

## Danger in the Classroom

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### Introduction

At a Texas public school in 2002, a 14 year-old 129-pound male student died as a result of trunk compression from a 230-pound teacher. The teacher placed the student into a prone restraint, which holds a child horizontally in a facedown position<sup>1</sup>, because the student would not remain still the teacher laid on top of him.<sup>2</sup> The student was rushed to the hospital where he suffered serious complications and eventually died<sup>3</sup>. While his death was ruled a homicide, no charges were brought and the teacher is currently a licensed special education teacher in Virginia.<sup>4</sup> This horrific event illustrates the extremes that can result from restraint and seclusion practice in schools across the country today. Since March 2010, there have been 31 states with reports of inappropriate seclusion and restraint practice resulting in over hundreds of allegations of abuse and several cases of death.<sup>5</sup> This statistic has led Representatives George Miller and John Kline to introduce national legislation, *Keeping All Students Safe Act* to establish minimum safety standards in schools to prevent and reduce inappropriate restraint and seclusion practice.<sup>6</sup> However, the legislation has met resistance from several congressmen who believe the issue

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<sup>1</sup> Tash. "Shouldn't School Be Safe." pg. 4 (2011).

<sup>2</sup> Government Accountability Office. "Selected Cases of Death and Abuse at Public and Private Schools." *Seclusions and Restraints*. pg 10 (May 19, 2009)

<sup>3</sup> Supra. note 2

<sup>4</sup> Supra. note 2

<sup>5</sup> "Seclusion and Restraint." Committee on Education and the Workforce, 2012. Web. <<http://democrats.edworkforce.house.gov/issue/seclusion-restraint>>.

<sup>6</sup> "Supra. note 5

should be decided at a state or local level.<sup>7</sup> Given the abuse, death, negative effects, and disproportionate use on special needs students, national legislation needs to be passed immediately to ban both the practice of restraint, with the exception of immediate harm, and seclusion.

### The Practice of Restrain and Seclusion

Using restraint on a student involves “forced restriction or immobilization of the child’s body or parts of the body, contingent on a designated behavior.”<sup>8</sup> There are three different types of restraints: (1) manual restraint involving different types of “hold” for keeping a child immobilized or brought to the floor by another individual; (2) mechanical restraint involving using straps, cuffs, mats and other devices to prevent the child’s movements and/or sense of perception; and (3) chemical restraints using medication to stop behavior.<sup>9</sup> The two most common restraints are prone restraints, meaning holding the child horizontally in a face down position and supine restraints, holding the child horizontally in a face up position.<sup>10</sup>

The practice of seclusion is forced isolation in a room or space that the child is not allowed to leave.<sup>11</sup> Seclusion can range from a square of duct tape on the floor in the classroom that the student cannot leave to the student being placed in a room by themselves. A student is usually not physically touched in seclusion however,

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<sup>7</sup> "School Is Not Supposed to Hurt." *National Disability Rights*. N.p., Mar. 2012. pg. 17 <<http://democrats.edworkforce.house.gov/bill/hr1381-keeping-all-students-safe-act>>.

<sup>8</sup> Supra. note 1

<sup>9</sup> Supra. note 1

<sup>10</sup> Supra. note 1

<sup>11</sup> Supra. note 1

there is the potential of serious physical and mental harm. In January 2011 in Indiana, a child was left alone in a seclusion room and was not allowed to leave to use the restroom resulting in the student urinating on the floor.<sup>12</sup> Subsequently, the child was secluded the next day for urination.<sup>13</sup> Then on January 20<sup>th</sup> after four consecutive hours in seclusion, which part of the time the child was screaming to use the bathroom, the staff came to the room to find the child had attempted suicide by hanging himself.<sup>14</sup>

#### Extension Ingraham v Wright Precedent

When the United States Supreme Court decided *Ingraham v Wright* they found that *reasonable* corporal punishment, in this case paddling, in school is justifiable. This holds that Fourteenth Amendment liberty interests are implicated when school authorities are acting under state law and decide to deliberately punish a child for misconduct by restraint and inflicting appreciable physical pain.<sup>15</sup> Restraints used in schools today, with an exception of immediate harm, should be considered an unreasonable form of corporal punishment, and therefore unjustifiable. If there are no immediate dangers, for example trying to make a child sit still to listen, then there is a punitive purpose of the restraint. In situations where a child is restless, the use of supine restraints, even if the end means is to get the child to pay attention, it also is punishing the student for not paying attention. The

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<sup>12</sup> "School Is Not Supposed to Hurt." *National Disability Rights*. N.p., Mar. 2012. pg. 11 <<http://democrats.edworkforce.house.gov/bill/hr1381-keeping-all-students-safe-act>>.

<sup>13</sup> Supra. note 12

<sup>14</sup> Supra. note 12

<sup>15</sup> *Ingraham v. Wright*, 430 U.S. 651, 674, (1977).

Supreme Courts holding turns on the word *reasonable*. Black law dictionary defines reasonable as “fair, proper, just moderate, suitable under the circumstances. . . not immoderate or excessive”.<sup>16</sup> The use of restraints on students when there is no immediate emergency are not fair or suitable under the circumstances, instead they are excessive. Studies done on the effects of restraints on students and the alternative methods available illustrate that point. There is no situation, other than in an emergency, where any form of restraint should be considered reasonable. Therefore, restraining students is an unreasonable exercise of teachers that should be held unjustifiable.

In addition, the students are being afforded no due process of law guaranteed under the Fourteenth Amendment, which should be permitted as it was *Ingraham*. *Ingraham* held procedural safeguards in place to protect the students from excessive corporal punishment.<sup>17</sup> However, in many states, no such safeguards are in place. Most states require no notification requirements to parents or any other type of protection, unlike in *Ingraham*, where the teacher and principal met before any corporal punishment was given. In most cases of restraint there are no requirements<sup>18</sup> or protections in place to protect the student so teachers are free to exercise restraint at their own discretion. Without due process protection restraints should be considered an unreasonable corporal punishment and therefore not appropriate. Absent the Supreme Court extending making a ruling regarding

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<sup>16</sup> *Black's Law Dictionary* (9th ed. 2009), available at Westlaw BLACKS

<sup>17</sup> *Ingraham v. Wright*, 430 U.S. 651, 672, (1977).

<sup>18</sup> *Supra*. note 17

restraint and seclusion, passage of federal legislation would guarantee protection to the students so that the protections against restraint were afforded.

### Federal Legislation

Proposed federal legislation, Keeping Students Safe Act, has the purpose of “prevent[ing] and reduc[ing] inappropriate restraint and seclusion by establishing minimum safety standards in schools, similar to protections already in place in hospitals and non-medical community based facilities”<sup>19</sup> More specifically the bill would allow for physical restraint or locked seclusion only in the situations of imminent danger and then only practiced by trained staff.<sup>20</sup> Furthermore, it would prohibit the use on any mechanical or chemical restraint.<sup>21</sup>

There is a strong need for federal legislation on this matter. While education is seen as primarily a state and local responsibility<sup>22</sup>, there are issues that call for federal involvement. The first sentence of the U.S. Department of Education’s mission statement states their “mission is to promote student achievement . . . by fostering educational excellence.”<sup>23</sup> Using restraint and seclusion on students runs contradictory to that statement. The federal government should be promoting this mission statement by taking a strong leadership role in crafting policy to secure, at

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<sup>19</sup> "H.R. 1381: Keeping All Students Safe Act." *Committee on Education and The Workforce*. N.p., 2010. Web. <<http://democrats.edworkforce.house.gov/bill/hr1381-keeping-all-students-safe-act>>.

<sup>20</sup> Supra. note 19

<sup>21</sup> Supra. note 19<<http://democrats.edworkforce.house.gov/bill/hr1381-keeping-all-students-safe-act>>.

<sup>22</sup> "The Federal Role in Education." U.S. Department of Education, 13 Feb. 2012. Web. <<https://www2.ed.gov/about/overview/fed/role.html>>.

<sup>23</sup> "Mission." U.S. Department of Education, 13 Feb. 2012. <<https://www2.ed.gov/about/overview/mission/mission.html?src=ln>>.

the very least, a minimum safety level for every student who has a compulsory requirement to attend school in the United States. While some education issues are better left to be decided at the state level, such as curriculum, because it can be tailored to the overall individualized needs of the community, basic student safety does not need to be tailored to any local system. While states would be free to add more safeguards to students involving restraints and seclusions, the national government needs to set minimum safety standards by banning restraints, except in instances of imminent harm, and seclusion.

Illinois state law pertaining to restraints is a good model for what should be applied at the national level. Illinois law only allows restraints to be used as a means of maintaining a safe and orderly environment for learning and only to the extent necessary to preserve the safety of students and others.<sup>24</sup> Physical restraint is not used as a form of punishment and can only be imposed when “(a) the student poses a physical risk to himself, herself, or others;(b) there is no medical contradiction to its use; and (c) the staff applying the restraint have been trained in its safe application.<sup>25</sup> Illinois law also requires a student to be immediately released when they are no longer in imminent danger of causing physical harm to themselves or others. That is the only time that physical restraint should be permitted in schools.

Since it is acknowledged that restraint can be appropriate in emergency situations, national legislation should also call for proper training for teachers to perform restraint in those isolated instances. While 22 states have seclusion and

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<sup>24</sup> Administrative Code. Title 23: Sections 1.285

<sup>25</sup> Administrative Code. Title 23: Sections 1.285

restraint laws that require staff training, most of them tend to be fairly minimal.<sup>26</sup> The GAO found that a number of deaths and injuries stemming from restraints involved poorly trained or untrained staff members.<sup>27</sup> It reasonably follows that if teachers were trained, in the rare instance that require the use restraints, they would be equipped to do so. Currently 19 states require training in de-escalation and prevention of seclusion and restraint.<sup>28</sup> This training should also be mandated nationwide to help prevent situations from escalating to the point where restraints or seclusion are necessary. If more focus is placed on prevention of behavioral outbursts then there would be a better learning environment for the student and teachers would not feel the need to resort to restraint or seclusion.

#### Effects of Restraint and Seclusion

Researches have continually seen no therapeutic benefits from the practice of restraints, and instead found it causes increased agitation, higher rates of anxiety and depression and more disruptive behavior in students.<sup>29</sup> Also, when students with disabilities are restrained during periods of high stress their bodies become hyper-aroused because of the sense of danger causing the student to struggle with the restrainer, leading to more intense injuries.<sup>30</sup> These negative effects prove that teachers need use alternative behavior managements to control the classroom in

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<sup>26</sup> Butler, Jessica, "How Safe is the Schoolhouse?" Autism National Committee. pg. 33. (April 15, 2012)

<sup>27</sup> Supra. note 27, page 32

<sup>28</sup> Supra. note 27, page 3

<sup>29</sup> Mulay, Darcie. "Keeping All Students Safe: The Need for Federal Standards to Protect Children from Abusive Restraint and Seclusion in Schools." 42 Stetson L. Rev 325. 327, Fall 2012.

<sup>30</sup> Miller, Jeffrey, "Physical Education: Amending the Individuals with Disabilities Education Act to Restrict Restraint and Seclusion in Public and Private Schools" 49 Fam. Ct. Rev 400, 406 (April 2011)

replacement of physical restraint. The American Psychiatric Association suggests alternatives that can be used in schools such as determining and addressing the underlying issue in the child's behavior and to use positive reinforcements instead of the negative reinforcement of restraints.<sup>31</sup> The alternatives available show that physical restraint does not belong in the classroom.

In addition to restraint rarely being appropriate, any method of seclusion should be banned from the education setting. There are instances of students being left in timeout for extended periods of time for the sole purpose of the staff avoiding to address the students.<sup>32</sup> Additionally, negative psychological and developmental effects on students have been proven to result from the practice of seclusion including trauma from fear and isolation, lack of access to education, modeling of punitive strategies by adults and overall embarrassment to the students.<sup>33</sup> The frustration and anxiety created by seclusion causes the child's original behavior to worsen or be replaced with other poor behaviors.<sup>34</sup>

These negative effects were illustrated by a study done by D.E. Miller. She had forty children, aged five to thirteen, draw a picture depicting their experience with seclusion, the descriptions showed punishment, fear and abandonment.<sup>35</sup> In contrast, an inpatient child unit performed a case study looking at the effects of

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<sup>31</sup> Supra. note 30

<sup>32</sup> Ryan, Joseph B., Reece L. Peterson, and Michael Rozalski. "State Policies Concerning the Use of Seclusion Timeout in Schools." *Education and Treatment of Children* 30 (2007): n. pg. 220.  
<http://muse.jhu.edu/journals/etc/summary/v030/30.4ryan.html>.

<sup>33</sup> Supra. note 32

<sup>34</sup> Supra. note 2

<sup>35</sup> D.E. Miller, "The Management of Misbehavior by Seclusion", 4 Residential Treatment for Child. & Yolph 63, 63— 73 (1986)

alternative techniques available to teachers.<sup>36</sup> The study involved comparing positive reinforcements with negative reinforcement such as spending more time with the children compared to secluding them.<sup>37</sup> The study found a 97% decrease in behavior outbreaks requiring seclusion during a two-month period.<sup>38</sup> These overwhelming statistics illustrate the ineffectuality of seclusion, especially in comparison to the benefits of the alternative practices available to teachers.

#### Disproportionate Application on Students with Disabilities

Restraint and seclusion statistics show that the practice is used predominantly on students who have disabilities. The 2009 Government Accountability Office report found that of the hundreds of allegations at public and private schools, “almost all” of the allegations involved “children with disabilities.”<sup>39</sup> This unequal application shows that students with disabilities are suffering the most from the lack of restraint laws. Contributing to the imbalance is that the Individuals with Disability Education Act passed in 2004, does not prohibit the use of seclusion or restraint in schools.<sup>40</sup> It instead requires Individualized Education Plan teams to create a behavioral intervention to deal with “a child whose behavior impedes the child’s learning or that of others.”<sup>41</sup> Those plans can implement seclusion and restraints, without a federal law to the contrary.

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<sup>36</sup> Supra. note 30

<sup>37</sup> Supra. note 30

<sup>38</sup> Supra. note 30

<sup>39</sup> Supra. note 1

<sup>40</sup> Supra. note 12, pg 26

<sup>41</sup> 20 U.S.C.A. § 1414 (West)

A great risk of restraint and seclusion is the threat to a special education student's right to a free and appropriate education guaranteed by IDEA.<sup>42</sup> A student cannot receive an appropriate education if they are consistently being restrained or secluded from the rest of the class. Seclusion in separate rooms physically removes and isolates the student, given them no access to an education. While secluding the student to the back of the classroom does not have that same effect, it is a form of isolation. The student is not allowed to leave a certain area, which significantly limits their interaction with other students, which could greatly hinder an appropriate education. Also, the student is being "put on display" in a way. It would be completely clear to the rest of the class that the student is being isolated, which can be extremely embarrassing. This type of embarrassment, as a general matter, would affect the student's ability to pay attention and receive an education. It has been generally argued the push to mainstream students, placement in the least restrictive environment, has caused for an increase in restraint practice. However, this only demonstrates the need for more training for general education teachers to learn how to properly teach students with special needs so they do not resort to restraint and seclusion.

### Conclusion

Restraint and seclusion have no place in the classroom today. In *Ingraham v Wright*, the Supreme Court affirmed that students need reasonable protection in school. The horrifying statistics reported by the GAO show that this is not the case,

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<sup>42</sup> Farall, Justin J. "Protecting the Legal Interests of Children when Shocking, Restraining, and Secluding are the Means to an Educational End." 89 *St. John's L. Review* 395, 399 (Winter 2009)

especially for student's who are classified as special needs. National legislation on the matter would guarantee those protections. The lack of some many states to have any types of laws dealing with restraint and seclusion only illustrates more the need for the national legislation. Students should not be going to school with the fear of being hurt or humiliated by their teachers, which is exactly the effect restraint and seclusion.