

# School-based Restraint and Seclusion

## Critical Next Steps to Protecting Kentucky's Children



Schools should be a safe, secure place for all children. The unnecessary use of restraint and seclusion on children in Kentucky schools is harmful, especially for the disabled and very young. A Kentucky regulation governs restraint and seclusion in schools, but there must be strong application, transparency and accountability for a safe school environment. Vulnerable children cannot wait.

### Background:

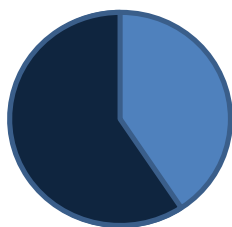
For many children, school is a safe, even happy place. But for some students who are younger and/or have disabilities, the experience may not be so positive. Most children restrained are under the age of ten and due to lack of compliance.<sup>1</sup> Young children with disabilities often do not respond to cues in the expected manner. Some school staff and law enforcement officers may react by implementing restraint or seclusion that may exacerbate the child's anxiety. In some cases, this aggravation leads to physical injury or even death.<sup>2</sup>

In 2009, the Government Accounting Office conducted a study of the use of restraint and seclusion in schools. Hundreds of cases related to the improper use of restraints and seclusion were cited, which ranged from five-year-olds suffering broken arms and bloody noses to a 13-year-old reportedly hanging himself in a seclusion room.<sup>3</sup> The disturbing results of the study stirred nationwide interest. In May 2012, the U. S. Department of Education published 15 principles to guide the use of restraint and seclusion in schools.<sup>4</sup> Now, forty-five (45) states have some kind of law or regulations governing the use of restraints and seclusion in schools.<sup>5</sup>

More than three years after the regulation went into effect, the Kentucky Department of Education (KDE) found that children at or below the third grade make up 60% of all school restraints. In 2014 in Kentucky, there were 93 “violations of the law” in pre-kindergarten through just the first grade.<sup>6</sup> A large number of the very young “law-breakers” referred to the judicial system involve charges of terroristic threatening.<sup>7</sup>

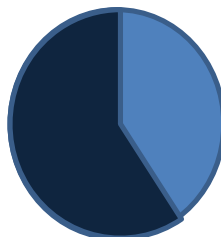
Statewide data through the Kentucky Department of Education for SY 2014-15 indicates that students were restrained 5,985 times, up from 4,885 restraints reported for the SY 2013-14 school year. Youth of color were involved in reported incidents of restraints in SY 2014-15 at nearly 5 times the rate of their white peers, and experienced 44.7% of all restraint incidents while making up only 10.5% of the student population statewide.

Youth with disabilities were also significantly overrepresented for both restraints and seclusion incidents. Statewide for SY 2013-2014, the data indicate that students with special education status made up 15.1% of the student population, yet were involved in 79.2% of incidents of restraint and 95.4% of incidents of seclusion. Students with disabilities were involved in these discipline resolutions at more than 5x the rate of their non-disabled peers. In SY 14-15, their share of the student population dropped to 14.6%, yet they still were involved in incidents of restraint and seclusion at disparate rates, 71.3% and 89.3% respectively.



**58% of Kentucky students who are restrained have a disability.**

Kentucky began the process of developing a regulation regarding restraint and seclusion in 2009. The regulation became effective on February 1, 2013.



**60% of school restraints in Kentucky are students in the 3rd grade and below.**

*Note: KDE has acknowledged that the data collection system for restraint and seclusion information may have inaccuracies, and they are working to improve upon this system. The problems relate to under-reporting total incidents, however, rather than to disparity proportions.*

Kentucky's regulation is intended to "emphasize the primacy of student and school personnel safety, including the risks associated with the use of physical restraint and seclusion."<sup>8</sup> It substantially addresses 13 of the 15 principles articulated by the U.S. Department of Education in 2012. A recent national publication on state seclusion and restraint laws described Kentucky's effort as "meaningful and having protections in regulation...protecting all children from both restraint and seclusion."<sup>9</sup> Nevertheless, the author noted that the regulation without effective enforcement is meaningless.<sup>10</sup> It is time to evaluate and recommend the next steps needed to ensure school safety for all students and staff.

## Kentucky's Restraint and Seclusion Regulation and Practice

### General Provisions

Kentucky's regulation defines physical restraint as the reduced freedom of movement of the student's head, arms, legs, or torso.<sup>11</sup> Other minimal physical contact is explicitly permitted. The regulation prohibits restraint to address disrespect, noncompliance, or out of seat behaviors. It prohibits chemical and mechanical restraint and other hurtful or dangerous restraint practices.<sup>12</sup>

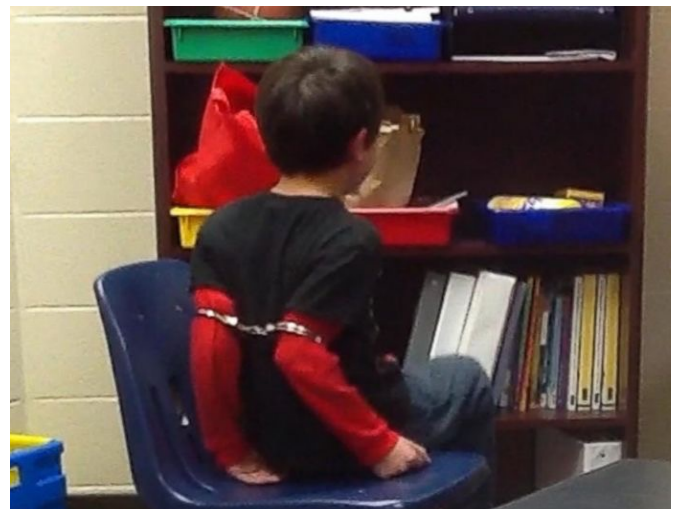
Seclusion is the involuntary confinement of a student in an area that the student is prevented from leaving. It does not include timeouts, detention, or suspensions. It can only be used to address imminent danger of physical harm after less restrictive interventions have been ineffective.

The regulation applies to a very broad range of school personnel, including law enforcement officers and school resource officers.<sup>13</sup> It also provides protections for children with medical conditions that limit restraint, and provides for a written record, notification to parents, notification to the principal, and potential debriefing sessions with the parents of the child.

In spite of well-intentioned requirements in the regulations which define and detail scope, notice and data collection, policies and practices across the state remain problematic and inconsistently enforced.

### Case Examples: The Restraint and Seclusion Regulations Must Apply to all Students

School staff or School Resource Officers (SRO) sometimes misinterpret the regulation's prohibitions. There are several videotaped instances of violations. In one, an eight-year-old student with disabilities is handcuffed by an SRO for behavior characterized by a federal judge as a "temper tantrum." The child was cuffed behind his back at his biceps. He cried for an extended time saying, "Ow, that hurts." In an effort to force compliance, he was told, "You need to ask me nicely" to remove the cuffs.



**The eight-year-old can be heard crying for an extended period of time and saying, "Ow, that hurts."**

A little nine-year old girl was cuffed with her arms above her head in another video. In a third video, an elementary student who is non-verbal and disabled is seen being dragged down a hall and into a classroom.<sup>14</sup> His behavior was not dangerous, and the teacher wanted to get him "calmed down." Calming is an intervention that should have been tried *before* the student was restrained. In a fourth video, a 16-year-old student is slammed against a wall, shoved into a "reflection room," and pinned to the back of a bench using the teacher's body.<sup>15</sup>

There was no “imminent danger,” until the teacher placed himself, the student, and a second teacher in danger. Because the student was immobilized, he was “restrained” under the regulation.

With the last two incidents, the media reported that the students were not injured. However, no mention was made of the likely emotional trauma to the students, the potential risks to school staff nearby or tangentially involved, or the trauma to students who had to observe these incidents. In the latter two incidents, the district took action against the teachers, which was significantly reduced on administrative appeal. KDE had no enforcement authority.

In addition to these incidents, a high school student with autism had both legs broken in a restraint.<sup>16</sup> This matter is currently under multiple reviews. There is anecdotal information of other students injured and handcuffed across the state. During the 2014-15 school year, more than 80 students were injured during restraints in Jefferson County.<sup>17</sup> Students are being restrained often, including 30 times for one student in a year, without the requisite positive behavioral interventions and supports being systematically put in place; without the detailed requisite documentation; and without the requisite sole legitimate purpose of the regulation—to address imminent danger to self or others.

### Prohibited Restraint Techniques Are Used

Aversive techniques are forbidden by the regulation. Yet some districts have used techniques such as the Aikido Control Training (ACT) that have raised substantial questions. One ACT trainer asserted that his techniques did not cause pain or result in injuries. Dr. Melissa Currie, head of Pediatric Forensic Medicine at the University of Louisville, stated that her office has “examined several cases of injuries, primarily broken bones,” which “resulted from the use of Aikido Control Training...”<sup>18</sup> KDE stepped in swiftly once these facts became known and banned the use of ACT in the public schools.<sup>19</sup> However, the use of this technique in schools only became public after some districts had implemented it. The regulation does

**There is no procedure to assure a review of restraint training curriculum.**

not provide for objective review of a training curriculum prior to district use.

### Training for School Personnel and SROs Must Be Enhanced

Relevant training is not provided to all personnel. SROs receive 40 hours of training through the law enforcement-training network. There are no mandates about what must be in that 40 hours, and it is not age-specific.<sup>20</sup> They receive no education-related training.

**In 2014, 93 pre-kindergartners through the first grade were treated as “law violators.” A significant number of those referred to the court system were for terroristic threatening.**

In view of the racial and disability-related disparities in disciplinary responses, the training should address the concept of implicit bias. As noted by Lawrence Weathers, veteran Kentucky SRO, “We all bring our own baggage and are not aware of our own bias. We need training to bring that out to us.”<sup>21</sup>

Training for all, including SROs, should address the impact of structural brain changes; behavior of children with mental health concerns; responses of traumatized youth; and behaviors related to disabilities and medications. Certified teachers cover most of these topics in their education; however, other school staff, such as cafeteria workers, instructional assistants, bus drivers, and SROs do not. These topics are not all covered in the baseline training provided to school personnel and further are not covered in the Department of Criminal Justice Training that trains the majority of SROs.<sup>22</sup> For SROs and others new to the educational environment, training needs to be provided about the importance of relationships. As noted in a Kentucky Center for School Safety video,<sup>23</sup> “This isn’t a cop job. It’s all about relationships.” The costs of litigation and settlements for inappropriate restraints and the immeasurable costs of less visible damage and trauma to students and staff when restraints and seclusion are inflicted unnecessarily cannot be ignored.

## Grounds for Restraint and Seclusion Must Be Limited

Kentucky’s regulation significantly departs from the U.S. Department of Education’s 15 principles in that it permits restraint for a host of reasons, including preventing property damage and “to maintain reasonable discipline.”<sup>24</sup>

Further, Kentucky’s regulation does not require the likelihood of imminent *serious* danger to self or others. In view of the injuries that are documented to date when restraints are administered, it is clear that the regulation has not achieved its goal emphasizing “the safety of students and school personnel.” Because of the known and proven risks of restraint and seclusion, imminent danger of “serious” injury should be the standard. There is no other legitimate reason to risk serious student or staff injury, including trauma.

## Transparency and Accountability Must Be Strengthened

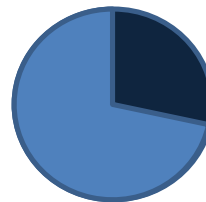
Potential adult-imposed injury to children in a setting that is mandated by Kentucky’s compulsory attendance laws requires transparency and accountability. The regulation requires that all school personnel be aware of the policies, and that notification be provided to parents about how to access the policies and procedures and parent and student rights. In reviewing district websites, compliance with this requirement is not transparent in 18 of the 19 district sites reviewed.

Student Handbooks from only four of the 18 districts contained accurate information about the requirements of the regulation. Several of the 18 districts had no link to the Employee Handbook on their webpage. Codes of Acceptable Behavior in three districts had broad provisions on restraint with almost no correlation to the regulation.

Transparency and accountability in aggregate reporting of data are also important. Interviews and a review of 20 district report cards for 2014-15 establish that there are significant underreporting problems. The expectation is that there will be three years of accurate data to use in determining trends by 2018-19. Transparency is nonexistent when the public and Department officials cannot access accurate data.

Another area of significant underreporting is restraints and seclusions in which an SRO is involved. Although the reporting of aggregate data of SRO and other law enforcement personnel involved in restraint and seclusion is required, this information is not reported in many districts when the SRO is considered to be engaging in “law enforcement functions.”

In a May 2014 survey, only 17 of 59 responding SROs provided their reports to school officials. Ten shared their reports with no one, and the remainder reported to their law enforcement supervisor.<sup>25</sup> Principals are responsible for *all* actions occurring in their schools and local education officials are responsible for *all* actions occurring in their programs. It is critical that SRO data be shared and reported to the district and to the state educational agency so that principals, district administrators, and the public can know what is happening in their schools.



**In 2014, only 17 of 59 SROs provided their reports to school officials.**

In addition to these transparency concerns, Kentucky’s regulation does not provide appropriate accountability. Our regulation omits a significant provision found in the 15 federal principles. It is the requirement for systematic review in the event of repeated restraints of an individual child, multiple uses in a particular classroom or repeated restraints or seclusions by a particular school employee. Kentucky’s regulation does not provide this timely quality assurance process. This is a serious impediment to accountability.

## Schools Can Create Safer Environments with Better Behavior Management Techniques

Reducing behavioral incidents leads to reductions in restraint and seclusion and to a safer environment for all students and staff. In September 2016, the U. S. Department of Education released a Guidance Package addressing the behavioral needs of students with disabilities.<sup>26</sup> Specific guidance regarding the use of SROs and the necessity of positive behavioral

interventions and supports (PBIS) make this an invaluable resource. The goal is to seek to understand and address the underlying causes of children’s behavior by relying on data to develop positive plans for intervention.<sup>27</sup> The plans focus on the students’ individual needs and socially meaningful support.<sup>28</sup>

PBIS reduces behavioral incidents in Kentucky schools that implement the program with fidelity. The districts of Hopkins, Warren, Christian, and Hardin systematically implemented PBIS. In three years, educational leaders report vastly improved educational environments for all of their students.

**Reducing behavioral incidents leads to reductions in restraint and seclusion and to a safer environment for all students and staff.**

There are *significantly* fewer office referrals and behavioral incidents leading to suspensions and expulsions. Additionally, academic performance improved substantially.

Warren County reduced its suspension rate 52.98% between 2010-11 and 2014-15. Hardin County reduced its number of suspended students from 6.09% of its students in 2011-12 to 2.81% in 2014-15. Hopkins County reduced its 2011-12 out-of-school suspensions from 297 to 58 in 2014-15, an 80% reduction.

**Reduction in Suspension Rate from 2010-11 to 2014-15**

Warren County	52.9%
Hardin County	50%
Hopkins County	80%

In capturing the difference that PBIS has made in Hopkins County, Adam Harris, Assistant Principal of North Hopkins High, described the atmosphere at the school: “(I)here is a general feeling of happiness. The culture of the school has (improved by) leaps and bounds. Teachers want to come to work, and kids want to be here.”

As with the other three districts using PBIS, Christian County is making gains academically and reducing the behavioral incidents leading to office referrals and suspensions.

Christian County began full implementation in the 2014-15 school year so limited data is available.

**“Teachers want to come to work, and kids want to be here,” – Adam Harris, Assistant Principal of North Hopkins High, in speaking of PBIS.**

An approach complimentary to PBIS is known as Trauma Informed Care, and incorporating it into schools will create a safer environment for all. This concept emphasizes the need to assume that challenging behavior in a child may be a manifestation of previous trauma. This approach calls for a shift in school culture, from punitive to positive approaches. This change in culture to calming and supportive responses allows for healing and permits children to experience school as a safe place, rather than retraumatizing a student unnecessarily.<sup>29</sup>

A positive, trauma informed school setting reduces behavioral problems. It is unquestionable that children are being harmed with improper and unnecessary restraints and seclusion in Kentucky schools. School should be a safe, secure place for all children. Kentucky has a regulation in place, but it must have strong implementation and oversight. Additionally, two critical omissions from the 15 principles published by the U.S. Department of Education must be added to the regulation. Vulnerable children cannot wait.

**Vulnerable children cannot wait.**

## Critical Next Steps

Additional action is required to ensure protection of Kentucky's school children and staff when using restraint and seclusion. Recommendations that follow apply to both school districts and the Kentucky Department of Education.

### School Districts

- Systematically implement PBIS. The very positive impact on behavior when PBIS is appropriately implemented is unquestionable. Individualized plans for the 20% of students who generally do not benefit from the school-wide system will enhance school functioning, reduce negative behaviors and reduce disciplinary and control strategies. Students and staff all benefit.
- Concurrently with implementing PBIS, train all school personnel in trauma-informed practices and begin implementation. This includes identifying trauma and appropriate interventions in Individual Education Plans (IEPs) where appropriate.
- Require accountability from SROs and report aggregate numbers of all restraints and seclusions in which SROs are involved. School principals are responsible for events in their schools and are entitled to SRO reports and data. Additionally, the aggregate reporting of all SRO involvement in restraint and seclusion should be made public in the school report cards.
- Establish a process by which all multiple restraints or seclusions of a student, in a classroom, or by a particular person are systematically reviewed and addressed by redesigning the student's program or by providing additional staff training, supervision or taking other necessary action.
- Ensure that parents and employees can easily access restraint and seclusion requirements and that parents have clear access to their rights. Parents cannot exercise their rights nor the rights of their children if the information is not easily available.
- Provide comprehensive training occasions for staff. Depending on a host of individualized factors such as age, history of trauma, disability status, implicit bias by adults, and stages of brain development, children react differently to adults. It is critical that school personnel and SROs are aware of the range of behaviors and how to assess and respond to them based upon the child.
- Use one data system for all student-related information. Multiple data systems are costly and result in confounding of data.

### Kentucky Department of Education

- Amend the regulation to provide explicit oversight authority to KDE. Until such time as the regulation is completely implemented with fidelity, KDE needs oversight authority to provide district training and other technical assistance for district capacity building, to ensure transparency, to assist in assuring legally required practices and accurate reporting and to otherwise oversee implementation of the regulation.
- Amend the regulation to permit restraint and seclusion solely in instances where there is imminent danger of serious physical harm and define "serious" in the regulation. Currently, even after implementation of the regulation, videotaped and other documented incidents of injuries to students and staff continue. The risks of such harm require limiting restraint and seclusion only to those circumstances where a greater risk exists if restraint or seclusion is not used.
- Amend the regulation to require school districts to conduct systematic timely review of all instances of multiple restraints of an individual student, by a particular person or in a classroom. Actions to address the multiple restraints should be required, either by changing the student's program or by addressing staffing or environmental issues.
- Amend the regulation to require expanded educationally-related basic and core team training, including for SROs. This should be in addition to the 40 hours of law-enforcement training that

- SROs receive. Differing responses of students must be addressed to assist all school personnel in evaluating how to approach and de-escalate *all* students in crisis. This includes students with disabilities, behavioral health concerns, age-specific reactions and histories of trauma, as well as implicit bias across the school environment.
- Increase staffing and seek additional state funding for KDE’s restraint and seclusion initiative. Currently 1.5 full-time positions are devoted to this significant effort. One employee addresses all related issues, phone calls, correspondence, parent questions, district visits and much of the data. This is insufficient.
- Include restraint and seclusion reviews in all Management Audits, Consolidated Monitoring visits and all other reviews.

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## End Notes

<sup>1</sup> Trader, Barbara, TASH Ed., Why Restraint Prevention is the Priority (9/3/15). Retrieved August 28, 2016 from <http://tash.org/blog/2015/09/03/why-restraint-prevention-is-the-priority/>

<sup>2</sup> National Disability Rights Network, School is Not Supposed to Hurt, (3/12). Retrieved August 12, 2016 from [http://ndrn.org/images/Documents/Resources/Publications/Reports/School\\_is\\_Not\\_Supposed\\_to\\_Hurt\\_3\\_v7.pdf](http://ndrn.org/images/Documents/Resources/Publications/Reports/School_is_Not_Supposed_to_Hurt_3_v7.pdf)

<sup>3</sup> Government Accounting Office (GAO). (2009) Seclusions and Restraints: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers (GAO-09-719TMay19,2009).

<sup>4</sup> U.S. Department of Education. Restraint and Seclusion: Resource Document (2012). Retrieved October 25, 2016 from <http://www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf>

<sup>5</sup> Butler, Jessica, How Safe is the Schoolhouse? An Analysis of State Seclusion and Restraint Laws and Policies (7/25/15). Retrieved August 2, 2016 from <http://www.autcom.org/pdf/HowSafeSchoolhouse.pdf>.

<sup>6</sup> Morrison, L. Center for School Safety, School Based Law Enforcement - Protecting Kentucky’s School Children and Educators... Presentation at Juvenile Justice Oversight Council Meeting (8/16/16)

<sup>7</sup> Dudgeon, Laurie, Administrative Office of the Courts and Juvenile Justice Oversight Council Member, Juvenile Justice Oversight Council Meeting Comments (8/16/16)

<sup>8</sup> 704 KAR 7:160 Department of Education (Amended After Comments) Staff Document, p. 40 (undated).

<sup>9</sup> Butler, Jessica, *op. cit.* (KDE officials have expressed concern about the fidelity of data reflecting injuries. However, the concerns regarding data problems generally indicate that the results are under- rather than over-reported.)

<sup>10</sup> *Ibid.*

<sup>11</sup> 704 KAR 7:160.1(10)

<sup>12</sup> 704 KAR 7:160.3

<sup>13</sup> 704 KAR 7:160.1

<sup>14</sup> Lexington Herald Leader, Fayette County Teacher Appeals Termination for Dragging Student (3/25/16). Retrieved August 21, 2016 from <http://www.kentucky.com/news/local/education/article68213252.html>

<sup>15</sup> Lexington Herald Leader, MLK Teacher in Altercation with Student (4/20/16). Retrieved July 30, 2016 from <http://www.kentucky.com/latest-news/article69637582.html>

<sup>16</sup> Yetter, D. & Ross, A., Louisville Courier-Journal, Kentucky schools to pay \$1.75M after child's legs broken (5/27/16). Retrieved on 8/28/167 from <http://www.courier-journal.com/story/news/education/2016/05/27/jcps-pays-175m-after-boys-legs-broken/84916428>

<sup>17</sup> Yetter, D. & Ross, A., Louisville Courier Journal, Ky. Schools Must Stop Using Aikido on Students (8/5/16) Retrieved on August 7, 2016 from <http://www.courier-journal.com/story/news/education/2016/08/04/ky-schools-must-stop-using-aikido-students/88180044/>

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<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

<sup>20</sup> Kubala, F. & McKinney, J. Department of Criminal Justice Training, Statement before the Juvenile Justice Oversight Council (8/16/16).

<sup>21</sup> Weathers, L., SRO, Statement before the Juvenile Justice Oversight Council Meeting (8/16/16)

<sup>22</sup> Kubala, F & McKinney, J. Handouts School Resource Officer Basic and School Resource Officer Advanced, at the Juvenile Justice Oversight Council meeting (8/16/16).

<sup>23</sup> Kentucky Center for School Safety video presented at the Juvenile Justice Oversight Council Meeting (8/16/16)

<sup>24</sup> 704 KAR 7:160 Sections 3(1)(d); 3(3)(a); KRS 503.080; 503.110.

<sup>25</sup> *Ibid.*

<sup>26</sup> U. S. Department of Education & U. S. Department of Justice, Laws & Guidance/General. Retrieved 9/6/16 from <http://www2.ed.gov/policy/gen/guid/school-discipline/support.html>

<sup>27</sup> The Association for Severely Handicapped, Stop Hurting Kids, Frequently Asked Questions (undated) Retrieved 7/16/16 from <http://stophurtingkids.com/about-restraint-seclusion/frequently-asked-questions/>

<sup>28</sup> *Ibid.*

<sup>29</sup> The Association for Severely Handicapped, Stop Hurting Kids, *op. cit.*



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