

Policy & Safety Issues Regarding Physical Restraint & Seclusion

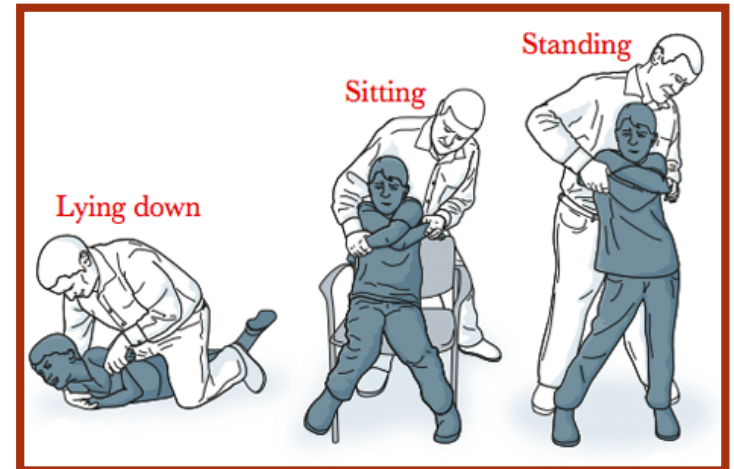
Tri-State Law Conference, Nov. 2, 2017

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Outline!

- Federal policy
- State policy
- Local policies
- Litigation
- Issues
 - Imminent danger;
 - Training;
 - Prevention;
 - Supervision
- Conclusions



Additional
Resources

FEDERAL POLICY

No federal law *

No U.S. Dept. of Education Policies**

*In ESSA mention of state plans to reduce use of aversive procedures...

**U.S. Department of Education Guidance document with 15 principles, & Office of Civil Rights Letter to Colleagues.



*Every Student Succeeds Act - ESSA (December, 2015)...

Each State plan shall describe-

“(1)...(C) how the State educational agency will support local educational agencies receiving assistance under this part to improve school conditions for student learning, including through reducing— “(i) incidences of bullying and harassment; “(ii) the overuse of discipline practices that remove students from the classroom; and “(iii) the use of **aversive behavioral interventions** that compromise student health and safety;“

p. 41-42 of pdf;

The Conference Committee Report indicates that this includes “physical restraint and seclusion.”

** U.S. DOE Resource Document

Restraint and Seclusion Document: US Department of Education
Arne Duncan, 2012.

<https://www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf>

“Physical restraint or seclusion should not be used except in situations where the child’s behavior poses imminent danger of serious physical harm to self or others and other interventions are ineffective and should be discontinued as soon as imminent danger of serious physical harm to self or others has dissipated.”

** Recommended 15 Principles

US DOE Resource document May, 2012

- Prevent the need for use...
- Never mechanical restraints...
- Only use when behavior poses imminent danger...
- Policies apply to all children.
- Treat with dignity; free of abuse...
- Never use as a punishment...
- Never use to restrict breathing...
- Repeated/Multiple use triggers review...
- Behavior strategies should address underlying cause...
- Training on effective alternatives.. and safe use...
- Use should be monitored...
- Parents should be informed of policies...
- Parents notified following each use...
- Policies reviewed regularly...
- Policies should require documentation

More complete version attached

** OCR Letter to Colleagues

Office of Civil Rights, December 26, 2016

Catherine E. Lhamon, Assistant Secretary for Civil Rights

<https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201612-504-restraint-seclusion-ps.pdf>

“I write to explain the limits that Federal civil rights laws enforced by the U.S. Department of Education’s Office for Civil Rights (OCR) impose on the use of restraint and seclusion by public elementary and secondary school districts. In particular, this guidance informs school districts how the use of restraint and seclusion may result in discrimination against students with disabilities. ...”

STATE POLICY

State Legislation and Policies

- 28 states have laws providing meaningful protections against restraint and seclusion for all children;
- 38, states for children with disabilities.
- 19 states by law require that an emergency or threatening physical danger exist before restraint can be used for all children;
- 22, for children with disabilities.

Butler, December, 2016

State Legislation and Policies

- Thirty-eight states have existing legislation and 45 have policy on restraint and seclusion
- US DOE Principle 3 on *imminent danger* is most addressed
- US DOE Principle 14 on *reviewing & updating* policies frequently is least addressed

In our four state region-

- **Iowa** –detailed legislation 10/2008.
 - Chapter 103 corporal punishment ban; restraint; physical confinement and detention.
- **Kansas** -legislation — most recent August of 2015.
 - Kansas HB 2170, the Freedom From Unsafe Restraint and Seclusion.
- **Missouri** -legislation requiring local policies;
 - Developed a statewide model policy for districts.
- **Nebraska** – No state legislation or policy...
 - Except that a local policy is required for district accreditation.

State Restraint & Seclusion Policies

	Iowa	Kansas	Missouri*	Nebraska**
Definitions		✓	✓	
Rationale (Preamble)	✓			
Focus on Prevention (Crisis De-Escalation)	✓	✓		
Purpose of Employing Restraint		✓		
Staff Training Requirements	✓	✓	✓	
Staff Training Requirements (Certification)	✓	✓		
Maintaining Safety (Time Lines/Limits)	✓		✓	
Maintaining Safety (Monitoring)				
Maintaining Safety (Special Cases)	✓	✓	✓	
Documentation of Each Incident	✓	✓	✓	
Debriefing	✓			
Appropriate Reporting to Parents/Guardians/Others	✓	✓	✓	
Supervision, Oversight, and Review		✓	✓	
Seclusion		✓	✓	
Dangers & Risks				
Restraint Holds/ Procedures	✓	✓	✓	
Follow-Up	✓	✓		

***Missouri** requires district policies and provides a model policy.
 ****Nebraska** school accreditation requires districts to have a policy, but does not specify policy requirements.

Studies of State Legislation and Policies

Both Marx & Baker, and Butler note continuous introductions, modifications, and overall improvement to state policy and legislation over time.

They also examined components included in these policies.

LOCAL POLICY

Some states require local district policies in lieu of state policies (e.g. Nebraska; Missouri) with some technical assistance or model policies available.

There is no data about how many local districts have policies, or, when local policies exist, what is included.

Recommended elements

- ✓ Definitions of terms
- ✓ Purpose of employing restraint or seclusion
- ✓ The need for a prevention focus
- ✓ Dangers & Risks
- ✓ Physical restraint procedures and holds
- ✓ Seclusion procedures/requirements
- ✓ Staff training requirements, content & certification
- ✓ Safety procedures time limits, monitoring, special cases
- ✓ Documentation of incidents
- ✓ Debriefing of incidents
- ✓ Reporting to parents/guardians
- ✓ Supervision & oversight regarding data
- ✓ Follow up/ regular review of policies

(adapted from Peterson, 2010)

Data

- No useful data about injuries or deaths resulting from restraint or seclusion!
- Other than OCR data, little data about how often these procedures are employed
- Is OCR data valid or reliable?
- See the media reports!

Documentation

- Proper & timely documentation should occur after every physical hold or seclusion
- Critical for oversight and accountability
- Should be used to analyze patterns of use and improve preventative practices
- Should be utilized for more than a procedural check mark



Gagnon et al. (based on national OCR data) p. 7-8

- “This study found that reports of restraint and seclusion are relatively rare in most school districts.”
- “Given the overwhelming majority of districts in our sample that reported zero or near-zero rates of restraint and seclusion, it appears that many schools are consistent with such practice.”

Issues with Data

- Does this reflect reality, or the potentially poor quality of the data?
- Lack of consistent definitions, lack of consistent and reliable data collection, recognition that these procedures might lead to criticism, etc.

“...it appears that state policies on restraint and seclusion may only have a modest impact on how frequently the practices are conducted...”

- Gagnon et al., p. 8

"...it appears that the use of these practices is likely driven to a meaningful degree by local policy and school culture more generally."

- Gagnon et al., P. 8 (Our emphasis).

What happens when state or local policies are violated?

- Most do not specify sanctions for violations
- State Education Agencies may intervene if policies are clear
 - Ultimately for egregious situations, district accreditation could be challenged...
- Extensive Mediation/Litigation may occur...

“As Gust and Sianko (2012) suggest, it may be more effective to supply practitioners with the skills necessary to respond to challenging behavior rather than simply banning techniques that are deemed inappropriate.”

• Gagnon et al., P. 8

However- LB595?

“School teachers and administrators may use physical contact short of corporal punishment to the degree necessary to preserve order and control in the school environment and may use an acceptable level of incidental physical contact as necessary to promote personal interaction with students.”

- Gym teacher grabbed 3rd-grade student by his ankles and dragging him 93 feet to the timeout room for disruptive behavior and noncompliance
- State Sen. Mike Groene of North Platte introduced the bill to help teachers keep control of their classrooms and unruly students without fear of lawsuit

What happened to LB595?

- Supported by the state Teacher's Association
- Appears to contradict U.S. Dept. of Education Guidelines and recommendations.
- Testimony supported problems with discipline, classroom management and lack of mental health services
- 3 hour debate on April 24 ended without a vote to advance LB595
- Possible that this same topic might come up next year.

LITIGATION

Hearings & Settlements

Legal Causes of Action



❑ **Constitutional Claims**

- ❑ 8th Amendment (cruel & unusual punishment)
- ❑ 14th Amendment (deprive life, liberty or property; equal protection)

❑ **Section 1983** 42 U.S. Code § 1983
Civil action for deprivation of rights

❑ **Maltreatment** -Does it constitute child abuse?

❑ **Licensing Complaints**- violation of professional codes of conduct

❑ **Criminal Liability**

❑ **Personal Injury/Tort Actions**

❑ **Special education and Section 504 claims**
(Issues around FAPE; due process, behavior plans, etc.)

How can schools get in trouble?

Causes of Action

- Staff or Student Injury
- Repeated or overuse of R&S
- Staff member engages in restraint without training/certification
- Not following state or district policy
- Even if correct procedures are followed!

Who can take action?

- The student or Parents/Guardians
 - If disabled, the Parent Surrogate
- Staff members
- The State –
 - Department of Education
 - Child protection /social services
- Independent Child Protection and Advocacy Organizations
- The police

Supreme Court: Endrew F. v. Douglas County School District

- What level of educational benefit constitutes FAPE guaranteed by IDEA?
- The trivial or de minimis standard of educational benefit is not sufficient
- Courts may look to student progress in future FAPE litigation to ensure meaningful educational benefit
- ***Potential Implications for R&S:***
 - **Does repeated use imply lack of adequate programming?**
 - **Does improper or over use of these procedures limit student progress and thus meaningful educational benefit?**

Supreme Court: Fry v. Napoleon Community School District

- Must a student denied the right to bring her trained service dog to school exhaust administrative remedies under IDEA when seeking discrimination damages under other federal disabilities laws?
- The Court explained that "We hold that **exhaustion is not necessary** when the gravamen of the plaintiff's suit is something other than the denial of the IDEA's core guarantee - what the Act calls a 'free appropriate public education.'"
- Implications regarding claims made in R&S cases - when suit is focused on systemic failure or discrimination, the plaintiff need not exhaust administrative remedies

N.S. by J.S. v. Tennessee Dep't of Educ. (U.S. District Court, 2016)

- District could not use the *Fry v. Napoleon Community Schools* Supreme Court Ruling to turn away claims that it improperly restrained an elementary school student
- Parents alleged that the student was subjected to frequent isolations and restraints in support of their claim that the district had a system-wide problem related to inappropriate disciplinary practices and indifference to complaints of abuse
- "Exhaustion of remedies would be futile because the primary challenge was not to the individual instances in which students were subjected to isolation or restraint, but the systemic failure of the district to take measures that would reduce the use of isolation and restraint"

J.M. by McCauley v. Francis Howell Sch. Dist. (U.S. Court of Appeals, 2017)

- Claiming loss of educational benefit due to use of restraint and seclusion was fatal to parent's attempt to pursue Sect 1983, Sect 504, and Title II claims in court
- Parent alleged that district deprived student of educational benefit by failing to offer him appropriate behavioral supports
- Although the parent framed her complaint as a disability discrimination, it was based on the denial of FAPE under IDEA, so the court dismissed the case and held that the parents failed to exhaust administrative remedies

K.G. by Gosch v.
Sergeant Bluff-Lufton Cmty. Sch. Dist.
(U.S. District Court, 2017)

- Parents initially pursued due process complaint for a denial of FAPE, alleging that the district failed to implement their child's BIP when the sped teacher dragged the 7-year-old child with Autism across the classroom floor
- After hearing officer favored the district, parents instead sued the Iowa District, and a teacher under ADA and Section 504
- District claimed that parents abandonment of administrative proceedings was a litigation strategy
- Court found that the the decision was not merely strategic, and favored that the parents had realized their claims were about something other than FAPE
- The case essentially concerned the subjection of the student to a hostile environment and unreasonable physical force, so the parents were not required to exhaust IDEA's administrative remedies, and exhaustion only is required when the substance, "the graveman," of the claim is the denial of FAPE

Zirkel Restraint & Seclusion Court Cases Review

- **Zirkel (2016a)** 50 restraint related cases (2011-2015)
 - $\frac{3}{4}$ related to *physical* restraint; most were challenging broader array of aversive procedures
 - Majority of conclusive outcomes favor districts and significant number of inconclusive outcomes
 - **30% Conclusive for Districts (n=15); 48% Inconclusive (n=24); 2% Conclusive for Plaintiffs (n=1)**
- **Zirkel (2016b)** 24 seclusion or time out related cases (2013-2016)
 - Most were labeled “Seclusionary Timeout”; most included with or secondary to more invasive aversive (i.e., physical restraint, physical abuse)
 - Under the few cases where aversive action was limited to seclusion, violations of FAPE were the primary challenge
 - **Majority of conclusive outcomes favor districts and significant number of inconclusive outcomes**
 - 38% Conclusive for Defendants (n=9); 63% Inconclusive (n=15); 0% Conclusive for Plaintiffs (n=0)

Zirkel Restraint & Seclusion Court Cases Review

- 14th Amendment SDP most common constitutional claim
- Most successful defense was either 11th Amendment immunity, or lack of the requisite policy or custom
- Most common hurdle for plaintiffs was to establish that the conduct was “shocking to the conscience of society”.
- Majority of the cases were in federal vs. state courts
- Almost half of cases make it past on of the 2 successive pre-trial stages → prices and fees increase with each successive stages

Shocking to the Conscience of Society

- An action is understood to "shock the conscience" if it is perceived as manifestly and grossly unjust.
- Based on if the due process requirement in the 14th amendment
- Subjective decision by the judge –
 - Give a lot of latitude to professionals
 - Largest plaintiff hurdle is establishing that the use of restraint or seclusion is "Shocking to the Conscience of Society" (Zirkel, 2016)

Muskrat v. Deer Creek Public Schools (10th Circuit, 2013)

- A school district's use of a "timeout room" to briefly restrain an elementary school student with developmental disabilities did not "shock the conscience" and thus did not violate the student's constitutional rights
- "Although [the child] obviously did not want to be placed in the timeout room, this single incident lasting four minutes **does not shock the conscience**. The various details, such as placing a chair in front of the door, show at most a "careless or unwise excess of zeal" rather than a "brutal and inhumane abuse of official power."

Parrish ex rel. L. v. Bentonville Sch. Dist. (U.S. District Court, 2016)

- Parents claimed the district violated the constitutional rights of four students with autism by using excessive physical force, physical restraints, and seclusions, and failing to take action in response to the parents alleged repeated requests for district to end its alleged use of aversive techniques. Administrators “encouraged staff to continue to use physical restraint and seclusion on children with autism”
- Court addressed that while “the right to bodily integrity and to be free from excessive use of governmental force are clearly established”, It was not clearly established that “public school students have a constitutional right to be free from physical restraint or seclusion when their behavior is uncontrolled”
- Without evidence that the administrators violated fundamental constitutional rights, and that their actions were not “shocking to the contemporary conscience” the administrators were entitled to qualified immunity in the parents’ substantive due process claims

C.N. v. Willmar Public Schools (Eight Circuit, 2010)

- Teacher had been reported three times to Minnesota Dept of Ed for “maltreatment”
- “. . . [teacher] allegedly made C.N. sit at a ‘thinking desk’ and hold a physical posture for a specified time, or else face restraint or seclusion”
- Other allegations included demeaning and belittling student, pulling hair and denying use of restroom.
- Court concluded that a special education teacher, using restraint, had not violated student’s constitutional rights.
- Because restraint was listed in BIP, it was in the realm of acceptable practices.

T.W. v. School Bd. Of Seminole County (Eleventh Circuit, 2010)

- Court rules that parent of a child who was restrained did not establish that constitutional rights of student had been violated.
- “[Teacher] used profanity in her classroom daily and directed it at her students, including T.W. [Teacher] told T.W. that he stinks and called him lazy, an asshole, a pig, and a jerk . . . [Teacher] often restrained her students after doing something to upset or anger them.”
- . . . Interventions were to “restore order, maintain discipline . . . “
- There was a strongly worded dissenting opinion.

The “Spaghetti Strategy”

Throwing everything against the wall and hoping something sticks (Zirkel & Lyons, 2011).

D.L., E.L., and I.L., a Minor, by her Father and Mother and Next Friends, D.L. and E.L., Plaintiffs, v. The WAUKEE COMMUNITY SCHOOL DISTRICT and Heartland Area Education Agency, 2008

Parents observed “some of Defendants were restraining I.L. and that her eyes were glazed, she was screaming and yelling and had urinated during the restraint.” *Id.* ¶ 24. Behavioral problems continued into the fall of 2005, and Defendants “used more hand-over-hand restraints, physical body restraints and a ‘calming room.’” *Id.* ¶ 27. I.L. also experienced a pattern of time-outs, almost daily, which would last for several hours.

Revisions to the IEP were noted and it was suggested that isolation with immediate timeouts would be appropriate. *Id.* ¶ 41. D.L. expressed his objection to the revisions and stated that he intended to remove I.L. from **school** with outside support at the **Waukee School’s** expense. *Id.*

D.L. ... v. The Waukee School District And Heartland Area Education Agency (U.S. District Court, 2008)

Plaintiffs claim that Defendants' conduct toward and treatment of I.L. caused various damages. The Amended Complaint asserts eleven causes of actions:

- (1) violation of [20 U.S.C. §§ 1414–15](#),⁶ the Individuals with Disabilities Education Act (“IDEA”);
- (2) denial of substantive and procedural due process in violation of [42 U.S.C. § 1983](#);
- (3) denial of equal protection, in violation of [42 U.S.C. § 1983](#);
- (4) violation of the Rehabilitation Act (“RA”), [29 U.S.C. § 794](#);
- (5) disability discrimination in violation of [Iowa Code § 216.9](#);
- (6) assault and battery;
- (7) false imprisonment;
- (8) intentional infliction of emotional distress;
- (9) negligent infliction of emotional distress;
- (10) negligence—bystander; and
- (11) intentional or reckless infliction of emotional distress—bystander.

In the present Motion to Dismiss, Defendants assert that none of Plaintiffs' causes of actions are viable and that each and every count must be dismissed under [Federal Rules of Civil Procedure 12\(b\)\(1\)](#) and [12\(b\)\(6\)](#).

**Some claims
were granted
and some were
denied.**

Duty of Care

- The Vermont Statutes Online
- [Title 16 : Education, Chapter 021 : Maintenance Of Public Schools](#)
- (Cite as: 16 V.S.A. § 834)
- **§ 834. Duty of care**
 - (a) Each school district and its employees owe its students a duty of ordinary care to prevent the students from being exposed to unreasonable risk, from which it is foreseeable that injury is likely to occur.
 - Does that includes a duty of care to use restraints in a reasonably prudent manner and to the extent possible without causing injuries?

Reilly v. Southwest Vermont Supervisory Union (Vermont Superior Court, 2016)

- Parent challenged a Vermont district's continued use of physical restraint as a behavior management technique despite evidence that it was causing her son's behavior to deteriorate
- Court favored district, because parents failed to identify any injuries resulting from employee's alleged misconduct



ISSUES

on Use of Restraint or Seclusion

Local Policy ISSUES

In use of physical restraint and seclusion.



Imminent Danger



Training



Prevention



Supervision

Imminent Danger



Imminent Danger

- Procedures carry risk and have no evidence for behavior change, they are considered “last resort procedures”
- **Common consensus:** physical restraint procedures are only warranted in cases of clear and imminent danger
- Risk of not intervening outweighs risk of using a restraint
- Issues arise when these procedures are used for other circumstances (e.g., compliance)



Focus on Interpretation

- How people interpret & define
 - “dangerous”
 - “imminent”
 - “serious bodily injury”

What is “clear and imminent danger”?

Crisis Intervention Training Program Definitions

- “a person: has the ability to injure seriously, shows an intent to injure seriously and immediately, and the threat or attempt would create a need for immediate, professional, medical attention” (PRO-ACT)
- “It is when people are no longer able to maintain self-control due to a perception that they are unable to cope with the demands presented.” (RIGHT RESPONSE)
- “‘Immediately Dangerous’ situations are those which ‘put self or others at risk of imminent and serious harm, and verbal instructions have failed” (TACT 2)
- “Acute physical behavior that is likely to result in injury” (TCI)
- “An immediate threat of harm exists when [it is] ‘not separated in time, acting or happening at once, next in order.’ (Harper, 2010) The words that characterize such situations are “severe” and “out of control. ” (MANDT)





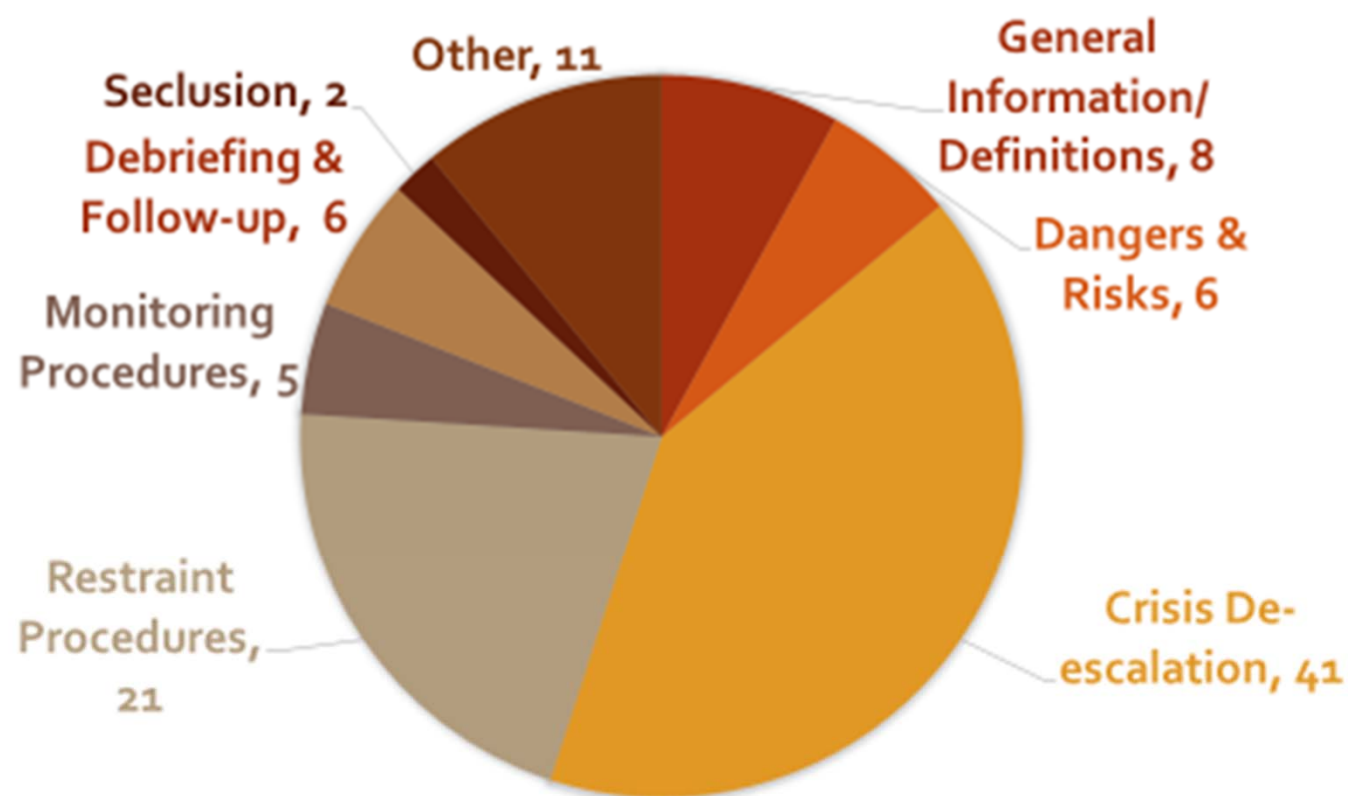
TRAINING

17 Crisis Intervention Training Programs	Organization Name	Website
Calm Every Storm, Crisis Intervention Training	Crisis Consultant Group, LLC.	crisisconsultantgroup.com
Management of Aggressive Behavior (MOAB®)	MOAB® Training International, Inc.	moabtraining.com
Nonviolent Crisis Intervention® Program	Crisis Prevention Institute	crisisprevention.com
Oregon Intervention System (OIS)	Alternative Service, Inc. - Oregon	ois.asioregon.org
PMT	PMT Associates, Inc.	pmtassociates.net
Pro-ACT®	Pro-ACT, Inc.	proacttraining.com
Professional Crisis Management (PCM)	Professional Crisis Management Association	pcma.com
Response	Response Training Program LLC	responsetrainings.com
RIGHT RESPONSE	Service Alternatives Training Institute	rightresponse.org
Safe and Positive Approaches®	Devereux	devereux.org
Safe Crisis Management® (SCM)	JKM Training Incorporated	jkmtraining.com
Safe Prevention Principle and Techniques	JIREH Training and Consulting LLC	jirehtraining.com
Safety-Care™	QBS, Inc.	qbscompanies.com
Satori Alternatives to Managing Aggression (SAMA)	Satori Learning Designs, Inc.	satorilearning.com
The Mandt System®	The Mandt System, Inc.	mandtssystem.com
Therapeutic Aggression Control Techniques (TACT2)	SBP Consulting, Inc.	tact2.com
Therapeutic Crisis Intervention (TCI)	Residential Child Care Project, Cornell Univ.	rccp.cornell.edu/tcimainpage.html

Allocation of resources across general topics

Training Program Name	Total Basic Training Time	General Information / Definitions %	Dangers & Risks %	Crisis De-escalation %	Restraint Procedures %	Monitoring Procedures %	Debriefing & Follow-up %	Seclusion %	Other %	Total %
Calm Every Storm	16 hrs	5	5	55	15	5	5	5	5	100
MOAB	6-8 hrs	20	15	20	20	10	5	5	5	100
Nonviolent Crisis Intervention® program	14 hrs	20	5	35	25	5	10	0	0	100
OIS	12 hrs	15	10	25	15	2	2	2	29	100
PMT	8 hrs	15	10	40	20	5	5	5	0	100
Pro-ACT®	20 hrs	5	4	60	8	7.5	7.5	3	5	100
Professional Crisis Management	14 hrs	10	5	30	50	0	5	0	0	100
Response	12 hrs	4	6	58	12	4	4	0	12	100
RIGHT RESPONSE	5-14 hrs	2	2	31	30	5	5	0	25	100
Safe & Positive Approaches®	14 hrs	5	7	34	18	3.5	3.5	0	29	100
Safe Crisis Management	18 hrs	5	5	45	30	5	10	0	0	100
Safe Prevention Principles and Techniques	16-20 hrs	10	12	38	15	5	15	5	0	100
Safety-Care	12 hrs	5	5	25	20	5	5	0	35	100
SAMA	16 hrs	1	2	40	20	1	1	0	35	100
The Mandt System®	19 hrs	7	8	58	12	7	7	1	0	100
TACT2	18-20 hrs	10	2.5	50	30	2.5	2.5	2.5	0	100
TCI	28-32 hrs	5	5	50	25	5	10	0	0	100

Average Allocation Across Training Programs



<http://k12engagement.unl.edu/study-crisis-intervention-training-programs>

Issues related to training

- Who accredits this training?
- How do consumers know the curriculum content?
- How do consumers know whether the training results in good outcomes?
- What is the safety record for training vendors?
- How effective is the “trainer of trainers” model for this type of curriculum.
- Who should be trained & in which components?



PREVENTION

Duty to Prevent

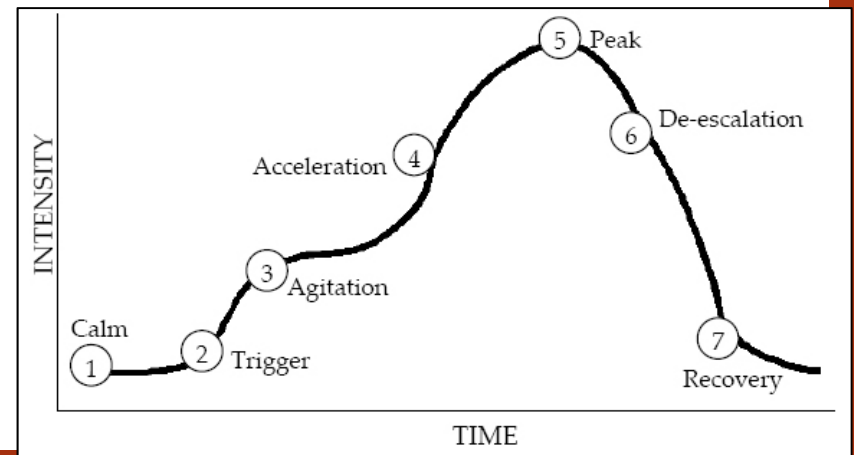
- ✓ Unsafe student behaviors
- ✓ Accidents
- ✓ Unsafe staff behaviors
- ✓ Unsafe conditions
- ✓ Intruders
- ✓ Weapons on campus
- ✓ Alcohol / Drugs on campus



- ✓ Appropriate academic and behavioral instruction
- ✓ Positive behavior supports
- ✓ Functional assessments
- ✓ Effective behavior intervention plans, etc.

Focus on Prevention

- Prevention of unsafe behavior is key
- Time to intervene is when things are going well
- Recognize early signs of agitation
- Identify and manage antecedents/contributing factors
- Anticipate triggers
- Verbally de-escalate students



Duty to Protect

- ✓ With safety plan
- ✓ With trained staff
- ✓ From threats
- ✓ From internal or external threats & hazards
- ✓ From injury (accident/deliberate)



For Behavioral Crisis-

- ✓ Is there a plan for use of restraint or seclusion when behavior is dangerous?
- ✓ Are staff trained?
- ✓ Are threats and escalating behavior recognized?
- ✓ Are safety equipment and training in place where they might be needed?

SUPERVISION/ OVERSIGHT



Duty to Supervise

- ✓ Adequate number of staff for activity
- ✓ Properly trained staff
- ✓ Adequate records and data
- ✓ Appropriate staff behavior
- ✓ Appropriate staff response to ...



For Behavioral Crisis-

- ✓ Is incident data gathered and analyzed?
- ✓ Are data used to make changes in behavior plans?
- ✓ Adequate number of staff?
- ✓ Are people responsible for oversight identified?

Adapted in part from Heidelberg, NDE

Settlement of Federal Class Action Lawsuit

PRESS RELEASE

pillsbury

Pillsbury and Disability Rights Legal Center
Salute Settlement in Disability Rights Cases

*Pomona Unified School District to revamp its policies relating to
the safety of special education students.*

The lawsuits contend that District administrators, teachers, classroom aides, and health officers violated the students' civil and constitutional rights under the Americans with Disabilities Act, the Rehabilitation Act, the Unruh Civil Rights Act, and related statutes through a systemic failure to keep students with disabilities safe while at school, resulting in a pattern of undocumented and unreported physical injuries and abuse, since at least 2013.

Settlement of the Pomona Class Action Lawsuit- Expert Testimony Concluded:

- Lack of evidence of prevention activities
- Lack of supervision of para educators
- Lack of data to support appropriate use of physical restraint.
- Lack of evidence of implementation of IEPs and BIPs

Leadership Considerations

- Is your local policy detailed enough to guide staff?
- Is your staff trained about state and local policies?
 - Does your crisis intervention training program cover district/state policy guidelines?
- Is there someone who is monitoring data on the use of these procedures in your district?



VIDEO & DISCUSSION

CONCLUSIONS

Our Conclusions



- Have good policies and train staff on policies!
- Data and documentation are essential
- Have adequate and current crisis intervention training in place for appropriate staff
- Focus on prevention and document prevention efforts (such as PBIS implementation fidelity data; good classroom & behavior management skills; BIP implementation data; etc.)
- Ensure adequate ongoing supervision and oversight

Despite lack of plaintiff wins, these issues still may cost districts substantial resources



Questions?

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 Building & Sustaining
Student Engagement

