

Key points:

- **Recognize staff may need to use restraint to prevent harm to student, others**
- **Document any incidents involving restraint, notify parent**
- **Convene team to discuss if further assessment is necessary, review behavioral interventions**

Prevent use of restraint, whether by trained staff or in an emergency, from denying student FAPE

Restraint is restraint is restraint.

Although a district may choose not to classify an action as "restraint," that won't shield it from a potential FAPE violation for repeatedly restraining a student and failing to assess the student's behaviors.

Such was the case when OCR investigated an incident in a North Carolina district where two staff members held down a student's arms and hands to prevent her from lunging at her one-to-one aide. *Warren County (NC) Schs.*, [68 IDELR 281](#) (OCR 2016). According to the case, staff didn't call their actions restraint because they said they did not "cross their arms" in a "basket hold" technique. What's more, they said they weren't trained in how to use restraint and therefore their actions were not restraint.

An untrained staff member may need to restrain a student in an emergency to prevent the student from harming himself or others, said Robin S. Ballard, school attorney with [Schenck, Price, Smith & King LLP](#) in New Jersey. In this case, however, there were repeated incidents of restraint and staff were not trained on how to use it appropriately or how to prevent the student's conduct from happening again, she said.

When districts have reason to believe a student with a disability is likely to engage in that conduct again, then, "the absence of planning and training for staff to intervene becomes culpable," agreed Andrew E. Faust, school attorney with [Sweet, Stevens, Katz, Williams LLP](#) in Pennsylvania.

Consider these strategies to avoid a similar misstep in your district:

- **Prioritize training.** Any staff member who may need to use restraint should be trained on how to use it appropriately, Ballard said. Cast a wide net when deciding who should be trained.

"With the IDEA requiring education of students with disabilities in the least restrictive environment, it may be a general education teacher that could need to restrain a child," she said.

Certainly staff in a self-contained classroom should receive training, she added.

- **Review definition of restraint.** Despite recent national efforts, there's currently no federal definition of restraint, said Faust. Most states, however, define restraint in state law, he said. For instance, in Pennsylvania, the definition is essentially physical force for the purpose of restraining the free movement of a student's body, he said.

"It really doesn't matter whether it's deliberate and planned or whether the staff engaging in it are trained in it," Faust said.

Nor is it limited to a certain set of techniques, he added.

"What matters, of course, is that the free bodily movement of the child is in any way impeded by the actions of others. That's true here in Pennsylvania and that's probably true in the majority of jurisdictions," he said.

- **Ensure staff report restraint.** Most states permit untrained staff to use restraint in emergencies to prevent a student from harming herself or others, Ballard said. Whether or not protocols for restraint are in a student's plan, staff need to document any situation involving restraint and notify parents, she said. Ballard and Faust both advised having the student checked by a school nurse following the incident.

"If the child has a mark, I don't think it helps anyone to try to pretend that mark isn't there," Ballard said.

Document what happened before the restraint, if staff were trained, who implemented the restraint, how long it took place, and if anyone was injured.

- **Convene team.** When restraint occurs, convene a team meeting to discuss the incident and review whether the current interventions and strategies being used with the student are appropriate or need to be revised, Faust said. Also, consider if it's necessary to conduct a functional behavioral assessment, Ballard said.

Restraining a child even once should cause a child find alarm to ring in your head, Faust said.

"When you have a child who's evidencing enough emotional distress that they're engaging in dangerous and restrain-able activity, the next step should be to start asking questions: Should we be reevaluating? Should that include a functional behavioral assessment? Does the IEP have positive behavioral interventions and strategies?" he said.

- **Conduct assessments.** "The fact that the child [in the *Warren* case] needed to be restrained as often as the child apparently did is indicative of some serious problems with the interventions," Faust said.

A pattern of restraint should trigger the team to consider an assessment looking into the student's behavior and a review of positive behavioral interventions that could prevent those behaviors, Ballard said.

"There are times when restraint is absolutely necessary and appropriate for a child, but staff need to be trained, and there need to be protocols in place for when and how it should be done," she said.

See also:

- [Train staff members on what constitutes restraint](#) (Oct. 31)
- [Accountability rule seen as chance to discourage restraint, seclusion](#) (Aug. 17)
- [Leave no part of restraint unplanned](#) (June 3)

For more stories and guidance on this topic, see the [Restraint and Seclusion Roundup](#).

[Jennifer Herseim](#) covers Section 504, education technology, and Common Core issues related to special education for LRP Publications.

December 2, 2016

Copyright 2016© LRP Publications