

**UPDATE**  
**New Arizona Law**  
**HB 2476**  
**April 3, 2013**

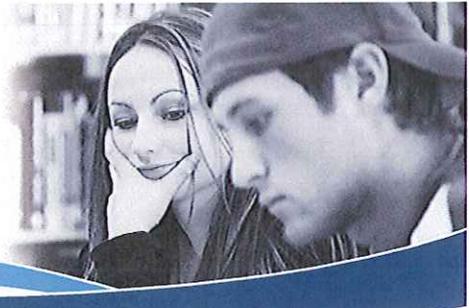
**Regarding Using Seclusion Rooms for Discipline**

*Arizona House Bill HB 2476, signed by  
Governor Janice K. Brewer amends A.R.S. § 15-843*

Under this new law, new rules will apply to the disciplinary policies and actions related to confinement of students in enclosed spaces.

**Beginning in the 2013-2014 school year, the policies will now include:**

- A process for prior written parental notification that confinement can be used for disciplinary purposes that is included in the pupil's enrollment packet or admission form.
- A process for prior written parental consent before confinement is allowed for any pupil in the school district.
- The policies shall provide for an exemption to prior written parental consent if a school principal or teacher determines that the pupil poses an imminent physical harm to self or others.
- The school principle or teacher shall make reasonable attempts to notify the pupil's parent or guardian in writing by the end of the same day that confinement was used.



### What are restraints and seclusion<sup>1</sup>?

Restraints are methods that restrict a person's ability to move freely or use one's body. They can be mechanical (e.g., straps), physical (e.g., being held by others), or chemical (e.g., medication used to sedate). Seclusion is involuntary isolation in a restricted location without the ability to leave. An appropriate use of "time out" is not considered seclusion.

Restraints and seclusion are used to subdue or stop undesirable behavior. In the best circumstances, restraints are employed by trained personnel and used to prevent a person from harming him/herself or others. In the worst cases, restraints and seclusion are used excessively as a management intervention by untrained staff when the behavior is not dangerous, and may lead to psychological trauma, physical injury, or even death.



Although we could not determine whether allegations of death and abuse were widespread, we did discover hundreds of such allegations at public and private schools across the nation between the years 1990 and 2009. Almost all of the allegations we identified involved children with disabilities.

– *Restraints and Seclusions: Selective Cases of Death and Abuse at Public and Private Schools and Treatment Centers*

### What does federal and Arizona law say about restraints and seclusion?

At the federal level, the Children's Health Act of 2000 regulates the use of restraints and seclusion on children in certain residential, community-based facilities and in medical facilities that accept federal funding, such as Medicare or Medicaid. However, no federal statute governs the use of restraints and seclusion in schools, public or private. Several attempts have been made to pass federal legislation that would restrict the use of restraints and seclusion and require states to collect data on their usage. Most recently in 2011, Senator Tom Harkin (Iowa) introduced the Keeping All Students Safe Act (S 2020).

Along with 17 other states, Arizona has no statute or rules regarding the use of restraints and seclusion in schools. According to a 2010 National Disability Rights Network report, only 22 states require schools to notify parents if restraints or seclusion were used on



their children; Arizona is not one of them. A 2009 Government Accountability Office report documented inconsistent standard across states regarding the use of restraints and seclusion in public schools.

## Why has this become an issue?

Among those in the developmental disability community, restraints and seclusion have been a concern for many years. The issue gained a broader audience in 2009, when the U.S. House of Representatives Committee on Education and Labor held a hearing examining the use of restraints and seclusion in schools.<sup>2</sup> Among the witnesses was the Government Accountability Office (GAO), which summarized federal and state laws and presented 10 case studies of students who died or endured injuries as a result of restraints and seclusion.<sup>3</sup>

### Arizona's Task Force on Best Practices in Special Education and Behavior Management Selected Recommendations

- Restraints and seclusion should be used only in an emergency to protect student(s) and staff from imminent, serious physical harm.
- If restraints or seclusion are used, parents and administrators should be notified the same day. A debriefing between the parents and staff should occur within 48 hours.
- Staff should be trained in conflict prevention and positive behavior intervention techniques, and should be recertified annually.

Later in 2009, the U.S. Secretary for Education issued a letter to state school superintendents encouraging them to review their states' policies on restraints and seclusion and update these policies to ensure the safety of students.<sup>4</sup>

Additional reports were issued in 2009 by disability advocates, documenting the misuse of restraints and seclusion in schools that ended with significant harm or death of a child, and highlighting the problem for children with disabilities.<sup>5</sup>

Reports of the abuse and misuse of restraints and seclusion continue to this day. Most recently in 2011, National Review of Restraint Related Deaths of Children and Adults with Disabilities: The Lethal Consequences of Restraint examined and detailed the specific events surrounding 61 deaths that happened to children and adults with disabilities while being restrained.<sup>6</sup>



## Why is this an important issue for people with developmental disabilities?

Although hard data regarding the use of restraints and seclusion is sparse, the GAO report suggests that children with disabilities are uniquely vulnerable to inappropriate and dangerous uses of restraints and seclusion. Children with disabilities are often unable to report use of restraints or seclusion.

## What has Arizona done in response?

While serving in the Arizona Senate in 2009, now-Superintendent of Public Instruction John Huppenthal, sponsored a bill that created the Task Force on Best Practices in Special Education and Behavior Management.<sup>7</sup> The Task Force was asked to “examine, evaluate and make recommendations concerning the best practices for managing the behavior and discipline of pupils with disabilities.” The statute also required public and charter schools to hold public meetings to review the findings of the Task Force. The Task Force issued a formal report in 2009.<sup>8</sup>

The Arizona Developmental Disabilities Planning Council commissioned a report to study the impact of the Task Force’s recommendations on school districts and charters. Of the 123 school districts and charter schools surveyed, 98% of the school leaders have a familiarity with the Task Force’s recommendations. Further, 51% of those districts and schools surveyed have adopted the Task Force’s recommendations, and 36% are in the process of adopting the recommendations. This report also studies the use of positive behavior intervention use in Arizona’s schools. To read the full report, please go to: <http://azgovernor.gov/DDPC/Reports>.

Some suggest there are flaws in the statute that created the Task Force. While school districts and charter schools were required to hold a public meeting to address the Task Force’s recommendations by June 2010, they were not required to report outcomes of that meeting to any entity. Whether all Arizona school districts and charter schools met the requirements of the statute is unclear.

The final report emphasizes positive behavior intervention, often referred to as PBIS, techniques as a way to prevent many behavior problems that could lead to restraints or seclusion, but does not define what these techniques would include.<sup>9</sup> In other words, some untrained school personnel and administrators may say they use positive behavior interventions and supports, when in reality they do not. Lastly, the statute does not require gathering or reporting any data on the use of restraints and seclusion. This is crucial in



understanding the extent of the problem students face in Arizona schools, and to assess whether state or local efforts are effective at minimizing that problem.

## What does the research say about the effect PBIS has on the use of restraints and seclusion?

Although research has not explored if it reduces the incidence of restraints and seclusion, PBIS has been proven to reduce suspensions, expulsions and other disciplinary activities. Consistent and robust data collection systems are necessary to explore the effect (if any) PBIS has on the use of restraints and seclusion, which is often a missing piece.

## Do we know how frequently restraints and seclusion are used on students in Arizona's schools?

Schools are not required by law to report to parents, districts or the state of Arizona on the use of restraints and seclusion. Individual districts and charter schools may develop (or not develop) their own unique policies or choose to remain silent on the issue.

In part of its response to the 2009 reports, the U.S. Department of Education has begun to collect data regarding the use of restraints and seclusion through its Civil Rights Data Collection.<sup>10</sup> However, the first set of data has not yet been released.

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### Sources

<sup>1</sup>Although there are many definitions of restraints and seclusion, these are based on the Centers for Medicare and Medicaid Services (42 C.F.R. § 482.13(e)(1)(i)-(ii)) that apply to medical facilities participating in federal programs.

<sup>2</sup>Testimonies, materials and video of the hearing can be found at [http://archives.republicans.edlabor.house.gov/hearingsMarkup\\_details.aspx?NewsID=1053](http://archives.republicans.edlabor.house.gov/hearingsMarkup_details.aspx?NewsID=1053)

<sup>3</sup>The Government Accountability Office; *Restraints and Seclusions: Selective Cases of Death and Abuse at Public and Private Schools and Treatment Centers* (GAO 09-719T); 2009. <http://www.gao.gov/new.items/d09719t.pdf>

<sup>4</sup>U.S. Secretary of Education, Arne Duncan; *Letter to chief state school officers regarding policies on physical restraint and seclusion*; 2009. <http://www2.ed.gov/policy/elsec/guid/secletter/090731.html>

<sup>5</sup>These reports include: The Council of Parent Attorneys and Advocates; *Unsafe in the Schoolhouse: Abuse of Children with Disabilities*; 2009. [http://www.copaa.org/wp-content/uploads/2010/10/UnsafeCOPAAMay\\_27\\_2009.pdf](http://www.copaa.org/wp-content/uploads/2010/10/UnsafeCOPAAMay_27_2009.pdf) and National Disability Rights Network; *School Is Not Supposed to Hurt: Investigative Report on Abusive Restraint and Seclusion in Schools*; 2009. <http://www.napas.org/images/Documents/Resources/Publications/Reports/SR-Report2009.pdf>

<sup>6</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/publications/national-death-study.pdf>

SB 1197 can be found at <http://www.azleg.gov/legtext/49leg/1r/bills/sb1197s.pdf>

<sup>8</sup>The Task Force's final report, meeting minutes and other resources can be found at <http://www.azed.gov/special-education/task-force-best-practices/>

<sup>9</sup>More on Positive Behavior Intervention and Supports can be found at <http://pbis.org/>

<sup>10</sup><http://www2.ed.gov/news/pressreleases/2010/03/03162010.html>