



Colorado's Protection & Advocacy System

Protecting Children with Disabilities in School: The Legal Center's Initiative Against Restraint and Seclusion

In 2007, The Legal Center embarked on a wide-ranging initiative to eliminate the inappropriate and dangerous use of restraint and seclusion as a disciplinary measure for children with disabilities in Colorado's public schools. The initiative began in response to a growing number of anguished complaints from parents whose children were being tied to chairs for hours at a time, physically injured as they were held down or handcuffed, or placed in a locked room—one little girl was so scared that she urinated on herself. The parents' anxiety was exacerbated by the fact that the children's behavior grew worse rather than being improved by the restraint and seclusion, and their mental and emotional wellbeing deteriorated significantly. The longer their children were in school, the more complex their diagnoses became.

There are state laws to protect schoolchildren with disabilities (see page 5) but the administrative and teaching staff charged with implementing them often have inadequate training and support in dealing with what can be a frightening experience. When students become aggressive or disruptive in class, the natural response is to physically restrain them or put them in a quiet place to calm down. As Elizabeth Collard, our attorney-investigator, noted in a recent meeting: "In the entire year I've been investigating complaints, I haven't found one bad apple—no one wants to hurt children."

Sadly, Elizabeth's investigations have also found that while school districts may have the appropriate policies on file, individual schools often have no knowledge of the law, and their staff has no training in the appropriate way to handle difficult behaviors and properly support children with disabilities in the classroom. Added to this, some districts are reluctant to make any changes in their approach, and it can take many months of visits, reports, and meetings with district legal counsel before lasting changes are implemented.

As an example, one lengthy investigation was begun by a call from the mother of a six-year-old girl who was diagnosed with Down syndrome, as well as several disorders that affected her behavior. The child's mother initially contacted us because she believed her daughter had sustained a broken arm as a result of being locked into a wraparound desk/chair combination to limit her mobility. The school district admitted that the device was not specifically designed for therapeutic use and staff in the school told Elizabeth that mechanical restraints were used frequently at the beginning of the year to "teach" children appropriate behavior, and employed on an on-going basis as a means to

“threaten” them to act appropriately. The Legal Center recommended that the district immediately cease use of the locking bar on the wrap-around table, ensure that restraints of any type only be used in emergencies, and that each occurrence be reported to parents or guardians. We made several follow-up visits to the district over the course of the 2008-2009 school year. When it became apparent, despite written confirmation from the district to the contrary, that restraint desks were still being used, we demanded the immediate cessation of their use, which was agreed to in writing from the district’s counsel.

There is a growing body of medical evidence that confirms The Legal Center’s (and many parents’) observations that restraint and seclusion makes children’s behavior worse rather than better, and can in some instances lead to severe illness, injury, and even death, especially when the child has a mental health diagnosis. In 2003, the United States Department of Health and Human Services issued a report regarding restraint or seclusion, stating:

The use of seclusion and restraint on persons with mental health and/or addictive disorders has resulted in deaths and serious physical injury and psychological trauma. In 1998, the Harvard Center for Risk Analysis estimated deaths due to such practices at 150 per annum across the nation. Children have been noted at especially high risk for death and serious injury. Individuals with addictive or co-occurring mental health and addictive disorders also appear to be at risk due, in part, to the possibility of increased agitation. It is also known that sentinel events (e.g., deaths and injuries) from restraint or seclusion occur in a number of settings which currently have no national guidelines, such as schools.

In its 2007 report on restraint and seclusion in California schools, the California Protection and Advocacy System summarized the psychological harm that can result from restraint or seclusion:

Beyond physical injuries or death, behavioral restraint or seclusion can also severely traumatize individuals and result in lasting adverse psychological effects. The risk of trauma is greater with individuals with a history of abuse. Individuals who have been restrained and secluded describe these events as punitive and aversive, leaving lingering psychological scars. Children and adolescents restrained during a psychiatric hospitalization report recurrent nightmares, intrusive thoughts, avoidance behaviors, enhanced startle response, and mistrust of mental health professionals resulting from the incidents, even years after the event. Restraint or seclusion may evoke feelings of guilt, humiliation, embarrassment, hopelessness, powerlessness, fear, and panic. Restraint or seclusion compromise an individual’s ability to trust and engage with others, and create a violent and coercive environment that undermines forming trusting relationships and, by extension to the education setting, learning.

In the two years since the restraint and seclusion initiative began, The Legal Center has completed investigations on behalf of 25 students. Of those 25 students, in addition to a developmental disability, 16 were diagnosed with some type of mental illness. The

following stories from several different school districts demonstrate the importance of this initiative in protecting children from the abusive use of restraint and seclusion:

- One young boy started school with an autism diagnosis. He was subjected to a series of seclusions to control his behavior and his parents believe he was so traumatized by that experience that they enrolled him in an intensive day treatment program at Children's Hospital. The director of the Neuropsychiatric Special Care (NSC) team noted that the child's symptoms of post-traumatic stress disorder (PTSD) related to his reported history of seclusion at the school. The director said that because of these PTSD symptoms, special care must be taken when attempting to reintroduce him to school again. The boy's parents have filed a private personal injury lawsuit alleging that the restraint caused severe psychological trauma and other injuries to their child.
- In another case, a student started kindergarten at a neighborhood school with diagnoses of posttraumatic stress disorder (PTSD), reactive attachment disorder, and attention deficit hyperactivity disorder (ADHD). The child progressed through kindergarten and into first grade in a fully integrated classroom with some special education support. Toward the end of first grade, she was moved from the integrated classroom into a special education classroom where she was repeatedly restrained and secluded. She began to exhibit signs of severe trauma, such as stripping, urinating, defecating in the classroom, and hiding under tables and desks. When a day treatment program was unable to help her, she entered the inpatient program at the Colorado Mental Health Institute at Ft. Logan and then moved on to the day treatment program there. Now, the student is doing better, and is being educated in a day treatment program at a private nonintegrated school. The student's parents have filed a private personal injury lawsuit alleging that the restraint caused severe psychological trauma and other injuries to their child.
- In a third case, the student was an eleven-year-old girl who attended an elementary school in a large metro school district. She was diagnosed as bipolar with major depression and traumatic brain injury, which results in hyperactivity, aggression, attention and learning problems. The student was placed in a special education classroom for the majority of her day where she was physically restrained for periods of five minutes to an hour, as well as being secluded away from her classmates for extended periods. Both forms of restraint exacerbated the student's bipolar condition and she began to experience hallucinations, requiring treatment in a local residential psychiatric facility. She is now home with her family and attending private school, as her parents fear the public school will once again forcibly restrain their daughter. The student's parents have filed a private injury lawsuit that alleges that the restraint caused, among other things, psychological trauma to their child.

In January 2009, the National Disability Rights Network (NDRN), of which The Legal Center is a member, issued *School Is Not Supposed to Hurt*, a disturbing report on seclusion and restraint in U.S. schools. The report, available at www.NDRN.org, provides specific examples, state by state, of the improper use of seclusion and restraint in schools and its impact on the health and wellbeing of its victims. The Legal Center has taken a leadership role among the statewide Protection and Advocacy systems by

focusing major resources, including two full-time staff members, on the issue of restraint and seclusion. We see it as fundamental to our mission. If children with disabilities do not have the opportunity to learn in a safe and nurturing environment, they will not grow up to be productive members of our community, and they will require more and more services as adults, perpetuating the public perception that people with disabilities cannot live independent and fulfilling lives.

We are extremely grateful for the support of funders who share our goals of creating welcoming and supportive learning environments in the public schools where children with disabilities can reach their potential. The initiative has benefited enormously from having a dedicated investigator, Elizabeth Collard, who joined The Legal Center a year ago. In September, we were pleased to welcome a second attorney to the project, Jennifer Levin, who comes to us courtesy of a public interest law fellowship from the nonprofit Equal Justice Works. The fellowship is also sponsored by Greenberg Traurig, LLC, an international law firm with a large practice here in Denver. We also appreciate the support of the Colorado Department of Education (CDE), which has established guidelines for school districts, and is now working to ensure compliance. CDE is also working with us to implement changes in teacher training curricula so that new educators enter the classroom equipped with the knowledge and skills to support children with disabilities, and it is encouraging school districts statewide to provide training for both educators and administrative staff.

The Legal Center is engaged in nothing less than culture change throughout Colorado's public school system. This requires working across the entire education culture, from superintendents to school resource officers and everyone in between. For the initiative to effect lasting change, we must: respond to individual complaints from parents; where there is a pattern of abuse we must investigate incidents of restraint and seclusion throughout entire school districts; we must effect legislative change so that the statute (see "The Law on Restraint and Seclusion" on page 5) has clear guidelines for tracking and reporting the use of restraint and seclusion; we must ensure that districts develop appropriate policies and then follow those policies; and finally we must secure training for school staff so that positive behavior support strategies replace the use of restraint and seclusion in schools. The Legal Center is dedicated to protecting children with disabilities and ensuring that they receive an inclusive education free from harm, because we agree with the NDRN report—school is not supposed to hurt!

The Law on Restraint and Seclusion

The Colorado Department of Education (CDE) and Colorado's schools are covered by the Protection of Persons from Restraint Act, passed by the Colorado State Legislature in 2000 in response to an increasing number of deaths associated with the ungoverned use of restraint and seclusion in hospitals, schools, day treatment, residential treatment, and other mental health facilities. The use of restraint or seclusion is only permitted in emergency circumstances. An emergency is the serious, probable, imminent threat of serious bodily harm to self or others. Restraint and seclusion may never be used as a means to punish a student or to gain compliant behavior. Finally, any restraint or seclusion must end once the need to ensure for the safety of the student or others has ended. The Restraint Act requires CDE to establish clear guidelines for school districts, which it has done. The Legal Center is now working with the CDE to ensure school compliance with rules.