

# DisabilityRights



## ARKANSAS

### *PROTECTING ARKANSAS STUDENTS WITH DISABILITIES:*

*THE NEED FOR BINDING EDUCATIONAL  
STANDARDS AND LAW TO ADDRESS THE USE OF  
RESTRAINT IN ARKANSAS SCHOOLS*

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## Protecting Arkansas Students with Disabilities: The Need for Binding Educational Standards and Law to Address the Use of Restraint in Arkansas Schools

Disability Rights Arkansas receives calls far too frequently from parents whose children with disabilities have been physically restrained at school. Most reports of physical restraint concern restraint of children with developmental disabilities, including Autism Spectrum Disorder. Children with disabilities in Arkansas schools currently have no legal protections in state law in connection with the use of physical restraint by schools and school personnel.

Arkansas is one of only eleven states that does not have any binding authority on the use of physical restraint in the school setting.<sup>1</sup> Though the Arkansas Department of Education issued Advisory Guidelines for the Use of Student Restraints in Public School or Educational Settings addressing the use of restraint in 2014, there is no way to enforce the guidelines to ensure that school districts are implementing the recommendations. As a result, Arkansas students continue to be subjected to dangerous and outdated physical restraint practices. To protect Arkansas students, it is imperative that the State enact binding and enforceable educational standards and law for the use of physical restraint in its schools.

Many stakeholders in the State have long urged Arkansas to promulgate enforceable authority regarding the use of physical restraint that would establish standards consistent with best and evidence-based practices and protect students with disabilities. Disability Rights Arkansas has prepared this document to educate and advocate for the need for enforceable standards related to the use of physical restraint in Arkansas schools.

### **The Well-Known Dangers of Physical Restraint**

Over the last several years, numerous reports have been written outlining the dangers and the lack of therapeutic value associated with the use of restraint.<sup>2</sup> Due to the dangers associated with restraint, many organizations with expertise in serving individuals with disabilities have publicly spoken out on the need to reduce and eliminate the use of restraint.<sup>3</sup>

There are several variations of restraint, each of which poses a potential risk to both the person restrained and the person doing the restraint.<sup>4</sup> Physical restraint is the most common type of restraint used in a school setting. A physical restraint is “a personal restriction that immobilizes or reduces the ability of a student to move his or her torso, arms, legs, or head freely.”<sup>5</sup>

Physical restraints can occur in different ways. For example, a basket hold is when an individual is held with his arms crossed in front of his body.<sup>6</sup> It can take place with an individual lying down, sitting, or standing. A supine hold is when an individual is held down on the ground, face up, with pressure applied to keep him in that position.<sup>7</sup>

One of the most dangerous physical restraints is a prone restraint. A prone restraint is when an individual is held down on the ground, facedown, with physical pressure applied to his body to keep him in that position.<sup>8</sup> Prone restraints often restrict an individual's ability to breathe and increase the risk of death. Physical restraints can and have resulted in injuries, including scratches, black eyes, broken bones, and, in the most tragic cases, death.

Despite the known dangers, restraints continue to be used in schools, many times far too often and with long lasting detrimental results. Even if a restraint is applied correctly and in a situation where a school district believes it is justified, it can have a traumatic impact on the student's life. In fact, the "traumatizing effect could manifest itself in new behaviors, impaired concentration or attention in class, or increased absences."<sup>9</sup>

Recognizing the risk and little benefit associated with the use of restraint, many facilities across the country have developed policies to reduce and eliminate the use of restraint.<sup>10</sup> In addition to internal policies, federal and state agencies have developed enforceable regulatory authority to prohibit or limit the use of restraints in many facility settings.<sup>11</sup> These authorities protect individuals from both the inappropriate use of restraints and the harmful restraints that often lead to injury and trauma. Furthermore, these authorities provide standards for staff to follow and a framework for providing quality training to staff. Unfortunately, there is no such enforceable law or regulation governing the use of restraint in Arkansas public schools and, as a result, no protection for students or support for school personnel.

### **The Need for Enforceable Standards Related to the Use of Restraint in Schools**

In 2009, the United States Government Accountability Office (GAO) issued a report documenting several horrific examples of restraint and seclusion in public and private schools and treatment centers.<sup>12</sup> In its report, GAO found that nineteen states had no laws or regulations governing the use of these aversive techniques. At that time, Arkansas had an educational standard regarding the use of seclusion but nothing to address restraint. GAO documented that, in the states that did have something in place, the laws or regulations regarding the use of restraint and seclusion varied widely.

Also in 2009, the National Disability Rights Network issued an investigative report on the use of restraint and seclusion in schools and highlighted many horrible examples of these aversive techniques being used on students across the country.<sup>13</sup> The National

Disability Rights Network updated its report in both 2010 and 2012, continuing to express concerns for the safety of students due to lack of regulations on restraint and seclusion in schools and again citing examples of how students had suffered from these practices.<sup>14</sup> These examples included a child who was zipped up in a duffel bag in response to a behavior; a deaf student who communicates using American Sign Language and has an additional health condition who was restrained in a prone restraint with no ability to communicate with staff during the restraint; a six year old student with Down Syndrome who was strapped to the bus seat with the seatbelt around the child's neck; and a six year old girl with Autism Spectrum Disorder and other disabilities who suffered deep bruising due to an inappropriate restraint involving a postural support chair.<sup>15</sup>

In 2012, the United States Department of Education issued a resource document on restraint and seclusion.<sup>16</sup> The document outlined the dangers associated with these practices and encouraged states to utilize fifteen principles in developing policies and procedures related to the use of restraint and seclusion in schools.

According to the most recent data collected by the United States Department of Education's Civil Rights Data Collection, more than 100,000 students nationwide were placed in restraints or seclusion during the 2013-2014 school year.<sup>17</sup> The data also shows that students with disabilities are restrained and secluded in far greater numbers than their non-disabled peers.<sup>18</sup>

In December 2016, recognizing the continuing problem with restraints in schools, the United States Department of Education Office for Civil Rights issued a Dear Colleague Letter explaining that the use of restraint on students could result in a finding of discrimination in violation of both Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990.<sup>19</sup>

### **Examples of Restraint Usage in Arkansas**

The sources described above express concerns consistent with the experience of students with disabilities in Arkansas. The following examples are from clients who were represented by Disability Rights Arkansas. These are real life examples of what is currently happening to students with disabilities in Arkansas.

#### *Example 1*

A nine year-old student was restrained by a school resource officer after pulling the fire alarm at school. The officer put the student into a prone restraint, handcuffed him with his arms behind his back, and placed his body on top of the student's back for several minutes until the student's family arrived and demanded he move. The student was not being aggressive and was not posing an imminent danger to himself or others. The

student's wrists remained sore for a week following the restraint. The student's family later learned this was not the first time the student was restrained, though they had not received any prior notification of earlier incidents.

#### Example 2

A seven year-old student was repeatedly placed in seclusion and in restraints due to behaviors related to his disabilities. During one incident when the child was in kindergarten, the staff applying the restraint had no training on restraint techniques, used a weighted blanket to restrain the child, and denied his repeated requests for a drink of water. The student had also been restrained by staff holding his hands behind his back for some time, which the student described as being "arrested." In another incident, the student was held in a prone restraint by two adults in a hallway with other peers watching. The parent was not notified of these incidents by the school and instead learned of them from the student. Because of the lack of notification, the parent is unaware of how many times the student has been restrained or the circumstances surrounding the restraint incidents.

#### Example 3

A sixteen year-old student in a self-contained classroom was throwing pencils and hitting himself while in the classroom. The teacher called for the school security officer, who restrained the student in a prone restraint with the officer's hands on the student's back to hold him down. The student experienced breathing problems following the restraint incident.

#### Example 4

A ten year-old nonverbal student was subjected to a prone restraint following behavioral issues related to his disabilities. His parent was provided documentation that the student was "taken to the mat" and that two adults held him in the restraint, one at his upper body and one at his lower body. She requested a meeting with the school following the incident where she expressed her concerns regarding the use of restraint and stated she did not wish for restraint to be used on her child. She later learned that, despite her requests, the student was placed in a prone restraint following the meeting and was injured in the restraint. She was not notified of the restraint from the school and was only able to confirm it happened upon questioning staff after her son came home with the injury.

## **Arkansas Efforts to Address the Need for Enforceable Authority Related to the Use of Physical Restraint in Schools**

Since before 2009, the Arkansas Department of Education has had a regulation regarding the use of time-out seclusion rooms.<sup>20</sup> In 2009, the Department reported to the United States Department of Education its intention to develop a rule or policy regarding restraint in the educational setting or to propose legislation to the Arkansas General Assembly if additional statutory authority was required.<sup>21</sup> However, the Department has not adopted nor requested assistance with a similar binding authority regarding the use of restraint.

In both 2013 and 2014, there was much discussion amongst stakeholders, particularly at the Legislative Autism Task Force meetings, regarding the need to create enforceable standards for the use of restraint in schools. During that time, the Arkansas Department of Education presented to the Autism Task Force on its draft Advisory Guidelines for the Use of Student Restraints in Public School or Educational Settings (Advisory Guidelines) addressing the use of restraints in public school and made changes to the Advisory Guidelines based upon feedback received.

At the May 2014 Autism Task Force Meeting, there was discussion about school districts not following the Advisory Guidelines and a need for legislation to make the Guidelines enforceable. In fact, legislation was drafted that mirrored the draft state legislation suggested by The Alliance to Prevent Restraint, Aversive Interventions, and Seclusion<sup>22</sup> and included many of the provisions within the Advisory Guidelines.

The draft legislation recognized the dangers of restraint and emphasized the need for other interventions and staff training. The draft legislation also required parent notification and debriefing following incidents of restraint. Ultimately, the draft legislation was not introduced nor voted on by the Arkansas General Assembly.

### **Arkansas Department of Education Advisory Guidelines for the Use of Student Restraints in Public School or Educational Settings**

In 2014, the Arkansas Department of Education published the Advisory Guidelines for the Use of Student Restraints in Public School or Educational Settings. The Advisory Guidelines include definitions of terms, prevention techniques, district responsibilities, information on how and when to use a restraint, notification/reporting/debriefing suggestions, and recommend training for personnel. The Advisory Guidelines are consistent with approaches recommended by experts in behavior intervention and with the recommendations of the U.S. Department of Education.

The Advisory Guidelines start with the premise that physical restraint of students with disabilities should be avoided and used only in extremely limited circumstances. They

recognize the importance of prevention and that one of the most effective means of preventing restraints is by implementing positive behavioral supports school-wide.<sup>23</sup>

Importantly, the Advisory Guidelines provide that physical restraint should not be used except in situations where a student's behavior poses an imminent danger to the student or others. Imminent danger, as defined in the Advisory Guidelines, is "when a danger exists that could reasonably be expected to cause death or serious physical harm immediately."<sup>24</sup> The Advisory Guidelines provide that mechanical restraint, chemical restraint, life-threatening restraint, restraint that is medically contraindicated, and other aversive behavioral interventions that compromises health and safety should not be used. The Advisory Guidelines also provide that prone restraint should *never* be used because of the dangers associated with that type of restraint.

The Advisory Guidelines further provide a recommendation that districts establish policies and procedures on the use of restraints, complete documentation on the restraint incident, notify parents of the restraint, and hold a debriefing on the incident. The Advisory Guidelines also include recommendations for personnel training, which should include ways to respond to a behavioral crisis and how to prevent it.

Despite the many positive aspects within the Advisory Guidelines, there is no enforcement mechanism to ensure that school districts across the state follow or implement the recommendations. Instead, school districts are simply encouraged to review the Advisory Guidelines and develop their own policies and procedures regarding the use of restraint.

### **Lack of Effectiveness of the Advisory Guidelines**

A review of published school policies currently available online from Arkansas school districts reveals that a majority of districts have no published policies governing the use of restraint on students. While a few districts have a published restraint policy that directly discusses the use of restraint, most of the districts that reference restraint do so only in personnel policies and only to briefly address that certain personnel will be trained on the use of restraint. It is unclear whether this is due to a lack of policy or to districts not making those policies publicly available. Either way, most Arkansas parents do not have easy access to the restraint policy in their district. Many Arkansas parents are also not aware of the existence of the Advisory Guidelines.

Furthermore, districts are not required to report data regarding restraint usage to the Arkansas Department of Education. Therefore, there is currently no data collected that identifies how often restraint is used, the circumstances surrounding the use of restraint, the type of restraint, or ways that a restraint could have been avoided. In short, there is no monitoring or oversight of the use of restraint in schools and no way to ensure compliance with any of the Advisory Guidelines recommendations.

Parents and others consistently report concerns that schools are utilizing restraint in lieu of providing meaningful behavioral programming and interventions, either by refusing to develop a behavior intervention plan, by not implementing an existing plan, or by escalating a student's behavior due to inappropriate staff responses to behaviors.

Parents are also not being notified by school districts when their child has been subjected to a restraint. Because Arkansas currently has no enforceable standards or law regarding the use of restraint, schools are not required to notify parents when a restraint occurs, though it is recommended within the Advisory Guidelines. Many times parents only learn about a restraint if their child is willing or able to tell them about it. Even after learning of the restraint, parents are frequently unable to obtain documentation of the restraint incident from the school. Therefore, parents are often unaware that their child has been restrained and do not know how frequently the restraint occurs, for how long, or even why. Without this information, parents are unable to actively participate in their child's education and, if needed, provide them with medical or mental health treatment.

The lack of enforceable standards and law is contributing to Arkansas students continuing to be restrained, often for minor incidents and certainly not when imminent danger is present, as evidenced in the examples above. Many times, the restraint is the only type of intervention used or is a result of staff actions that escalate a student's behavior. There is also little in the way of reviewing the restraint incident and finding ways to address the behavior in the future, by way of developing or amending an individualized behavior intervention plan that would address the student's needs in a more positive way.

In addition to the overuse of restraint, Arkansas students are being subjected to the most dangerous form of restraints, prone restraint, which has led to the unfortunate and untimely deaths of individuals across the country. Prone restraint is still being used in some schools, despite a recommendation by national experts and the Advisory Guidelines that prone restraint not be used due to the associated dangers. Furthermore, Arkansas students continue to be restrained with improper techniques by staff who are unfamiliar with the Advisory Guidelines and with best and evidence-based practices for behavior intervention and who have not received adequate training on the use restraint.

## Recommended Action

All students attending school in Arkansas deserve to learn in an environment where their needs are supported and where they are not subjected to unnecessary and harmful restraint. The State should take immediate action to address the use of restraint in Arkansas schools and to bring the State's educational practices for children with disabilities in compliance with expert recommendations and practices for managing behaviors.

Disability Rights Arkansas recommends that the State enact enforceable state standards and law regarding the use of restraint in schools. The Advisory Guidelines issued by the Arkansas Department of Education have the necessary components to protect students from these aversive techniques, as does the model legislation. Disability Rights Arkansas recommends that the State either enact the previously drafted model legislation or adopt the Advisory Guidelines as binding authority and require that school districts implement the important standards and protections for students with disabilities in those Guidelines.

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<sup>1</sup> Jessica Butler, *How Safe Is the Schoolhouse? An Analysis of State Seclusion and Restraint Laws and Policies* (July 25, 2015) Bibliography of State Materials, <http://www.autcom.org/pdf/HowSafeSchoolhouse.pdf>.

<sup>2</sup> See, e.g., Eric Weiss, et al., *11 Months, 23 Dead, Series: Deadly Restraint*, HARTFORD COURANT Oct. 11, 1998; Heather Vogell, *Violent and Legal: the Shocking Ways School Kids are Being Pinned Down, Isolated Against Their Will*, PROPUBLICA (June 19, 2014, 4 a.m.), <https://www.propublica.org/article/schools-restraints-seclusions>; National Disability Rights Network, *School Is Not Supposed to Hurt* (March 2012), [http://www.ndrn.org/images/Documents/Resources/Publications/Reports/School\\_is\\_Not\\_Supposed\\_to\\_Hurt\\_3\\_v7.pdf](http://www.ndrn.org/images/Documents/Resources/Publications/Reports/School_is_Not_Supposed_to_Hurt_3_v7.pdf); U.S. Senate Health, Education, Labor, and Pensions Committee Report, *Dangerous Use of Seclusion and Restraints in Schools Remains Widespread and Difficult to Remedy: A Review of Ten Cases* (February 12, 2014),

<http://www.help.senate.gov/imo/media/doc/Seclusion%20and%20Restraints%20Final%20Report.pdf>; Jessica Butler, *Unsafe in the Schoolhouse: Abuse of Children with Disabilities*, COPAA (2009), [http://c.yimcdn.com/sites/www.copaa.org/resource/collection/662B1866-952D-41FA-B7F3-D3CF68639918/UnsafeCOPAAMay\\_27\\_2009.pdf](http://c.yimcdn.com/sites/www.copaa.org/resource/collection/662B1866-952D-41FA-B7F3-D3CF68639918/UnsafeCOPAAMay_27_2009.pdf).

<sup>3</sup> Equip for Equality, *National Review of Restraint Related Deaths of Children and Adults with Disabilities: The Lethal Consequences of Restraint*, (2011), <http://www.equipforequality.org/wp-content/uploads/2014/04/National-Review-of-Restraint-Related-Deaths-of-Adults-and-Children-with-Disabilities-The-Lethal-Consequences-of-Restraint.pdf> at 21-22.

<sup>4</sup> The focus of this paper is on physical restraint because that is the form most commonly used in the school setting. However, there are other forms of restraint, including mechanical and chemical. A mechanical restraint is "the use of any device or equipment to restrict a student's freedom of movement." For example, using a restraint chair, papoose board, handcuffs, or any other device to restrict movement would be considered a mechanical restraint. A chemical restraint is "the use of a drug or medication to control a student's behavior or restrict his freedom of movement." See Arkansas Department of Education, *Advisory Guidelines for the Use of Student Restraints in Public School or Educational Settings* (2014), <https://arksped.k12.ar.us/documents/mainPage/ADEAdvisoryGuidelinesfortheUseofStudentRestraintinPublicSchoolorEducationalSettings2014.pdf>. [hereinafter referred to as Guidelines].

<sup>5</sup> *Id.* at Section 1.(22).

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<sup>6</sup> Heather Vogell, *Violent and Legal: the Shocking Ways School Kids are Being Pinned Down, Isolated Against Their Will*, PROPUBLICA (June 19, 2014, 4 a.m.), <https://www.propublica.org/article/schools-restraints-seclusions>.

<sup>7</sup> *Supra* note 4 at Section 1.(30).

<sup>8</sup> *Id.* at Section 1.(24).

<sup>9</sup> U.S. Department of Education Office for Civil Rights, *Fact Sheet: Restraint and Seclusion of Students with Disabilities* (December 2016), [https://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-201612-504-restraint-seclusion-ps.pdf?utm\\_content=&utm\\_medium=email&utm\\_name=&utm\\_source=govdelivery&utm\\_term=](https://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-201612-504-restraint-seclusion-ps.pdf?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=).

<sup>10</sup> *See, e.g.*, Substance Abuse and Mental Health Services Administration, *Alternatives to Seclusion and Restraint*, <https://www.samhsa.gov/trauma-violence/seclusion>.

<sup>11</sup> *See, e.g.*, 42 C.F.R. § 483.420 (a)(6); 42 C.F.R. § 483.450 ; 42 C.F.R. § 482.13(e); 42 C.F.R. § 460.114; 42 C.F.R. § 418.110(n); 42 C.F.R. § 483.358; Ark. Code Ann. § 5-2-326; Ark. Code Ann. § 20-47-229; Ark. Code Ann. § 20-10-1204; Ark. Code Ann. § 20-10-1003.

<sup>12</sup> U.S. Gov't Accountability Office, GAO-09-719T, *Seclusions and Restraints, Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers* (2009), <http://www.gao.gov/new.items/d09719t.pdf> [hereinafter GAO Report].

<sup>13</sup> National Disability Rights Network, *School is Not Supposed to Hurt: Investigative Report on Abusive Restraint and Seclusion in Schools* (January 2009), <http://www.ndrn.org/images/Documents/Resources/Publications/Reports/SR-Report2009.pdf>.

<sup>14</sup> National Disability Rights Network, *School is Not Supposed to Hurt: Update on Progress in 2009 to Prevent and Reduce Restraint and Seclusion in Schools* (January 2010),

<http://www.ndrn.org/images/Documents/Resources/Publications/Reports/School-is-Not-Supposed-to-Hurt-NDRN.pdf>; National Disability Rights Network, *School is Not Supposed to Hurt: The U.S.*

*Department of Education Must Do More to Protect School Children from Restraint and Seclusion* (March 2012), [http://www.ndrn.org/images/Documents/Resources/Publications/Reports/School\\_is\\_Not\\_Supposed\\_to\\_Hurt\\_3\\_v7.pdf](http://www.ndrn.org/images/Documents/Resources/Publications/Reports/School_is_Not_Supposed_to_Hurt_3_v7.pdf).

<sup>15</sup> National Disability Rights Network, *School is Not Supposed to Hurt: The U.S. Department of Education Must Do More to Protect School Children from Restraint and Seclusion* (March 2012), [http://www.ndrn.org/images/Documents/Resources/Publications/Reports/School\\_is\\_Not\\_Supposed\\_to\\_Hurt\\_3\\_v7.pdf](http://www.ndrn.org/images/Documents/Resources/Publications/Reports/School_is_Not_Supposed_to_Hurt_3_v7.pdf).

<sup>16</sup> U.S. Department of Education, *Restraint and Seclusion: Resource Document* (May 2012), <https://www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf>.

<sup>17</sup> U.S. Department of Education Office for Civil Rights, *Dear Colleague Letter: Restraint and Seclusion of Students with Disabilities* (December 28, 2016), [https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201612-504-restraint-seclusion-ps.pdf?utm\\_content=&utm\\_medium=email&utm\\_name=&utm\\_source=govdelivery&utm\\_term=](https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201612-504-restraint-seclusion-ps.pdf?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Arkansas Department of Education Special Education and Related Services, Section 20.00, [https://arksped.k12.ar.us/rules\\_regs\\_08/1.%20SPED%20PROCEDURAL%20REQUIREMENTS%20AND%20PROGRAM%20STANDARDS/20.00%20USE%20OF%20THE%20TIME-OUT%20SECLUSION%20ROOM.pdf](https://arksped.k12.ar.us/rules_regs_08/1.%20SPED%20PROCEDURAL%20REQUIREMENTS%20AND%20PROGRAM%20STANDARDS/20.00%20USE%20OF%20THE%20TIME-OUT%20SECLUSION%20ROOM.pdf).

<sup>21</sup> United States Department of Education, *Summary of Seclusion and Restraint Statutes, Regulations, Policies and Guidance, By State and Territory: Information As Reported to the Regional Comprehensive Centers and Gathered from Other Sources* (February 2010), <https://www2.ed.gov/policy/seclusion/summary-by-state.doc> at 19.

<sup>22</sup> Stop Hurting Kids, *Resources: Model State Legislation*, <http://stophurtingkids.com/resources/#cat3>.

<sup>23</sup> *Supra* note 4 at 11.

<sup>24</sup> *Id.* Section1.(15).