RESTRAINT AND SECLUSION RULES FOR OREGON: REQUIREMENTS, PROCEDURES, DATA COLLECTION AND MORE

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HISTORY OF OREGON’S RESTRAINT AND SECLUSION ADMINISTRATIVE RULES

- 76th OREGON LEGISLATIVE ASSEMBLY, 2011 passed
  House Bill 2939
  [http://www.leg.state.or.us/11reg/measpdf/hb2900.dir/hb2939.en.pdf](http://www.leg.state.or.us/11reg/measpdf/hb2900.dir/hb2939.en.pdf)
- Resulting in Provision in the Oregon Regulatory Statutes, January 1, 2012
- Repealed OAR 581-021-0062
- Enacted OARs 581-021-0550, -0553, -0556, -0559, -0563 and -0566
- School Districts required to comply July 1, 2012

OAR 581-21-0550

**Definitions**
- Chemical Restraint
- Mechanical Restraint
- Physical Restraint
- Prone Restraint
- Public Education Program
- Seclusion
- Serious Bodily Injury
OAR 581-021-0553

Use of Physical Restraint & Seclusion in Public Education Programs

- Chemical, Mechanical and Prone Restraint prohibited
- Physical Restraint & Seclusion used with conditions
- Physical Restraint & Seclusion may not be used for discipline or punishment
- Must be implemented by those who are trained
- Requires ongoing visual monitoring
- Requires water and bathroom breaks if occurs for more than 30 minutes; and
- Administrator must provide written authorization for it to continue;
- Parent or guardian must be notified by the end of the day of the incident

OAR 581-021-0556

Programs’ Procedures Regarding the Use of …

- Policies and Procedures must be in place by school district/‘public education program’
- Verbal or electronic notification to parent by end of day; and
- Written notification within 24 hours
- Debriefing meeting within two days
- Provisions if serious bodily injury or death occurs
OAR 581-021-0559

Reporting Requirements for the Use of …

- The entity in charge of public education program must complete an annual report; and
- Make the report available to its constituents - the public, public education program, ESD and its component school districts, charter school, parents or guardians.
- Posted on Website and made available at Main Office.

OAR 581-021-0563

Approval of Physical Restraint and Seclusion Training Programs…

- The ODE shall compile and provide a list of approved training programs, as well as monitor and update the list as needed, in physical restraint & seclusion that include the following:
  1. Evidence-based techniques, preventive and safe
  2. Provide skills in de-escalation, conflict prevention, crisis response and positive behavior support
  3. Consistent with the training and policies provided by the Department of Human Services (Oregon Health Authority)
OAR 581-021-0566

Required Use of Approved Restraint and Seclusion Programs

- A public education program may only use a training program approved by the Oregon Department of Education.

WHERE OREGON STANDS COMPARED TO FEDERAL STANDARDS (2012)

- Provides ‘Meaningful Protection’ [1/29]
- Defines ‘Seclusion’; student cannot exit (locked or blocked) [1/32]
- When ‘Less Intrusive Methods Ineffective’ [1/10] and
- Only until the ‘Emergency Ends’ [1/14]
- Prohibits Mechanical, Prone & Chemical Restraint [1/15 & 1/30]
- Notify the Parents Same Day of Incident [1/12]
- Data Collection [1/13]
OREGON IN COMPARISON
CONTINUED

- Statute/Rules apply to All Children
- Debriefing – analyze, cause, triggers, plan, positive interventions
- Training Required [1/21]
  - Evidence-Based Practices
  - De-Escalation Training
  - Positive Behavior Supports
  - Prevention
  - (Conflict Resolution)

15 PRINCIPLES - USDE

1. Prevent the Use of Restraint & Seclusion (De-Escalation training)
2. Never use Mechanical restraint, nor use Drugs or Medications
3. Only where Student Poses Imminent Danger of Serious Physical Harm to Self or Others, and other Interventions Ineffective, and should be discontinued when Imminent Danger Dissipates.
4. Policies restricting use for All Children.
5. Students’ Rights to be treated with Dignity
6. Never used as Punishment, Discipline, Coercion, Retaliation, Convenience
7. Never used in Manner that Restricts Breathing (Prone Restraint)
8. Repeated Use should Triggers Review, Revise Plan, Implement Positive Behavioral Strategies
9. Strategies address Underlying Cause or Purpose of Behavior
10. Teachers/School Personnel Trained Regularly

11. Every incident Carefully and Continuously Visually Monitored
12. Parents should be Informed of Policies & applicable Laws
13. Parents Notified as soon as possible each incident
14. Policies Reviewed regularly & Updated as appropriate
15. Policies requiring Documentation in Writing and for Data Collection (Debriefing)
WHERE DO WE GO FROM HERE?

❖ “Keeping All Students Safe Act, S. 2020 (Sen. Harkin)

❖ Federal Legislation?

❖ Oregon is aligned with Federal Proposals, the 15 Principles and Best Practices

NSBA CONCERNS

❖ States and Local School Boards having Maximum Flexibility and Authority in Implementation.

❖ Requirements for Training is Reasonable, Affordable & Effective

❖ Data Collection & Reporting – purpose and costs?

❖ “Serious Bodily Injury” – Staff have to determine if level of injury would meet IDEA 2004's definition.

❖ Prohibition on making restraint a 'Planned-for Intervention', removes opportunity to effectively train and plan for its use.
NSBA CONCERNS CONTINUED

- Debriefing Session….provide opportunity for personnel to submit verbally or in writing instead of required physical attendance
- Maintain language against Total Prohibition due to the need to be able to respond in circumstances threatening safety and welfare
- Delete requirement to prohibit any reference in IEP, 504 plan, Safety Plan….
- Exempt States who have Policies established

OREGON DISPUTES INVOLVING RESTRAINT AND SECLUSION

- Due Process 10-116
  * Early Elementary Student with ADHD/OHI- displayed intermittent behavior problems including running out into the street to kicking and threatening other students and staff.
  * School developed a BSP with consequences which included escorting student to a safe room.
  * The safe room was in the classroom and 5x5 feet wide with a 10 foot tall ceiling.
  * Parent claimed she had no way of knowing when student was taken to safe room or by which staff. District claimed staff were trained in OIS (Oregon Intervention Systems).
DP 10-116

- District did not have a consistent definition of “escort” which was brought up often during the Due Process.
- The Restraint was not mentioned in the student's IEP.
- Student behavior spiked resulting to death threats to staff and student, a pencil being jabbed in a teacher's leg, cursing, and a coat rack being pulled over an IAs foot.
- Student slammed a door on an instructional assistant's head. She sought medical care.
- One day mother came to school to assist during an outbreak and found two teachers pinning child to floor using prone restraint. Student was in 3rd grade. Student was suspended after this episode. Student's placement was changed to an interim home placement for safety.
- District moved for Expulsion and Manifestation Determination. Parent moved for revaluation for ASD.

DP 10-116 RESULTS

- Hearing Officer said that be District withheld info from the parent regarding when teachers moved the child to safe room that mother did not have a “realistic view of the extent of the behavior problems” or the measures District took to control them.
- HO held that this lack of information prevented the parent from problem solving the behavior issues that eventually led to the removal of child from school.
- As a result, the HO said that these procedural defects denied child of FAPE.
- The HO also held that District did not follow IDEA’s detailed procedures for removing a student with a disability from school for disciplinary reasons thus denying FAPE (see 34 CFR 300.530).
- HO also found District pre-determined placement by handing parent a pre-prepared, pre-typed, written notice of placement change in a 2010 placement meeting.
DP 10-116 END RESULTS

- HO also said that District violated Least Restrictive Environment by moving child to Home Instruction where student could not receive special ed, general ed, or peer interaction.
- District was not required to have a separate safety plan for student due to alleged bullying and student’s running off campus, in order to ensure FAPE.
- While there was not a ruling on the restraint, it was an open hearing with public testimony that highlighted the restraint and seclusion information to the community.

DP 10-116 CORRECTIVE ACTION

- Corrective Action Ordered: transition student back to placement in elementary school, convene a new IEP meeting for student, conduct a comprehensive FBA of student, conduct a BSP and discuss restraining and physically moving student with parent within 24 hours of such an event and notify parent in writing of all restraints used on child, provide student with 1 hour per week of social skills instruction (including: problem solving, trusting adults, self-advocacy, conflict resolution/etc), 30 minutes per week of counseling for any trauma related issues, specialized instruction in writing 30 minutes per week, 6 hours of instruction in developing IEPs to any person who will serve as the student’s Special Ed teacher, 6 hours of instruction in developing FBAs and BSPs and 6 hours of instruction on appropriate disciplinary measures for 6th graders to any special education staff who would work with the student during the school year.
Background: Child was 7 years old and a 1st grade student who is eligible for special education as a child with ASD.

Student IEP placed student in “Communication and Behavior classroom” for up to 95% of the day due to behaviors such as hitting, kicking, throwing things, biting, and head butts.

Student had a BIP implemented consistently which included a “cool down routine” described as taking student to separate space using Crisis Prevention Institute (CPI) restraint.

Student’s special education classroom was a 14x14 foot room partitioned into temporary “break spaces”, on average the student was in this space 2.5 hours of a 6.0 hour day or 1.0 hour of a 2.0 hour day.

The district modified this room by creating a permanent structure with permanent walls, a door, and a window. The room was 5 feet by eight feet.

Student stayed in this room from 91 minutes to 234 minutes at a time.

Student was also left in a classroom with an IA and no other students on multiple occasions and the student was not allowed to attend recess with other students.
09-054-013 OUTCOME

- ODE found that the staff secluded the student by placing the student in temporary partitions, holding the walls so the student would not make them topple, and preventing the student from leaving.
- The Department found that the interventions used by District were not comparable to those described in the BIP.
- ODE held that the District violated IDEA by not implementing behavioral interventions comparable to those in the previous IEP.
- Confining student for significant portions of the day resulted in a denial of FAPE as the child did not receive educational services for long periods of time.

CORRECTIVE ACTION

- District had to provide 45 hours of behavior specialist support to personnel, including IEP team, and 15 hours of autism specialist support. District and parent worked with ESD autism resources in designing corrective action.
- District was ordered to create structured nonacademic and recreation activities for student to participate in with peers.
- District and parent created a plan for 60 hours of direct/structured student instruction.
RESOURCES


QUESTIONS & ANSWERS