

E 'Specially' DLS

An Email Update from the Division of Learning Services
To Directors of Special Education
July 26, 2011

Restraint and Seclusion

KDE recently met with Protection and Advocacy (P&A) concerning an increase in the restraint and seclusion of students with disabilities. KDE is extremely concerned by P&A's reports of:

- A student being nearly asphyxiated while being restrained
- A student vomiting from panic attacks, while spending most of an academic year confined to a closet, with no ventilation or outside source of light,
- Instances of restraint and seclusion resulting in the deaths of children in Georgia, Michigan, Texas and Wisconsin,
- An overall increase over the past three years in inappropriate restraint and seclusion of students with disabilities

These situations are alarming to KDE. We are also gravely concerned by P&A's report that several Kentucky districts cite the lack of state laws or regulations on restraint and seclusion to justify cases of restraint and seclusion misuse.

Although the Division of Learning Services (DLS) has not yet received formal complaints related to the conduct of the two districts noted above, we have investigated situations involving restraint and seclusion twice during the past five months. **DLS has used the IDEA formal complaint process to cite a district for a denial of FAPE due to use of a dangerous restraint. DLS has also ordered a district to cease and desist using a seclusion room until such time as DLS approves district policies for using the room.**

KDE will soon be reissuing guidance on **Effective Use of Time-Out**, found at:

<http://www.state.ky.us/agencies/behave/bi/to.pdf> KDE is also in the process of examining additional data and other information to determine the extent of the problem.

IDEA does not prohibit the use of restraint or seclusion. However, KDE is giving notice that districts risk being cited for IDEA violations, should DLS determine inappropriate use of restraint and seclusion during a formal complaint investigation. Findings of noncompliance of a student's right to FAPE and a student's right to be educated in the Least Restrictive Environment (LRE) are areas in which districts may be cited, should the facts indicate the law has been violated.

Dr. Holliday has indicated he will ask the Kentucky Board of Education to address inappropriate restraint and seclusion of **all** students, through the Board's specific authority to promulgate regulations related to the health and safety of Kentucky's students. The effort will coincide with the recent directive from the federal Department of Education, urging states to adopt laws in this area.

KDE has long offered technical assistance and support to assist districts in appropriately addressing behavioral challenges of students with disabilities. KDE has done this through the extensive funding of technical assistance projects, the provision of state-wide training and the development of tools and materials for use by classroom teachers.

Districts must no longer risk emotional and physical harm and even the possibility of death to students who are subjected to dangerous restraints and inappropriate seclusion. Because of these latest developments across the state, KDE is no longer only asking districts to comply with our guidance on restraints and seclusion, but are now forced to require districts' compliance with these standards through the enforcement mechanisms in IDEA, as well as with anticipated promulgation of regulations protecting all students.