

# DISABILITY RIGHTS OHIO

Ohio Disability Rights Law and Policy Center, Inc.

February 6, 2013

Sue Zake, Director  
Tom Lather, Associate Director  
Office for Exceptional Children  
25 S. Front Street  
Columbus, Ohio 43215

Re: Complaint # CP 0203-2012

Dear Sue and Tom:

This letter is in response to the Ohio Department of Education's Letter of Findings (LOF) relating to Complaint # CP 0203-2012 addressed to Dr. Gene Harris, Superintendent of Columbus City Schools (the district), dated January, 11, 2013.

The LOF's conclusion that no student is experiencing a denial of a free appropriate public education (FAPE) as a result of the district's restraint and seclusion (R/S) practices is simply incomprehensible. The volume of occurrences across the district (aggregate data of 1800 incidents involving 375 students) is alarming and suggests a level of acuity and disruption impeding the education of many students, not just those experiencing restraint and seclusion. This also indicates a system wide failure to meet the behavioral needs in these schools. Our consultant, Dr. Janice Lebel reviewed the LOF and advised us that "the rates of behavior incident reports was stunning and higher than [those found in] many psychiatric inpatient services."

In healthcare settings, R/S is considered "treatment failure." In educational settings, R/S should be considered no less than "education failure." Based on the LOF and the practices described therein, it appears that the field of education in Ohio is either incapable or unwilling to accept this fundamental premise.

The conclusion that there are no rights violations also raises questions about the credentials of ODE staff who conducted the investigation. The LOF neither identifies the identity of the individuals nor their qualifications and experience. We are concerned that many education officials are likely not well versed in R/S prevention practices and the rising standards of practice in other industries. This concern is borne out by numerous comments made by educators during the stakeholder R/S rules meetings that educators lack training on alternative, non-violent responses to behavior and also lack the time and financial resources to implement such training.

The following describes a number of areas where the LOF was lacking in critical information or analysis:

- The data/information is completely decontextualized. It is impossible to know how to accurately interpret the information without more demographic data.

- The dimensions of all of the seclusion/processing/timeout rooms were not identified. This is significant, particularly since many were repurposed from supply closets. This would not suffice in the behavioral health industry. The AIA (American institute of architects - which sets environment of care standards for hospitals, etc.) requires a minimum of 100 nsf (net square feet). During our own investigation, one “processing room” measured a mere 19 square feet,
- Some environmental descriptions of the seclusion/processing rooms evidenced alarming and dangerous conditions of confinement, including:
  - the use of “peep holes” (p., 18, 6B, 6G; p. 20, 12G; p. 20, 14B; p. 21, 15C). This is grossly insufficient and belies any sufficient or adequate visual monitoring of children in distress. The ‘closet’ description also suggests means there is no natural lighting/window or way for youth to maintain orientation to time of day or capacity to calm by viewing the outdoors. For many youth, this could create panic, claustrophobia, feelings of abandonment, isolation, neglect and fear/terror. This is inhumane and not allowed in other settings serving youth far more impaired. This is a human rights violation.
  - it appears that many of the rooms serve either a dual function of seclusion and storage or have been repurposed and serving neither function well. By description, many of the items stored in these rooms pose an immediate risk of harm if children were left in these rooms even with adult supervision outside the doors, such as; electronic equipment, fans (p. 18, 6J), metal cabinet (p. 18, 7C & p. 19, 11B).
  - the description of the lighting (large fluorescent lighting panel) gives no indication if the lighting is secured in anyway. Again, in healthcare services, lighting must be secured to ensure there is no possibility of breakage and injury from glass.
  - at least one “process room” still has a foot latch (spring lock).
  - all of the descriptions are silent on the hardware of the door hinges. This is significant. Hardware can present a significant risk of hanging and loop-risk, like Jonathan King experienced. He hung himself in a Georgia school seclusion room: [http://articles.cnn.com/2008-12-17/us/seclusion.rooms\\_1\\_seclusion-autistic-children-special-education?\\_s=PM:US](http://articles.cnn.com/2008-12-17/us/seclusion.rooms_1_seclusion-autistic-children-special-education?_s=PM:US)



- some schools, such as Ridgeview Middle School, were identified as using 'padding' on the walls (p. 20, 11i; p. 21, 17J) This is very concerning. Unless the padding is used in the healthcare industry, it could easily pose an infection control, choking or ingestion/aspiration risk if the material can be degrading thru biting or tearing.
- The number of youth who were repeatedly restrained and kept in seclusion for extended periods of time (>5 minutes) was astounding and indicates staff do not have sufficient knowledge about how to manage youth in distress. At least one student was secluded for over 2 hours (2 hours, 20 minutes). In this and during other incidents, staff did not maintain constant observation of the student; instead, it was reported that the staff did ten minute checks. (p. 26). Students were reportedly restrained 25, 29, 21 times. Binns Elementary reported 119 incident reports involving 12 students with 5 students involved in 75% of the incidents. Beatty Park Elementary provided 862 reports. It is difficult to comprehend how meaningful educational progress can occur in such a chaotic, out of control environment.
- Dr. Lebel advises that the practice of simply sitting outside the door and watching is antiquated practice. Also, the report was silent on the word/concept/practice of violence/restraint prevention and how to recognize when a problem is brewing.
- Some examples of restraint antecedents were illogical and essentially non-lethal/non-emergent situations such as: refusing to leave during a fire alarm; refusing to enter the building, screaming, throwing objects, refusing to comply with directives. In a time when recognizing the potential for violence in the school has never been greater, staff need this knowledge: how to recognize what could be coming and how to resolve it peacefully, without aggression. Responding to aggression with counter-aggression is a strategy that fails. It fails to teach life and pro-social skills needed to succeed at school and paradoxically reinforces the behavior that is attempting to be extinguished;
- Single person restraints were identified on several occasions. This is dangerous and high-risk for students and staff. The only restraint curriculum crafted for children/adolescents (Cornell's Therapeutic Crisis Intervention, AKA: TCI) prohibits this practice, as do many public mental health systems (such as MA and NY).
- The district uses CPI training which permits prone restraint, a practice banned by Executive Order and ODE's safety rules.
- The report is absolutely silent on staff behavior contributing to the escalation/role in pre-restraint or incident escalation. Restraint is not a solo activity. It requires an audience and actors. Staff has a role in deciding to restrain/seclude and this documentation is remarkable for its silence in this regard. The LOF often accepts the district's characterization of a dangerous situation without an analysis of whether R/S was necessary and whether the incident could have been prevented by properly trained staff.

- The report is virtually silent on PBIS and there is limited information about the implementation of the BIP/behavior supports plans to help the youth calm, stay focused and attend to school work.
- There were only a few references to contacting parents/involving parents as problems are unfolding, and including them in the BIP process (Johnson Park, p. 40; Starling Middle, p. 44).
- While there were a few positive signs (staff stopped restraining a student at the sign of an 'asthma attack' (p. 33); some schools (STEM, Salem Elem., South Mifflin, Trevitt Elementary) have no processing rooms, calling on outside resources for help (Shady Lane called Nisonger at OSU), using alternatives (sticker charts, selective/planned ignoring, listening to music, wiggle seats, fidgets, gum, stress balls (Watkins Elementary), removal of most of the foot locks and repurposing rooms (storage closets) – it appears that there has not been any measurable, meaningful change or improvement since Disability Rights Ohio (formerly Ohio Legal Rights Service) issued its report. There is no evidence that the district is monitoring for trends and patterns, conducting root cause analyses and implementing strategic improvement plans to reduce the use of R/S.

In light of the facts presented, the findings on p. 50 are shocking, illogical and unsupported by generally accepted professional standards of care. Educators and especially ODE, who has the monitoring and enforcement responsibilities for the delivery of services in Ohio's schools, must accept that repeat occurrence of a R/S episode is firsthand evidence of ineffectual preparation of the teachers and failure to learn from the 'processing' experience by the students after the first episode. Merely having a BIP or an IEP is not an indication of effective education being delivered. It appears that ODE staff did not look beyond the procedural compliance/paper to scrutinize the results on the interventions imposed on students, including the resulting trauma and academic and behavioral deterioration that many of these students surely experienced. At no time does it appear that ODE interviewed any students who had been subjected to R/S or their parents.

We ask ODE to carefully consider these issues and reexamine its findings and conclusions. At a minimum ODE should require and support the district in providing the training necessary to change the practices detailed in the LOF so that incidents of R/S will be greatly reduced and safety of staff and students will be increased. Some suggested resources are:

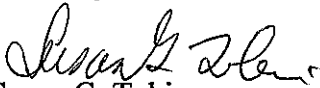
- NASMHPD offers free training on the Six Core Strategies, which is an evidenced-based practice curriculum that creates a framework for R/S prevention. It is a 2-day training, proven effective - Dr. Lebel has trained/retrained all of her facilities in MA on it and it has now adopted for public and private schools, juvenile justice, developmental disabilities, public health, and child welfare/mental health residential and community services.
- Creating Positive Cultures of Care Resource Guide which was developed in MA.

- "Real Danger: Restraints and our Children" – a DVD and study guide (also developed in MA)
- TASH has created training for parents re: R/S in schools - what to watch out for - what parents' rights are, how to intervene, etc.

In addition, I am attaching two other recommended resources, a technical assistance manual for Nebraska schools and a guidebook on supporting teachers to prevent the use of R/S. These resources should be reviewed by ODE staff as they proceed with work on a resource document and sample policies for Ohio's schools.

Please respond within seven days of receipt of this letter. Feel free to contact me if you have any questions or wish to discuss technical support and training resources.

Sincerely,

  
Susan G. Tobin  
Chief Legal Counsel

With attachments to email