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INSIDE THIS
 ISSUE:

New Physical Restraint and Seclusion Guidelines	1
RFR Speaker Showcase	8

Chalkboard

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2011 ISSUE 1

NEW OKLAHOMA GUIDELINES GOVERNING USE OF PHYSICAL RESTRAINT AND SECLUSION FOR STUDENTS WITH DISABILITIES

BY ANDREA R. KUNKEL

During the summer of 2010, the Oklahoma State Board of Education adopted *Guidelines for Minimizing the Use of Physical Restraint for Students with Disabilities in Oklahoma* and *Guidelines for Minimizing the Use of Seclusion for Students with Disabilities in Oklahoma (Guidelines)*, which became effective in January, 2011. Oklahoma school district employees can now use physical restraint and seclusion for students with disabilities only as set forth in the *Guidelines*.

Definitions

Chemical restraint. Use of a drug or medication to control behavior or restrict freedom of movement that is not prescribed by a licensed physician for standard treatment of the student's medical condition and administered for that purpose as prescribed.

Imminent. Immediate and impending.

Imminent risk of harm. The immediate and impending threat of a person causing serious bodily injury to self or others.

Mechanical restraint. Use of devices as a means of restricting a student's freedom of movement.

According to the State Department of Education, Child Safety Restraint Systems (CSRS) are not considered physical restraints under the *Guidelines*. Examples of CSRS include:

- ♦ adaptive and assistive devices used to support or secure students;
- ♦ mobility aids;
- ♦ special belts; and
- ♦ harnesses and devices.

Physical restraint. Any method of one or more persons limiting or restricting

another person's freedom of movement, physical activity, or normal access to his/her body. It is a means for managing that person's movement, reconstituting behavioral management and establishing and maintaining safety for the student, other students and staff.

Prone physical restraint. A restraint that positions a student face down on his or her stomach or face up on the back.

Seclusion. Involuntary confinement of a student alone in a room or area that the student is physically prevented from leaving. This includes situations where a door is locked as well as where the door is blocked by other objects or held by staff. Any time a student is involuntarily alone in a room and prevented from leaving is considered seclusion.

(Continued on page 2)

OKLAHOMA'S PIONEER IN LEGAL EXCELLENCE



PHYSICAL RESTRAINT AND SECLUSION GUIDELINES (CONTINUED FROM PAGE 1)

sion regardless of the intended purpose, the name applied to this procedure, or the



“Child Safety Restraint Systems (CSRS) are not considered physical restraints under the Guidelines.”

name of the place where the student is secluded.

Seclusion room. A room or other confined area in which a student with a disability is placed in isolation from other persons from which the student is prevented from leaving. A seclusion room must meet specific criteria.

Serious bodily injury. Bodily injury that involves –

- ◆ a substantial risk of death;
- ◆ extreme physical pain;
- ◆ protracted and obvious disfigurement; or
- ◆ protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

Limitations on Use of Physical Restraint

Under the *Guidelines*, school district employees can use physical restraint for a student with a disability only under specific emergency circumstances and when the student is acting in a manner that presents an imminent risk of harm to the student or others. The student's actions must demonstrate the immediate and impending ability to cause serious bodily injury. Although the *Guidelines* do not define the term “serious bodily injury,” the term is defined in the Individuals with Disabilities Education Act. That definition, above, indicates that the use of physical restraint is intended to be quite limited.

School district employees can use physical restraint for a student with a disability only as a last resort after other less restrictive methods of de-escalating the risk of injury have been attempted without success. They can apply only the degree of physical restriction necessary to protect the student or other persons from imminent serious bodily injury. They must terminate the physical restraint when the risk of danger or harm has been resolved.

A school district employee can directly participate in the

use of physical restraint for a student with a disability only if the employee holds a current certificate earned as the result of participation in first aid and CPR training and specific training in the use of physical restraint procedures. The physical restraint training must include:

- ◆ conflict de-escalation;
- ◆ the crisis cycle and interventions at each stage;
- ◆ possible effects of physical restraint; and
- ◆ methods for monitoring a student's well-being during and following a restraint.

Each direct participant in a physical restraint must have a current certificate for each portion of the training. So, if Ann has current certificates in CPR and first aid and Ben has a current certificate in CPI, neither Ann nor Ben can directly participate in a physical restraint because both lack portions of the required training.

The *Guidelines* encourage, but do not require, the presence as a witness of at least one adult who is not involved in the physical restraint. The witness need not have a current CPR, first aid, or physical restraint training certificate and need not have ever had such training.

(Continued on page 3)

PHYSICAL RESTRAINT AND SECLUSION GUIDELINES (CONTINUED FROM PAGE 2)

School districts should not use other students as witnesses.

The *Guidelines* prohibit mechanical and chemical restraints and prone physical restraint. They also ban any maneuver that places pressure or weight on the chest, sternum, lungs, diaphragm, neck, throat, or back and any restraint that prevents a student from speaking or breathing.

Although the *Guidelines* do not indicate whether or not they apply to students with disabilities who are on 504 Plans, we suggest that school districts extend the requirements to all students with disabilities, whether they have an IEP or a 504 Plan. Neither federal nor state laws or regulations take a position about addressing the use of physical restraint or seclusion in student IEPs, 504 Plans, or behavior intervention plans (BIPs). Although each school district can make its own determination about this issue, we strongly encourage district personnel to discuss the issue of physical restraint and/or seclusion in any IEP or 504 meeting for a student for whom its use is reasonably anticipated to be necessary. Have a full discussion in the meeting, with as much transparency as possible. Finally, in at least those cases in which the need for physical

restraint or seclusion is reasonably anticipated, the team should ensure that the student has in place an appropriate BIP based upon current functional behavior assessment data.

Limitations on Use of Seclusion

The *Guidelines* contain very similar restrictions on the use of seclusion. As with physical restraint, school district employees can use seclusion for students with disabilities only under emergency circumstances and when the student is acting in a manner that presents an imminent risk of harm to the student or others. They can use seclusion only as a last resort after other methods of de-escalating the risk of injury have been attempted without success. In addition, seclusion can be used only when positive behavior intervention strategies and less restrictive measures appropriate to the behavior exhibited by the student and specified in the student's IEP or BIP have been implemented, but have failed to de-escalate the risk of injury. This last provision goes beyond anything contained in the *Guidelines* for physical restraint, as the result of its references to positive behavior intervention strategies and less restrictive measures specified in the IEP or BIP. This indi-

cates the expectation that the student's IEP team will have addressed issues related to the student's behavior in the IEP or BIP. Again, although the *Guidelines* refer only to



IEPs, we encourage school districts to extend their coverage to students with 504 Plans as well. The *Guidelines* caution District personnel not to use seclusion to manage student behavior.

School district employees can seclude a student until his or her actions no longer pose an imminent risk of harm, except that seclusion may continue while waiting for the arrival of law enforcement or crisis intervention personnel, such as when the student has possessed a

“. . . seclusion may continue while waiting for the arrival of law enforcement or crisis intervention personnel, such as when the student has possessed a weapon or committed a crime.”

PHYSICAL RESTRAINT AND SECLUSION GUIDELINES (CONTINUED FROM PAGE 3)

weapon or committed a crime.

As with physical restraint, school district employees can use seclusion for a student with a disability only if they hold a current certificate earned as the result of participation in first aid, CPR and District-approved seclusion procedures. Each employee who directly participates in the seclusion must have a current certificate covering all portions of the training. The seclusion training must include:

- ◆ conflict de-escalation;
- ◆ the crisis cycle and interventions at each stage;
- ◆ possible effects of seclusion;
- ◆ appropriate use of seclusion rooms; and
- ◆ process and techniques for escorting a student to a seclusion room, placing a student in a seclusion room and supervising a student while in seclusion.

The *Guidelines* do not contrast the use of “time out” and the use of seclusion. Certainly, if a teacher’s, administrator’s or school district’s use of “time out” amounts to seclusion, then the *Guidelines* apply. However, it also seems clear that the *Guidelines* do not apply to time out

procedures that do not also constitute seclusion.

Seclusion may be used only if a district employee continuously monitors the student both visually and aurally. If the student displays any sign of medical distress, school staff must take immediate action. Furthermore, students must be permitted to use the restroom and have a drink of water upon request.

Seclusion rooms must meet specific room requirements. Each room must:

- ◆ be of reasonable size, permitting students to lie or sit down;
- ◆ have adequate heating, cooling, ventilation and lighting systems that are comparable to those in other rooms throughout the same building;
- ◆ have adequate lighting;
- ◆ be free of any potential or predictable safety hazards that pose a potential risk of harm to the student;
- ◆ permit direct continuous visual and auditory monitoring of the student; and
- ◆ permit automatic release of any locking device if fire, severe weather, or other emergency arises in the school.

We urge each school district to initiate a process by which site and/or district administrators inspect seclusion rooms

for compliance and document their inspection at least annually. In addition, we recommend that any room used for seclusion be inspected after each use to ensure that it continues to be free of any safety hazard that could pose a potential risk of harm to a future student user.

As with physical restraint, at least one staff member who is not involved in the seclusion incident should be present during the seclusion as a witness.

Additional Limitations

Because the *Guidelines* permit the physical restraint or seclusion of a student with a disability only when the student’s actions present an imminent risk of harm to the student or another person, a verbal threat or verbally aggressive behavior alone will not demonstrate an imminent risk of harm to a person. Further, school district personnel cannot use physical restraint or seclusion as punishment or discipline, to force compliance, or as a convenience for staff.

The *Guidelines* also provide that school district personnel cannot use physical restraint to prevent property damage. Although the imminent or

(Continued on page 5)

PHYSICAL RESTRAINT AND SECLUSION GUIDELINES (CONTINUED FROM PAGE 4)

actual destruction or damage of property does not demonstrate an imminent risk of harm to the student or another person, the act of destroying or damaging the property could conceivably create an imminent risk of harm to a person. This could arise if, for example, a student pulling over a bookcase is likely to cause the bookcase and its contents to fall on the student.

Reporting, Documentation and Debriefing Meeting Requirements

The *Guidelines* contain the same requirements for reporting, documenting and meeting to “debrief” for incidents of physical restraint and seclusion. For the most part, the *Guidelines* simply provide that a specific action must take place; they do not identify who in the school district should do it. We strongly urge school districts to put processes in place to ensure that the requirements are met as to each incident because failure to specify how something is to be accomplished can result in miscommunications among staff and a failure to complete the required reporting, documentation and debriefing processes. We also urge school staff members to keep in mind that those directly involved in an incident are almost always in a better position to explain what occurred.

A staff member must notify the building administrator immediately about an incident of physical restraint or seclusion. If the administrator is unavailable, notice must take place as soon as possible after the incident.

A staff member must also notify the parent immediately after the restraint or seclusion incident.

At least one staff member or perhaps the entire group of staff members involved with the incident must complete the pre-debriefing meeting portions (approximately the first two pages) of OSDE Form 12 (for physical restraints) or OSDE Form 13 (for seclusions) before the debriefing meeting convenes. The *Guidelines* specifically identify the information that must be documented concerning an incident of physical restraint or seclusion, and OSDE Forms 12 and 13 mirror those requirements. According to SDE, each incident in which physical restraint or seclusion is utilized must be documented on a separate form, describing the incident and behaviors that occurred.

A staff member must also promptly attempt to schedule a mutually agreeable date and

time for a debriefing meeting with the parent. Because a debriefing meeting is not an IEP or 504 meeting, a Notifi-



cation of Meeting form is not sent to the parent for a debriefing meeting. The debriefing meeting must be held within two school days following each physical restraint/seclusion incident and prior to any extended breaks from school. The purpose of the debriefing is to focus on alternatives to physical restraint/seclusion and how to avoid future use of physical restraint/seclusion, including antecedent events that led to their use. According to SDE, if physical restraint or seclusion is used multiple times in one day with the same student, one debriefing meeting can be convened to address the multiple incidents, as long as each incident is addressed individually during the meeting.

“A staff member must also notify the parent immediately after the restraint or seclusion incident.”

(Continued on page 6)

PHYSICAL RESTRAINT AND SECLUSION GUIDELINES (CONTINUED FROM PAGE 5)

The following persons should attend the debriefing meeting:

- ◆ all individuals involved in the incident;
- ◆ a building administrator;
- ◆ the parent of the child with a disability;
- ◆ the child (if able to participate); and
- ◆ the witness, if there was one, to the physical restraint/seclusion.



“ . . . a staff member must provide the parent with a copy of all documentation concerning the physical restraint/seclusion incident, including OSDE Form 12 or OSDE Form 13.”

The school district can hold the debriefing meeting without the parent in attendance only if the parent is unable or unwilling to attend. District personnel must document their efforts to obtain the parent's participation in the debriefing meeting on the Record of Parent Contact. The staff member attempting to schedule the meeting should offer the parent as many different times to convene the meeting as possible and the opportunity to participate via phone and in any other ways

that may be possible under the circumstances. Even if the parent does not participate, District personnel must still convene and hold the debriefing meeting within two school days of the incident and prior to an extended break from school. According to SDE, neither lack of parent participation nor a perceived lack of parent interest will excuse the school district from reporting, documenting and debriefing.

At the debriefing meeting, the group will sign the Record of Access to Educational Records and complete and sign the debriefing meeting portion of OSDE Form 12 or OSDE Form 13. At the conclusion of the meeting, a staff member must provide the parent with a copy of all documentation concerning the physical restraint/seclusion incident, including OSDE Form 12 or OSDE Form 13. This will typically be done by handing the parent a copy or mailing a copy. If the parent is not present, a staff member must promptly mail the parent a copy of the documentation. A Written Notice to Parents form is not completed for a debriefing meeting even if the parent does not attend.

During the debriefing meeting, the group may determine, for example, that changes in the student's IEP, 504 Plan,

or BIP are necessary or to seek parent consent for a functional behavior assessment. It is permissible to seek parent consent for a functional behavior assessment during the debriefing meeting. However, changing the student's IEP, 504 Plan, or BIP typically requires action at an IEP or 504 team meeting. If school district personnel are willing and the parent specifically agrees, the group may immediately convene an IEP or 504 team meeting as part of the debriefing meeting by giving the parent a completed Notification of Meeting form and then completing (in addition to OSDE Form 12 or 13) the necessary IEP or 504 paperwork, including a Written Notice to Parents form. School district personnel should document the parent's agreement to the IEP or 504 team meeting on the Record of Parent Contact form and in any other appropriate places. If school district personnel are unwilling or if the parent expresses discomfort or unwillingness to immediately convene an IEP or 504 team meeting as part of the debriefing meeting, then only a debriefing meeting should be held. If an IEP or 504 team meeting is necessary following the debriefing meeting, then district personnel must take the necessary steps to schedule

(Continued on page 7)

PHYSICAL RESTRAINT AND SECLUSION GUIDELINES (CONTINUED FROM PAGE 6)

the IEP or 504 meeting for a later date.

Promptly after the debriefing meeting, a school staff member must place a copy of the completed and signed OSDE Form 12 or 13 and all other documentation concerning the physical restraint/seclusion incident in the student's confidential folder. The file should contain complete, signed documentation reflecting each incident.

Other Issues of Concern

SDE has indicated that the *Guidelines* are applicable to all school district employees, including campus police officers employed by the district. We suggest that campus police officers participate in the same training and obtain the same certification required of other district employees who may use physical restraint and seclusion procedures. We also suggest that each school district review the situations in which it involves campus police officers. To the extent that they are assisting with a physical restraint or seclusion that another district employee could perform – and are not performing a law enforcement function – then they certainly must follow the same requirements those other employees must follow.

It is possible that any room or area can become a seclusion room depending upon the way it is used in a specific situation. SDE has indicated that the seclusion requirements apply even if the space in which seclusion takes place does not meet the room requirements or does not permit continuous visual or aural monitoring. We suggest that school districts make their personnel aware of this issue and consider how the issue might be addressed in light of the situations they reasonably anticipate in their buildings.

What to Do Right Now

Most school districts have taken advantage of the restraint/seclusion training offered by SDE or made their own arrangements. Although training is crucial, we suggest that districts also take the following action:

- ◆ Review IEPs, 504 Plans and BIPs to ensure that they do not contain procedures incompatible with the *Guidelines*. School districts cannot depend upon IEP or 504 team agreement to avoid compliance with the *Guidelines*. Schedule IEP or 504 team meetings to discuss alternatives;
- ◆ Review the same items to ensure that for students for

whom staff members reasonably anticipate the need to use seclusion, the students' IEPs, 504 Plans and/or BIPs contain positive behavior intervention strategies and less restrictive measures appropriate to the behavior exhibited by the student, as required by the *Guidelines*;

- ◆ Meet with school staff to discuss the broad range of situations to which the



Guidelines will apply, such as physical restraint used to prevent a student from fleeing a room or building;

- ◆ Establish an oversight process to ensure compliance with the *Guidelines* and correct issues of concern promptly;
- ◆ Establish a system to keep track of staff training to ensure that all necessary staff members con-

(Continued on page 8)

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PHYSICAL RESTRAINT AND SECLUSION GUIDELINES (CONTINUED FROM PAGE 7)

sistently have current certification in all necessary areas of training;

- ◆ Provide basic training about the *Guidelines* to all staff members to ensure that staff members who will not have training in physical restraint and seclusion know when to intervene and when not to intervene; and
- ◆ Because compliance with the *Guidelines*, just in terms of documentation and meetings, will be time-consuming, focus on strategies to improve student behavior across schools.

RFR SPEAKER SHOWCASE

Andrea Kunkel will be speaking at the Oklahoma Directors of Special Services conference on January 24, 2011, concerning restraint/seclusion and other current issues in special education. In addition, Ms. Kunkel will be a keynote speaker at the Oklahoma Council for Exceptional Children 46th Annual Conference on March 1, 2011, at Moore-Norman Technology Center.

Doug Mann will be speaking at the February 18, 2011, OSSBA Workshop at Fulton Teaching and Learning Academy at TPS on “Board Hearing Pitfalls—The Dos and Don’ts for Board Members at Hearings Involving the Termination of Teachers, Support Staff and Administrators and the Suspension of Students.”

Karen Long will be speaking at the OAESP Mid-Winter Conference on January 21, 2011, on best administrative practices for investigation and reporting of bullying in schools. In addition, Ms. Long will be speaking at the Oklahoma Department of Transportation 2011 Road to Excellence Conference on April 12, 2011, on ways supervisors can prevent or minimize legal issues with employees.

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Chalkboard is designed to provide current and accurate information regarding current education law issues. *Chalkboard* is not intended to provide legal or other professional advice to its readers. If legal advice or assistance is required, the services of a competent attorney familiar with education law issues should be sought.

We welcome your comments, criticisms and suggestions. Correspondence should be directed to Rosenstein, Fist & Ringold, 525 South Main, Seventh Floor, Tulsa, Oklahoma 74103-4508, or call us at (918) 585-9211 or 1-800-767-5291. Our FAX number is (918) 583-5617. Help us make *Chalkboard* an asset to you.