



October 24, 2012

Michael Sawyers
Acting Superintendent of Public Instruction
Ohio Department of Education
25 South Front Street
Columbus, OH 43215-4183

RE: Public Commentary on Proposed Policy and Rule on Positive
Behavior Interventions and Support, and Restraint and Seclusion

Dear Acting Superintendent Sawyers:

We write on behalf of The American Civil Liberties Union of Ohio ("ACLU of Ohio.") The ACLU of Ohio is the Ohio Affiliate of the national ACLU, with hundreds of thousands of members nationwide and over 30,000 members and supporters across Ohio. The ACLU and ACLU of Ohio are non-profit, non-partisan membership organizations devoted to protecting basic civil rights and civil liberties for all Americans and all Ohioans. Through litigation, advocacy, and public education, we work to ensure that conditions of confinement are constitutional and consistent with health, safety, and human dignity. This includes children who are secluded within the educational setting.

While we applaud ODE for taking the necessary action of creating a rule and updating the policy that governs the use of restraints and seclusion in Ohio schools, we have concerns about the current draft of the proposed policy and rule that has been submitted for public comment. Please consider this letter as our formal public comment on the matter.

The Ohio Department of Education has chosen to approach this policy and rule from the perspective of creating a framework for a disciplinary system to be implemented by school districts. In this area, we agree with and support the effort to move towards an evidence-based, school-wide system of positive behavioral interventions and supports ("PBIS".) However, we do not see the use of restraints and seclusion as having a place in such a discipline system. In fact, we see the use of PBIS as an alternative to a disciplinary system that responds to negative behavior by students with punitive measures and that uses restraint and seclusion as a response to aggressive or dangerous behavior. We would recommend that any rule or policy in regard to restraint and seclusion be phased out entirely over a period of time, not to exceed three years, from the date of implementation.

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Further, while we understand that restraint and seclusion is perceived by ODE as a disciplinary issue, this area is not unique to schools. The use of seclusion and restraint is also a human rights issue that has been addressed in other settings, such as mental health facilities and prisons, where concerns for the safety of staff and residents is paramount, but maintaining the dignity of the residents is of equal importance. The Department of Developmental Disabilities is shifting towards a Positive Culture Initiative in an effort to move away from culture structured around power, control, and coercion. Similarly, the Department of Mental Health has adopted a trauma informed treatment practice and new policies and procedures with the goal of reducing the use of seclusion and restraint. We encourage the Ohio Department of Education to seek an end to all use of restraint and seclusion in schools and to implement PBIS as an alternative form of discipline. However, we recognize that while the process of phasing out occurs, there may still be some isolated incidents of restraint or seclusion. Therefore, we recommend that any policy or rule with regard to seclusion and restraint contain these important elements:

1. The policy and rule must be applied to all public schools, including charter or "community schools".
2. Seclusion and/or restraint shall only be used as a last resort when imminent threat is present and all other measures have been exhausted by trained staff.
3. All staff, including security guards, must be trained and regularly reviewed for competency in the use of de-escalation techniques, the safe and proper use of restraints and seclusion, and in the identification of physical, psychological distress, medical conditions, developmental and physical disabilities. A medical evaluation by a physician or nurse must follow immediately after each incident of seclusion and restraint.
4. Data must be collected, recorded, and maintained regarding the use of seclusion and restraint, and it must be available to the public for review. This data must include student age, race, ethnicity, gender, English proficiency, number of incidents per student, duration of seclusion event, reason for restraint or seclusion, method of restraint or seclusion used, staff involved, incidents of injury requiring first-aid for both students and adults, or death resulting from or related to seclusion or restraint.
5. Data collected must be reported and reviewed annually to determine if changes in the rule or policy are required.
6. Students not already identified as special education students for which restraint/and or seclusion is used will be assessed by an intervention team to determine if the child should be referred for an evaluation for special education services. For those students with an IEP, an IEP team meeting must be convened after any incident of seclusion to consider the need for a functional behavior assessment ("FBA") or behavior intervention plan, ("BIP") as mandated by federal law.

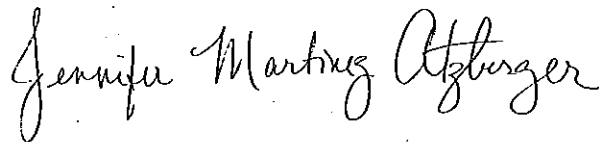
7. Each incident of seclusion or restraint must be recorded & reported to the administrator and the parent(s)/guardian(s) by the end of the school day; unless the seclusion time exceeds 15 minutes at which time an administrator and parent(s)/guardian(s) must be notified immediately.
8. Debriefings must be held and documented following each incident of seclusion or restraint and must include parent/guardian, affected student, administrator, staff involved, incident that lead to the use of restraint or seclusion, preventive and de-escalation methods used, students reactions to de-escalation methods, students reactions to restraint and seclusion, and actions that might have prevented the use of seclusion or restraints; and what technique would be helpful in the future.
9. A grievance procedure must be put in place so that parent(s), guardian(s), and/or students may report the improper use of restraint or seclusion. This grievance procedure should allow for anonymous reporting, if desired.
10. All students, parents, guardians, and staff must be made aware of all new policies regarding seclusion and restraint, as well as the grievance procedure.

In conclusion, while we are heartened to see that ODE has decided to take action on this important issue, we believe that the ultimate goal of Ohio school districts should be to implement a PBIS disciplinary system, and to prohibit the use of seclusion and restraint in their educational settings. We understand that this is a process that will take time, and that requires training for all staff. During the transition process we urge ODE to create a policy and rule that sets clear and consistent standards for all school districts in Ohio meeting the minimum requirements set forth in our above comments.

Sincerely,



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