



## **Restraints and Seclusion in US Public Schools: A review of existing law, policy, and litigation**

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### **Abstract**

In order for an educator to properly restrain or seclude a child, they should be made aware of the statutes, court cases, governmental policies, and terminologies that shape the legality of restraints and seclusions. This paper means to nurture that awareness. The paper is in an order that shows an evolution of the policies and laws about restraints and seclusion. First, relevant cases are identified and described. Second, federal policies and statutes related to student restraint and seclusion are discussed. Lastly, a policy framework is proposed for the legal restraint and seclusion of students in the public school setting.

**Keywords:** student restraint, student seclusion, corporal punishment

### **Introduction**

During debates concerning public education, seclusion and restraints are usually not addressed or even thought of. When one talks in public about restraints and seclusion, people stereotypically believe the conversation must be about treatment of inmates in jail or prison. However, policies and laws must be in place for restraining and secluding students in P-12 schools. Incidents of extreme student behaviors happen. To provide a safe learning environment for the school as a whole, school staff sometimes have to use the last alternative of restraining or secluding a child. According to the US Department of Education's 2014 Civil Rights Data Collection (CDRC), over 100,000 students were restrained or secluded during the 2011-2012 school year. Over 69,000 of those students had disabilities served

by Individuals with Disabilities Educational Act (IDEA) ("Civil Rights Data," 2016). Educators must be made aware of the proper methods of physical restraint and seclusion, the policies and law behind them, and the thin line between unjustifiable corporal punishment and justifiable restraints or seclusion. The US Department of Education defines seclusion as the involuntary confinement of a student alone in a room or area that the student is physically prevented from leaving (U.S. Department of Education, n.d.). There are mechanical restraints and physical restraints. Mechanical restraints are devices used to restrict a student's freedom of movement ("Civil Rights Data," 2016). The current policies of the US Department of Education strongly discourages the use of mechanical restraints in public schools (U.S. Department of Education, 2017). Physical restraints are restrictions of a student's freedom of movement by the holding pattern of a school staff member ("Civil Rights Data," 2016). Physical restraints are legal if done properly as the last possible alternative to providing a safe environment for all students present (U.S. Department of Education, 2017). Proper restraints and seclusion are not categorized as corporal punishment ("Civil Rights Data," 2016).

One program addressing proper restraint is the *Nonviolent Crisis Intervention* program (CPI). This program provides training for school districts and their staff to be better prepared when the de-escalation process is needed and in the proper use of physical restraints as a last resort. Districts have reported a decrease in physical restraints as well as a decrease in staff assaults resulting in suspensions when using the CPI program correctly. CPI also emphasizes the importance of debriefing all parties involved and what to do after an escort or restraint has occurred. If precautions are not taken carefully, restraints and seclusion could be unlawfully painful to the student ("Physical Restraint Training | CPI," n.d.).

### **Court Cases**

The following court cases involve incidents of physical and psychological abuse of students by educators. These cases help distinguish between what is and is not physical abuse of a student by an educator. Even though the following cases involve corporal punishment and not students' restraints and seclusion, they have helped to shape the policies and procedures of restraints and seclusion in schools (Muskrat v Deer Creek, 2013).

#### **Ingraham v. Wright 430 US 651 (1977)**

In Dade County Florida, a principal and an assistant principal physically punished a group of students with paddles and physical restraints. The punishment was so severe that one of the students went to the hospital afterward and was treated for hematoma. The students and their parents filed suit against the administrators and their superintendent. The Florida district court dismissed the case and dropped the charges against the officials of the school district. The Fifth Circuit reversed and claimed the student's' Eighth and Fourteenth Amendment Rights were violated.

The U. S. Supreme Court ruled 5-4 in favor of the district. The Court stated that the students' Eighth and Fourteenth Amendment rights were not violated. As for the

Eighth Amendment, corporal punishment does not count as 'cruel and unusual punishment' if done appropriately and for the purpose of securing a safe learning environment for all students involved. "There is no need to wrench the Eighth Amendment from its historical context and extend it to public school disciplinary practices" (*Ingraham v Wright*, 1977).

The students' Fourteenth Amendment Rights were not violated because the administrators followed Florida's 'due process' procedures related to the administering of corporal punishment in state's public schools. Even though, the Court did not support the claims of the students, the majority did state that there is a need for provisions about the nature of physical punishment that should be permissible in public schools. The majority spoke of corporal punishment as if it was an ingrained aspect of American history. Corporal punishment "has survived the transformation of primary and secondary education from the colonials' reliance on optional private arrangements to our present system of compulsory education and dependence on public schools. ... Yet we can discern no trend toward its elimination. Rather, common law suggested that teachers could legally impose reasonable, non-excessive force on their students" (*Ingraham v. Wright*, 2007)

Before 1971, physical abuse by educators on students was deemed acceptable by American society. As extreme cases of physical abuse made it into the news, it began to lose its acceptance (Anderson 2015). Now in 2017, physical abuse by educators is primarily forbidden.

*Ingraham v. Wright* is not explicitly about restraints or seclusion but the court's opinion about corporal punishment did start to shape the limits of restraining or secluding a student. The court's opinion gave justifiable reasons to hold down or isolate a student. The court held that unwarranted arrests are justifiable with probable cause. The restraining or secluding of a student by an educator acts as an unwarranted arrest. Educators would need probable cause to restrain or seclude.

### **Garcia Garcia v Miera 817 F2d 650 (1987)**

*Garcia Garcia v. Miera* (1987) was a case involving particularly harsh corporal punishment. In 1982 New Mexico, a 9-year-old girl hit a boy because the boy kicked her. The principal called the girl to her office and told the girl to get in position to be paddled, but the girl refused. The principal called in a teacher to assist by holding the girl upside down while the principal paddled the girl. The student obtained a permanent scar from the incident.

The student filed suit stating her due process rights were violated. The district court in New Mexico ruled in favor of the principal and the teacher. The Court of Appeals concluded in favor of the student (*Garcia Garcia v Miera*, 1987). The majority opinion of the Court of Appeals compared this case to the *Ingraham* case constantly. The judges believed the ruling in *Ingraham* was wrong.

*Garcia Garcia v. Meira* was neither specifically about restraints, seclusion, nor special education. However, the majority opinion did shape the limits of discipline

before it becomes corporal punishment. The majority discussed the extent of due process for student discipline in schools. The court found excessive brute force, being hit until bleeding and scarring, and other forms of such violence are never part of the due process of the law, since those would be violations of the Eighth Amendment.

The court's opinion did include provisions about restraints. Appropriate restraints and seclusions do not count as corporal punishment. Restraints can include an amount of appreciable pain but the tactics of restraint must be in good nature without excessive force.

"[W]here school authorities, acting under color of state law, deliberately decide to punish a child for misconduct by restraining the child and inflicting appreciable physical pain, we hold that Fourteenth Amendment liberty interests are implicated" (*Garcia Garcia v. Miera*, 1987). If the purpose is to ensure a safe learning environment and to isolate disturbances, restraints and seclusion are justifiable as long as the act itself is not meant to induce harm.

The Court opinion of *Garcia Garcia v Miera* categorized three levels of corporal punishment. The First is justifiable corporal punishment, which "do not exceed the traditional common law standard of reasonableness" (*Garcia Garcia v Miera* 21). Second is excessive corporal punishment, which exceeds common law standards. Third is gross misconduct of corporal punishment, which covers the extreme cases. Restraints and seclusion, if done correctly, would fit in the first category. In the present, the boards of school districts decide whether or not they want to have the option of corporal punishment in their schools (Anderson, 2015).

### **Gerks v. Deathe 832 F. Supp. 1450 (1993)**

*Garcia Garcia v Miera* provides some definition to legal student restraints; *Gerks v Deathe* (1993) provides some legal definition to legal student seclusion. Gerks was a cognitively disabled 1<sup>st</sup> grader with cerebral palsy. Gerks and the rest of her classmates were told to go to the bathroom before class started. Gerks had a documented fear of bathrooms. Deathe, her teacher, persuaded Gerks to go. After a while, all the kids but Gerks came back to class. Deathe went to check on Gerks and found three piles of excrement on the floor. Deathe got paper towels and asked Gerks for help, but Gerks procrastinated and made little progress. Deathe cleaned up some of the mess but demanded that Gerks complete the cleaning task. Eventually, Deathe left Gerks alone in the bathroom, using a ribbon to prevent the student from exiting. Unable to leave the restroom, Gerks eventually cleaned the bulk of the mess under sporadic checking by Deathe, but soiled her clothes in the process. Deathe assisted Gerth in cleaning herself and gave her new clothes to wear that day.

Gerks' parents filed suit against Deathe, her principal, and the district for violating IDEA and the Due Process Clause of the Fourteenth Amendment. The parents claimed that the confinement of their child in the bathroom was paramount to false imprisonment. The District court of Oklahoma agreed with the parents and found

this case to be one of unjustifiable seclusion. The school district did not appeal.

Gerks' fear of bathrooms was documented and known by the teacher and the principal. She had the IQ of a 4-year-old, making her possibly unaware of what the teacher was asking her to do. Gerks was left alone in the bathroom for more than 2 hours. This case would not pass *Garcia Garcia's* standard for justifiable corporal punishment. A child can be secluded if it is the last possible alternative to diffuse a situation and the place where a child is secluded is safe. "Reasonableness is the standard in evaluating the conduct of a person who is alleged to have falsely imprisoned another" (*Gerks v Deathe*, para 12).

### **Muskrat v. Deer Creek Public School 715 F.3d 775 (2013)**

Ingraham, Garcia-Garcia, and Gerks set precedents for future court decisions and governmental policies involving restraint and seclusion methods in schools. *Muskrat v. Deer Creek Public School* is a recent case using these precedents. Ingraham, Garcia-Garcia, and Gerks were all mentioned in the court's opinion of *Muskrat v Deer Creek* (2013).

From 2002-2007, the Muskrat family had a child who attended Deer Creek Elementary School in Edmond, Oklahoma. Their son, J.M., was developmentally delayed. At the time, J.M. was between five to ten years old but had the mental age of a two-year-old. J.M. also demonstrated difficulty with balance, seizures, gross motor delay, and fine motor delay. J.M.'s parents believed, at the time of enrollment, he had been physically abused, placed in "time-out" for excessive amount of times. The parents claimed their child's constitutional rights were violated (*Muskrat v Deer Creek*, 2013).

The policies of Deer Creek Elementary stated that time-outs were a consequence for out-of-control or unmanageable behaviors and should be limited to no more than twice the student's mental age in minutes. For example, for a student with a mental age of 3, the longest permissible time-out would be 6 minutes. The longest record noted for J.M. was four minutes, which complied with the school's policy (*Muskrat v Deer Creek*, 2013).

In 2004, the Muskrat family notified the school they no longer wanted their son to be placed in the time-out room as a behavior consequence due to lingering effects of anxiety. Other physical effects noted by the parents were sleeplessness, vomiting, frequent urge to urinate, and an increase in stress, although these symptoms were never officially presented to teachers or administrators. J.M. was documented to have been placed in the room more than 30 times during the 2004-05 and 2005-06 school years. After the multitude of time-outs were reported, J.M.'s parents requested an amendment to his IEP (Individualized Educational Program) to state that the staff could not subject J.M. to the time-out room or any other room similar to the time-out room.

Physical abuse claims came after reports from other school staff and incident

reports concerning three specific instances. The first involved a special education teacher, Jessica Renaker, who “popped” J.M. on the face while trying to calm him down in the cafeteria. The second instance was when J.M.’s aide, Kay Rogers, slapped him on his arm to the point of leaving a red mark. Lastly, both Renaker and Rogers restrained J.M. by holding him down in a chair by pushing down on his shoulders to the point that he was immobilized.

Eventually, the Muskrats withdrew J.M. in the 2006-07 school year. In 2008, a civil suit was filed stating J.M.’s constitutional rights were violated under 42 U.S.Code 1983. They stated their son had been unconstitutionally subjected to abuse and time-outs. Deer Creek Public School argued the Muskrats had not exhausted all their claims through the process established under IDEA.

This case went to the 10<sup>th</sup> Circuit Court of Appeals. The judge's’ opinion focused on IDEA exhaustion and the conscience- shocking test. The court decided that the Muskrats had not exhausted all IDEA options but had adequately pleaded a Fourteenth Amendment claim. The court ruled in favor of the district for exhausting all IDEA options. The next claim, concerning conscience-shocking events, had to go through a test. For this test, the Court had to analyze the unreasonableness of the violation of the child’s liberty interests or seizure under the 4<sup>th</sup> and 14<sup>th</sup> Amendments. Since the school was following the appropriate processes under IDEA and local laws, the Courts were in favor of the district once again. In conclusion, the Court ruled in favor of the district on all accounts. This ruling assisted in setting parameters on IDEA exhaustion.

### **Policies of the US Department of Education**

Court law is the basis for governmental policy. The four court cases described above have influenced federal laws and policies regulating student restraint and seclusion. The US Department of Education’s website describes 15 principles for restraints and seclusion (US DOE, 2017).

In summary of the principles, every effort to not use restraints or seclusion must be attempted before the use of restraints and seclusion. Schools should never use mechanical restraints or drugs to restrain a child. Restraints and/or seclusion should only be used when the child is an imminent danger to itself and/or other children. The restraints or seclusion should be discontinued as soon as the threat dissipates. Policies about restraints and seclusion apply to all children, not just those with disabilities. Restraints or seclusion should be used for punishment or discipline. Multiple uses of restraints or seclusion with the same child should trigger an administrative review. Educators should be periodically trained about proper use of restraints and seclusion. Each use of restraints and seclusion should be documented. Parents should stay informed on the policies about restraints and seclusion. Parents should be contacted immediately after a restraint or seclusion method was used on their children. Policies about restraints and seclusion should be regularly reviewed.



## **IDEA**

The Individuals with Disabilities Educational Act (IDEA) is a federal statute that regulates the rights of students with disabilities. According to IDEA, a student has access to a free and appropriate education as well as the right to be educated with other children who do not have a disability (Jones & Feder, n.d.). This access is a right. An educator would violate this right by wrongfully restraining or secluding a student.

IDEA does not have a specific definition or a rule regarding seclusions and restraints. Instead, the portion of IDEA addressing a student's Individualized Educational Plan (IEP) hints at the regulations of restraints and seclusion. Ideally in times of crisis in the classroom, proper behavioral strategies and crisis interventions are the methods to be used for behavioral instruction. However, when all else fails to secure a safe learning environment, students with disabilities can be safely put into physical restraints and/or secluded. Students who identified under IDEA as intellectually disabled count for 12% of all students in the P-12 system of the United States (CDRC 2014). Even though they are only 12% of the population, intellectually disabled students account for 67% of the students to be restrained or secluded in the 2013-2014 school year.

## **US Code 1983**

Another Federal statute that must be considered is the 42 U.S. Code 1983- Civil action and deprivation of rights.

Every person who, under cover of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress... ("42 U.S. Code § 1983 - Civil action for deprivation of rights," n.d.).

Since children who meet eligibility under IDEA have access to additional rights, personnel must take those rights (Free and Appropriate Public Education, Individualized Education Plan, and Least Restrictive Environment) into consideration before enacting any type of physical restraint or seclusion from the educational setting. When personnel do not take these into consideration, there might be a provable violation of U.S. Code 1983.

## **Recent Research by the United States Department of Education**

The researchers, who are educators, believe the best means to avoid restraints and seclusion in school is professional development of school staff. For the 2009-2010 school year, the US Department of Education conducted a school survey about crime and safety. Statistics in the study show frequencies of training for educators

about how to safely discipline students.

Table 1

<b>Variable Name: C0266 Teacher training-classroom management</b>		
<b>Distribution</b>	<b>Unweighted Frequency</b>	<b>Percent</b>
Yes	2,101	79.3
No	547	20.7
<b>Totals</b>	<b>2,648</b>	<b>100</b>

Table 2

<b>Variable Name: C0268 Teacher training-discipline policies</b>		
<b>Distribution</b>	<b>Unweighted Frequency</b>	<b>Percent</b>
Yes	1,707	64.5
No	941	35.5
<b>Totals</b>	<b>2,648</b>	<b>100</b>

Table 3

<b>Variable Name: C0270 Teacher training-safety procedures</b>		
<b>Distribution</b>	<b>Unweighted Frequency</b>	<b>Percent</b>
Yes	2,374	89.7
No	274	10.3
<b>Totals</b>	<b>2,648</b>	<b>100</b>

Tables 1-3: US Department of Education: 2009–10 School Survey on Crime and Safety: Public-Use Data File Codebook

This data shows safety is taught much more in professional development than classroom management or discipline. However, safety is ingrained with classroom management and discipline in schools. Safety, classroom management, and discipline are like 3 cornerstones in the reasons and tactics of restraint and seclusion in school. By learning proper techniques of restraint and seclusion, an educator would learn about safety in classroom management and discipline.

For the 2011-2012 school year, the US Department of Education (DOE) administered a Civil Rights Data Collection (CDRC). This survey concluded over 100,000 students were restrained or secluded just during that school year alone. Disproportionately, boys were restrained or secluded much more frequently than girls. Even though mechanical restraints are deemed not allowable by the DOE, they are still used. According to the CDRC, 4000 students were subject to mechanical restraints in 2011-2012. Students with disabilities served by IDEA make up 12% of the student population but were 75% of the students restrained or secluded in 2013-2014 (CDRC 2014).

### **Policy Proposal**

In order for a school to decrease their number of physical restraints and ensure continuity throughout the district a set procedure should be created, taught, and implemented by all responsible staff members, faculty, and administrators.



Teachers and other staff that work directly with children must be properly trained to peacefully deescalate situations that appear to warrant restraining or secluding a child.

We recommend the following:

1. Before someone ever restrains or secludes a child, they must first try to talk to the child. Professional development courses like Capturing Kids Hearts trains staff to deescalate tension through talking.
2. All staff who work with students should attend the Crisis Prevention Intervention (CPI) techniques training course (or a similar course with comparable objectives).
3. Teachers, staff, and case managers should be made aware of a student's history of incidents involving restraints or seclusion, if that student has a history.
4. If a restrained or secluded child is receiving service under IDEA guidelines, the documentation about the incident of restraint or seclusion should be available during the child's ARD.
5. If a restrained or secluded child is receiving 504 services under the guidelines set by the Office of Civil Rights, the documentation about the incident of restraint or seclusion should be available during the child's 504 accommodations meetings.
6. Mechanical restraints should never be used. The US Department of Education states exactly that. However, the study of the CDRC shows 4,000 students were mechanically restrained in 2011-2012. We guess 'should never' does not translate to 'is forbidden.' There are potential extreme situations where mechanical restraints are part of the due process of the law under probable cause.

Administrative officials must be aware of the administrative options to dealing with claims of misconduct before a suit is possible. A common question asked is "What are the proper channels for complaints of misconduct before a suit may be filed?". Schools administrators should have a discipline rubric in which the teachers must follow to ensure all other disciplinary measures have been considered before any physical restraints or seclusions are used.

We want children to be safe. We also don't want teachers to lose their jobs because they used improper restraint or seclusion tactics. Cases and policies about corporal punishment, restraints and seclusions are sure to come up in the future. It is impossible to perfectly gauge and quantify what exactly is too much physical and/or psychological pain a child can lawfully endure while being restrained and/or secluded. Such vagaries will allow for controversial suits in the future.

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