It is surprising that so few states have seen fit to go as far as these three given the potential for injury, death, professional career destruction, and costly litigation.

Conclusions and Recommendations

Public policy on restraint is consistent across the courts, legislatures, and regulatory law, although it doesn't reach a level of procedural and substantive specificity until the state regulations. Practitioners must be aware that policy for public schools is different from

that for residential, hospital and institutional settings. Public schools are afforded a greater degree of latitude and are not generally guided by federal statutes on restraint except those general statements contained in IDEA. In addition, the law surrounding restraint as a safety procedure (i.e., restraint designed to prevent harm) is different than other forms of restraint (i.e., restraint as punishment). This distinction is not made sufficiently clear in previous treatments of this subject (Lohrmann-O'Rourke & Zirkel, 1998; Ryan, 2004).

State regulations provide sufficient guidance for any LEA seeking to develop a policy. The most comprehensive regulations described are provided by Colorado, Illinois and Massachusetts. The principles and procedures that should form the basis for any policy are consistent and include:

1. Restraint must be defined. The definition should include descriptions of both acceptable and unacceptable forms and purposes of restraint.
2. Policy should prescribe specific limitations on restraint. For example, restraint should not be used as a punishment.
3. Reasonable force should be defined in the policy. This is one area of the regulations that remains highly subjective. Case law reveals no standard other than the result of the force (i.e., injury). Obviously, using injury as the measure of reasonable force relies on hindsight, not an analysis of conditions at the time of the incident.
4. Restraint should be removed as soon as the danger of harm is reduced.
5. Educators working in environments where dangerous and aggressive behavior is likely to occur should have a means of emergency communication to summon support from other personnel. Restraint applied by multiple personnel is less likely to result in injury to either student or educator. In addition, witnesses provide more accurate documentation of the incident. Furthermore, courts often assess foreseeability as a measure of the appropriateness of a response. An educator working in an environment where violence is likely is expected to behave prudently. Prudence requires foresight to develop a plan.
6. Educators should understand their vulnerabilities and protections (liability) in a restraint incident. Few policies provide clarity. Adherence to procedures, training by a recognized organization and documentation reduce but do not eliminate personal liability.
7. Whether or not a state has issued regulations on restraint, each LEA should have its own set of procedures. If a state policy exists,

the local procedure must follow, but can be more detailed than the state policy. Where state policy does not exist, policy should be developed to adhere to the principles enumerated in the court decisions and policies of other states.

8. Documentation and post-incident analysis are critical. Each incident of restraint should be documented and analyzed. Corrective action should be identified in two ways. First, if errors were committed during the restraint, retraining and adjustments in policy are indicated. Second, a restraint incident should cause review of the student's behavior plan and IEP by the IEP team. Appropriateness of the behavior supports in place must be determined. They must be revised if they are not effective. Placement, and other aspects of the IEP should also be reviewed. Records of restraint incidents should be maintained for individual students. In addition aggregate annual reports may reveal patterns that should result in revised practice or staff training.

Teachers are confused about restraint (McAfee, 2004). Part of this confusion arises from historical discussion of restraint within the wider context of other aversive responses to behavior such as seclusion, mechanical devices, chemical restraint, corporal punishment and noxious substances. Yet, courts have clearly separated physical restraint as a safety measure (to prevent harm) from other responses that are alleged to have therapeutic value. Requirements for restraint as a safety response are consistent and well articulated if the entire body of policy is examined in detail and held separate from case law and policy on other forms of restraint and intrusions on personal liberty.

References

- Addington v. Texas*, 441 U.S. 418, 99 S.Ct. 1804 (1979).
- Brown by Brown v. Ramsey and Hart*, 33 IDELR 215 (E.D. Va, 2000).
- Chicago (IL) Public School District 299*, 20 IDELR 699 (OCR, 1993).
- Citrus County School District*, 34 IDELR 67 (OCR, 2000).
- CJN by SKN v. Minneapolis Public Schools; Special School District No. 1; Minneapolis Board of Education; Shreeves and Johnson*, 38 IDELR 208 (Eighth Cir. 2003).
- Colorado State Board of Education, *Rules for the Administration of the Protection of Persons from Restraint Act* (2000). 2620-R-1.00 et seq.
- Delaware Department of Education, Title 14, Sec 702.
- Florence (AL) City Board of Education*, 42 IDELR 129 (SEA, 2004).

- Florence (SC) County No. 1 School District*, EHLR 352:495. (OCR, 1987),
Framingham (MA) Public Schools, 36 IDELR274 (OCR, 2001).
Gateway(CA) Unified School District, 24 IDELR 80 (OCR, 1995).
Government Accounting Office, T-HEHS-00-26 (1999).
Grine v. Sylvania(OH) Schools Board of Education, 42 IDELR 143 (OH App. 2004).
Halderman v. Pennhurst, 446 F.Supp.1295 (1978).
Hawaii Board of Education Policy on Use of Force. (2002).
Illinois Administrative Code Ch. I, S. 1.280 et seq. (2002).
Individuals with Disabilities Education Improvement Act of 2004, 20 USC 1400 et seq.
Ingraham v. Wright, 430 U.S. 651; 97 S. Ct. 1401 (1977).
James v. Trumbull County Board of Education, 663 N.E. 2d 1361 (Ohio Ct App.1995).
James S., Barbara S., and Justin S. v. Fond Du Lac School District and Kohlman, 35 IDELR 251 (E.D. Wis. 2001)
Lohrmann-O'Rourke, S. & Zirkel, P.A. (1998). The case law on aversive interventions for students with disabilities. *Exceptional Children*, 63(1), 101-123.
Lynch v. Baxley, 386 F.Supp. 378 (1974).
Maryland Department of Education, 13A.08.04.05
Massachusetts Department of Education, Physical Restraint, 603CMR 46.00
McAfee, J. K. (2004). *Teacher's knowledge of physical restraint*. Unpublished manuscript.
M.H. by Mr. and Mrs. H v. Bristol Board of Education, Bourgault, Ives, Maher, Palangi, Wininger, Wasta and Marchesi, 36 IDELR 123 (Conn. 2002)
Michigan Department of Education. 380.1312 (2004).
Mills v. Board of Education, 348 F.Supp. 866 (D.D.C., 1972).
New York Department of Education, 100.2.1.3.
Orange (CA) Unified School District, 20 IDELR 770, (OCR,1993).
Oregon Department of Education, ORS 339.250.
Pennsylvania Association for Retarded Children V. Pennsylvania, 334 F.Supp. 1257 (E.D. Pa, 1971))
Pennsylvania Department of Education, 22 Pa Code14.133

- Ryan, J.B. (2004). Physical restraint in school. *Behavioral Disorders*, 29(2), 154-168.
- Sylvester v Canicenne and Assumption Parish School Board* 23 IDELR 609 (La Ct App., 1995).
- Texas Department of Education Subchapter A, Chapter 29 Section 37.0021.
- Vermont Department of Education 16 VSA 1161a(c)
- Wells-Orgunquit (ME) Community School District*, 17 EHLR 495 (OCR 1990).
- Wyatt v. Stickney*, 334 F.Supp. 1341, 1343-1344 (M.D. Ala. 197).

A vertical yellow bar with a red diamond at the top, located on the left side of the page.

COPYRIGHT INFORMATION

TITLE: Public Policy on Physical Restraint of Children with
Disabilities in Pu
SOURCE: Education and Treatment of Children 29 no4 N 2006
PAGE(S): 711-28
WN: 0630503477015

The magazine publisher is the copyright holder of this article and it is reproduced with permission. Further reproduction of this article in violation of the copyright is prohibited.

Copyright 1982-2006 The H.W. Wilson Company. All rights reserved.