



# Update on Seclusion and Physical Restraint

In 2013, the Wisconsin legislature enacted Wis. Stat. § 118.305 which prohibits the use of seclusion or physical restraint in public schools, except when certain conditions apply. This legislation codified and expanded directives issued by the Wisconsin Department of Public Instruction (DPI) in 2005.

While the statute established specific conditions for the use of seclusion and physical restraint, some provisions were broadly framed and, therefore, subject to differing interpretations and applications by school districts, especially in the context of students with disabilities. The statute has not been addressed in any Wisconsin court decisions. However, DPI's Individuals with Disabilities Education Act (IDEA) Complaint decisions on this issue should provide useful direction to districts in navigating this relatively new law.<sup>1</sup> This *Legal Comment* briefly summarizes the statute and reviews some of DPI's most significant decisions regarding students with disabilities.

## The Seclusion and Physical Restraint Law

The statute prohibits a "covered individual" from engaging in the seclusion or physical restraint of a student at school unless specific circumstances exist. The term "covered individual" includes those who are employed by a district, under con-

tract with a district, employed by a person under contract with a district, or engaged in student teaching in a district. The term does not include school board members, volunteers, or law enforcement officers (including school liaison officers) working in the district. The statute covers the day-to-day operations of a school and any school-related activities, including field trips, sporting events, after school clubs, and transportation.

"Seclusion" is defined as the "involuntary confinement of a pupil, apart from other pupils, in a room or area from which the pupil is physically prevented from leaving" and may only be used if all of the following apply: the pupil's behavior presents a clear, present and imminent risk to the physical safety of the student or others and is the least restrictive intervention feasible; a covered individual maintains constant supervision of the pupil; the seclusion room is free of objects or fixtures that may injure the pupil; the pupil has access to bathroom facilities, drinking water, necessary medication and regularly scheduled meals; the seclusion lasts only as long as necessary to resolve the risk; and no door connecting the seclusion room or area is capable of being locked.

"Physical restraint" is defined as "a restriction that immobilizes or reduces the ability of a pupil to freely move the pupil's torso, arms, legs or head" and may only be used if all of

the following are present: the pupil's behavior presents a clear, present, and imminent risk to the physical safety of the pupil or others and is the least restrictive intervention feasible; there are no medical contraindications to its use; the degree of force used and its duration do not exceed the duration reasonably necessary to resolve the risk; the restraint does not constitute "corporal punishment;" mechanical or chemical restraints are not used; and the restraining technique used gives adequate protection to the pupil's head, does not cause compression on the pupil's chest, lungs, sternum, diaphragm, back or abdomen and does not place pressure on the pupil's neck or throat, on an artery, or on the back of a pupil's head or neck, or otherwise obstruct the pupil's circulation or breathing.

While the statute governs the use of seclusion and physical restraint on all regular education and special education students, there are provisions in the statute specific to students with disabilities that direct a student's Individual Education Program (IEP) team to both anticipate the use of seclusion and/or physical restraint and respond to it. If a student's IEP team reasonably anticipates that seclusion or physical restraint may be used, it must be explicitly stated in the student's IEP and the IEP must identify appropriate positive behavioral interventions, supports and strategies based on a functional behavioral assessment

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(FBA). Further, the first time seclusion or physical restraint is used, the student's IEP team must meet as soon as practicable after the incident to review and revise the IEP, if necessary, to ensure it contains positive behavioral interventions and supports.

## ■ DPI's Decisions Regarding Seclusion

### **IDEA Complaint Decision 13-002.**

Over a four-month period, a student was placed in seclusion on numerous occasions during which staff physically prevented the student from leaving the room by holding the door shut. Typically, the student would not be released from seclusion until the student demonstrated a calm voice and body, and had ceased yelling, throwing items, kicking, or verbalizing threats of physical harm. Seclusion was also used when the student engaged in verbal aggression, took or damaged items, did not follow directions, swore and sang, or engaged in other types of disruptive behavior. In these situations, the district used seclusion as a time-out and required the student to complete thought sheets and letters of apology. The district notified the parents, as required by law, but did not convene the IEP team until four months after the first use of seclusion. In addition, the IEP team did not conduct an FBA and it did not review or revise the student's IEP, including the behavioral intervention plan and crisis intervention plan, in response to the use of seclusion. Finally, the district's non-violent crisis policy stated that the use of "seclusion/time-out" was a standard management practice in the district.

DPI determined that the district's use of seclusion was contrary to Wisconsin law because it was not always used as the least restrictive intervention feasible, nor was it used only when there was a clear, present, and imminent risk of the student's safety or the safety of others. Furthermore, by using seclusion as a time-out and requiring the student to complete thought sheets and letters of apology, the district was pro-

longing seclusion beyond what was required for maintaining safety. DPI ordered the district to conduct an IEP meeting to determine compensatory services for the time period the student was secluded and to determine appropriate behavioral interventions and strategies based upon an FBA. Further, DPI ordered the district to develop a correction plan that included revision of the district's non-violent crisis intervention plan and staff trainings.<sup>2</sup>

### **IDEA Complaint Decision 14-025.**

A student's IEP included a behavioral intervention plan detailing a process whereby the student was given three opportunities to comply with a directive before being removed to a break room. The positive interventions and strategies in the IEP were not based on an FBA and did not clearly specify the use of seclusion or physical restraint. During one school year, the student was removed to the break room 73 times for periods of time ranging from five minutes to 90 minutes per incident. Most of the time, the student was not physically prevented from leaving the break room, but on eight occasions, staff utilized seclusion. In addition, while in the break room, the student was expected to complete a task before being allowed to return to the classroom.

DPI concluded that the district did not follow all required procedures in its use of seclusion. First, not every situation where seclusion was used involved an imminent safety risk. Second, the student was not allowed to leave the break room immediately when the safety risk was resolved. Accordingly, DPI ordered the district to review the IEP, including the behavioral intervention plan, and revise it to include positive behavioral interventions and supports, including strategies to de-escalate the student's behavior based upon an FBA, to ensure that the student's IEP specified whether seclusion and physical restraint could be used, and to provide compensatory services for the amount of missed instruction. In addition, DPI ordered the district to review the

IEPs of all students with disabilities for whom seclusion and/or physical restraint was used and ensure compliance with the statute.<sup>3</sup>

### **IDEA Complaint Decision 15-020.**

In accordance with a student's behavioral intervention plan, staff directed the student with behavioral difficulty out of the general education classroom to an empty classroom to allow the student time and space to de-escalate. When the student's difficulties continued to escalate, staff physically prevented the student from leaving the room, but remained in the classroom with the student at all times. During the period of seclusion, the student tipped over tables and chairs and attempted to damage a computer. While the student was not injured, the room contained objects that could have caused injury and the classroom door was capable of being locked.

DPI determined that the district did not comply with the statute because the student's IEP did not clearly specify the use of seclusion, the room used for seclusion was not free of objects and fixtures that cause injury, and the door to the room was capable of being locked. DPI ordered the district to submit a plan to ensure that all supplementary aids and services in the IEP are implemented, to revise the IEP to clearly specify the use of seclusion, and to submit a plan to ensure that all rooms used for seclusion are free from objects that may cause injury and that all doors to the seclusion rooms are incapable of being locked.<sup>4</sup>

## ■ DPI's Decisions Regarding Physical Restraint

### **IDEA Complaint Decision 14-007.**

A student whose IEP addressed the use of seclusion and physical restraint was involved in two incidents that included the use of physical restraint. In the first incident, the student crawled into the bottom shelf of a moveable shelving unit in a closet and would not come out with verbal prompting from staff. Staff removed the student and temporarily immobilized him, but allowed him to move independently once he was

standing. Staff did not notify the student's parents of the incident because they did not believe the student had been physically restrained. DPI concluded that physical restraint was used and justified because the shelving unit created an imminent safety risk to the student. DPI also concluded that the parents should have been notified as required by the statute.

In the second incident, the student crawled into the bottom shelf of a shelving unit in a staff work room. The student responded to verbal prompts and crawled out of the shelving unit, but refused to stand and leave the room. Staff reduced the ability of the student to freely move his torso, lifted the student to a standing position, and, once standing, allowed the student to move independently. DPI concluded that physical restraint was used, but not justified because there was no imminent safety risk to the student or staff. DPI ordered the district to report the two incidents and to develop a corrective action plan to ensure that all staff understands the definition of physical restraint, when it may be used, and when it must be reported.<sup>5</sup>

#### **IDEA Complaint Decision 14-022.**

DPI determined that a district violated the statute by using improper holds on two occasions that did not involve an imminent safety risk to the student and/or others. On one occasion, staff put the student in a prone position with weight placed on the student's chest and, on another, a staff member wrapped his arms around the student in a bear hug, picked him up so his feet were not on the floor, carried him across the room, and placed him in a chair. These holds are not permitted under the statute because they place pressure on a student's chest and abdomen. DPI ordered the district to submit a plan that included pro-

visions to ensure all staff members follow proper physical restraint procedures.<sup>6</sup>

#### **IDEA Complaint Decision 14-048.**

A student with an IEP had a physician's note stating that "it is absolutely contraindicated that the student is punished when he displays uncontrollable behavior." Two incidents resulted in the use of physical restraint of the student. During the first incident, the student climbed on furniture, threw objects, and used a metal rod as a bat. Staff physically restrained the student for less than two minutes. During a second incident, the student was asked to give his iPad to a staff member so it could be recharged. The student was offered another iPad to use, but he became upset. The student again climbed on furniture and was asked to get down because it was unsafe. When the student did not comply, the student was lifted down and a physical restraint hold was used. The hold was released when the student's behavior indicated that he would not begin climbing again. The duration of the restraint was less than 10 minutes. DPI concluded that both restraints were proper because staff appropriately determined that the student's behavior posed an imminent safety risk to himself. DPI further concluded the physical restraint was not prohibited by the doctor's note because it did not indicate that physical restraint cannot be used when there is an imminent safety risk.<sup>7</sup>

#### **Conclusion**

It is critical for districts to train staff, especially those working with students with disabilities, concerning the statutory requirements governing the use of seclusion and physical restraint. In particular, staff should understand what actions constitute seclusion and/or physical

restraint, ensure that neither is used unless there is a clear, present, imminent risk of the student's safety or the safety of others, and limit the duration of the seclusion and/or physical restraint to the time needed to resolve the risk. Further, staff should know that when seclusion and/or physical restraint is used, the IEP team must review the IEP and revise it if necessary to ensure that it includes the use of seclusion and/or physical restraint, as well as positive behavioral interventions and strategies that are based on an FBA.<sup>8</sup>

#### **Endnotes**

For additional information on related topics, see *Wisconsin School News* "Seclusion and Restraint" (February 2013) and "Using Force to Maintain Student Discipline" (February 1996).

1. DPI is responsible for adjudicating complaints that a public agency has violated the requirements of state or federal law governing the treatment of students with disabilities, including the use of seclusion and/or physical restraint. These complaints are referred to as "IDEA Complaints." If DPI concludes that the district has violated the law, it will order the district to come into compliance with the law and/or direct the district to submit a corrective action plan to address each violation. See Wisconsin DPI, *IDEA Complaint Procedures*, available at <https://sped.dpi.wi.gov/sites/default/files/imce/sped/doc/comp-procedures.doc>
2. *IDEA Complaint Decision 13-002* (3/11/13)
3. *IDEA Complaint Decision 14-025* (7/3/14)
4. *IDEA Complaint Decision 15-020* (5/2/15)
5. *IDEA Complaint Decision 14-007* (4/2/14)
6. *IDEA Complaint Decision 14-022* (6/17/14)
7. *IDEA Complaint Decision 14-048* (11/4/14)
8. See also 2011 Act 125 Seclusion and Restraint Frequently Asked Questions, [http://sped.dpi.wi.gov/sped\\_secrestfaq](http://sped.dpi.wi.gov/sped_secrestfaq)

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