

Advocacy in Action

Seclusion and Restraint: Federal Updates and Advocacy Opportunities

By Kelly Vaillancourt & Mary Beth Klotz

The issue of seclusion and restraint has been a recent hot topic widely discussed among many education and disability rights advocacy groups, and now the United States Congress. The Children's Health Act of 2000 protects children from abusive seclusion and restraint practices in facilities that receive federal funding such as Medicaid. These centers include residential group homes, treatment facilities, and hospitals. However, there is no federal legislation that regulates the use of these techniques in our public schools. Historically, policies and procedures related to seclusion and restraint in the schools have been maintained at the state and local district level, although examples are limited. As of April, 2012, there are 30 states that have either a statute or regulation providing protection against seclusion and restraint for students. However, there is wide variation among these laws and regulations, and only 13 states have laws or regulations that cover all students, while others only protect students with disabilities (Butler, 2012). Recently, there has been increased debate regarding appropriate staff training, proper seclusion and restraint techniques, monitoring and parent reporting, and when, if at all, these methods are appropriate to use in the public and private school settings.

Over the past several years, allegations of abuse and death related to seclusion and restraint, media coverage of these events, subsequent federal investigations, and Congressional hearings about this topic have resulted in increased pressure on Congress to pass legislation to address the use of seclusion and restraint in the school setting.

Currently, there are two pieces of federal legislation that are intended to regulate state and local policy regarding seclusion and restraint, and the U.S. Department of Education recently released a resource document related to this issue. Although NASP does not have a formal position regarding seclusion and restraint, the association actively promotes the use of preventive measures and positive behavioral supports (PBS) with all students. This article will provide you with background information relating to this legislation as well as NASP's response. The article will also highlight key recommendations from the U.S. Department of Education's (2012) *Restraint and Seclusion: Resource Document*, and summarize the behavioral practices that NASP promotes, including the role of the school psychologist in ensuring that all students' behavior is properly supported.

Editor's Note:

This month's **Student Connections** column provides a field-based example of one graduate student's experience with seclusion, restraint, and positive disciplinary approaches.

Definitions of Seclusion and Restraint

It is important to note the distinction between *seclusion* and *time-out*. These two terms are often used interchangeably, but they have very different meanings. Time-out involves removing a student from the group or requiring the student to go to a separate designated area, but the individual is monitored at all times by an adult and is not physically prevented from leaving the area. Typical examples of time-out include sending a student to sit at a desk in the hallway, facing the wall in the classroom, or sitting in a designated section of the classroom away from the rest of the group. The Children's Mental Health Act of 2000 defines seclusion as, "the involuntary confinement of an individual alone in a room or area from which the individual is physically prevented from leaving." Regulations issued around this definition indicate that seclusion can mean confinement in rooms that are locked, blocked by furniture, held shut by staff outside the door, etc. Examples of seclusion include forcing a child into a room and locking the door, strapping a child to a chair, or pinning a student to the floor to keep him or her from leaving an area (National Disability Rights Network [NDRN], 2009).

Restraint, as defined by the Children's Health Act of 2000 and further interpreted by the Center for Medicare and Medicaid Services in final regulations, means any manual method, physical or mechanical device, material, or equipment that immobilizes or reduces the ability of an individual to move his or her arms, legs, body, or head freely. Restraint also refers to drugs or medications that are used to manage someone's behavior or to restrict their freedom of movement, and are not part of a standard treatment dosage for a diagnosed condition. Restraint does not include physical escort, or the use of devices such as orthopedically prescribed devices, helmets, or bandages (NDRN, 2009).

Federal Investigation of Seclusion and Restraint Practices

Over the past several years, numerous reports examining the use of seclusion and restraint in public and private schools have been released (e.g., National Disability Rights Network, 2009; Butler, 2012). In addition to reports by advocacy organizations, the federal government has also investigated these practices. The United States Government Accountability Office (GAO), at the request of the House of Representatives Committee on Education and Labor, reviewed available data on the use of restraint and seclusion as it pertained to allegations of death and abuse at public and private schools. In addition, as part of the investigation, GAO was asked to provide an overview of laws that addressed the use of seclusion and restraint in public and private schools. The results of this investigation were presented in May 2009 to the House of Representatives Committee on Education and Labor (GAO, 2009). GAO reported that there were no federal laws restricting the use of seclusion and restraint, and that although some states had laws or policies to address the use of these techniques, they varied widely from state to state. In addition, GAO was not able to identify a single repository of information related to the use of seclusion and restraint methods. Although GAO could not investigate every allegation of death and abuse related to the misuse of seclusion and restraint, hundreds of allegations were discovered, and the majority of these involved children with disabilities. In many cases, the teachers and staff who implemented the seclusion and restraint techniques were not properly trained (GAO, 2009). Although there are likely many instances in which seclusion and restraint techniques are used appropriately, the allegations of abuse and death have called into question the need for these practices in our schools.

In part because of the results of the GAO report, the U.S. Department of Education began to examine seclusion and restraint practices in the school setting. In July, 2009 Secretary of Education Arne Duncan sent a letter to the chief state school officers and encouraged them to review current policy and procedure

related to seclusion and restraint, revise them if appropriate, and hold schools accountable to these policies. Additionally, the Office for Civil Rights revised its Civil Rights Data Collection, starting with the 2009–2010 school year, to require reporting the total number of students subjected to seclusion and restraint (U.S. Department of Education, 2012).

Proposed Federal Legislation

Due to the results of the GAO report, Congressional hearings, and pressure from advocacy groups, federal legislation was introduced in the 111th Congress relating to the use of seclusion and restraint in schools. In 2009, the House of Representatives introduced the Keeping All Students Safe Act (H.R. 4257) and the Preventing Harmful Restraint and Seclusion in Schools Act (H.R. 4247). The Senate also introduced a companion bill to the Keeping All Students Safe Act (S. 3895). None of these bills were signed into law. In April 2011, the Keeping All Students Safe Act was reintroduced in the House of Representatives (H.R. 1381) and in December, the Senate introduced its own version (S.2020). There are a host of disability rights and parent advocacy groups that fully support both of these bills that are intended to limit the use of seclusion and restraint in the schools, outline criteria for appropriate use of these methods, and require data collection on the use of these techniques. In addition, these bills promote the use of positive behavioral interventions and supports. However, while NASP fully supports the House bill, it has concerns with language contained in S.2020, outlined in written testimony submitted for a Senate hearing held on July 12, 2012 and summarized below. Readers may also find the full set of NASP recommendations at <http://www.nasponline.org/advocacy/advocacynews.aspx>.

Allowable use of physical restraint. NASP recognizes that physical restraint should only be used when absolutely necessary, by trained staff, and in concert with a range of positive discipline and behavioral techniques. NASP's main concern with S. 2020 is the requirement that the use of physical restraint may only be used in instances when the student's behavior poses an immediate danger of serious bodily injury to self or others. The term serious bodily injury as defined in U.S. Criminal Code means being inflicted with an injury or illness that involves: (a) substantial risk of death, (b) extreme physical pain, (c) protracted and obvious disfigurement, or (d) protracted loss or impairment of the function of a bodily member, organ, or mental faculty. Examination of case law indicates that determination of serious bodily injury is based on the type of care that is required by an injured party after such injury occurs, and in cases where the meaning of "serious bodily injury" has been examined, a broken nose and a concussion, injuries that parents and school personnel would consider very serious, did not meet the definition of serious bodily injury (SEA PA 2008; SEA CA 2006). The decision to use seclusion and restraint is generally made when a student is in crisis, with the intent of keeping students and staff safe, and it would be nearly impossible for school staff to predict if the student's behavior would result in serious bodily injury when making this decision. NASP believes that the definition of serious bodily injury is too stringent and may prevent the necessary use of appropriate restraint when it is warranted to ensure the safety of students and staff.

Mandatory debriefing session. S. 2020 would require that parents be notified following each instance of seclusion and restraint. In addition, after each instance, a debriefing session, with all school personnel who were in proximity of the student before, during, and after the use of restraint, must take place within 5 school days. There are parts of the debriefing session that NASP supports, including the identification of additional positive strategies that could be used with the student in the future. However, this bill would also require that schools refer a student for eligibility consideration for IDEA or Section 504 if the student is not already receiving services or accommodations or document why a referral was not made. NASP believes it is inaccurate to assume that when a child receives behavioral interventions in school, including seclusion and restraint, that it is because the student has a disability. Requiring school personnel to prove they are

not negligent in identifying a student's disability would lead to a host of unintended consequences, including unnecessary referrals to special education and unnecessary litigation. Although there are concerns regarding this language in S. 2020 and the potential burdens it could place on school personnel, NASP does support many other aspects of the bill, including the recommended use of multitiered problem-solving strategies and PBS.

Department of Education Restraint and Seclusion Resource Document

In response to the growing national concern, in May of 2012, the U.S. Department of Education published a resource document that states, school districts, school staff, parents, and other stakeholders may use when developing or refining policies and procedures on the use of seclusion and restraint. The document is applicable to all students, not just those with disabilities, and stresses that every effort should be made to structure learning environments and provide supports so that restraint and seclusion are unnecessary. In particular, it recommends that schools review their strategies when there is repeated use of restraint or seclusion for an individual child, multiple uses within the same classroom, or multiple uses by the same individual. The Department, in collaboration with the Substance Abuse and Mental Health Services Administration (SAMHSA), included 15 basic principles in the document that should be considered a framework to ensure that any use of seclusion and restraint occurs in a manner that protects the safety of all children and adults in school. School psychologists can take a leadership role in helping districts and schools adopt policies that reflect these 15 principles. In particular, school psychologists can work with school personnel to develop and implement prevention measures such school-wide positive behavior support systems, functional behavioral assessments, and training on deescalation techniques to defuse potential violent dangerous behavior. The resource tool is not intended to provide formal guidance to states and districts and does not require any specific actions or mandate any new requirements regarding the use of seclusion and restraint.

NASP's Best Practice Recommendations

NASP believes that the creation of positive conditions for learning is essential to student success and foundational to effective school discipline policies. To help students learn to their fullest potential, schools need to actively cultivate conditions that promote safety, prevent negative behaviors, foster increased student engagement, and support social– emotional wellness, mental health, and positive behavior (NASP, 2011). In order to establish positive school climates and conditions for learning, NASP supports the use of multitiered problem-solving models that feature interventions that are evidence based, implemented with fidelity, and include objective and validated measures to monitor student progress (NASP, 2009). School-wide positive behavioral support programs help prevent negative behaviors and improve school safety and are central to positive conditions for learning. School psychologists play important leadership roles in designing and implementing these models, and advocating for culturally competent and equitable discipline practices for all students. Ultimately, it is these positive discipline practices and preventive measures that reduce or eliminate the need for use of seclusion and restraint in schools.

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