

Client Alert

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Restraint & Seclusion – Arizona’s New Student Discipline Law

Education Law

Whether it be reviewing your discrimination and bullying policies, providing training for teachers and staff, or providing legal advice as issues arise, Osborn Maledon’s Education Law team is here to help. For more information, please contact:

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In 2009, a seminal report from the U.S. Government Accountability Office found hundreds of alleged cases of abuse and neglect, including death, arising from schools’ use of restraint and seclusion techniques on disruptive students. On July 3, 2015, a new Arizona law that addresses schools’ use of restraint and seclusion techniques became effective. The statute, A.R.S. § 15-105, breaks new ground in Arizona, which previously had no law on the subject. This development is important news for charter schools, school districts, and private schools – all of which now have guidelines for the use of these techniques and requirements for implementing policy, training, and parental notification.

What are restraint and seclusion techniques? Generally, “restraint” is anything that keeps a student from moving, and “seclusion” is a method that isolates the student and prevents the student from leaving. Nationally, students with disabilities are disproportionately subjected to these techniques, and Arizona is no exception. In 2014 the U.S. Department of Education found that of all students who are restrained, 77% of them were disabled receiving services under the IDEA.

The new state law defines “restraint” as “any method or device that immobilizes or reduces the ability of a pupil to move the pupil’s torso, arms, legs or head freely, including physical force or mechanical devices.” A.R.S. § 15-105(G)(1). There are important exceptions to this definition, including temporarily touching a student on the arm, shoulder, or back for calming, comforting, instructional, or safety reasons; where trained school personnel or the student use approved methods or devices for therapeutic or safety purposes; or to remove a weapon from the student or keep the student from committing an assault. “Seclusion” is defined as the “involuntary confinement of a pupil alone in a room from which egress is prevented.” A.R.S. § 15-105(G)(3). It does not include voluntary behavior management techniques, such as timeouts, as part of a student’s individualized behavior or education plan.¹

When and how can a school use these techniques? In order to use restraint or seclusion under the new statute, a school must determine that a student’s behavior poses imminent danger of bodily harm to him or herself or others, and that less restrictive interventions appear insufficient to lessen this danger. A.R.S. § 15-105(A).

¹ The new law does not affect A.R.S. §15-843, which governs school districts’ policies on confinement for disciplinary purposes. Discipline-based confinement is different from restraint and seclusion under A.R.S. § 15-105.

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Once a school has made this determination, it can only deploy the appropriate technique by personnel specifically trained in the use of safe restraint and seclusion techniques (absent an emergency that makes it impossible to have trained staff deploy the technique). Additionally, the school must continuously monitor the student during the use of the technique and must end the restraint or seclusion as soon as the imminent danger ends. A.R.S. § 15-105(B). Likely because of the national cases involving restraint-related injury and death, Arizona was specific in prohibiting any technique that restricts a student's ability to breathe or that is disproportionate to the student's age and physical condition. A.R.S. § 15-105(B)(4),(5).

What is the necessary follow-up after the school uses restraint or seclusion? Unless prevented by "circumstances," a school must make written or verbal contact with a student's parent or guardian on the same day that a restraint or seclusion technique is used on the student, but in no event can the school wait more than 24 hours after the incident to inform the parent or guardian. A.R.S. § 15-105(D). Also, within a reasonable time after the incident, the school must provide written documentation to the parent or guardian that includes the type of restraint or seclusion technique that was used and for how long, specific information about the behavior leading up to the technique, and information about any "persons, locations or activities that may have triggered the behavior." *Id.* Finally, if there has been repeated use of these techniques during a school year, the school must analyze how future incidents may be avoided and consider whether the student needs a functional behavioral assessment. *Id.*

What does this new law mean for my school? The new law applies equally to all charter schools, school districts, and private schools and impacts schools' policies and teacher/staff training.

- First, your school must now adopt reporting and documentation policies to follow in the event of a restraint or seclusion. A.R.S. § 15-105(D). Your school may include, but is not required to include, policies and procedures concerning the use of restraint or seclusion techniques in safety or crisis intervention plans, but only if the policies are consistently applied and not student-specific. A.R.S. § 15-105(C).
- Second, you must now have staff trained on how to safely restrain or seclude a student. In addition, your school should consider training staff on less invasive intervention techniques so that behavioral issues can be addressed without rising to the level of restraint or seclusion.

If you have questions about restraint or seclusion trainings, policies, or best practices, we are here to help you!