

POLICY GUIDANCE FOR USE OF SECLUSION AND RESTRAINTS IN SCHOOLS INDIANA DEPARTMENT OF EDUCATION

Background

In a letter to all Chief State Schools officers dated July 31, 2009, U.S. Secretary of Education Arne Duncan asked that “each State ... review its current policies and guidelines regarding the use of restraints and seclusion in schools to ensure every student is safe and protected, and if appropriate, develop or revise its policies and guidelines.” This request comes after a hearing held on May 19, 2009, by the U.S. House Education and Labor Committee to examine misapplication of seclusion and restraint techniques in schools. On the day of the hearing, the Government Accountability Office (GAO) issued a copy of the testimony of Gregory D. Kutz, entitled "Seclusions and Restraints: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers."

Based on this federal directive, the Indiana Department of Education has reviewed all state statutes, regulations and policies, and concluded that Indiana has no statewide policy regarding restraint and seclusion of students. This document was developed after reviewing other states' statutes, regulations, and policies, as well as the position papers of organizations such as the Council for Exceptional Children. As a guiding principle, the Department recommends that schools and school corporations address the use of student seclusion and restraint as part of the school's written discipline rules.

Policy and Guidance

Indiana Code 20-33-8-12(a)(1) requires school corporations to establish written discipline rules. The Indiana Department of Education recommends that school corporations adopt rules regarding student seclusion (also called isolated time out) and restraint¹ as part of their comprehensive discipline rules under this statute. The following should guide school corporations as they develop and review their discipline rules and related policies and procedures.

Use of isolated time out or physical restraint and limitations on use

A school corporation's discipline rules, as well as any policies and procedures, addressing the use of isolated time out or physical restraint, should include the following:

- 1) the circumstances under which isolated time out or physical restraint may be utilized;
- 2) a written procedure to be followed by staff when isolated time out or physical restraint is utilized;
- 3) designation of a school official who will be informed of incidents when isolated time out or physical restraint is used;
- 4) a description of the alternative strategies that will be implemented when determined advisable; and

¹ According to Mr. Kutz: "There are no federal statutes that apply to seclusion or restraint in the context of public or private schools" *Seclusion and Restraints*, Testimony of Gregory D. Kutz, May 19, 2009.

5) a caveat that any utilization of isolated time out or physical restraint with a student with a disability may be precluded by or subject to additional parameters pursuant to the student's individualized education program (IEP).

Isolated time out and physical restraint as defined herein shall be used only as means of maintaining a safe and orderly environment for learning and only to the extent necessary to preserve the safety of students and others. Use of isolated time out or physical restraint may also be a component of a behavioral intervention plan (BIP) or and IEP. Neither isolated time out nor physical restraint shall be used as a form of punishment.

“Isolated time out” means the confinement of a student in a time-out room or some other enclosure, whether within or outside the classroom, from which the student's egress is restricted. The use of isolated time out shall be subject to the following requirements:

- 1) Any enclosure used for isolated time out shall
 - A) have the same ceiling height as the surrounding room or rooms and be large enough to accommodate not only the student being isolated but also any other individual who is required to accompany that student;
 - B) be constructed of materials or objects that cannot be used by students to harm themselves or others, and be designed so that students cannot climb up the walls;
 - C) be designed to allow continuous visual monitoring of and communication with the student;
 - D) not use any device that requires the use of a key or special knowledge on any required exit from the room; and
 - E) comply with all applicable health and safety requirements.
- 2) An adult must supervise the student while confined and must be able to see the student at all times.
- 3) A student shall not be kept in isolated time out for more than 30 minutes after he or she ceases presenting the specific behavior for which isolated time out was imposed or any other behavior for which it would be an appropriate intervention. If a student is placed in isolated time out pursuant to a BIP or IEP, any time limitations identified in the BIP or IEP will control.

“Physical restraint” means holding a student or otherwise restricting his or her movements. The following should be considered when adopting policies, procedures, or rules regarding the use of physical restraint:

- 1) Physical restraint should be employed only when:
 - A) the student poses a physical risk to himself, herself, or others;
 - B) there is no medical contraindication to its use; and
 - C) the staff employing the restraint have been trained in its safe application.
- 2) Students shall not be subjected to physical restraint for using profanity or other verbal displays of disrespect for themselves or others. A verbal threat shall not be considered as constituting a physical danger unless a student also demonstrates a means of or intent to carry out the threat.
- 3) Any application of physical restraint shall take into consideration the safety and security of the student. Further, physical restraint shall not rely upon pain as an intentional method of control.

4) In determining whether a student who is being physically restrained should be removed from the area where such restraint was initiated, the supervising adult(s) shall consider the potential for injury to the student, the educational and emotional well-being of other students in the vicinity, and as applicable, any requirements pursuant to a BIP or IEP .

5) If physical restraint is imposed upon a student whose primary mode of communication is sign language, the student shall be permitted to have his or her hands free of restraint for brief periods, unless the supervising adult determines that such freedom appears likely to result in harm to the student or others.

6) A student shall be released from physical restraint immediately upon a determination by the supervising adult or staff member administering the restraint that the student is no longer in imminent danger of causing physical harm to himself, herself, or others.

Reviewing and Reporting

A school's policies, procedures, and discipline rules should include a process for reviewing the use of isolated time out or restraint and for notifying the student's parents that one of these methods was employed with the student. As guidance, the Department recommends that when a student has experienced three instances of isolated time out or physical restraint, the school personnel who initiated, monitored, and supervised the incidents shall review the effectiveness of the procedure(s) used and prepare an individual behavior plan for the student that provides either for continued use of these interventions or for the use of other, specified interventions. The plan shall be placed into the student's student record. The review shall also consider the student's potential need for an alternative program or for a referral for a special education evaluation, if the student does not have an IEP. Parent notification, documentation, and subsequent action to be taken in the case of a student with an IEP, including the development of a behavior plan, is subject to applicable terms in the student's BIP or IEP.

Requirements for Training

A school's policies and procedures should address the training requirements for all staff that may be required to utilize isolated time out or physical restraint methods with a student.

Isolated Time Out: When the school's policies, procedures, or rules permit staff to utilize isolated time out as a means of ensuring the safety of the student or others, the school should require staff training on such policies, procedures, or rules.

Physical Restraint: When the school's policies, procedures, or rules permit staff to utilize methods of physical restraint, staff should be trained in appropriate physical restraint techniques, as well as on the content of the policies, procedures, or rules. In addition:

1) Physical restraint should be applied only by individuals who have received systematic training that includes all the elements described in this policy, and who have obtained written evidence of successful participation in such training. An individual who applies physical restraint shall use only techniques in which he or she has received such training within the preceding two years, as indicated by written evidence of participation.

2) Training with respect to physical restraint should include, but need not be limited to the following:

A) appropriate procedures for preventing the need for physical restraint, including the de-escalation of problematic behavior, and the use of alternatives to restraint;

- B) a description and identification of dangerous behaviors on the part of students that may indicate the need for physical restraint and methods for evaluating the risk of harm in individual situations in order to determine whether the use of restraint is warranted, including compliance with any BIP or IEP requirements;
- C) the simulated experience of administering and receiving a variety of physical restraint techniques, ranging from minimal physical involvement to very controlling interventions;
- D) instruction regarding the effects of physical restraint on the person restrained, including instruction on monitoring physical signs of distress and obtaining medical assistance;
- E) instruction regarding documentation and reporting requirements and investigation of injuries and complaints; and
- F) demonstration by participants of proficiency in administering physical restraint.

Nothing in this policy guidance should be construed to limit the rights and abilities of teachers and school staff to keep order and administer necessary discipline in their classrooms and on school grounds, especially those powers and immunities found in IC 20-33-8.