

## **SECLUSION AND RESTRAINT IN MISSOURI SCHOOLS**

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### **"Missouri School Children Placed In Padded Seclusion Rooms"<sup>1</sup>**

### **"Parents of Disabled Students Say Metro District is Mistreating Their Kids"<sup>2</sup>**

These are just two of the many headlines involving the use of seclusion and/or restraint in schools that have peppered newspapers across Missouri and the country. The issue has received so much media attention in recent months that the U.S. House of Representatives Committee on Education and Labor requested that the Government Accountability Office (GAO) conduct a study examining the use of seclusion and/or restraint in public schools. The study found "hundreds of cases of alleged abuse and death due related to the use of [seclusion and/or restraint] on school children during the past two decades."<sup>3</sup>

The GAO also discovered that there are "no federal laws restricting the use of seclusion and restraints in public and private schools."<sup>4</sup> The closest federal law to address the issue is the Individuals with Disabilities Education Act (IDEA), a funding statute that provides that eligible disabled children receive a free appropriate public education ("FAPE") in the least restrictive environment. A disabled student's FAPE should be delivered through an Individualized Education Program ("IEP"). The IDEA and its implementing regulations provide that if a disabled child's behavior impedes the child's learning or that of others, the IEP team must "consider the use of positive behaviors interventions and supports, and other strategies, to address that behavior."<sup>5</sup> While the IDEA does not address seclusion or restraint specifically, the U.S. Department of Education has stated, "While IDEA emphasizes the use of positive behavioral interventions and supports to address behavior that impedes learning, IDEA does not

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<sup>1</sup> Lisa Zigman, *Missouri School Children Placed In Padded Seclusion Rooms*, available at <http://www.ksdk.com/news/investigative/story.aspx?storyid=167698&catid=70>.

<sup>2</sup> Tess Koppelman, *Parents of Disabled Students Say Metro District is Mistreating Their Kids*, available at [http://www.fox4kc.com/news/wdaf-story-raytown-schools-abuse-051909\\_0\\_7375905.story](http://www.fox4kc.com/news/wdaf-story-raytown-schools-abuse-051909_0_7375905.story).

<sup>3</sup> Government Accountability Office, *Seclusions and Restraints: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers*, GAO-09-719T (May 19, 2009), <http://www.gao.gov/new.items/d09719t.pdf>

<sup>4</sup> *Id.* at 3.

<sup>5</sup> 34 C.F.R. §300.324(2)(i).

flatly prohibit the use of mechanical restraints or other aversive behavioral techniques.”<sup>6</sup>

The U.S. Department of Education also advised that state law may address the matter more specifically, but that if restraints are allowed under state law, “the critical inquiry is whether the use of such restraints or techniques can be implemented consistent with the child’s IEP and the requirement that IEP Teams consider the use of positive behavioral interventions and supports when the child’s behavior impedes the child’s learning or that of others.”<sup>7</sup> Unfortunately, the GAO also noted that Missouri was one of nineteen states to have “no laws or regulations related to the use of seclusion or restraints in schools.”<sup>8</sup>

However, late last month, the Missouri Legislature passed a comprehensive education bill that did address the issue.<sup>9</sup> Specifically, the bill provides that a school district’s discipline policy “shall prohibit confining a student in an unattended, locked space except for an emergency situation while awaiting the arrival of law enforcement personnel.”<sup>10</sup> It also mandated that by July 1, 2011, Missouri school districts must adopt a written policy addressing the use of “restrictive behavioral intervention as a form of discipline or behavior management technique.”<sup>11</sup> The Missouri Department of Elementary and Secondary Education is mandated to issue a sample policy by July 1, 2010.

In essence, the Missouri Legislature has charged individual school districts to define the terms “seclusion” “restraint” and “time out” and to adopt appropriate policies involving the use of same. However, in developing district-wide policies, special education teachers, administrators and legal counsel should be consulted to ensure that students’ IEPs are consistent with the new district policy. While districts are not mandated to adopt a seclusion and restraint policy for two more years, districts may wish to develop policies sooner rather than later, if only to avoid becoming another headline. More information on the recent legislation, as well as tips to develop an appropriate seclusion and restraint policy, will be discussed at the Mickes Goldman O’Toole 26th Annual School Law Seminars. For more information and to register, visit <http://www.mickesgoldman.com>.

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<sup>6</sup> *Letter to Anonymous*, 50 IDELR 229 (OSEP March 17, 2008).

<sup>7</sup> *Id.*

<sup>8</sup> *Seclusions and Restraints: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers*, at 4.

<sup>9</sup> House Committee Substitute No. 2 for Senate Substitute for Senate Bill No. 291.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

