



The Council of Parent Attorneys and Advocates, Inc.

A national voice for special education rights and advocacy

PO Box 6767, Towson MD 21285 (410)372-0208

email: govrelations@copaa.org website: www.copaa.org

May 15, 2009

Congressman George Miller
Chair, Education and Labor Committee
United States House of Representatives
Washington, D.C. 20515

Re: Examining the Abusive and Deadly Use of Seclusion and Restraints in School

The Council of Parent Attorneys and Advocates (COPAA) is a national nonprofit organization of parents, advocates, and attorneys who work to protect the civil rights of children with disabilities and ensure that they receive appropriate educational services. We have over 1200 members in 47 states and the District of Columbia. Our members see the successes and failures of special education through thousands of eyes, every day of every year. We thank you and the House Education and Labor Committee for allowing us to submit this letter for the record describing the harm to children from aversive interventions in school. We thank you for your work in examining the extent of restraint and seclusion in American schools.

Abuse of children with disabilities is a particularly pernicious problem. Children with disabilities are a vulnerable population, at special risk of being subject to restraint and seclusion. Their disabilities may manifest in what appears to be misbehavior, or they may have great difficulty following instructions. Children may have communication, emotional, cognitive, or developmental impairments that may impede understanding or the ability to effectively report what happened to them. They may be unable to comply with instructions that are made a condition for ending the abusive intervention and unable to communicate pain or danger. They may be in segregated disability-only classrooms, with few witnesses who can report what has happened.

COPAA's Survey: 155 Incidents of Abuse

In March-May 2009, COPAA conducted a survey that identified 155 situations in which children with disabilities were subjected to aversive interventions. (We use the term aversive interventions to include restraint, seclusion, and other forms of abusive interventions in school.) Our report entitled, *Unsafe In The Schoolhouse: Abuse Of Children With Disabilities*, is available at <http://www.copaa.org/news/unsafe.html>. We received reports of children injured by adults who restrained them; tied, taped and trapped in chairs and equipment; subject to prone restraints; forced into locked seclusion rooms; made to endure pain, humiliation and deprived of basic necessities, and subjected to a variety of other abusive techniques.¹

Perhaps most striking, 71% of the survey respondents reported that the children who were abused did not have a research-based positive behavioral intervention plans; ten percent (10%)

¹ This was a limited sample collected over 2 months; there are many more incidents of the use of such interventions in this country. We also used the internet to collect data and were unable to obtain reports from those without internet access; many low-income families lack access. www.ntia.doc.gov/reports/2008/Table_HouseholdInternet2007.pdf

did, but the parents often said the plan was ignored. Positive behavioral interventions are proactive techniques that reduce and prevent problem behaviors. They prevent acute episodes of dangerous and difficult conduct from occurring. But these numbers appear to indicate that rather than proactively using positive techniques, the school personnel relied on reactive, aversive interventions. Restraint and seclusion are ineffective, harmful, and violative of human rights and dignity. Positive behavioral supports use research-based strategies to lessen problem behaviors while teaching replacement skills, and at the same time create an environment that teaches children about healthy relationships, conflict resolution skills, and valuing each person.²

Moreover, 71% of the parents had not consented to the use of aversive interventions. Nearly 16% had consented, but many believed the interventions would only be used in highly-limited circumstances where there was an imminent threat of injury and found instead that school districts used their permission when there was not. Furthermore, the relative ages of the children underscores the imbalance between larger, older adults and young children. Approximately 86% of the children were under age 14, with 53% aged 6-10. Of course, mistreating older teenagers is as wrong as mistreating preschoolers, particularly given the vulnerabilities of children with disabilities. Finally, abusive interventions were used primarily in segregated disability-only classrooms and in private seclusion rooms, away from the eyes of potential witnesses. Only 26% of the respondents reported incidents in the regular classroom.

Restraint and seclusion were used against children in almost every disability category: Autism/Asperger's Syndrome (cited by 68% of the survey respondents), ADD/ADHD (27%); Developmental Delay, Emotional Disturbance, Intellectual Disability and Speech/Language Impairment (14%-20% of respondents); Specific Learning Disability (11%), and others. Many parents also indicated that their children had Down Syndrome, epilepsy, Tourette Syndrome and other conditions.

Among the incidents of abuse reported to COPAA were these:

- A 9 year old boy with autism in Tennessee was restrained face-down in his school's isolation room for four hours. The complaint alleges that for much of the time, one adult was across his torso and another across his legs, even though he weighed only 52 pounds. His mother was denied access to him, as she heard him scream and cry. His body was bruised and marked from the restraints. He was released to his mother only after she presented a due process hearing notice under the IDEA.
- The teacher of a 15 year old Californian with Down Syndrome reported to his parents that he had been confined inside a closet with an aide as in-school suspension. The teacher

² We recognize that, at times, students with significant behavioral challenges may not respond to traditional means of discipline or classroom reinforcement, and behavioral challenges can seem frustrating and daunting. Schools, however, have the responsibility to respond with evidence-based positive strategies and the supports and services required by law. Teachers should have adequate support in the classroom. The National Association of State Mental Health Program Directors, through its National Technical Assistance Center, has identified six core strategies for reducing seclusion and restraint based on the literature and prior experience in reduction across a variety of settings. They include: (1) leadership towards organizational change; (2) use of data to inform practice; (3) workforce development; (4) use of restraint and seclusion reduction tools; (5) consumer roles; and (6) debriefing techniques. See http://www.nasmhpd.org/general_files/publications/ntac_pubs/SR%20Plan%20Template%20with%20cover%207-05.pdf

believed the confinement to be wrong. The school district did not follow his behavioral intervention plan. He was in the closet all day. He was only allowed out to go to the bathroom, causing extreme humiliation as he walked in front of his classmates.

- An 11 year old South Carolinian girl was regularly restrained with beanbags on the floor, and the school attempted to use a straightjacket restraint on her. As a result of advocacy by her attorneys, the restraints were terminated. Her curriculum was made more age-appropriate; her behaviors likely resulted from being bored. A new crisis plan was put into place: if the student became aggressive toward staff, the staff would break away and briefly leave the classroom. Using this plan, the child quickly calmed down and went to her desk area. She has made substantial progress in school and the school district no longer asks her parents to pick her up and bring her home early.
- An elementary school child in Maine was placed in a prone restraint while in a school district's segregated disability-only classroom. The district was on notice from the child's doctor that the child should not be restrained for medical and psychological reasons. The child regressed as a result of the incident. The restraint claim was dismissed by the hearing officer as being outside the jurisdiction of an IDEA due process hearing.
- A Palm Beach 14 year old with a severe emotional disturbance was handcuffed in an isolation room, defenseless. He spit at a school officer. Even though he was handcuffed and unable to hurt anyone, the officer pepper-sprayed him, injuring him. A civil rights case was filed in Southern District of Florida and the school district entered a consent decree enjoining further such action and ordering damages for the child.
- A young girl in Colorado with multiple disabilities and developmental delays was regularly strapped into an occupational therapy device as punishment for actions that were the manifestation of her disability, including making noise in the classroom, not being able to sit still long enough, and not being able to stay on task.

Protection Randomly Decided by State Lines

Children in school have little protection from abuse. Geography and state lines have randomly determined whether a child has comprehensive protection or little or none. Roughly half of the states provide some protection against the use of restraints through a state statute, regulation, or binding state policy and roughly half do not. (Another five discourage the use of restraints through non-binding, voluntary best practices policies). Only six states prohibit prone restraint; only three ban any restraint that affects breathing; only nine require an evaluation of medical contraindications to use or require the school to prioritize the child's health and safety; and only four require that children who cannot speak have the ability to use a communications device or sign language to communicate pain, etc. while restrained.

About half of all states have no legal protection against seclusion. Seclusion is traumatic and it is particularly dangerous to lock a child in a room alone. The child may hurt himself or be unable to escape in an emergency. Yet, only 12 states forbid locked seclusion by statute, law or binding policy; only 15 require continual monitoring of the rooms (some of these are the same states that forbid locked seclusion and apply the monitoring rules to unlocked, closed rooms). Only 11 states set standards for the room, such as access to drinking water, heating and lighting, health and safety codes, etc. Only eight states impose time limits on the length of seclusion.

By contrast, federal law protects children in hospitals, health care facilities receiving Medicare or Medicaid funds, and residential centers are protected from restraint, seclusion, and aversive interventions by federal laws establishing minimum protections.³ Children with disabilities in schools are a vulnerable population at special risk and merit the same protections.

No child should be subject to abuse in the guise of education. Every child's dignity and human rights must be respected. Abusive interventions are neither educational nor effective. They are dangerous and unjust. The victims suffer physical harm, psychological injury, and have died. Aversive interventions are cruel, and dangerous, and violative of human rights and dignity.

Legislative Change to Protect Children with Disabilities

We urge Congress to adopt national legislation to protect children with disabilities. Among other things, legislation should provide the following.

Restraint and seclusion should be used only when the immediate safety of the child or others is at risk; less-restrictive alternatives have failed; only if not medically or psychologically contraindicated for the child; and never to coerce compliance, as punishment, or staff convenience. Restraint should be limited to only the degree of force needed to protect from imminent injury and no more. Restraint and seclusion should not be used in place of providing appropriate related services and behavioral supports in the classroom. Children who cannot speak should have the ability to use communications devices and sign language.

We ask Congress to prohibit prone restraints; any restraints that interfere with breathing; mechanical and chemical restraints; any other form of restraint except in situations in which the student poses a clear and imminent physical danger to himself or others; and any behavior management or discipline technique that is intended to inflict injury, cause pain, demean, or deprive the student of basic human necessities or rights. Locked seclusion rooms or other rooms from which a child cannot exit should also be prohibited, unless there is an imminent threat of immediate bodily harm that necessitates placing a child in a locked room while awaiting the arrival of law enforcement or crisis intervention team. If, in order to allow a child to de-escalate, unlocked time-out or cooling-off spaces are used, children must be able to exit them and the children must be supervised at all times.

School districts and employees should be held accountable when abusive interventions are used. If children are subjected to these wrongful interventions, parents must have access to all available legal remedies, including the right to seek redress in a court of law. Retaliation for reporting abuse should be prohibited. Effective enforcement is also important. Even in states with comprehensive statutes, the use of abusive interventions has been documented.

We ask Congress to mandate that children receive effective positive behavior supports developed within a comprehensive, professionally-developed individualized plan of behavioral accommodations, related services, and interventions. Such supports prevent acute episodes of difficult behavior from occurring; they enable children to de-escalate. Such plans should include properly-conducted Functional Behavioral Assessments when appropriate. Children must have adequate supports and services in the classroom.

³ 42 U.S.C. §§ 290ii, 290jj (Children's Health Act); 42 C.F.R. § 483.356 (HHS regulations).

We believe legislation should require staff to be trained on positive behavioral techniques, de-escalation, the risks and harms of restraint and seclusion, and the requirements under the law with which they must comply regarding aversive interventions.

Congress should make clear that schools should adhere to IDEA requirements that parents and school staff should work together collaboratively—as equals—to ensure that children receive appropriate interventions. Parents must be informed about any proposed interventions, possible harms, and the child's rights under the law. They should have the ability to observe in the classroom. Parents and senior administrators should be notified immediately in writing of any use of seclusion or restraint or violation of the law, given the dangers involved.

Schools should gather and report data, regarding each incident of in which an aversive intervention was used, and the circumstances surrounding its use. Data should be analyzed for possible trends to ensure that positive behavioral interventions are used. Data should be reported at the local, state, and federal levels. Currently, over half of the states require some reporting at the local level, either to parents or to school administrators. Yet only six apparently require the data to be reported to the state; others simply let the school district decide.

Conclusion

We appreciate the Committee's examination of the dangers of restraints and seclusion in school. We ask Congress to enact legislation to make our most vulnerable children--children with disabilities--safe from abusive interventions in all educational settings. The 7.1 million children with disabilities in America deserve it. We look forward to working with the Committee and are happy to provide further information.

Sincerely,

Robert Berlow, Chair, Government Relations
Jessica Butler, Co-Chair, Government Relations (for Congressional Affairs)
Denise Marshall, Executive Director
Council of Parent Attorneys and Advocates, Inc. (COPAA)
govrelations@copaa.org