



DISABILITY RIGHTS OREGON

THIRD EDITION

**Restraint & Seclusion:
When Behavior Interferes with Learning**



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610 SW Broadway, Suite 200, Portland OR 97205

Voice: 503-243-2081 or 1-800-452-1694

Fax: 503-243-1738

E-mail: welcome@droregon.org

Website: www.droregon.org

Written in 2010 and updated in 2011 by
McKenna Lebens, Communications Specialist
Susana Ramírez, Advocate
Chris Shank, Attorney

Updated in 2012 by
Joel Greenberg, Attorney
McKenna Lebens, Communications Specialist
Chris Shank, Attorney

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NOTICE: This publication contains general information about legal issues and legal rights; however, it is not a substitute for legal advice. For specific information about restraint and seclusion of children in special education, contact Disability Rights Oregon or your attorney.

Purpose of this Handbook

This Handbook was written to provide general information about the rights and protections of students with disabilities regarding restraint and seclusion in schools under the law.

In 2007, at our urging, the Oregon Department of Education (ODE) enacted rules limiting the use of restraint and seclusion to situations in which a student's behavior poses a threat of imminent, serious physical harm to the student or others. These rules also directed school districts to establish written policies and procedures with provisions for staff training, debriefing, and notification of the parent or guardian on the day of a restraint or seclusion incident.

On the national level, an investigation in 2009 by the National Disability Rights Network (NDRN) found that hundreds of students had been abusively restrained and secluded in their classrooms. Many were traumatized and humiliated. Some even died as a result. The victims were disproportionately students with disabilities.

Arne Duncan, the U.S. Secretary of Education, stated in a 2009 letter to school superintendents that the use of Positive Behavioral Interventions and Supports (PBIS), together with state rules strictly limiting the use of restraint and seclusion, could drastically reduce restraint and seclusion incidents in schools. 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. When PBIS is properly used, behavior is defused before it becomes unsafe behavior requiring restraint and seclusion.

By 2010, while we believed many districts were trying to follow these rules and provide PBIS, we were concerned that some were not. DRO's Keep School Safe for Everyone Campaign was launched in 2010. It had four objectives: educate parents of children with disabilities about the issue; examine the policies & procedures of all 197 school districts; monitor the implementation of those policies & procedures; and push for new legislation with enforceable standards regarding the use of restraint and seclusion in Oregon's schools.

Our efforts culminated in an investigative report, *Keep School Safe for Everyone: A Report on the Restraint & Seclusion of Children with Disabilities in Oregon Schools (2011)*. The report made the case for passage of House Bill (HB) 2939 to regulate the use of restraint and seclusion in schools and was introduced by State Representative Sara Gelser (D-Corvallis) in the 2011 Oregon legislature. HB 2939 passed, promoting school safety by requiring planning, training, and parental involvement to regulate the use of restraint and seclusion in schools. It went into effect in July 2012 and regulations at the state level are now in place. This Handbook summarizes Oregon Administrative Rules (OAR) 581-021-0061 through 581-021-0062, but it is not a substitute for legal advice. Federal and state law can change at any time. Contact Disability Rights Oregon or consult with an attorney in your community if you require further information.

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What is physical restraint?

Oregon Administrative Rule (OAR) 581-021-0062(1)(a) defines physical restraint as “the restriction of a student's movement by one or more persons holding the student or providing physical pressure upon the student.” The rule notes that physical restraint is not touching or holding a student without the use of force to direct the student or to assist the student in completing a task.

What is seclusion?

OAR 581-021-0062(1)(b) defines seclusion as "the involuntary confinement of a student **alone** in a room from which the student is **physically prevented from leaving.**"

Can my child be physically restrained or secluded away from other students while at school?

Yes, but only under strictly limited conditions that are now defined by state law and regulations.

When may restraint or seclusion be used?

Your child can only be physically restrained or secluded when your child’s behavior poses a **reasonable threat of imminent, serious bodily injury to self or others** and when less restrictive interventions would not be effective.

Can the school use restraint or seclusion to make my child obey staff?

No. Physical restraint and seclusion may not be used for discipline, punishment or for the convenience of staff under the new law.

How long may restraint or seclusion last?

Only as long as your child poses a threat of imminent, serious physical harm to self or others. As soon as the threat of harm is over, your child must be released from the restraint or seclusion.

Your child should not be restrained or secluded for extended periods of time. Restraints and seclusions are emergency interventions that should not be used to manage behavior on a regular basis.

If your child is experiencing restraint or seclusion for long periods or if it is happening frequently, your child’s Individualized Education Program (IEP) team should meet and look at changes to your child’s IEP, placement, and behavior plan.

What happens if my child is restrained or secluded for a long period of time?

New protections have been put into place for restraints and seclusions that last more than 30 minutes.

1. Your child must be allowed access to the bathroom and water.
2. Staff must get written authorization from a district administrator for the restraint/seclusion to continue, including documenting the reason the restraint/seclusion needs to continue.
3. Staff must try to immediately contact you either by phone or e-mail to notify you of the length of the restraint or seclusion.

Are staff trained in how to safely engage in or avoid restraint and seclusion?

The law requires that any staff members who use physical restraint and seclusion on students are trained by a state-approved training program, unless the restraint or seclusion was required during an unforeseeable emergency situation.

If restraint or seclusion are used by staff who were not trained in a proper and approved technique, the district must notify you and explain why it was necessary to have an untrained staff member use restraint or seclusion. Staff training must include positive behavior support, conflict prevention, and de-escalation and crisis response techniques.

What happens after my child is restrained or secluded?

First, the school is required to notify you verbally or electronically by the end of the day the incident occurred. Within 24 hours of the incident, the district must provide you with written documentation including, at minimum:

- Who implemented the restraint or seclusion;
- How long the restraint or seclusion lasted;
- Where it happened;
- What was happening before it started;
- How staff tried to de-escalate the situation; and
- A description of what your child was doing that posed a reasonable threat of imminent bodily injury.

Within two days of the incident, staff must hold a debriefing meeting to discuss the incident. The purpose of this meeting is to look at why the incident happened and to take any action necessary to reduce the chances of it happening again.

You must be given notice of when that meeting will occur and you have the right to attend the meeting. However, because debriefing meetings must be held within two days, the district does not have to accommodate your schedule when setting a meeting time.

What is mechanical restraint?

Mechanical restraint is any device that is used to restrict your child's movement; for example, strapping your child to a chair to prevent him/her from leaving the room. The district **cannot** mechanically restrain your child. Protective or stabilizing devices ordered by your child's physician and vehicle safety restraints used during transport are not mechanical restraints.

What is prone restraint?

Prone restraint is a restraint in which a student is held face down on the floor. Prone restraint is not permitted under Oregon law.

Are there tools available to help reduce or stop my child's difficult behaviors?

Your child's disability may cause behaviors that interfere with learning or lead to disciplinary problems. There are two basic tools to help reduce or stop difficult behaviors: a **functional behavior analysis (FBA)** and a **behavior plan (often called a BSP or BIP)**.

What is a functional behavior assessment (FBA)?

An FBA tries to answer three questions:

1. Why is the behavior happening? Identify triggers and setting events.
2. What clues does your child give that the behavior is about to happen? These clues are also called antecedent behaviors. It is very rare for a student to not give any signs that the situation is escalating.
3. Why does your child engage in this behavior? Figure out the function or purpose of the behavior. If your child seems to be seeking attention, ask why. Is the work too difficult? Does your child feel anxious that she won't understand the work so that she wants an adult nearby?

Once these questions have been answered, a strategy is developed to deal with the behavior. A good FBA should describe your child in a way that makes sense to you.

When should an FBA be done?

An FBA should be done when:

- Behavior consistently or predictably impacts your child’s learning, or the learning of your child’s classmates;
- Your child has multiple suspensions or disciplinary referrals;
- Your child is experiencing restraint or seclusion at school; or
- Before a behavior plan is written. *See pp. 5-6, What is a behavior plan?*

What happens during an FBA?

The FBA starts with a school staff member (possibly a special education teacher, or a behavior specialist) observing your child in different settings, such as the playground and math class, on different days. That person writes down his/her observations. The IEP team then meets to review what was observed and members add their own observations and thoughts as to why the behavior might be happening. Parents are **crucial** to this process and have a right to be part of it. You know your child and have learned so much about when and why the behaviors happen. Share your expertise with the team during this process.

What does a good FBA look like?

To give you an idea of how useful an FBA can be when done thoughtfully, review the following examples.

TRIGGERS & SETTING EVENTS: When is the behavior happening?

Useful	Unhelpful
The behavior happens at recess and during unstructured times. The behavior happens when noise in the classroom gets too loud.	Daily, across settings. At all times, unpredictable.

ANTECEDENT BEHAVIORS: What clues does the student give that the behavior is about to happen?

Useful	Unhelpful
The student’s face turns red, and she raises her voice. The student hides under his desk, or fidgets with his pen and push papers away.	The behavior is unpredictable.

FUNCTION OR PURPOSE: Why does the student engage in this behavior?

Useful	Unhelpful
The student becomes anxious when presented with too much verbal information to process.	The student is trying to avoid work. The student is trying to gain attention.

What is a behavior plan?

A behavior plan (also called a BIP or BSP) is a set of instructions for the adults who work with your child. It is **not** a plan for what your child is required to do. The IEP team uses the information from the FBA to develop the behavior plan. A behavior plan should address the following:

- 1. What is the behavior theory or function of behavior that the team determined during the FBA? The plan should be based on that behavior theory or function.**

Example: If the FBA behavioral theory or purpose is that your child becomes anxious when presented with too much verbal information to process, the plan should instruct adults to reduce their demands and verbal explanations when they see signs of trouble.

- 2. How can staff help eliminate or reduce the triggers and setting events?**

Example: If loud noises are a trigger, can the student wear headphones? If transitions lead to behaviors, can the schedule be adjusted to make fewer transitions? Would a visual schedule help? If writing is a trigger, the plan should require adults to be flexible about how and when to ask your child to write.

- 3. Teach replacement behaviors. When you look at the function or purpose of the behaviors, is there another way for the student to get that need met?** This part of the plan focuses on teaching the student new skills that will eventually replace the negative behaviors. (This could also be covered by a behavior goal in the IEP.)

Example: If your child becomes anxious when presented with too much verbal information to process, this part of the plan might encourage your child to learn to flip over a card or give a hand signal to indicate their anxiety level. This gives your child the opportunity to learn another way to communicate their needs to those around them.

- 4. How will staff respond when they see antecedent behaviors?** The behavior plan should list what antecedent behaviors staff should look for, and specific ways they will respond when they see them.

Example: When the student raises his voice and his face gets red, staff will calmly suggest that he can take a walk or change activities, to give him space.

5. **How will staff help the student de-escalate if the behaviors escalate?** Even with the best behavior plan in place, there are times the behaviors will escalate. This part of the plan should focus on the best way to help the student de-escalate as quickly as possible.

Example: If your child is known to escalate when forced to admit a mistake, make sure that the behavior plan specifies that your child is not asked to apologize during de-escalation.

What should not be part of a behavior plan?

A behavior plan should not:

- Be a behavior contract with a list of expectations for the student and consequences for not meeting those expectations.
- Include half-day or reduced schedules unless you really feel these options are appropriate for your child.
- Include negative consequences unless they have been shown to be effective and meaningful for your child.

What happens if the behavior plan does not work?

If your child's behavior becomes worse or the plan does not result in significant reduction or elimination of the targeted behaviors within a month, you should ask the team to meet and discuss the problem.

The team should first consider whether the problem has been caused by poor implementation – meaning that staff has not followed it. If that is the problem, the team needs to provide better training or increased supports to ensure that the plan is followed.

On the other hand, if the plan has been properly followed without a good result, the team needs to look at revising the plan **and** the FBA behavior theory.

For more detailed information on special education, call us or visit our website for a copy of *Special Education: A Guide for Parents & Advocates*.

RESOURCES

Disability Rights Oregon (DRO) Report, *Keep School Safe for Everyone: A Report on the Restraint & Seclusion of Children with Disabilities in Oregon Schools* (February 2011)
Website: droregon.org

Government Accounting Office (GAO) Report, SECLUSIONS AND RESTRAINTS: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers (GAO-09-719T May 19, 2009)
Website: gao.gov

National Disability Rights Network (NDRN) Report, School is Not Supposed to Hurt: Update on Progress in 2009 to Prevent and Reduce Restraint and Seclusion in Schools
Website: ndrn.org

Oregon Department of Education (ODE)
255 Capitol Street NE | Salem, OR 97310-0203
Tel: 503.947.5600 | Fax: 503.378.5156
E-mail: ode.frontdesk@ode.state.or.us | Website: www.ode.state.or.us

OSEP Technical Assistance Center on Positive Behavioral Interventions & Supports (PBIS)
Website: pbis.org

U.S. Department of Education, *Restraint and Seclusion: Resource Document* (May 2012)
Website: ed.gov



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