

## Q&A: The Right to be Free from Restraint and Seclusion

### What is restraint and seclusion?

There are four types of restraint: physical restraint, seclusion, mechanical restraint, and chemical restraint. Physical restraint and seclusion may be allowed in situations that rise to the level of being an **emergency**. Mechanical and chemical restraint are not allowed. All four types are discussed in more detail below.

**Physical restraint** is defined by the U.S. Department of Education as personal restriction that immobilizes or reduces the ability of a student to move his or her torso, arms, legs, or head freely. This does not include physical escort, which is the temporary touching or holding of the hand, wrist, arm, shoulder, or back for the purpose of inducing a student who is acting out to walk to a safe location.

**Physical restraint** is defined by Colorado state law as “the use of bodily, physical force to involuntarily limit an individual’s freedom of movement.” Under Colorado state law, physical restraint does not include, “holding of a student for less than **one minute** by a staff person for the protection of the student or others; brief holding of a child by one adult for the purpose of calming or comforting the child; minimal physical contact for the purpose of safely escorting a student from one area to another; or minimal physical contact for the purpose of assisting the student in completing a task or response.”

**Seclusion** is defined by the U.S. Department of Education as the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving. This does not include timeout, which is a behavior management technique that is part of an approved program, involves the monitored separation of a student in a non-locked setting, and that is implemented for the purpose of calming. **Seclusion** is defined in Colorado state law as, “the placement of a student alone in a room or area” from which their exit is involuntarily prevented, except during normal sleeping hours. Unlike physical restraint, Colorado state law does not have any exclusions for seclusions that last under 1 minute.

**Mechanical restraint** is defined by the U.S. Department of Education as the use of any device or equipment to involuntarily restrict a student’s freedom of movement. The term **does not include devices** implemented by trained school personnel or utilized by a student that have been **prescribed** by an appropriate medical or related services professional and are used for the specific and approved purposes for which such devices were designed, as specified in the student’s Section 504 Plan or Individualized Education Program (IEP). Colorado state law similarly defines mechanical restraint as “any physical device used to involuntarily restrict the movement of a student or the normal function of a portion of his or her body.” “Devices recommended by a physician, occupational therapist, or physical therapist and agreed to by a student’s IEP or Section 504 Team and used in accordance with the student’s IEP or Section 504 [p]lan” are not considered mechanical restraints and are therefore allowed. Additionally, “[p]rotective devices such as helmets, mitts, and similar devices used to prevent self-injury” are not considered mechanical restraints so long as they are used in accordance with a student’s IEP or Section 504 plan.

**Chemical restraint** is defined by Colorado state law as “administering medication to a student (including medications prescribed by his or her physician) on an as-needed basis for the sole purpose of involuntarily limiting the student’s freedom of movement.” Chemical restraint is **never allowed**. This does not include “prescription medication that is regularly administered to the student for medical reasons other than to restrain the student’s freedom of movement.”

### Is physical restraint and seclusion ever allowed?

The use of a chemical, mechanical, or prone restraint upon a student is prohibited when the student is on the property of any agency or is participating in an off-campus, school-sponsored activity or event. However, there are **limited** situations in which a school<sup>1</sup> may use restraint or seclusion. If there is a reasonable probability that restraint or seclusion will be used on a student, the parents must be **notified in writing of the restraints and restraint procedures**. Depending on the length of time for which a student is restrained, the notification procedures are different.

- If the student is restrained for a time between one and five minutes, a parent or guardian should receive written notice on the day of the restraint. The notice must include the date, the student's name, and the number of restraints that lasted between one and five minutes.
- If the student is restrained for a time **over five minutes**, the administration should mail, fax, or email a written report of the incident to a parent or guardian **not more than five calendar days** after the use of the restraint on the student. The written report must include: any known antecedent to the student's behavior, a description of the incident, de-escalation efforts, alternatives that were attempted, the type and duration of the restraint, any injuries, and the staff present and involved in administering the restraint.

Restraint and seclusion cannot be used as punishment, discipline, or to gain compliance from a student. Colorado state law specifies that restraints **shall only be used**:

- ***In an emergency*** and with extreme caution; and
- After the failure of less restrictive alternatives or a determination that such alternatives would be inappropriate or ineffective under the circumstances.
- If property damage is involved, restraint may only be used when the destruction of the property could possibly result in the bodily harm of the student or another person.

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| Examples of less restrictive alternatives: <ul style="list-style-type: none"><li>• Positive behavior supports</li><li>• Constructive and non-physical de-escalation</li><li>• Restructuring of the environment</li></ul> |
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School resource officers are not permitted to use handcuffs on a student at any time. These types of restraints may only be used:

- If the student is a danger to themselves or others, or
- If the handcuffs were used during the course of an arrest that requires the transportation of the student.

Schools must ensure that students with disabilities are not physically restrained or secluded:

- For behavior that would not result in the restraint or seclusion of peers without disabilities, or
- Based on assumptions or stereotypes about disability.

### What protections do I have if restraint or seclusion is used?

If restraint or seclusion is used, **the public education program must ensure that**:

- No restraint is administered in a way that *inhibits or impedes the student from breathing or communicating*;
- No restraint is administered in a way that *places excess pressure on the student's chest, back, or that causes positional asphyxia*, and the student is carefully, continuously, and visually monitored to ensure breathing;
- Restraints are administered *only by staff who have received training in it*;

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<sup>1</sup> In this document, "school" is a term used to include public K-12 schools, including charter schools.

- *Opportunities to have the restraint removed* are provided to the student;
- The staff administering the restraint *removes the restraint when the emergency no longer exists*;
- The staff *reintegrates a student in seclusion or clearly communicates* to the student that they are free to leave the area used to seclude the student; and
- The student is *reasonably monitored* to ensure the student's physical safety.

If **physical restraint** is being used, the person administering restraint can use only the amount of force necessary to stop the dangerous or violent actions of the student. A student must be released from physical restraint within 15 minutes, unless precluded by a safety concern.

If **seclusion** is used, the room in which the student is held must have at least one window. If a window is not feasible, monitoring must be possible through the use of video cameras. The seclusion room must be free of injurious items and must not be a room that is used by school staff for storage, custodial, or office space. The student must be allowed relief periods to access a bathroom. Any space used must have adequate lighting, ventilation, and size.

### Are staff trained in restraint and seclusion?

Schools must ensure that teachers and other personnel are **trained regularly** (i.e. at least every two years) about the appropriate use of effective alternatives to physical restraint and seclusion and the safe use of physical restraint and seclusion. The training must include:

- The health and behavioral impacts that restraint and seclusion have on a student;
- Environmental management; and
- Nationally-recognized physical management and restraint practices, including techniques that allow restraint in an upright/sitting position and information about the dangers created by prone restraint.

Staff also must be trained in methods to explain the use of restraint to the student who is to be restrained, and to the individual's family if possible.

### Can the use of restraint and seclusion impact the receipt of a free appropriate public education?

Yes. Use of physical restraint and seclusion have the potential to impact a student's receipt of FAPE under Section 504 and/or the IDEA.

For a student **not identified** as having a disability, instances of the use of restraint or seclusion may indicate the need to evaluate the student to determine whether the student has a disability.

For a student **already identified** as having a disability, instances of the use of restraint or seclusion may:

- Signal the need to re-evaluate the student;
- Signal the need to conduct a functional behavioral assessment (FBA) and create a behavioral intervention plan (BIP) for the student;
- Signal the need to review and revise services, accommodations, etc. for the student;
- Cause the student to miss the delivery of general or special education or related services, which in turn, may need to be made up; and/or
- Cause trauma that has an educational impact on the student (*e.g.*, school avoidance, declining academic performance, etc.), and consequently, should be addressed.

### What is a free appropriate public education?

A recipient that operates a public elementary or secondary education program or activity shall provide a free appropriate public education (FAPE) to each qualified student with a disability who is in the recipient's jurisdiction, regardless of the nature or severity of the student's disability. The provision of an

appropriate education is the provision of regular or special education and related aids and services that are designed to meet individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met. For more information, visit Disability Law Colorado's [FAPE handout](#).

### **What can I do if I have concerns about the use of restraint and seclusion?**

If you need help or have questions about your rights, you can contact [Disability Law Colorado](#).

If your concerns are related to a violation of Colorado state law and/or the IDEA, you can file a state complaint with the [Colorado Department of Education](#). You also have a right to file a complaint with the [U.S. Department of Education's Office for Civil Rights](#) (within 180 days of the alleged discrimination) or the [U.S. Department of Justice if you believe there has been a violation of Section 504](#). For more information about dispute resolution options, please visit Disability Law Colorado's [Dispute Resolution Fact Sheet](#). If you choose to file a complaint, please see Disability Law Colorado's [Tips for Filing an Administrative Complaint](#).

### **Where can I go for more information?**

For additional information, please see:

- [Colorado's Protection of Persons from Restraint Act](#)
- [Colorado House Bill 22-1376](#)
- [OCR's "Dear Colleague Letter: Restraint and Seclusion of Students with Disabilities"](#)
- [OCR's "Restraint and Seclusion: Resource Document"](#)