



Overview: Seclusion and Physical Restraint in Schools Michigan, Ohio and Federal Laws

by Amy J. Borman

I. Federal Law

On March 3, 2010, the U.S. House of Representatives passed the Keeping All Students Safe Act. This bipartisan Act, introduced by Rep. George Miller (D-CA) and Rep. Cathy McMorris Rodgers (R-WA), also is known as the Preventing Harmful Restraint and Seclusion in Schools Act. It is designed to establish federal minimum standards to protect students from seclusion and physical restraint in schools.

Currently, dramatic variance exists among states in laws and policies regulating seclusion and physical restraint. A United States Department of Education report revealed that while 32 states are in the process of revising and adopting new approaches to these controversial topics, presently, 19 states have no laws or regulations that address seclusion or restraint, and 11 states are without policies or guidance on seclusion or restraint.

II. Ohio Law

In Ohio, prior to July 2009, laws and policies related to health and human services were used to regulate seclusion and physical restraint. In July 2009, the

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the General Assembly enacted House Bill 1 which includes a provision that bans corporal punishment in public and non-public schools. Prior to this legislation, corporal punishment was prohibited unless specifically allowed by a local board policy. Under Ohio Revised Code 3319.41, however, school employees may use force or restraint if reasonable and necessary to quell a disturbance threatening physical injury to others, to obtain possession of weapons or dangerous objects, for self-defense, or for the protection of persons or property.

In August 2009, Governor Ted Strickland issued Executive Order 2009-13S which placed a statewide ban on the use of physical and mechanical prone restraint and imposed limitations on transitional holds and other physical restraints. Under this order, a transitional hold is allowed only if it is conducted for a reasonable amount of time necessary to safely bring the person or the situation under control and it is conducted by staff with current training. Additionally, the transitional hold may be applied only when there is consistent and frequent monitoring during and after the intervention to ensure that it is conducted in a way that does not compromise breathing or cause harm.

Governor Strickland's executive order also established the Ohio Policy Committee on Restraint and Seclusion to develop a single statewide policy on the use of restraint and seclusion. This Committee is comprised of representatives from 14 Ohio governmental departments, including the Ohio Department of Education. Currently, there are no Ohio laws, policies, regulations or guidance on seclusion.

III. Michigan Law

In Michigan, both Michigan Compiled Laws and the Michigan Department of Education provide directives on the use of seclusion and restraint specific to school-based policies and practices. For example, Michigan Compiled Law 380.1312 prohibits corporal punishment and allows reasonable physical force only if necessary to maintain order and control in providing a safe and conducive learning environment. Under this law, corporal punishment is defined as the deliberate infliction of physical pain by hitting, paddling, spanking, slapping or any other physical force used as a means of discipline. Similarly, to provide further guidance, the Michigan Department of Education issued *Supporting Student Behavior: Standards for the Emergency Use of Seclusion and Restraint*.

Michigan also has a policy that each district must implement school-wide behavioral support strategies on par with the Michigan Department of Education's 2008 *School-wide Positive Behavior Support Guidelines*. *Positive Behavior Support* is a proactive, team-based framework designed to create safe and effective schools through the assessment of existing behavioral concerns and the development of pro-social skills. The guidelines are designed to help schools in their creation of a school-wide positive behavior strategy.

While Michigan has several laws and policies regulating the use of seclusion and restraint in schools, there is a lack of oversight. There is no state monitoring to ensure adherence to these state laws and policies and no mechanism in place to report potential abuses. Moreover, the Michigan Department of Education is not collecting data on the use of seclusion and restraint.

IV. How Will a Federal Law Change This?

The Preventing Harmful Restraint and Seclusion in Schools Act is the first national effort to establish minimal standards to prevent seclusion and physical restraint in both public and private schools. The Act mandates that within 180 days of enactment, the Secretary of Education establish minimal standards that:

- prohibit managing students by mechanical, chemical or physical restraint unless necessary to eliminate an imminent danger of physical injury;

- require the states and local educational agencies to ensure a sufficient number of school personnel receive state-approved training in first aid;
- prohibit physical restraint or seclusion from being written into a student's education plan; and
- require schools to establish procedures to quickly notify parents if physical restraint or seclusion is imposed on their child.

The Act also mandates state reporting. Within two years of enactment, and annually thereafter, each state must submit a state plan that assures the state adopted policies to meet the Secretary of Education's minimum standards. This plan must include a description of how the state intends to ensure school personnel and parents are aware of the seclusion and physical restraint policies and procedures.

In addition to the state plan, each state is required to annually report the total number of incidents in the preceding academic year in which physical restraint or seclusion was imposed upon a student. This report must be disaggregated by the total number of incidences: that resulted in injury, that resulted in death, in which the school personnel imposing the restraint was not trained, and the demographic characteristics of all students upon whom physical restraint or seclusion was imposed.

With regard to remedy, if a state educational agency fails to comply with this Act, the Secretary of Education must withhold from that agency, in whole or in part, further payments under an applicable program and, either, require that the agency submit and implement a corrective plan of action within one year or issue a complaint to compel compliance through a cease and desist order.

Since passage in the House, the Act currently is awaiting approval from the Senate. A companion bill, sponsored by Sen. Christopher Dodd (D-CT), was introduced to the Senate on December 9, 2009, and referred to the Senate Committee on Health, Education, Labor and Pensions.

For more information on these laws, please contact Ms. Borman at our Columbus office.



Ms. Borman is a member of the Firm and located primarily in our Columbus office. She has significant experience in advising clients on compliance with emerging legislative and statutory issues in the areas of education and business law. Ms. Borman can be reached at 419-564-1445.

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