

Seclusion and Physical Restraint Review of the Debrief Meeting Requirement and Analysis of Significant IDEA Complaint Decisions

New legislation governing seclusion and physical restraint seemed overshadowed by the school closures in March 2020. 2019 Wisconsin Act 118 (“Act 118”), which made significant changes to the prior version of the seclusion and physical restraint statute (Wis. Stat. § 118.305), went into effect on March 4, 2020. As of March 18, 2020, at 5 p.m., all schools within the State were closed for in-person instruction. Priorities changed, and given that all children would soon be learning remotely, incidents of seclusion and restraint dropped precipitously and became nearly non-existent. As (hopefully) the pandemic wanes and more students return to their physical classrooms, this is the time to update policies, educate staff on the new law, and ensure compliance with the new mandates. Boardman & Clark previously provided a comprehensive overview of all the changes enacted by Act 118, which may be found [here](#). This article reviews the requirements for a meeting following the use of seclusion or physical restraint set forth in Act 118 (referred to herein as a “debrief meeting”), provides a template of a form that may be used to document that debrief meeting, and also highlights a trio of significant IDEA complaint decisions that may alter districts’ seclusion practices.

THE DEBRIEF MEETING

Act 118 adds an additional requirement after any incident of seclusion or physical restraint. Specifically, section 118.305(4)(a)3., Wis. Stat., requires the school principal or designee to “[m]eet with the covered individuals who participated in the incident to discuss all of the following:

- The events preceding, during, and following the use of the seclusion or physical restraint.
- How to prevent the need for seclusion or physical restraint, including the factors that may have contributed to the escalation of behaviors; alternatives to physical restraint, such as de-escalation techniques and possible interventions; and, other strategies that the school principal or designee determines are appropriate.”

A “covered individual” is defined in the statute as: an employee of the District or of a private school at which a student is placed by the District; an individual (or his or her employee) who is under contract with the District or a private school at which a student is placed by the District, as an independent contractor to provide services for the benefit of the District or the private school; and a student teacher under the supervision of a District employee, employee of a private school at which a student is placed by the

District, or individual under contract with the District or private school as an independent contractor. A “covered individual” does not include a school board member or a law enforcement officer.

There is no timeline or deadline associated with conducting the debrief meeting. However, within two days of any incident of seclusion or physical restraint a district must develop a written report of the incident. That report must be completed only after “consulting with the covered individuals and any law enforcement officers present during the incident.” Consequently, it would be most efficient to comply with both requirements simultaneously by engaging in the consultation required to draft the written report during the debrief meeting.

Districts should take note, however, that the debrief meeting provisions specifically require the principal or designee to “meet” with the covered individuals participating in the incident, a requirement that strongly suggests the need for a face-to-face meeting. Consequently, an email sent to a participant requesting the information set forth above would likely not satisfy such requirement. Further, while the law seems to allow for separate meetings with covered individuals, a joint meeting may be most beneficial for purposes of generating discussion regarding de-escalation techniques and possible interventions. Given the often conflicting and tight schedules of educators, separate meetings may be necessary, particularly if a large number of staff participated in the incident.

Finally, districts should document all meetings satisfying the requirement for a debrief meeting. Documentation will ensure that a district can show compliance should it be necessary to defend an IDEA complaint or due process hearing request. To assist our clients, the Boardman & Clark School Law Group created a template that districts may use to document debrief meetings. That form may be found here at Boardmanclark.com/assets/pages/Restraint-Seclusion-Debrief-Form-V.-2.docx.

A TRIO OF IDEA COMPLAINT DECISIONS REGARDING SECLUSION IN CLASSROOMS

Districts should take note of three recent IDEA complaint decisions regarding secluding students in a classroom during a behavioral incident. The facts of each decision and DPI’s determination are discussed below.

IDEA Complaint Decision 19-014

The student involved in this complaint engaged in numerous behaviors that presented a risk to the physical safety of the student or others. Specifically, while in the general education classroom the student hit, bit, kicked, and pulled staff to the floor or attempted to pull staff to the floor. The student also threw computer equipment, a chair, desk, garbage can, and a phone. When these incidents occurred, all other students were removed from the classroom and a staff member remained in the room to supervise and observe the student. The student was also physically prevented from leaving the room. The incidents of seclusion occurred over a period of approximately 5 months and the individual incidents lasted from 15 minutes to several hours. The District acknowledged that during several of the incidents the student was calm for 45 minutes to 2 hours, yet the seclusion in the classroom continued.

IDEA Complaint Decision 19-048

The student involved in this complaint was secluded in a classroom on one occasion. During that incident, all other students were removed from the classroom and the student was physically prevented from leaving the classroom. The district did not complete a written report of the incident of seclusion.

IDEA Complaint Decision 19-059

The student involved in this complaint became upset after not being able to participate in a classroom activity. When all other students left the classroom to attend recess, the student threw scissors, chairs, boxes, and books at the staff. The teacher left the classroom and partially closed the door for protection, but kept her foot in the door so it could not be closed. Staff were able to observe the student through a window in the door.

DPI's Determination

In all three complaint decisions, the Department of Public Instruction (“DPI”) found the Districts’ practice of removing all other students from the classroom or keeping a student in a classroom while all other students were engaged in activities outside the classroom, and physically preventing the student from leaving, were incidents of seclusion that violated the seclusion and physical restraint statute. The violations occurred because the classrooms had locks on the doors and contained items such as tables, chairs, and computers that may have injured the students. Consequently, DPI directed all three districts to develop a corrective action plan to ensure that rooms or areas used for seclusion are free of objects or fixtures that may injure students and do not have any doors that are capable of being locked.

Analysis

The above decisions may be troubling to teachers and staff who “clear classrooms” when a student is engaging in conduct that threatens the safety of the student or others. Districts may conclude that it would be safer to seclude a student in a familiar setting (i.e., the student’s regular classroom) for a brief time after all students are safely out of the room than to allow other students to remain in the room, restrain the student (in front of his or her peers), and/or physically escort the student to an alternate location. However, DPI’s decisions confirm that involuntarily confining a student apart from his or her peers and physically preventing the student from leaving a classroom with locks on the doors and typical classroom fixtures will be deemed a violation of the restraint and seclusion statutes. While the three complaints address seclusion in a general education classroom, districts must avoid seclusion in any room that contains objects or fixtures that may injure the student or that has a door with a lock or that is capable of being locked. For example, seclusion in a principal’s office, which is capable of being locked and likely contains chairs, computers, bookshelves, etc., would be a violation of the statute.

Districts may continue to use “classroom clearing” to protect other students and address behavior provided they are careful not to involuntarily confine a student to the classroom or physically prevent a student from leaving the classroom. It does not constitute seclusion if a student chooses to stay in the classroom room or is not physically prevented from leaving the classroom. Accordingly, keeping the door to the classroom open and not blocking the student’s exit from the room should prevent a violation.

Districts should take note of the obligation to end seclusion when the threat to physical safety has ended. Section 118.305(2)(e), Wis. Stat., states that “the duration of the seclusion” may only be “as long as necessary to resolve the clear, present, and imminent risk to the physical safety of the pupil or others.”

Finally, districts should take proactive approaches, including collaborating with the student’s IEP team, which includes parents, reviewing the appropriateness of the student’s placement, reviewing and revising behavioral intervention plans, and conducting a functional behavioral analysis to address behavior that may lead to seclusion or restraint.

CONCLUSION

As schools begin to reopen to all students for in-person instruction, Districts will want to ensure that policies are up to date and training has been completed. Failure to comply with the requirements of the new changes may lead to administrative litigation or worse, harm to students. Boardman & Clark's School Law Group is fully prepared to discuss all aspects of restraint and seclusion with your district.

PRIMARY AUTHOR

Matthew W. Bell

(608) 286-7239

MBELL@BOARDMANCLARK.COM

■ Michael J. Julka	(608) 286-7238	■ Richard F. Verstegen	(608) 283-7233	■ Matthew W. Bell	(608)286-7239
■ William L Fahey	(608) 286-7234	■ David P. Weller	(608)286-7235	■ Christopher T. Schmidt	(608) 286-7157
■ Eileen A. Brownlee	(608) 822-3251	■ Jennifer S. Mirus	(608) 283-1799	■ Brian P. Goodman	(608) 283-1722
■ Doug E. Witte	(608) 283-7529	■ Rhonda R. Hazen	(608) 283-1724	■ Daniel T. Fahey	(608) 286-7216
■ Steven C. Zach	(608) 283-1736	■ M. Tess O'Brien-Heinzen	(608) 283-1798	■ Eric B. Hagen	(608) 286-7225

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