



RESTRAINT AND SECLUSION IN OHIO SCHOOLS

Gaps in Enforcement

DANIELLE GRAY, AUTHOR

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ABOUT US

Disability Rights Ohio is the federally mandated Protection and Advocacy system and Client Assistance Program for the state of Ohio, whose mission is to advocate for the human, civil and legal rights of people with disabilities in Ohio. Disability Rights Ohio has investigated multiple claims of abuse and neglect involving restraint and seclusion across multiple state systems including the Ohio Department of Education, the Ohio Department of Developmental Disabilities, the Ohio Department of Mental Health and Addiction Services, the Ohio Department of Youth Services, and the Ohio Department of Medicaid.

INTRODUCTION

Restraint and seclusion are highly controversial methods of controlling behavior. These methods not only are completed against a person's will, but they can be dangerous, leading to serious injury or death (Fisher 1994) (Rakhmatullina, Taub and Jacob 2013). Many people are surprised to learn that these methods are not only used in psychiatric and corrections settings, but also by educators in local school districts. There have been many case studies and reports of children dying, being injured or traumatized by restraint or seclusion in the school setting (National Disability Rights Network 2012) (U.S. Government Accountability Office 2009) (Vogell 2014) (The Joint Commission 1998).

Restraint and seclusion are disproportionately used on children with disabilities and children of color. According to the United States Department of Education Civil Rights Data Collection, Ohio children with disabilities account for 14% of the school population but account for 80% of all restraints. Nationwide, 19% of all students with disabilities are African American, yet 36% of students with disabilities who have been subject to restraint are African American (Office for Civil Rights 2014).

Many professional organizations and researchers have evaluated data and literature and have concluded that restraint and seclusion practices carry heavy risks, and serve no value for therapeutic treatment. In rare and extreme emergency situations a student may need to be temporarily restrained in order to prevent physical harm. In these situations, the restraint should only be used when no other method of ensuring safety is available, and end when the risk of physical harm has passed. There should be an immediate review of the situation to determine what can be done to prevent any future emergencies. (National Alliance on Mental Illness 2014), (COPAA 2011), (APNA Revised, 2014).

There are alternatives to using restraint and seclusion. Positive Behavior Interventions and Support (PBIS) is an empirically validated, function-based approach to eliminate challenging behaviors and replace them with prosocial skills. PBIS is a systemic approach to not only implement evidence-based practices and data driven decision making, but also develop a culture that reinforces desired behaviors, diminishes reoccurrences of challenging behaviors and teaches appropriate behaviors to students. PBIS identifies root causes of behavior and addresses those causes. Full implementation of PBIS has been demonstrated to not only greatly reduce emergency situations, but also provide schools with additional tools to respond to an emergency that do not include restraint or seclusion (Cohn 2001).

OHIO DEPARTMENT OF EDUCATION RULE ON RESTRAINT AND SECLUSION

Ohio Department of Education Rule

On August 1st, 2013, the Ohio Department of Education rule limiting the use of restraint and seclusion and requiring the implementation of PBIS for students went into effect (Ohio Administrative Code 3301-35-15). This rule has a number of important features that both implement PBIS as well as limit the use of restraint and seclusion.

The rule requires that school districts develop written policies and procedures that are consistent with the Ohio Department of Education's policy on PBIS and implement PBIS on a system wide basis. These policies must include monitoring and reporting on the implementation of the policy. The school district also must ensure that an 'appropriate number' of personnel are trained in de-escalation and crisis management and PBIS training is highly encouraged.

The rule also limits the use of restraint and seclusion in Ohio schools. Prone restraint and other restraints that restrict breathing are prohibited at all times. Physical restraint and seclusion may only be used if there is immediate risk of physical harm to the student or others and no other safe method is available, and only for the minimum amount of time needed to prevent physical harm.

In addition, the rule establishes reporting requirements. Every incident of restraint or seclusion is required to be reported immediately to building supervision and the parent. A written report must be documented and made available to the parent within 24 hours and the report is to be maintained by the school district.

When the rule was originally established, it applied only to public schools. Early in 2015, legislators introduced a bill to hold charter schools to the same restraint and seclusion standards that were established for public schools. The bill became effective in June of 2015 and charter schools had to comply with the rule starting in the 2015-2016 school year.

The rule contains requirements concerning the development and implementation of best practices to prevent the use of restraint and seclusion. The discussion of the implementation and enforcement of these requirements will be addressed in a future publication.



GAPS IN ENFORCEMENT

Use of restraint and seclusion in non-emergency cases

The 2013-2014 school year was the first year in which schools submitted data on the use of restraint and seclusion and implementation of PBIS to the Ohio Department of Education. More than 10,000 incidents of restraint and seclusion were reported, suggesting that restraint and seclusion are used more broadly than only in cases where there is an immediate risk of physical harm. There is currently no plan for the Ohio Department of Education to follow up on reports of restraint and seclusion to determine if such methods were used appropriately.

Reports from students and parents suggest that many incidents of restraint or seclusion that are used in non-emergency cases are not reported by the school administration because of who performs the restraint or seclusion. In many schools, there are school resource officers who are technically employees of local law enforcement, and not the school. If a school employee feels that the student is engaging in inappropriate behavior, the school resource officer is called to intervene with the student, which sometimes involves restraint. The school district then claims that it does not have to follow the Ohio Department of Education rule—including reporting and notification requirements—because the action was not performed by the school, but by law enforcement.



Lack of proactive monitoring, reporting and notification

There is no plan or procedure in place for the Ohio Department of Education to proactively monitor compliance of school districts with the rule. There is no way to know which schools are in compliance and which are not because the Ohio Department of Education does not audit the data that school administrations report.

While the rule requires that school districts provide notice to parents when a student is restrained or secluded, Disability Rights Ohio has received reports that parents are not notified of such occurrences. This notification is essential for parents, especially parents of students who have communication barriers that prevent them from telling their parents about what has happened at school. Students will often have nightmares, regressing behaviors, or destructive behavior at home after a traumatic incident like restraint or seclusion. If parents are not notified, they will not be able to assist the school in addressing the root cause of the behavior and future incidents of restraint or seclusion may occur, increasing the likelihood of the child experiencing additional injury or trauma.

CLIENT EXAMPLE

In May of 2013, a parent of a student with a developmental disability was notified that her child needed medical attention. Upon arriving at the school to pick up her child, she was informed that the student required medical attention due to an injury that was sustained during a restraint. The school informed her that her child had been restrained for over 45 minutes and this process resulted in a leg injury. It was not until this day, when the student had been injured seriously enough to require medical attention, that she also learned that this was not the first incident of restraint. The school official told the parent that there had been many previous incidents of which the parent was not informed. The student now has chronic leg pain and needs physical therapy due to the injury.



Insufficient recourse for parents and students

Currently, if a parent has a concern regarding an incident of restraint or seclusion, they can file a complaint with the school administration. It is up to the school administration to respond to the complaint. If the parent is not satisfied with the response from the school administration there is no clear way for the parent to file an appeal with the Ohio Department of Education.

There is an existing complaint process for students with disabilities that is separate from the rule regarding restraint and seclusion that allows students with disabilities to file complaints when there have been violations of special education law. However, this process does not address if the rule on restraint and seclusion was violated. This complaint process only examines if a student with a disability has been denied a free and appropriate public education.

If a student does not have a disability and parents are not satisfied with the response from the school administration there is no ability for the parents to file an appeal to the Ohio Department of Education.

CLIENT EXAMPLE

In December of 2014, a parent contacted Disability Rights Ohio after having an IEP meeting at her child's school. During her time at the school, she saw the school's seclusion room. The seclusion room had no door handle and there was an automatic lock on the door that could only be opened by staff swiping a key card. The parent described to the school officials how the new Department of Education rules did not allow the use of locks on seclusion rooms. The school admitted that it was out of compliance and stated that it had no plans to come into compliance. Rather, the school official stated it was working with the Ohio Department of Education to have the rules changed to allow locks. Until this parent's child or another child is seriously injured or is denied a free and appropriate public education, there is no mechanism in place to ensure that this school will ever come into compliance with the new rule.

No coordinated effort for investigations

When an incident of restraint or seclusion occurs, multiple agencies or organizations may become involved depending on the unique circumstances of the incident. If there is an injury, the local children services agency may become involved. If the student has a developmental disability, the county board of developmental disabilities may be included in the process. If the incident involved a school resource officer or was serious enough to warrant criminal charges, local law enforcement may be contacted. However, there is no standard that requires that each incident be investigated, or that a single entity be responsible for investigations. Instead, each agency applies its own criteria for whether the incident warrants further action.

The purpose of allowing multiple agencies to be involved is to ensure that incidents are investigated and students are provided with the most appropriate services to meet their needs. However, if an incident does not fit neatly into any particular agency's guidelines, the incident is not appropriately investigated and the student and family are passed from agency to agency with no answers. In the end, nothing is done about the incident. Meanwhile, the situation often escalates and the student is restrained or secluded multiple times. Without thorough, independent investigations of individual incidents of inappropriate use of restraint or seclusion, there is no way for the state to become aware of systemic issues and address them appropriately.

Agencies are often unwilling to take responsibility for investigating restraint and seclusion incidents because they do not have the training needed for such incidents, especially if the student involved has a disability. Law enforcement and children services agencies may not have the training needed to interview or provide accessible services to individuals with disabilities.

RECOMMENDATIONS

Ending inappropriate use of restraint and seclusion in Ohio's schools requires more than simply putting a policy in place - it involves a change in culture at every level of the education system. The current culture puts too many Ohio students at risk of injury, death, or trauma. Disability Rights Ohio makes the following recommendations to address these problems:

Robust monitoring of incidents of restraint and seclusion

- **The Ohio Department of Education should include Restraint and Seclusion and PBIS reviews in the monitoring requirements that schools are already required to complete.**

There are many requirements placed on schools that restrict the use of restraint and seclusion and require the implementation of PBIS. However, there is no proactive monitoring of compliance. By including reviews of restraint and seclusion protocols and PBIS implementation along with other monitoring requirements, the Ohio Department of Education can be alerted to problems and work with schools to find appropriate solutions. The monitoring requirements need to be a reflection of the substantive changes that need to occur within a school. The measures must be evidence based and appropriate to determine that a school is, in fact, in compliance with the rule. Any school that is found to not be in compliance should be required to develop a plan of correction and notify parents of the findings and the plan for correction.

Effective system for reporting and investigations

- **The Ohio Department of Education should establish an effective system for reporting and investigation of incidents of restraint and seclusion that violate the rule.**

Parents, students, teachers, and others should have the ability to inform the school district of an incident of restraint or seclusion, and have confidence that the incident will be investigated and that steps will be taken to ensure that that incident is not a part of a systemic problem within the school. Incidents should also be investigated in a manner that ensures appropriate steps will be taken to ensure that similar incidents do not happen in the future.

If parents are not satisfied with the results of the school district's investigation, they should have access to a clear process to file an appeal with the Ohio Department of Education. The Department of Education should review the appeal and have the authority to require corrective action.

Consistent notification and documentation requirements

- **The Ohio Department of Education should create uniform notification requirements for school administrations and create a uniform form that schools would be required to use for documenting incidents of restraint and seclusion.**

Schools need to inform parents immediately when incidents of restraint and seclusion occur. The notification requirements should be consistent across all schools so parents can easily access and interpret information. Additionally, the Ohio Department of Education should create a mandatory uniform document for schools to use to ensure that reporting is consistent across schools.

Cross-agency collaboration

- **The Ohio Department of Education should require school administrations to implement agreements between agencies with overlapping authority that provide clarity in roles and responsibilities for monitoring, investigating, and reporting incidents of restraint and seclusion.**

When establishing a system of monitoring, reporting, and investigation, local school administrations should coordinate with other agencies, including children services agencies and law enforcement, so that those agencies can take appropriate corrective action. The Ohio Department of Education should require school districts to implement agreements between agencies with overlapping authority to provide clarity in roles and responsibilities for monitoring, reporting and investigation.

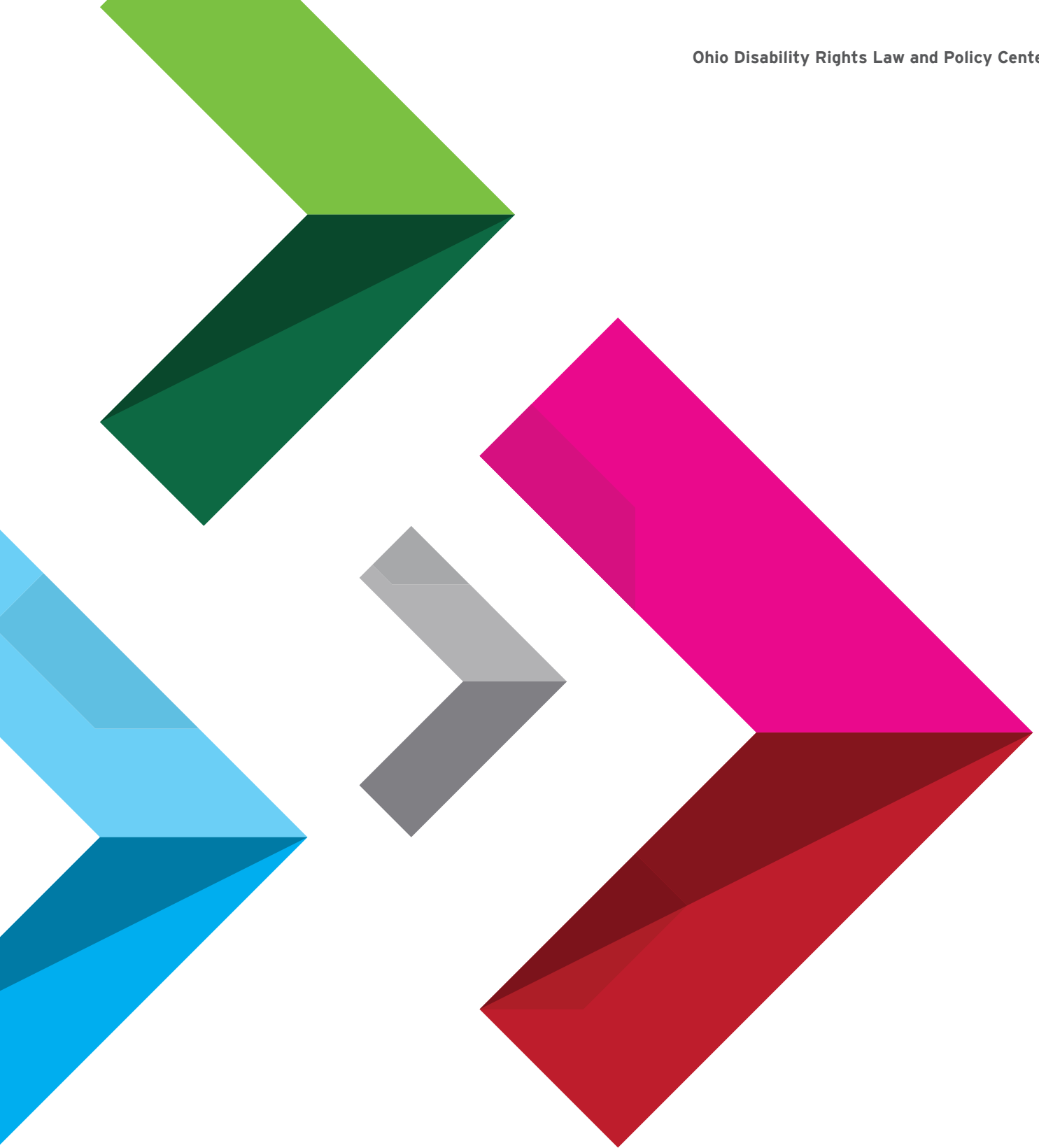
Commitment to performance improvement

- **The Ohio Department of Education should set clear standards and benchmarks for reducing incidents of restraint and seclusion and implementation of PBIS and provide schools with resources needed to meet standards.**

The Ohio Department of Education needs to set standards and benchmarks for reducing incidents of restraint and seclusion in Ohio's schools. These standards and benchmarks need to be reviewed often to ensure that the state is making progress, and the Ohio Department of Education needs to provide the necessary supports to school districts to help them meet the requirements of the rule.

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Disability Rights Ohio

50 W. Broad St., Suite 1400
Columbus, Ohio 43215-5923

614-466-7264 or 800-282-9181

FAX 614-644-1888

TTY 614-728-2553 or 800-858-3542

disabilityrightsohio.org