



Ten Best Practices to Consider When Implementing Seclusion in Schools

by Amy J. Borman and Melissa A. Gerber

Recently, the U.S. Department of Education issued a publication outlining principles for schools to consider when developing or revising policies on the use of seclusion. Seclusion is the involuntary confinement of a student to a room or a space from which the student is not permitted to leave. Because there is no federal legislation on the use of seclusion in schools, this publication is merely guidance and the U.S. Department of Education has no enforcement authority at this time.

Without federal regulation, many states have passed legislation or have issued detailed guidance addressing the permissible use of seclusion in public schools. Until recently, Ohio had neither passed legislation nor issued guidance concerning seclusion. In 2009, Governor Strickland issued Executive Order 2009-13S which called for the regulation of both seclusion and restraint. Last month, the Ohio Department of Education finally issued a proposed administrative rule and draft model policy (see page three for details).

Conversely, both the Michigan and Indiana Departments of Education have issued guidelines encouraging schools to adopt policies addressing the use of seclusion and explaining the conditions under which seclusion may be

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implemented. Florida has gone one step further. The Florida Legislature enacted Florida statute 1003.573 regulating the use of seclusion on students with disabilities and the Florida Department of Education has issued guidance to help schools comply with this law.

In states without legislation regulating a school's use of seclusion, parents have challenged its use on the grounds that it constitutes an unconstitutional seizure under the Fourth Amendment or that it is either a violation of students' procedural or substantive due process rights. Additionally, if the student has an IEP, parents claim that a school's use of seclusion violates either the Individuals with Disabilities Act or Section 504 of the Rehabilitation Act.

Despite these challenges, courts typically uphold a school's use of seclusion provided it was reasonably used. In extreme cases, however, the use of seclusion can be found to be unreasonable and unconstitutional when its use "shocks the conscience." Examples of unreasonable conduct include locking a student in a room without supervision when the student would have no means to escape in an emergency, or, placing a student in seclusion for an entire day without a restroom break or an opportunity to have lunch.

In light of case law, legislation and guidance from other states, the following are practices that should be followed to help ensure a school's use of seclusion is deemed reasonable, if challenged.

Ten Best Practices in Implementing Seclusion

- 1. *Limit the use of seclusion to emergency situations.*** Schools should make an effort to prevent the use of seclusion. It should be limited to situations where students' behavior poses imminent danger of serious physical harm to students or others and other interventions were ineffective.
- 2. *Only use seclusion if provided in the IEP.*** If a student has an IEP, seclusion should not be implemented unless specifically provided for in the IEP.
- 3. *Ensure the seclusion environment is safe.*** When seclusion is used, the room or space should not be locked; the student needs to be able to escape in the event of an emergency. The room or space should be well lit, devoid of any objects that could cause the student harm and include a window or opening to allow staff to communicate and continuously monitor the student's behavior while in the room. If it is possible to still protect the student and others, consider a room with an open doorway so the student may hear and see the rest of the school going about its business.
- 4. *Ensure the staff supervises the student.*** School staff should continuously monitor every instance of seclusion to ensure the safety of the student. The seclusion should be stopped if it becomes apparent that the student is harming him or herself.
- 5. *Limit the duration of the seclusion to the extent necessary.*** Seclusion should only be used to the extent necessary to stop the risk of imminent danger or harm. As soon as that risk dissipates, so too should the seclusion.
- 6. *Provide for the student's basic needs.*** Staff must ensure that the student is provided basic needs (restroom and lunch) while in seclusion.
- 7. *Document.*** Every instance of seclusion should be documented. This documentation should include details concerning the behavior that caused the student to be secluded, possible triggers for that behavior, the duration of the seclusion and the names of the staff members who supervised the seclusion. This documentation should be provided to a school administrator by the end of the school day on which seclusion was implemented.

8. **Parental notification.** Staff should notify parents as soon as possible after seclusion has been used on their child, but within 24 hours. This notification should be in writing and should explain why seclusion was necessary and the duration of the seclusion.
9. **Monitor repeated need for seclusion.** If a student experiences repeated instances of seclusion, the school should review or create a behavioral intervention plan for the student that addresses the behavior that triggers the use of seclusion and includes other specific interventions. The school should consider the need for an alternative program or a possible referral for a special education evaluation if the student does not already have an IEP.
10. **Review and update.** Schools should regularly review the use of seclusion and update procedures and train staff.

Should you have any questions or concerns regarding seclusion in schools, please contact Eastman & Smith Ltd.

Extra Extra! ODE Releases Draft Seclusion and Restraint Rule

In accordance with Executive Order 2009-13S, the Ohio Department of Education has released a draft administrative rule regarding seclusion and restraint in Ohio schools as well as a draft model policy. These can be viewed on ODE's web site. Should you have any questions about either the rule or policy, please contact the authors of this article. Subsequent issues of *LawTrends* as well as Eastman & Smith's web site will provide updated information concerning this proposed rule and policy.



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