



U.S. Department of Education

Students with Disabilities and the Use of Restraint and Seclusion in K-12 Public Schools

Department's Initiative

- ▶ In January, the Department announced an initiative to address the possible inappropriate use of restraint and seclusion in our nation's schools.
 - The Office for Civil Rights (OCR), in partnership with the Office of Special Education and Rehabilitative Services (OSERS), will oversee this proactive initiative to support students with disabilities
- ▶ As a part of the initiative, OCR will:
 - Conduct compliance reviews on recipients' use of restraint and seclusion on children with disabilities
 - Compliance reviews focus on the use of restraint and seclusion and the effect of such practices on a school's obligation to provide a free appropriate public education (FAPE) for all children with disabilities.
 - Compliance reviews are focused on correcting noncompliance

Department's Initiative

- ▶ As a part of the initiative, OCR will:
 - Conduct Data Quality Reviews on Civil Rights Data Collection (CRDC) restraint and seclusion data submitted by school districts
 - Work directly with school districts to improve data
 - Provide technical assistance on data quality
- ▶ As a part of the initiative, OSERS will:
 - Support recipients identified by OCR through compliance reviews or through the complaint resolution process to ensure they have access to appropriate technical assistance and support.
 - Support schools to ensure they have access to technical assistance and available resources
 - Support schools as they establish or enhance environments where the implementation of interventions and supports reduces the need for reliance on less effective and potentially dangerous practices.

Department's Initiative

- ▶ OCR and OSERS will provide joint technical assistance and support to schools, districts, and state educational agencies
- ▶ The joint technical assistance is intended to support recipients in understanding how Section 504, Title II, and the Individuals with Disabilities Education Act (IDEA) informs the development and implementation of policies governing the use of restraint and seclusion.

Introduction

- ▶ This presentation provides general information and does not represent a complete recitation of the applicable law and policy in this area. It does not address specific issues of compliance because determinations of compliance depend on specific facts on a case-by-case basis. The language used in these slides is approved for purposes of this presentation only and should not be used for other purposes.

Key Message

- In some cases, the use of restraint and seclusion may result in unlawful discrimination against students with disabilities, in violation of Federal civil rights laws.

Key Definitions

OCR Uses the Following Definitions:

As defined by the Civil Rights Data Collection (CRDC):

- ▶ *Physical restraint* refers to a personal restriction that immobilizes or reduces the ability of a student to move his or her torso, arms, legs, or head freely.
- ▶ *Mechanical restraint* refers to the use of any device or equipment to restrict a student's freedom of movement.

OCR's CRDC Definitions (continued):

- ▶ *Seclusion* refers to the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving.
- ▶ Seclusion does not include a timeout, which is a behavior management technique that is part of an approved program, involves the monitored separation of the student in a non-locked setting, and is implemented for the purpose of calming.

Disability Anti-Discrimination

Principles



Section 504 of the Rehabilitation Act

- ▶ Section 504 of the Rehabilitation Act (Section 504) prohibits disability discrimination by recipients of Federal financial assistance.
 - When a recipient violates Section 504, OCR has enforcement authority to address the non-compliance. Recipients include all public schools, school districts, public charter schools, and magnet schools.

Title II of the Americans with Disabilities Act

- ▶ Title II of the Americans with Disabilities Act (Title II) also prohibits disability discrimination by public entities, including public schools, school districts, public charter schools, and magnet schools.
- OCR shares enforcement authority of Title II of the ADA with the U.S. Department of Justice (DOJ).

What is the Definition of Disability under Section 504 and Title II?

- ❖ The definition is the same under both laws.
- ❖ A person (including a student) with a disability is someone who fits any of the following:
 - Has a physical or mental impairment that substantially limits one or more major life activities;
 - Has a record of such an impairment; or
 - Is regarded as having such an impairment.

What Does Section 504 Require?

- ▶ Among other things, Section 504 requires school districts to provide a free, appropriate public education for public elementary and secondary students with disabilities.
 - A “free, appropriate public education” is often abbreviated as “FAPE.”

What Is FAPE?

- ▶ Under Section 504, FAPE consists of two things:
 - The provision of regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met;
 - A school's adherence to certain requirements related to an educational setting, evaluation, placement, and procedural safeguards.

Legal Standards



How OCR Determines Whether the Use of Restraint or Seclusion Has Violated Section 504

Schools Have an Obligation to Evaluate Students Suspected of Having a Disability

- ▶ Section 504 requires a school to evaluate any student who needs, or whom the district has reason to believe needs, special education or related services, because of a disability.
- ▶ Student behavior is one thing that can lead a school to have an obligation to evaluate a student for a disability.

A School's Obligation to Evaluate a Student for Disability

- ▶ When a student exhibits behavior that interferes with the student's education or the education of other students in a manner that would reasonably cause a teacher or other school personnel to suspect that the student has a disability, as defined under Section 504, the school district must evaluate the student to determine:
 - 1) if the student has a disability; and
 - 2) if the student needs special education or related services because of that disability.

A School's Obligation to Identify Students With a Disability

- ▶ A student's challenging behaviors--such as behaviors that lead to a situation in which a school determines restraint or seclusion is a justified response:
 - could be a sign that the student has a disability *and* needs special education and related services; and
 - may indicate that the school does not have an appropriate system to appropriately respond to the inappropriate behavior of any student.

A School's Obligation to Identify Students With a Disability

- ▶ Situations that may impede the student's learning or that of others include:
 - New or more frequent emotional outbursts;
 - Increase in the frequency or intensity of behavior;
 - Sudden change into withdrawn, noncommunicative behavior;
 - Notable drop in academic performance.

A School's Use of Restraint or Seclusion

- ▶ For a student who has already been identified as a student with a disability, a school's repeated use of restraint or seclusion may suggest that the student's current array of regular or special education and related aids and services is not sufficient to provide FAPE.

If a Student is Not Receiving FAPE, What are the School's Obligations?

- ▶ The school must reconvene the Section 504 team (or IEP team for an IDEA-eligible student) to:
 - 1) determine if current interventions and supports are being properly implemented;
 - 2) determine whether and to what extent additional or different interventions or supports and services are needed, and, if necessary, reevaluate the student;
 - 3) ensure that any needed changes are made promptly; and
 - 4) remedy the denial of FAPE.

Does Section 504 Prohibit the Use of Restraint or Seclusion?

- ▶ No.
 - Section 504 prohibits disability discrimination, not the use of restraint or seclusion
- ▶ However, the use of restraint or seclusion may interfere with a student's receipt of FAPE.
- ▶ Also, Section 504 does prohibit secluding or restraining students with disabilities if similarly situated students without disabilities would not have been secluded or restrained under the same circumstances.

When Does Restraint or Seclusion Constitute Different Treatment?

- When a school restrains or secludes a student with a disability for behavior that would not result in the restraint or seclusion of peers without disabilities, OCR would likely find that the school district engaged in discrimination prohibited by Section 504 (called different treatment).
- A school that inappropriately restrains or secludes a student on the basis of assumptions or stereotypes about disability also engages in conduct prohibited by Section 504.

Impact on FAPE Due to the Use of Restraint or Seclusion

- ▶ If the use of restraint or seclusion has a traumatic impact on a student with a disability, the traumatizing effect could manifest itself in new behaviors.
 - If school personnel are aware of behaviors that are sufficiently severe to interfere with a student's individual educational needs, and those behaviors remain unaddressed by school personnel, it could result in a denial of FAPE for that student.

Impact on FAPE due to the Use of Restraint or Seclusion (continued)

- ▶ The repeated use of restraint or seclusion could potentially deny FAPE to a student with a disability, and therefore might violate Section 504
- ▶ Repeated restraint or seclusion of a student could impact FAPE if the student:
 - Doesn't receive the regular or special education, related aids and services;
 - Doesn't receive supplemental services and modifications that the student needs;
 - Is not in an appropriate setting in which to receive those services.

What Must a School District Do to Provide FAPE?

- ▶ If there is reason to believe that the provision of Section 504 FAPE services to the student has been adversely affected by the use of restraint or seclusion, such that the student's needs are not being met, a school has an obligation under Section 504 to take the following actions:

What Must a School District Do to Provide FAPE (continued)?

- 1) determine if current interventions and supports are being properly implemented;
- 2) determine the extent to which additional or different interventions or supports and services, including positive behavioral interventions and supports and other behavioral strategies may be needed, and, if necessary, reevaluate the student;
- 3) ensure that any needed changes are made promptly; and
- 4) remedy the denial of FAPE.

What Action May A School District Voluntarily Take?

- ▶ A school district may proactively address potential noncompliance by taking all, or some, of the following actions:
 - Drafting, adopting, and implementing a policy governing the appropriate use of restraint or seclusion
 - Training relevant staff and School Resource Officers on the policies regarding the appropriate use of positive behavior interventions
 - Implementing a tracking and monitoring system for incidents involving the use of restraint and seclusion techniques

OCR Contact Information

- To file a complaint or request technical assistance, please find your local OCR enforcement office at <http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm>.
- To learn more about OCR and our civil rights enforcement work, please visit our website at www.ed.gov/ocr.

Office of Special Education and Rehabilitative Services (OSERS)

- ▶ The Office of Special Education Programs (OSEP) within the Office of Special Education and Rehabilitative Services (OSERS) administers the Individuals with Disabilities Education Act of 2004 (IDEA)
 - IDEA ensures that a free appropriate public education is provided to eligible children with disabilities
 - IDEA governs how states and public agencies provide early intervention, special education, and related services to more than 7 million eligible infants, toddlers, children and youth with disabilities
 - OSEP is focused on raising expectations and improving results for infants, toddlers, children and youth with disabilities ages birth through 21.

Federal Law

- ▶ IDEA does not specifically prohibit the use of seclusion and restraint in schools.
 - Practices are primarily governed by State laws and regulations
- ▶ It is important that States inform school districts on the policies governing the use of restraint and seclusion so administrators, teachers, and parents understand how and when seclusion and restraint may be used in the school setting.
- ▶ Policies regarding the use of seclusion and restraint should be reviewed regularly and updated as appropriate.

Preventing the Inappropriate Use of Restraint and Seclusion

- ▶ Although most states have some form of legislation or policy, use of restraint and seclusion has not been reduced (Gagnon, Mattingly, & Connelly, 2017)
- ▶ Educators well-trained in de-escalation techniques are less likely to restrain and seclude (Ryan et al., 2007; Freeman & Sugai, 2013)
- ▶ Positive behavioral supports reduce the likelihood of using aversive techniques
- ▶ Generally, schools implementing school-wide positive behavioral interventions and supports (PBIS) with fidelity experience a reduction in the use of restraint and seclusion

IEPs and Behavior

- ▶ The IDEA promotes the use of positive behavioral interventions and supports to address behavior that impedes learning
- ▶ How IEP teams consider the appropriate use of restraint and seclusion for individual children with disabilities is a decision that is left, under the IDEA, to each State

IEPs and Behavior

- ▶ In the case of a child whose behavior impedes the child's learning or that of others, the IEP Team, in developing, reviewing, and revising the child's IEP, must consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.
 - This requirement applies to all IEP Teams, regardless of the child's specific disability, and to the development, review, and revision of IEPs
- ▶ A pattern of exclusionary disciplinary measures may indicate a child's IEP is not reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.

IEPs and Behavior

- ▶ Behavioral supports provided as part of a child's special education and related services may be necessary to ensure that the child's IEP is designed to enable the child to:
 - Advance appropriately toward attaining the annual goals specified in the IEP,
 - Be involved and make progress in the general education curriculum, and
 - Participate in extracurricular and other nonacademic activities.

IEPs and Behavior

- ▶ The child's unique needs are the basis for determining what behavioral interventions and supports or behavioral management strategies are appropriate for the child and what interventions, supports, and strategies are included in the child's IEP.
- ▶ Such behavioral supports might include meetings with a behavioral coach, social skills instruction, counselor, or other approaches.

Strategies to Consider

- ▶ Early identification of challenging behaviors and early intervention using preventative strategies can reduce the need for R/S
- ▶ Promote a school climate with an emphasis on positive, preventative, and supportive classroom strategies
- ▶ De-escalation and redirection
- ▶ Provide professional development and coaching on the use of preventative strategies

Strategies to Consider

- ▶ A functional behavioral assessment to identify why a behavior occurs and interventions to reduce the behavior should be put in place
- ▶ Systematically screen students who are at risk
- ▶ Establish policies to be implemented in schools that are regularly reviewed
- ▶ Collect data and use it for planning and decision making
 - Fidelity of implementation
 - Impact on behavior (i.e., increasing or decreasing)

Resources

- ▶ The Department's May 15, 2012 "Restraint and Seclusion: Resource Document,"
www.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf
- ▶ Supporting and Responding to Classroom Behavior: Evidence-Based Classroom Strategies for Teachers
<https://osepideasthatwork.org/evidencebasedclassroomstrategies/>
- ▶ OCR – www.ed.gov/ocr
- ▶ OSEP – www.ed.gov/osers/osep/index.html

Resources

- ▶ www.pbis.org
- ▶ www.samhsa.gov/nctic
- ▶ www.nctsn.org/resources/audiences/school-personnel
- ▶ www.osepideastthatwork.org/evidencebased-classroomstrategies