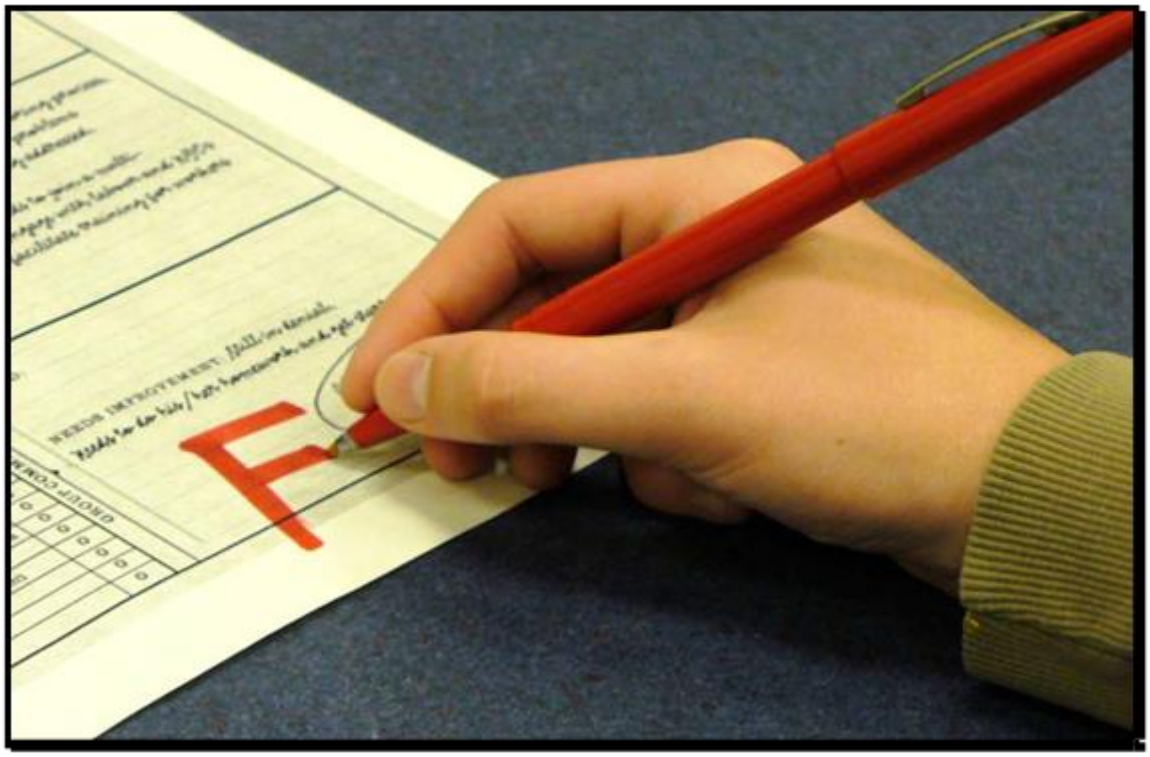
Disability Rights California

California's Protection & Advocacy System

Restraint & Seclusion in California Schools:



A Failing Grade

Disability Rights California
1330 Broadway, Suite 500
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Note: When this report was originally published, we were known as Protection & Advocacy, Inc. (PAI). In October 2008, we changed our name from PAI to Disability Rights California.

Restraint & Seclusion in California Schools:

A failing grade

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INTRODUCTION

Protection and Advocacy, Inc. (PAI) is an independent, nonprofit agency responsible for ensuring the rights of people with disabilities are protected and advanced. Established in 1978, PAI is funded through a series of federal laws enacted after horrific abuse and neglect was revealed at a state institution for individuals with developmental disabilities in New York. Congress and the State of California have granted PAI the unique authority to investigate allegations of abuse or neglect involving children, youth and adults with disabilities, monitor a facility or program's compliance with respect to the rights and safety of people who receive their services, and initiate systemic reform to prevent similar egregious incidents from occurring.

For many years, PAI heard anecdotal reports of excessive and inappropriate restraint and seclusion practices in schools but had not received any specific complaints. In the spring and summer of 2006, PAI received eight complaints of abusive restraint and seclusion of elementary, middle and high school students in California schools and promptly initiated in depth investigations into each.

PAI's year-long investigations included extensive review of records, on-site inspections, victim and witness interviews, consultation with experts in education, and restraint and seclusion, meeting with key stakeholders, and thoughtful legal analysis. These investigations revealed the failure of school personnel to comply with existing regulations, as well as gaps in existing law designed to provide protections and safeguards for students subjected to restraint and seclusion. In recognition of the serious risks associated with the use of restraint and seclusion, state and federal authorities and others have imposed significant restrictions on its use and required extensive review and reporting requirements in most settings. Schools and education laws and regulations have not kept pace with these reform initiatives.

Restraint and seclusion are emergency interventions employed to protect an individual from imminent serious physical harm. Restraint is any manual method or mechanical device that restricts the individual's freedom of movement or normal access to one's body. Seclusion is the involuntary confinement or isolation of a person alone in a room or an area from which the person is physically prevented from leaving. Restraint and seclusion are dangerous and traumatic events that may cause serious physical and psychological harm – even death.

PAI issues this report to ensure that the same level of protections are provided to children in school settings who are subjected to behavioral restraint and seclusion as guaranteed in most other environments and that such incidents receive the same level of scrutiny and oversight by all responsible entities. This includes:

- Defining restraint and seclusion consistent with state and federal law in other settings;

- Prohibiting the use of seclusion, while permitting limited and planned use of supervised time-out;

- Strictly limiting the use of behavioral restraint to the most dire circumstances, only for as long as absolutely necessary, and only if adequate safeguards can be instituted to minimize possible injury or trauma;

- Ensuring that schools comply with current state laws and regulations limiting the use of emergency interventions, including restraint and seclusion, and promptly report its use to parents, school administrators and the California Department of Education;

- Ensuring that school personnel proactively address serious student behavioral problems through timely and thorough individual functional analysis assessments and positive behavioral intervention planning;

- Encouraging heightened scrutiny of emergency interventions by schools, Special Education Local Planning Areas, and the California Department of Education; and

- Enhancing data collection regarding emergency interventions, including seclusion, restraint, unplanned time-out, and extended time-out.

Pseudonyms have been used throughout this report for all the names of individuals and school districts described in the cases.

EXECUTIVE SUMMARY

In the past year, PAI has conducted in-depth investigations into allegations of abusive restraint and seclusion practices involving seven students in five public schools and one non-public school. These investigations revealed both the failure of school personnel to comply with existing regulations and the failure of current law to sufficiently regulate the use of these dangerous practices. School personnel applied restraint and seclusion techniques that are expressly prohibited and employed emergency interventions in situations that did not pose an imminent risk of harm.

Restraint and seclusion are dangerous and traumatic events. Manual and mechanical restraints, even when applied correctly, have been associated with grave physical conditions, including asphyxiation, broken bones, dehydration, oxygen deprivation to the brain and other vital organs, and death. Seclusion and restraint can cause lasting, severe psychological trauma from the experience of being seized violently and isolated. Studies show that children are subject to restraint and seclusion at higher rates than adults and are at higher risk of associated injuries and death.

In emergencies, school personnel are permitted to act to control a student's behavior posing a clear and present danger of serious physical harm to the student or others, and which cannot be immediately prevented by a less restrictive response. Such interventions may include temporary physical restraint and/or unlocked seclusion. For students who regularly or predictably demonstrate serious behavioral problems in the classroom, schools may not default to these emergency interventions but must proactively evaluate the underlying cause of the student's behavior and develop a plan to intervene positively to prevent it from occurring.

Examples of Prohibited Techniques: One 10 year old boy with significant physical and cognitive disabilities was bound to his wheelchair and left on the school van on two separate days, at least once without any adult supervision. One school built a locked seclusion room and routinely locked an eight year old boy with psychiatric and developmental disabilities in the room when he was non-compliant with staff instruction. Other children were dragged by their teachers into seclusion rooms or areas which were then barricaded to prevent their exit. Students at one middle school were secluded every day, at times for the entire school day, for not completing work assignments and disobeying adult instruction. Teachers and aides used unapproved and dangerous restraint techniques. Several of the

students sustained physical injuries stemming from improper restraint techniques. Others were psychologically traumatized by incidents of seclusion.

Restraint and Seclusion Became Routine: Each of the students in the cases investigated had a history of serious behavior problems in school. Yet, school personnel implemented emergency interventions, including restraint and seclusion, in lieu of developing or modifying individualized positive behavior plans based upon a thorough assessment of the student. School personnel also did not evaluate the students' problem behavior and failed to develop or revise individualized positive behavior plans. Instead, schools frequently used seclusion or physical restraint as the primary means of intervening with the children. As these events occurred repeatedly over time, restraint and seclusion became routine classroom events. None of the events were reported as required by law, including notifying the students' parents or legal guardians.

Minimum Standards: PAI releases this report to reinforce compliance with current regulatory requirements and to challenge schools and the education system to bring standards regarding behavioral restraint and seclusion of students into line with current practices in all other settings. There are strict guidelines limiting the use of restraint and seclusion to extreme situations where there is an imminent risk of serious physical harm to an individual and only for the duration and to the extent necessary to protect the individual. Only staff who are currently and regularly trained in restraint techniques may apply them. Every restraint or seclusion event prompts rigorous scrutiny of events leading up to the incident, and details are collected, reported and reviewed in the aggregate to identify trends and opportunities to avoid its use. Schools must be held to these same standards.

Reducing Restraint and Seclusion as a Top Priority: In many health care and community settings, awareness about the risks of restraint and seclusion have prompted reform initiatives to eliminate their use. Given that these techniques are the same as those used in schools and given the enhanced risk of injury and death when used with children, the same restrictions and safeguards should apply. Schools must bring their standards regarding restraint and seclusion up to the minimum standards in other settings. Educators, parents, and others must ensure that the use of restraint and seclusion is scrutinized and limited to only the most imminently dangerous behaviors. Ultimately, schools and the California Department of Education must make reducing and, eventually, eliminating restraint and seclusion a top priority, consistent with initiatives in all other settings where used.

A. Rural School District in Northeastern California

1. Aaron Little

During the 2005-2006 school year, Aaron Little, an eight-year-old boy, attended a special day classroom in his elementary school, with a portion of each day with an aide in a regular education classroom. He has been diagnosed with attention deficit hyperactivity disorder (ADHD) and mild mental retardation.

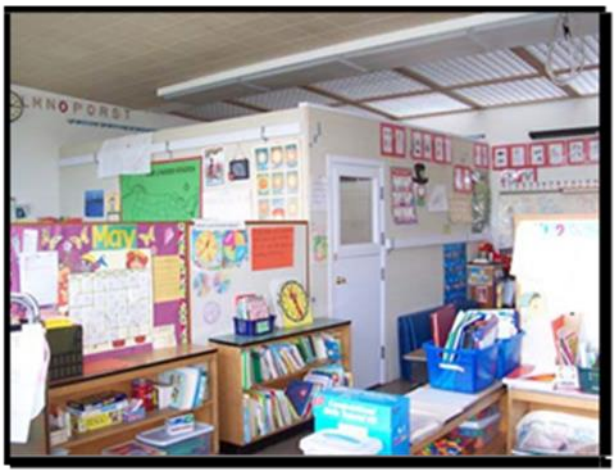
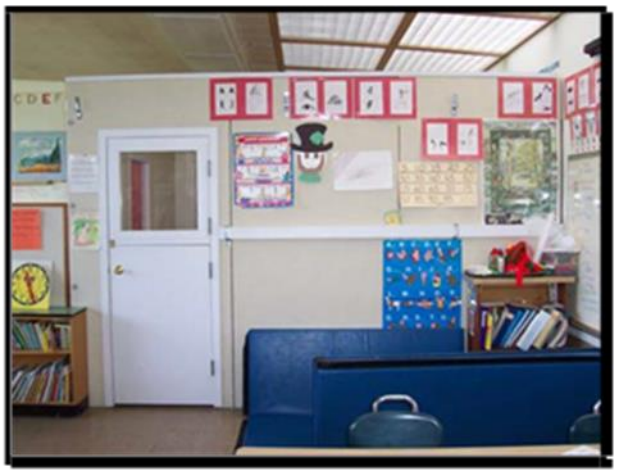
A behavioral intervention plan[1] (BIP) with a reinforcement system was developed for Aaron in the 2003-2004 school year. This plan lacked several of the regulatory requirements of a BIP. Furthermore, Aaron's educational records lacked a functional analysis assessment (FAA)[2] supporting the BIP.

Based upon the recommendation of the school's behavior specialist, in January 2005, the school installed a locked seclusion room to be used when Aaron was "noncompliant, aggressive or disruptive." This not only violates state law, which expressly prohibits locked seclusion, but is inconsistent with the community standard in other settings, which prohibits the planned use of locked seclusion.

Contained within the California Department of Education (CDE) investigation file, there is a draft BIP, dated November 2004, which does not appear in Aaron's education records. While the use of a "designated quiet area" is specified in this draft BIP, it does not address the use of locked seclusion.

[1] A behavioral intervention plan (BIP) is a written document that is developed when a student exhibits a serious behavior problem that significantly interferes with the implementation of the goals and objectives of the student's Individualized Education Program (IEP). Cal. Code Regs. tit. 5, § 3001(f). The plan must include a summary of relevant information gathered from a functional analysis assessment, an objective and measurable description of the target behaviors, individual goals and objectives, and a detailed description of behavioral interventions, among other requirements. *Id.*

[2] A functional analysis assessment (FAA) is a detailed, individual assessment of the student to determine the function the behavior serves. Cal. Code Regs. tit. 5, § 3052(b). A FAA may only be conducted by, or under the supervision of, a person with training in behavior analysis with an emphasis on positive behavioral interventions. *Id.* A FAA occurs after the IEP team finds that instructional/behavioral approaches in the student's IEP have been ineffective. *Id.* A FAA is the basis of a behavioral support plan. Cal. Code Regs. tit. 5, § 3052(a)(3).

Exterior of locked seclusion room from inside classroom.


Interior of locked seclusion room.

The seclusion room (approximately eight by eight feet) was built in a corner of Aaron's special day classroom. The walls to the room stopped several feet from the ceiling. There was no carpeting on the floor or padding on the walls. The door to the room had a window and could be locked from the outside. When locked, the door could not be opened from the inside. When PAI investigators inspected the room in May 2006, it contained several chairs, a small desk, and a thin mattress in the corner.

Aaron was repeatedly locked in the seclusion room alone. Although Aaron was known to be physically aggressive with staff, the evidence did not support that this behavior posed an imminent risk of serious physical harm. When he was placed in the room, Aaron would become upset and stand on the handle of the door and attempt to scale the walls. He would also throw himself against the walls. The dates and frequency of seclusion are not documented in Aaron's school records but, according to a witness report, occurred approximately 15 times during the school year. A log from the school contained in the CDE investigation file documents Aaron being placed in the room 31 times.

Aaron's parents were aware that the school built the seclusion room, believing it would be used only when Aaron was a physical danger to himself or staff. Because the school was recommending this intervention, Aaron's parents felt that such an intervention was necessary and permissible. Until another parent reported witnessing Aaron attempting to get out of the locked room, his mother was unaware that the door was lockable or that Aaron was ever locked alone inside.

Over the course of time, Aaron's parents came to suspect he was being secluded for problem behaviors that did not pose a risk of physical harm. According to Aaron's mother:

> "….Over the course of several years or so, I just felt [that the use of the seclusion room] has been abused. I just feel that now he's being put in there for anything. He's put in there for throwing a pencil on the floor. He takes his shoes off, he gets put in the room. And I just feel it's not what it was intended for. It specifically says in his IEP what it was intended for and now they're using it [for] anything he does that is disruptive behavior and he gets put in the room."

There were no behavioral emergency reports[3] in his file documenting when Aaron was secluded, although school personnel do not dispute that locked seclusion was used. Despite repeated seclusion events, from November 2004 until PAI's investigation in the spring of 2006, there is no record of the Individualized Education Program (IEP) team discussing whether Aaron's behavior warranted an FAA or revising the BIP. Despite school and district personnel meeting regularly

[3] By regulation, a behavioral emergency report shall immediately be completed and maintained in the student's file. Cal. Code Regs. tit. 5, § 3052(i)(5).

with Aaron's parents regarding Aaron's problem behavior, there is no notation in the record of the team discussing any restraint or seclusion incident.[4]

In April 2006, a complaint was filed with the CDE, alleging that the BIP from November 2004 was not being followed by the school district and that instead, Aaron was being frequently placed in locked seclusion by untrained staff using physical restraints. This complaint was investigated by the CDE in conjunction with the following two cases. Despite the serious allegation of locked seclusion, the CDE did not visit the school until September 2006 and never interviewed Aaron. The CDE "deleted" the allegation addressing locked seclusion and excessive and inappropriate restraint, "because the issues… were addressed by PAI." A second allegation was added by the CDE, focusing on the district's failure to implement Aaron's IEP. The district was found out of compliance and was required to take corrective action, namely reviewing and revising Aaron's IEP to address the use of time-out and physical restraints, and providing staff training on the development and use of positive behavior support plans and time-outs. See page 14 for the further details regarding the outcome of PAI's and the CDE's investigations into this complaint.

1. Brian Richards

During the 2005-2006 school year, Brian Richards was 10 years old and attending the same special day class as Aaron above. Since he was first enrolled in school, Brian was identified as having multiple disabilities. He is nonverbal, has moderate mental retardation, and uses a wheelchair for mobility. At times, Brian displays self-injurious behaviors, including slapping his face and hitting himself.

At two IEP team meetings held in September 2005, the school district agreed to provide Brian with van transportation to and from his home and reviewed "restraint options to use in the van." Brian's mother agreed to help get Brian on and off the van both at home and at school. In October 2005, the district

[4] Anytime a behavioral emergency report is written regarding a student who does not have a BIP, the school administrator shall, within two (2) days, schedule an IEP team meeting to review the emergency report, to determine the necessity for a FAA, and to determine the necessity for an interim BIPs. The IEP team shall document the reasons for not conducting an assessment and/or not developing an interim plan. Cal. Code Regs. tit. 5, § 3051(i)(7). Anytime a behavior emergency report is written regarding a student who has a BIP, any incident involving a previously unseen serious behavior problem or where a previously designed intervention is not effective should be referred to the IEP team to review and determine if the incident constitutes a need to modify the plan. Cal. Code Regs. tit. 5, § 3051(i)(8).

behaviorist conducted an FAA of Brian and developed a "positive behavior support plan" to address Brian's problem behaviors, namely noncompliance, tantrums, and physical aggression. The school's behavioral consultant recommended strategies for intervention to avoid Brian's problem behaviors, none of which involved the use of restraints.

Mid-day one cold, damp day in late March 2006, Brian's mother arrived at school and saw Brian seated in his wheelchair in the school van in the parking lot. Brian's wrists were tied to the arms of his wheelchair with components removed from the safety vest purchased for Brian to use during transport on the van. His legs were bound together at the ankles with a nylon Velcro strap. California regulations expressly prohibit mechanically restraining all four limbs simultaneously.[5] An aide sitting outside the van, reading a book, reportedly told Brian's mother, "I'm not allowed to say anything, but he hasn't had any food or anything to drink all day." Brian's mother removed him from the van and took him to his classroom.

On another cold, damp day later that month, Brian's mother again arrived at school close to noon and found Brian sitting alone in the van. Although Brian was not restrained to his wheelchair, the door to the van was locked and there were no school personnel within sight. Due to his disability, Brian was unable to leave the van without assistance.

On one occasion, Brian's mother reported seeing Brian restrained to his wheelchair in the classroom. Although his hands were free, his legs were bound together with a Velcro strap. There were no provisions for the use of restraints with Brian, either as a transportation safety device or a postural support in the classroom, in his behavior plan. This is not a restraint technique approved for use by this school's Special Education Local Planning Area (SELPA). None of the restraint incidents were reported as emergency interventions.

In late March 2006, an IEP meeting was held to address "parental consent to use mechanical restraint" on Brian to transport him to school. It was agreed that the only restraint to be used was for transportation to and from the school on the van. This was then added to Brian's behavior plan. Later, the IEP team required Brian's mother to restrain Brian physically when necessary to get him on and off the van. If she was unavailable, Brian could not attend school.

[5] Cal. Code Regs. tit. 5, § 3052(i)(4)(B) and (l)(5).

In April 2006, a complaint was filed with the CDE, alleging that Brian had been restrained with mechanical restraints on his arms and legs while in his wheelchair and left in the school van for several days. This complaint was investigated by the CDE at the same time as Aaron's complaint and the case below. Despite these serious allegations, CDE did not visit the school until September 2006 and never interviewed Brian or his mother, who was an eyewitness. The CDE found the district in compliance with "no evidence to support a finding that the student was left on the bus unattended for the three days alleged in the compliance complaint." No corrective action was required. See page 14 for the further details regarding the outcome of PAI's and the CDE's investigations into this complaint.

2. Eric Roe

In September 2005, Eric Roe, a six-year-old boy, was enrolled in a regular kindergarten classroom at a different elementary school in the same school district. His teacher soon noticed that he was having academic and behavioral challenges. Eric was placed in a classroom for students with moderate to severe disabilities. In December, the IEP team requested an FAA; at that time, an interim BIP was implemented. In January 2006, a "positive behavior support plan" recommended the use of three-minute time-outs to address escalating disruptive behavior, with ignoring and physical cues (point to the tasks or places for him to go) for continued noncompliance. The team next met in early February to discuss the FAA, which identified "disruption and noncompliance" as Eric's target behaviors. The team agreed to accept the behavior support plan.

In the spring of 2006, several school personnel saw Eric's teacher physically restraining Eric numerous times outside the classroom in a basket hold.[6] Eric told PAI investigators that his teacher restrained him when he did not listen to her. These restraint events lasted up to 20 minutes. One special education aide described the restraint she observed:

> "[The teacher] would grab his arms and then cross them, and hold them like he was in a tight hug to himself, and she was holding onto his arms…. [L]ike in a straight jacket position.… And she'd be standing there holding him for however long it took for him to stop fighting. … He would be saying,

[6] A basket hold restraint involves an adult holding the child from behind by the wrists with the child's arms crossed in front of the child, often in a seated position. Basket hold restraints are not endorsed by the behavioral restraint training program used by the Special Education Local Planning Area (SELPA).

> *'You're hurting me, you're hurting me. You're hurting my wrists.' And she's like, 'I'm not hurting you. You're hurting yourself because you're pulling. If you stop pulling, you're not gonna get hurt.'* Other teachers would come out and look … he was making so much fuss that it would disrupt other classrooms down the hall."

Other teachers and parents complained that Eric's teacher was yelling at students and laying hands on their children in a variety of ways that were "inappropriate." She was seen holding a first grade girl by the shoulders, "shaking her very viciously," and yelling at her. In another incident, Eric's teacher reportedly grabbed another boy by the arm and "started yelling … like a drill sergeant, *'Why are you doing this?'…* She just goes off like in another world. She goes into this rage and then…she stopped and backed off and said, *'[I] hope I didn't do anything wrong.'"*

An instructional aide was also observed on several occasions "dragging" Eric by the wrists when he refused to walk down the hall and then dropped to the floor, "going limp." This is not a restraint or escort technique approved for use by this school's SELPA or consistent with the school's restraint training program. PAI does not believe this aide had completed any restraint training.

Eric's foster mother learned of the restraint events when Eric complained to her about them. Aside from one event, she was not informed by the school about Eric being restrained or requiring emergency behavioral interventions.[7] According to Eric's foster mother, when she asked the school about what happened on the one occasion when she was notified, "They dismissed everything. I was waiting for a write-up of some kind and I asked about it and they said it wasn't necessary…." There were no behavioral emergency reports in Eric's educational records. The school also failed to convene the IEP team following each incident of restraint, or to subsequently develop a BIP, or review or revised Eric's behavioral support plan.

In April 2006, a complaint was filed with the CDE, alleging that Eric had been restrained by the special day class teacher and that there was no provision in his IEP for restraints. The complaint also described a "paraprofessional" who had been seen dragging Eric by his wrists. This complaint was investigated by the CDE at the same time as Aaron and Brian's complaints. Rather than addressing the allegations of excessive and inappropriate restraint, the CDE focused on whether

[7] Parents shall be notified within one school day whenever an emergency intervention is used or serious property damage occurs. Cal. Code Regs. tit. 5, § 3052(i)(5).

the district failed to implement Eric's February 2006 IEP. The CDE found the district had provided the required 1:1 instructional aide time but failed to implement his behavior plan by extending time-outs for more than the three minutes specified in his behavior plan. The district was required to view and revise Eric's IEP to address the use of time-out and physical restraints, if needed, and provide staff training on the development and use of positive behavior support plans and time-outs. See page 14 for the further details regarding the outcome of PAI's and the CDE's investigations into this complaint.

3. Sean Thompson

In the spring of 2006, Sean Thompson was an 11 year old in the fifth grade at a third elementary school within the same school district. Several years earlier, Sean had been identified by the school district as having physical disabilities necessitating accommodations, including placement in a resource classroom at the school. In February 2004, after finding that "behavioral and academic issues continue to place Sean at risk of failure," the IEP team referred him to a program specialist for a behavioral evaluation. That referral was not completed for nearly one year. California law requires that, following a written request, an assessment must be completed and the IEP developed within 60 calendar days.[8] In the meantime, Sean continued to show progressive problem classroom behavior, primarily refusing work assignments and not complying with adult direction.

In late 2004 and early 2005, Sean was secluded on several occasions by his classroom teacher in a corridor between two classrooms.

[8] Educ. Code § 56344.

Corridor between classrooms.

The corridor was approximately 10 to 12 feet long and about 4 to 5 feet wide with a door at either end into a classroom. There were doors off the corridor to two bathrooms and a utility closet. There was a window in the door from Sean's classroom into the corridor, but it was entirely obstructed with paper. When secluded in the corridor, Sean could not see into the classroom and no adult could observe Sean in the corridor.

Although there was no lock on the door between the hallway and either classroom, Sean's teacher would slide a classroom table in front of the door to barricade Sean's exit. At times, a classroom aide would sit on the table to further secure the door closed.

Sean did not attempt to leave the hallway, believing that he had been locked or barricaded in. According to Sean, "They locked me in there" and "They put a table in front of it so I could not get out." When asked if he ever attempted to leave through the door into the other classroom, Sean replied "No, 'cause it was locked."

Sean was allowed to return to his classroom when he knocked on the door and told the teacher he had completed his work.

Sean said he did not recall exactly how many times he was secluded in the corridor, but said that he was put in there whenever he did not follow directions. Although there are no notations regarding the seclusion incidents, a witness verified that Sean was secluded for noncompliance with adult instruction. School records fail to document that Sean was ever violent or aggressive. There are no

behavioral emergency reports in Sean's educational records or other notations documenting Sean's classroom behavior and his subsequent placement in the barricaded hallway.

Sean also described manual restraints being used in addition to seclusion. On one occasion, Sean recalled that his teacher, "picked me up by my arms and he threw me. [My teacher] picked me up in the air and threw me down" because Sean refused to talk on the telephone to his mother.

According to Sean's mother, Mrs. Thompson, Sean would get angry when he was placed in the corridor. He would kick and throw his chair at the door. Mrs. Thompson complained to the principal about the seclusion incidents, but he reportedly did not intervene. Mrs. Thompson debated removing Sean and home schooling him.

Despite repeated seclusion incidents and the IEP team's recommendation for a behavioral evaluation nearly one year earlier (in February 2004), no FAA or BIP was ever conducted. In mid-December, a behavioral consultant was retained to conduct a "full classroom analysis," seemingly for the entire classroom. In late January 2005, a token system was implemented for all students. School records indicate that the generic token system was considered the "positive behavior support plan" for Sean, although it was not based on an FAA and lacked sufficient specificity to qualify as a BIP. Less than one month later, Sean was found not to have a qualifying disability and was returned to a general education classroom with support of the behaviorist.

In April 2006, a complaint was filed with the CDE, alleging that Sean had been physically restrained and placed in locked seclusion. It was also alleged that the school had conducted a classroom assessment instead of a FAA specific to Sean as required by the IEP team in December 2004. The CDE reported that they did not investigate Sean's complaint because it had been withdrawn and Sean was no longer a special education student protected by the Hughes Bill.

2. Outcome

Complaints were filed with the CDE in April 2006. The students remained in their respective school settings until the end of the school year in June. Despite these serious allegations of excessive and inappropriate restraint and locked seclusion, the CDE did not visit the school sites until September 2006 or interview key

witnesses, including the students and some of their parents. The CDE investigator told PAI in July that she had promptly discussed the complaints with the attorney representing the school district and decided not to visit the county until school was back in session in the fall.

In April 2006, PAI initiated its investigation into these allegations. PAI contacted the school district, alerting them to our concerns about excessive and illegal restraint and seclusion. In June 2006, PAI visited the schools, interviewed witnesses, and verified the students' allegations of excessive and illegal restraint and seclusion. In August 2006, the school district met with PAI concerning all four students. At that meeting, the school district agreed to remove the door to the seclusion room and terminate the use of mechanical restraints on all students. They assured PAI that all students placed in time-out would be provided adequate adult supervision. The district reported retraining all relevant district special education staff in the SELPA approved emergency interventions and establishing a quality assurance system to track the use of behavioral emergency interventions in the district.

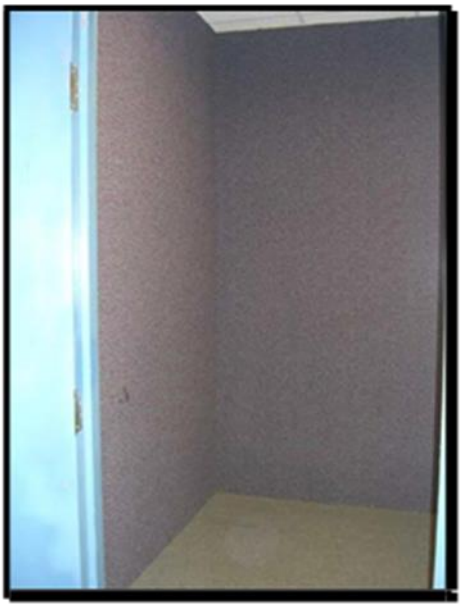
After the CDE concluded its investigations in late September and early October 2006, it found that the school district was not in compliance in two of the four cases, Eric and Aaron. In those cases, the CDE found that the schools had failed to implement students' behavior plans as written and used time-out and physical restraints for behaviors not specified therein. In Brian's case, the CDE found the school in compliance, in part relying upon an IEP drafted after the incidents occurred. The CDE reported that it did not investigate Sean's complaint because the complaint had been withdrawn and Sean was no longer a special education student protected by the Hughes Bill.

The CDE "deleted" the portions of complaints that specifically addressed illegal restraint and seclusion (i.e., "failure to prohibit behavioral interventions that may cause pain or trauma"), deferring to PAI's investigations and the corrective action that PAI achieved in the interim. The CDE failed to make any specific findings regarding the illegal restraint and seclusion practices.

B. Bay Area School District

In early 2006, PAI received information about excessive and inappropriate restraint and seclusion of students attending a special day class for emotionally disturbed children at the local middle school. The class had approximately eight students, one teacher, and two aides. The classroom was equipped with a seclusion room.

Exterior of seclusion room from inside classroom.



Interior of seclusion room.

Chair tethered to exterior of seclusion room door.

The seclusion room was approximately 8 to 10 feet across with four carpeted walls reaching from floor to ceiling. At the time of PAI's unannounced visit, the room was empty of furnishings. There was one small window in the back of the room facing an exterior classroom wall. The door of the seclusion room was solid, without a doorknob or lock, and swung open into the classroom.

To prevent students from leaving the seclusion room, at times, classroom personnel held the door closed. A handle on the exterior of the door was moved higher up the door to prevent staff from being hit by the handle as students attempted to kick the

door open. According to school personnel, a classroom chair was also placed in front of the door to alert staff when the door was opened. One student reported that "the chair was jammed up against the door to keep the kids from getting out." The chair was tethered to the door to prevent it from flying into the classroom when a student was able to force the door open.

School personnel acknowledged restraining students to control aggressive behavior, prevent property damage, or escort students into the seclusion room.

Only the classroom teacher had completed the SELPA approved restraint training program (Professional Assault Response Training 2000 or PART 2000) and his certification had expired. Neither classroom aide was trained in restraint techniques, although one participated in restraint events. PART 2000 does not teach or endorse single-person restraint techniques.

1. Jason Larsen

In February 2006, Jason Larsen was 12 years old and attending sixth grade at the middle school. Due to his history of behavioral problems in the classroom, Jason was placed in the special day class. At the time of PAI's investigation, Jason was approximately 4'9" and weighed approximately 100 lbs. Jason had been diagnosed with ADHD and posttraumatic stress disorder. His school records show behavior problems beginning in second grade.

Since his enrollment in late August 2005, Jason was repeatedly manually restrained and forcibly secluded. Jason described his teacher holding his legs while one of the classroom aides grabbed him by the arms in a basket hold and then dragged or carried him to the seclusion room. On other occasions, Jason's teacher used a prone containment (holding Jason face down on the floor, straddling Jason at his hips, and holding Jason's hands behind his back) or wall containment (restraining Jason standing with his face pressed against the wall with an aide holding his legs). These techniques are inconsistent with PART 2000 training. Furthermore, the teacher's PART training had expired; there were no records of the aide receiving any restraint training.

Beginning the first week of September 2005 until PAI's involvement in early February 2006, Jason was ordered into the seclusion room nearly every day for approximately three hours at a time, although some seclusion events lasted the entire school day. Manual restraint likely preceded many of these events as Jason would not go into the seclusion room voluntarily. Classroom personnel held the

door shut or placed a chair in front of the door to prevent Jason from leaving the room or kicking the door open. Notations by classroom personnel on Jason's daily progress sheets confirm regular use of the "time-out" room, including incidents lasting the entire school day. For a period of time, the ceiling light in the seclusion room was burned out, leaving Jason secluded for hours in the dark. Jason said he did not tell his grandmother (i.e., his legal guardian) about the restraint and seclusion events because he trusted the teaching staff and believed that restraint and seclusion were just the way things were done at the school.

According to Jason and his grandmother, Jason was restrained or secluded for not following adult direction or instruction, inappropriate language, and not obeying classroom rules. Notations on classroom records confirm that Jason's "time-out" followed incidents of inappropriate language, profanity, and refusal to complete work assignments. There is no evidence in the records that Jason's behavior posed an imminent risk of serious physical harm.

According to Jason's grandmother, she was not notified of many of the restraint or seclusion incidents, although she walked in on several, and she never received any behavioral emergency reports. Although the teacher acknowledged restraining Jason, none of these restraint events were recorded in Jason's school file or in any manner by school personnel. School and district personnel met regularly with Jason's grandmother about his problem behavior but, until PAI's involvement, there was no notation in the record of the IEP team discussing any restraint or seclusion incident or whether Jason's behavior warranted an FAA or BIP. With PAI's assistance, Jason received an FAA in March 2006.

2. Jonathon White

In February 2006, Jonathon White was 11 years old and attending sixth grade at the middle school. Jonathon had a long history of behavioral problems in the classroom, dating back to first grade. Jonathon was determined to be eligible for special education classes, with both emotional and learning disabilities. When Jonathon enrolled in August 2005, he was placed in the same special day class as Jason. Jonathon had been diagnosed with oppositional defiant disorder, rule-out ADHD, and dysthymia.

According to Jonathon, he was sent to the seclusion room involuntarily almost daily, often twice a day, and, at times, for almost the entire school day. The reasons for the seclusion primarily stemmed from Jonathon's noncompliance with work assignments and disobedience with adult instruction.

In early October 2005, Jonathon's arm was injured when his teacher dragged him to the seclusion room. Jonathon had been disobedient and refused to complete his assignment. His teacher instructed Jonathon to go to the seclusion room to complete his work. When Jonathon refused, the teacher grabbed Jonathon by the arm, twisted his arm up and between his shoulder blades, and forcefully led him into the seclusion room. This restraint technique is inconsistent with any approved PART 2000 technique. The seclusion room door was then closed. Jonathon's arm immediately began hurting. Jonathon reported crying in pain, but no school personnel responded. When he was released from seclusion, Jonathon told his teacher that his arm hurt. According to Jonathon, his teacher responded, "Let's just keep it between us."

The following morning, Mr. White took Jonathon to the health clinic to have his arm examined. According to the medical records, Jonathon sustained a serious sprain ("hyperpronation" of the left wrist with bruising and tenderness) consistent with a twisting injury, not a sports injury. After learning how the injury was sustained, health clinic personnel reported the incident to Child Protective Services (CPS). Jonathon was required to wear a sling and was limited in his physical activities for three months.

After the restraint incident, Mrs. White met with school personnel who suggested that Jonathon sustained the injury at football practice or another extracurricular activity, not from the restraint event. The teacher claimed that he had "gently led" Jonathon to the seclusion room. He denied dragging Jonathon by his arm.

Progress sheets completed by classroom personnel confirm that Jonathon was regularly sent to "time-out" for refusing to do sentences or schoolwork and being rude to or ignoring adults. Notations indicate the door was closed. One parent reported to Mrs. White seeing the door tied shut with a rope. Although the progress sheets do not generally indicate the duration of seclusion, on at least two occasions classroom personnel noted Jonathon remaining in "time-out" "all day" or "most of day." Jonathon did not tell his mother of many of the seclusion and restraint incidents because, like Jason, he trusted the teaching staff and believed that restraint and seclusion were approved and sanctioned practices at the school.

At first, Mrs. White was not alarmed when she learned of the seclusion room. Jonathon's previous school also had a time-out room where students went voluntarily to "chill out." It was only later when she learned that the seclusion room was used punitively and that students were forcibly dragged into seclusion

with the door held shut that she began to question its use. Mrs. White was not notified of many of the seclusion incidents involving Jonathon and never received any behavioral emergency reports.

Despite Jonathon's long history of behavioral difficulties and the repeated use of seclusion, there is no notation in the record of the team discussing any restraint or seclusion event other than the incident on October 5, 2005. No FAA or BIP was discussed until a behavioral consultation was requested by Mrs. White in mid-December 2005. In May 2006, a BIP was drafted.

3. Outcome

Immediately following PAI's visit, the school voluntarily removed the door to the seclusion room. PAI filed a complaint with the local Fire Marshal. After conducting an on-site inspection, the Fire Marshal ordered the school to either remove the carpeting covering the walls of the seclusion room or provide test results demonstrating that it met the necessary flame spread rating. The school elected to remove the seclusion room entirely.

School personnel admitted failing to report each behavioral emergency to parents and failing to complete behavioral emergency reports for any of the restraint and/or seclusion incidents occurring in the classroom, as is required by law. There are no behavioral emergency reports contained within the education records from the middle school for either of the students described above. In both cases, parents reported not being notified of restraint and seclusion incidents for months.

The following school year (2006-2007), the school district contracted with a non-public school to provide special education programming on the same site and in the same classroom. The non-public school service provider has a no-restraint policy.

Although recovered from their physical injuries, both boys and their legal guardians report lingering psychological trauma from repeated seclusion, particularly stemming from incidents when the room was without light. Jason told his grandmother that, even though the room is gone, he can still hear the crying of the children secluded there.

C. Non-Public School in Los Angeles Metropolitan Area

1. Locked Seclusion Room

In April 2006, PAI was notified that a secondary non-public school operated by a non-profit agency was inappropriately restraining and secluding students. All of

the students served by the school are “emotionally disturbed.” An informant advised PAI that one student was restrained and placed in a locked seclusion room on a number of occasions. At the time of the report, the student was no longer enrolled at the school.

Based upon this allegation, PAI visited the school and observed two seclusion rooms. The rooms were approximately 6 feet by 6 feet in diameter and had lockable doors with a small glass window at the top. Outside of each door was a red button. The school administrators explained that the door would lock when the button was depressed.

Original locked seclusion room.

Unlocked seclusion room at new campus.

PAI advised the school that the use of the locking device constituted locked seclusion and that locked seclusion was prohibited in school settings unless the school is otherwise licensed to use it. Although the school administrator believed that the locking mechanism and the manner in which it was used was appropriate under the law, they agreed not to install similar locking devices in the seclusion rooms at a new school site. During its visit to the new school site, PAI verified that the doors on the time-out rooms lack a locking mechanism and cannot be locked. Aside from removing the lock, the time-out rooms are essentially the same as those at the old school site.

D. Public Elementary School in the Inland Empire

1. Excessive and Inappropriate Physical Restraint

In the spring of 2006, PAI was contacted by the mother of a 6 year old boy regarding her son's special day class at a public elementary school in southern California. The special day class contained students from kindergarten through third grade.

According to the mother, the classroom teacher restrained children by pulling their arms around the back of a chair and holding their wrists together. This mother and other parents witnessed the teacher restraining students in this manner on several occasions. When the mother complained to the teacher about this practice, he tried to bar her from entering the classroom altogether. PAI advised the mother to file a compliance complaint with the CDE and opened an investigation to monitor the response by the CDE.

2. Outcome

The school admitted that the teacher had used restraints and that the teacher had not received any restraint training. Further, the school acknowledged not having BIPs for any of the students who were restrained.

The CDE found that the school district failed to comply with regulations pertaining to emergency interventions, including using emergency interventions in lieu of developing planned, systemic BIPs and failing to complete behavioral emergency reports as required. After the CDE investigation, the teacher and all the classroom aides received training in the SELPA's approved restraint techniques. The school assigned two psychologists to assess classroom students with challenging behaviors and to draft behavior plans for classroom students.

LITERATURE REVIEW, THE LAW, AND CURRENT POLICIES & PRACTICES

A. The Risks Associated with Behavioral Restraint and Seclusion

In the past 10 years, there has been increased recognition of the grave risks and serious trauma associated with the use of behavioral restraint[9] and seclusion[10] to both the individuals involved and personnel executing these interventions (Joint Commission Resources [JCR], 2002; Joint Commission on Accreditation of Healthcare Organizations [JC-HAS], 2007; Huckshorn, 2006). The President's New Freedom Commission on Mental Health (2003) reported that the use of behavioral restraint and seclusion poses significant risks for adults and children, including serious injury or death, retraumatizing of people with a history of trauma or abuse, loss of dignity, and other psychological harm (Commission On Mental Health [CMH], 2003). The Child Welfare League of America cautions that, "restrictive measures [behavioral restraint and seclusion] have the potential to produce serious consequences such as physical and psychological harm, loss of dignity, violation of individual rights, and even death" (Child Welfare League of America [CWLA], 2002).

Manual and mechanical restraints, even when applied correctly, have been associated with the following grave physical conditions:

- asphyxiation,
- choking,
- strangulation,
- cerebral and cerebellar oxygen deprivation (hypoxia and anoxia),
- broken bones,
- lacerations,
- abrasions,
- injury to joints and muscles,
- contusions or bruising,
- overheating, dehydration, exhaustion,

[9] For purposes of this report, behavioral restraint is defined as any manual method or physical or mechanical device, material, or equipment attached to or adjacent to the individual's body that the individual cannot easily remove that restricts freedom of movement or normal access to one's body. Health & Safety Code § 1180.1(a), (c), and (d); 42 C.F.R. § 482.13(e)(1)(i)(A).

[10] For purposes of this report, seclusion is defined as the involuntary confinement of a person alone in a room or an area from which the person is physically prevented from leaving. Health & Safety Code § 1180.1(e); 42 C.F.R. § 482.13(e)(1)(ii).

- blunt trauma to the head,
- broken neck,
- wrist and leg compression,
- dislocation of shoulder and other joints,
- hyperextension or hyperflexion of the arms,
- exacerbation of existing respiratory problems,
- decreased respiratory efficiency,
- decrease in circulation to extremities,
- deep vein thrombosis,
- pulmonary embolism,
- cardiac and/or respiratory arrest, and
- death

(Child Welfare League of America [CWLA], 2004b; Mohr, 2003; Stefan, 2002). These risks increase in individuals with preexisting medical or physical risk factors, such as obesity, respiratory and cardiac conditions, and prescribed and illegal drug or alcohol use (Stefan, 2002).

The risk of serious physical harm and death is verified in the scant available public data regarding injuries and deaths occurring during or resulting from restraint and seclusion. Since August 1999, PAI has learned of 39 deaths in California resulting from the use of seclusion and/or behavioral restraints. Since January 2004, PAI has received 104 reports of serious injuries[11] related to behavioral restraint in state-operated facilities and two reports of resident deaths. Injuries included six fractures, four joint dislocations – some requiring surgical correction – and numerous lacerations, abrasions, and bruising, particularly to the face and head.

As most facilities do not yet publicly report restraint or seclusion related deaths or injuries, as required by Health and Safety Code section 1180.3(c)(4), these are likely an under representation of the number of people who have died or been seriously injured from their use. Regardless, the public data confirms that restraint and seclusion are hazardous events that cause injury and death.

Children are subject to restraint and seclusion at higher rates than adults and are at higher risk of injuries or death (United States General Accounting Office [GAO],

[11] Serious injury is defined as any significant impairment of the physical condition as determined by qualified medical personnel, and includes, but is not limited to, burns, lacerations, bone fractures, substantial hematoma, or injuries to internal organs. Health & Safety Code § 1180.1(g).

1999; Substance Abuse and Mental Health Services Administration [SAMHSA], 2002; Child Welfare League of America [CWLA], 2004a). In the landmark 1998 Hartford Courant articles exposing the risks of restraint and seclusion, a disproportionate number of young children died (more than 26%) (SAMHSA, 2002; CWLA, 2004a; Mohr, 2003). Children struggle against physical and mechanical restraints, particularly when the situation or method of restraint is extremely unpleasant or aversive (CWLA, 2004b). During the struggle, severe injuries and death can occur when adults physically overpower a child or when a child struggles well beyond the point of physical exhaustion (CWLA, 2004b; Mohr, 2003). In a crisis situation, cognitive or learning disabilities may impair a child's ability to understand directions and are likely to compromise the child's ability to comprehend staff instructions and communicate needs (CWLA, 2004b).

Beyond physical injuries or death, behavioral restraint and seclusion can also severely traumatize individuals and result in lasting adverse psychological effects (CWLA, 2004a). The risk of trauma is greater with individuals with a history of abuse (CWLA, 2002). Individuals who have been restrained and secluded describe these events as punitive and aversive, leaving lingering psychological scars (CWLA, 2004b). Children and adolescents restrained during a psychiatric hospitalization report recurrent nightmares, intrusive thoughts, avoidance behaviors, enhanced startle response, and mistrust of mental health professionals resulting from the incidents, even years after the event (Mohr, 2003).

Restraint and seclusion may evoke feelings of guilt, humiliation, embarrassment, hopelessness, powerlessness, fear, and panic (CWLA, 2004b; Huckshorn, 2006). Restraint and seclusion compromise an individual's ability to trust and engage with others, and create a violent and coercive environment that undermines forming trusting relationships and, by extension to the education setting, learning (CWLA, 2004b).

B. Current Federal and State Laws and National Standards Governing Restraint and Seclusion Use in Health Care and Community Settings

Recognizing the serious risks associated with the use of behavioral restraint and seclusion, federal and state authorities and the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) impose significant restrictions on its use in many settings and require specialized training of staff, rigorous event review, and detailed data reporting. Behavioral restraint and seclusion may only be used in emergency situations where there is an imminent risk of physical harm to the

individual, staff, or others and less restrictive, nonphysical interventions have been determined ineffective.[12] Individuals must be released from restraint or seclusion as soon as their behavior no longer poses an imminent risk of harm.[13] Restraint and seclusion may not be used as a means of coercion, discipline, convenience, or retaliation by staff.[14]

In many settings, there must be immediate oversight of the restraint or seclusion event by a physician or an otherwise specially trained clinician. In many facilities, the clinician must physically respond and evaluate the individual face to face within one hour after the initiation of behavioral restraint or seclusion.[15] JCAHO requires the training of non-physicians to include recognizing how age, developmental considerations, history of sexual or physical abuse, and other characteristics of the individual may affect the way the individual may react to restraint and physical contact.[16]

Behavioral restraint or seclusion often requires a physician's written order.[17] In health care settings, these orders are time limited, based upon the age of the individual, generally to the following:

- 4 hours for adults;
- 2 hours for children and adolescents ages 9 to 17 years; and
- 1 hour for children under the age of 9.[18]

If the restraint or seclusion event exceeds these time limits, a new order must be obtained for continued use.

Orders for behavioral restraint and seclusion may not be written as a standing order or on an as-needed basis in anticipation of a potential event.[19] Extended use of restraint or seclusion and repeated events within 12 hours trigger ever-increasing administrative and clinical oversight.[20]

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[12] 42 C.F.R. §§ 482.13(e)(2) and (3); 42 C.F.R. § 483.356(a)(3); Health & Safety Code § 1180.1(a); Joint Commission on Healthcare Accreditation Standards [JC-HAS], PC 12.10 and 12.60 (2007).
[13] 42 C.F.R. § 482.13(e)(9); JC-HAS, PC 12.10.
[14] 42 C.F.R. §§ 482.13(e) and 483.356(a); Health & Safety Code §1180.4(k); JC-HAS, PC 12.60.
[15] 42 C.F.R. §§ 482.13(e)(12) and 483.358(f); JC-HAS, PC 12.90.
[16] JC-HAS, PC 12.30.
[17] 42 C.F.R. §§ 482.13(e)(5) and 483.358(a).
[18] 42 C.F.R. § § 482.13(e)(8)(i) and 483.358(e)(2); JC-HAS, PC 12.100.
[19] 42 C.F.R. § § 482.13(e)(6) and 483.356(a)(2); JC-HAS, PC 12.100.
[20] JC-HAS, PC 12.120.

An individual in restraint or seclusion must be carefully monitored, including continuous in-person observation or simultaneous monitoring with video and audio equipment.[21]

Only staff who receive training and demonstrate competence in the use of restraint and seclusion may participate in these interventions.[22] The training must include: assessing an individual's risk of restraint or seclusion; proper and safe seclusion and restraint application and techniques; strategies to avoid or minimize the use, including recognizing the underlying causes of threatening behavior; and alternative techniques staff may use to address threatening behavior, such as de-escalation, mediation, self-protection, and time-out.[23]

The individual and all staff involved in a restraint or seclusion event often are required to participate in a debriefing of the incident as soon as possible (no longer than 24 hours) after the individual's release.[24] Debriefing includes discussion of what led up to the event, how it could have been handled differently, whether the individual's physical well-being, psychological comfort and privacy were addressed, and whether the individual's plan for care should be modified to prevent future occurrences.[25]

Extensive documentation of each restraint or seclusion incident is required.[26] Documentation minimally includes a description of the individual's behavior and any alternative or other less restrictive interventions used before initiation of restraint or seclusion.[27]

Facilities must collect and analyze restraint and seclusion data in the aggregate to monitor its use and ensure staff compliance with applicable requirements.[28] Data elements minimally include the type of intervention (manual restraint, mechanical restraint, seclusion), duration of event, and any adverse outcome.[29]

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[21] 42 C.F.R. §§ 482.13(e)(15) and 483.364(a); Health & Safety Code §1180.4(i); JC-HAS, PC 12.140.
[22] 42 C.F.R. §§ 482.13(f)(1) and 483.376; JC-HAS, PC 12.30.
[23] 42 C.F.R. § 482.13(f)(2); Health & Safety Code §§ 1180.2(c) and 1180.3(b)(2); JC-HAS, PC 12.30.
[24] 42 C.F.R. § 483.370; Health & Safety Code §1180.5(b); JC-HAS, PC 12.160.
[25] *Id.*
[26] 42 C.F.R. §§ 482.13(e)(16) and 483.358(h); JC-HAS, PC 12.170.
[27] *Id.*
[28] Health & Safety Code §§1180.2(d)(1) and 1180.3(c)(1); JC-HAS, PC 12.180.
[29] Health & Safety Code §§1180.2(d)(3) and 1180.3(c)(4); JC-HAS, PC 12.180.

Hospitals maintaining JCAHO accreditation must develop and implement policies and procedures addressing prevention of restraint and seclusion and, when employed, guide their use, including: restrictions on their use; physician order, observation, and notification requirements; staff competence and training; nonphysical intervention techniques; criteria for release; post-restraint and seclusion practices (such as debriefing).[30]

C. Current California Law Regarding Behavioral Emergency Interventions with Students with Serious Behavior Problems

In 1990, the California legislature enacted the Hughes Bill[31], which prohibited the use of aversive[32] behavior interventions and mandated the development and implementation of positive behavior intervention plans for special education students with serious behavior problems. Prior to enactment of the Hughes Bill, there were few, if any, California laws or regulations addressing the use of behavioral interventions for special education students with behavioral difficulties or providing schools with guidance regarding how to handle students whose behavior disrupted the learning environment. Many schools reportedly relied on punishment, school exclusion, and the use of aversive behavioral interventions to address problem student behavior that interfered with classroom instruction.

Although aversives, restraint, and seclusion may reduce, or even cease, the immediate problem behavior, their long term results are dubious, in part because they fail to teach students adaptive behaviors, that is how to behave properly (Kerr, 2006; In the Name of Treatment, 2005). When teachers and staff respond to problem behavior with restraint and seclusion, students do not learn meaningful alternative ways of communicating and interacting (In the Name of Treatment, 2005). These interventions do not teach positive or desirable, self-directed behaviors that a child can maintain over time and may further exaggerate aggressive behavior as the child now also reacts to these restrictive interventions (In the Name of Treatment, 2005). Punitive methods of addressing behavioral problems create an aversive environment counterproductive to facilitating learning

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[30] JC-HAS, PC 12.190.

[31] Stats.1990, c. 959 (A.B. 2586), codified in Educ. Code §§ 56520-56524.

[32] Aversive interventions are those that people choose not to encounter, including physical or sensory intervention(s) to modify the behavior that causes or reasonably may be expected to cause significant physical harm, serious, foreseeable long term psychological impairment, or obvious repulsion on the part of observers (Kerr, 2006; In the Name of Treatment, 2005).

(Kerr, 2006). In simple terms, these punitive methods cause more problems than they solve.

Schools must respond proactively and constructively to problem student behavior through a graduated system of positive behavioral interventions and supports (PBIS). PBIS is based upon understanding why the student behaves in a certain way and what he is trying to communicate with the maladaptive behavior, and then replacing the inappropriate behavior with a suitable functionally equivalent replacement behavior. The two necessary elements are (1) conducting a functional assessment of the student's behaviors and (2) developing and revising a positive intervention plan, based upon the functional assessment, specific to each student. If the communication function of the maladaptive behavior can be understood, the student can then be taught adaptive replacement behaviors that communicate the same need or desire as previously communicated by the maladaptive behavior (Kerr, 2006).

The Hughes Bill required the CDE to promulgate regulations "governing the use of behavioral interventions with individuals with exceptional needs receiving special education and related services."[33] These regulations set forth requirements for educators to develop behavioral intervention plans (BIPs) with the focus on positive interventions, based upon functional analysis assessment (FAA) for students with serious behavior problems.[34] They limit the use of emergency interventions and specify what aversive interventions are prohibited.

According to these regulations, when a student demonstrates "unpredictable, spontaneous behavior which poses clear and present danger of serious physical harm to the student or others and which cannot be immediately prevented by a response less restrictive than the temporary application of a technique used to control the behavior," emergency interventions may be used to control the dangerous behavior.[35] A behavioral emergency is when a student demonstrates a serious behavior problem (1) not previously observed and for which there is no behavior plan, or (2) for which an existing BIP is ineffective.[36] Emergency

[33] Educ. Code § 56523(a).
[34] Code Regs. tit. 5, §§ 3052 *et seq.* Serious behavior problems are behaviors which are self-injurious, assaultive, or cause serious property damage and other severe behavior problems that are pervasive and maladaptive for which instructional/behavioral approaches specified in the student's IEP are found to be ineffective. Cal. Code Regs. tit. 5, §3001(aa).
[35] Cal. Code Regs. tit. 5, § 3052(i).
[36] Cal. Code Regs. tit. 5, § 3001(c).

interventions are never to be used as a substitute for a systemic BIP designed to modify or eliminate the student's maladaptive behavior.[37]

Emergency interventions are not further defined except by exclusion and may not include:

1. Locked seclusion, unless in a facility otherwise licensed or permitted by state law to use a locked room;
2. Employment of a device or material or object which simultaneously immobilizes all four extremities, except techniques such as prone containment if used as an emergency intervention by staff trained in such procedures;
3. An amount of force that exceeds that which is reasonable and necessary under the circumstances;
4. Any intervention that is designed to, or likely to, cause physical pain;
5. Releasing noxious, toxic or otherwise unpleasant sprays, mists, or substances in proximity to the individual's face;
6. Any intervention which denies adequate sleep, food, water, shelter, bedding, physical comfort, or access to bathroom facilities;
7. Any intervention which is designed to subject, used to subject, or likely to subject the individual to verbal abuse, ridicule or humiliation, or which can be expected to cause excessive emotional trauma;
8. Any intervention that precludes adequate supervision of the individual; and
9. Any intervention which deprives the individual of one or more of his or her senses.[38]

The local plan of each SELPA must include procedures governing emergency interventions, including which behavioral emergency procedures are approved, and special training required for the use of behavioral emergency interventions.[39]

Following passage of the Hughes Bill, which required the development of training programs in effective behavioral intervention, the CDE developed a training manual and later sponsored a statewide training in positive behavioral interventions. In 1998, the Positive Environment, Network of Trainers (PENT) project was developed in response to the SELPAs request for a 'train-the-trainer" model of training. PENT is a California Positive Behavior Initiative designed to

[37] Cal. Code Regs. tit. 5, § 3052(i)(1).
[38] Cal. Code Regs. tit. 5, § 3052(i)(4) and (l).
[39] Cal. Code Regs. tit. 5, §§ 3001(c) and 3052(j).

provide information and resources throughout California for educators striving to achieve high educational outcomes through the use of proactive positive strategies. Diana Browning Wright, a licensed educational psychologist and professional behavior analyst, directs the PENT initiative in collaboration with the CDE Diagnostic Center Director and PENT Project Manager, Deborah Holt. According to Deborah Holt and Ms. Browning Wright, the majority of SELPAs participate in the PENT "Trainer of Trainers Initiative."

In April 2007, PAI met with Ms. Browning Wright and Deborah Holt. Based on that meeting and review of the two leading CDE[40] and PENT[41] manuals addressing behavioral support planning with students with serious behavior problems, the recommendations regarding behavioral emergency interventions in this report are consistent with the PENT program and philosophy regarding positive behavior support planning and emergency intervention procedures. As Ms. Browning Wright states, "It is the intent of the PENT initiative to bring the science of behavior into all California school districts so that positive methods of changing challenging behavior are the primary focus of any behavior plan and that restraints are never provided for any purpose other than to meet the immediate and imminent safety of the student or others in the educational environment."

D. Oversight by the California Department of Education

1. Oversight

The California Department of Education (CDE) is responsible for overseeing the public and non-public[42] school system in California, enforcing education laws and regulations, and continuing to reform and improve public school programs. According to the CDE website, in California there are more than six million students in over 9,500 schools within 1,054 school districts. The CDE's mission is

[40] Diana Browning Wright & Harvey B. Gurman, *Positive Interventions for Serious Behavior Problems: Best Practices in Implementing the Hughes Bill (A.B. 2586) and the Positive Behavioral Intervention Regulations*, California Department of Education (2001).
[41] Diana Browning Wright & Gail Cafferata, *The BSP Desk Reference: A Teacher And Behavior Support Team's Guide to Developing and Evaluating Behavior Support Plans*, California Department of Education (2007), available at http://www.pent.ca.gov/03Training/TrainingTOC/TOC_Forum07.htm.
[42] Non-public school system includes non-public schools and agencies, such as speech pathology, psychology, and occupational therapy. This is distinguished from private schools which are outside of CDE oversight.

"to provide leadership, assistance, oversight, and resources so that every California student has access to an education that meets world-class standards (CDE, 2006a)."

The CDE Special Education Quality Assurance Process (QAP) evaluates school district and SELPA compliance with state and federal laws and regulations pertaining to the education rights of students with disabilities (CDE, 2006b). The QAP program has several components including self-reviews conducted by school districts, verification reviews by the CDE, CDE complaint investigation and management, and oversight of the SELPA local plans. When a district or SELPA fails to comply substantially with a provision, the State Superintendent may apply sanctions. The CDE is also available to provide technical assistance to assure compliance with federal and state special education laws.

CDE maintains a database of key performance measures as well as school district performance. The database has not included annual data regarding behavioral emergency reports. In the late 1990s, the CDE reportedly instructed the SELPAs that they were no longer required to submit annually the number of behavioral emergency reports completed within their SELPA, as required by regulation.[43] According to the CDE, SELPAs were to maintain the data locally and provide it to the CDE upon request. The majority of the SELPAs have not collected annual behavioral emergency report data or submitted it to the CDE in more than five years. In September 2006, the CDE seemingly reinstituted the reporting requirement, requesting that SELPAs submit 2005-2006 school year data.

One quarter of California school districts participate annually in a self-review of their special education program (CDE, 2006b). The self-review process includes the school district reviewing the special education programs at individual school sites, the district and SELPA policies and procedures, student records, including educational benefit and IEP implementation, and soliciting parent input. If the district identifies compliance issues, it may be required to submit a corrective action plan to the CDE. A follow-up review by the district is held six months later to ensure areas of noncompliance have been corrected.

Approximately 20 school districts are selected for a verification review by the CDE annually. The CDE uses information from the various data sources, in addition to performance measures, such as complaint history, sub-average school district performance on statewide issues, and deficiencies in compliance with

[43] SELPAs are required to collect and report annually to the California Department of Education and the Advisory Committee on Special Education the number of behavioral emergency reports completed within their SELPA. Cal. Code Regs. tit. 5, § 3052(i)(9).

previously identified issues, to determine which school districts will receive a verification review.

The CDE compiles data identifying the "top 20 most frequent categories of alleged special education violations." Of the 1,074 complaints received in 2005-2006, 10 of the complaints filed involved "behavior intervention" (the 19th most frequent category of complaints); seven were substantiated or found "noncompliant." No further detail is provided regarding the nature of these complaints, including whether they involved restraint or seclusion. The most common allegation (900+) is failure of the school to implement the IEP.

2. Complaint Investigations

If someone suspects that a school or educational agency has failed to comply with federal or state law or regulation regarding special education, that person can file a compliance complaint with the CDE regarding alleged violations.[44] An investigator from the CDE or the local school agency investigates the allegations. The CDE must directly intervene (not refer the complaint to the local school agency for self-investigation) in certain situations, including where the complaint indicates that the child or group of children may be in immediate physical danger or that the health, safety or welfare of a child or group of children is threatened. The CDE must determine whether the school or educational agency is incompliance with the law. The CDE has 60 calendar days from receipt of a complaint to carry out any necessary investigation and to resolve the complaint.

If a school or education agency is not in compliance, the school district is ordered to implement corrective action to ensure compliance. The CDE may order the school or agency to submit a plan of correction. This document describes the steps the school or agency has taken and will take to assure the problem does not occur again, either to this student or to others, as well as timelines for taking those steps and evidence required to demonstrate correction of the noncompliance.

[44] Cal. Code Regs. tit. 5, §§ 4600 et seq.

SURVEY OF SELPA TIME-OUT ROOMS AND EMERGENCY BEHAVIORAL RESTRAINT PRACTICES

PAI attempted to assess current practices regarding restraint, seclusion, and behavioral emergency interventions in California schools. PAI conducted a written survey of every SELPA, requesting the following information pursuant to the Public Records Act[45]:

1. A list of schools within the SELPA that have time-out rooms, quiet rooms, or similar spaces used to separate students with disabilities during periods of crisis or behavioral difficulties;
2. The SELPA's policies and procedures pertaining to the use of behavioral and emergency interventions, including the training of school personnel in the use of behavioral emergency interventions, including physical restraint and containment, and the types of interventions requiring such training; and
3. Annual data of behavioral emergency reports collected by the SELPA and reported to the CDE, from school year 2000 to 2006.[46]

PAI's survey was limited to a paper audit based on a written request for information about restraint and seclusion practices. No on-site inspections or interviews with school or SELPA personnel were conducted except in the cases described earlier.

PAI received responses from 117 of the 122 SELPAs queried – a 96% return rate. The SELPAs were diligent about providing PAI with the information requested, and the materials provided were ample. Some of the information that PAI requested was not maintained as a record of the SELPA and, therefore, was not subject to disclosure pursuant to the Public Records Act. The SELPA Directors invited PAI to join two of their statewide meetings to explain and answer questions about the survey project and to discuss concerns identified in the cases summarized above.

It is difficult to draw conclusions from the information obtained except to say that SELPA policies regarding emergency interventions appear to vary considerably, and many offer limited clear guidance regarding their use. There was significant variation in the detail and content of the policies, with many SELPAs' policies

[45] Gov't Code §§ 6250-6270.
[46] Cal. Code Regs. tit. 5, § 3052(i)(9).

providing schools with little direction regarding approved emergency interventions and the special training required to use behavioral emergency interventions. Six SELPAs had no policies addressing the use of emergency interventions. Nearly43% of responding SELPAs specifically listed approved intervention techniques and/or training programs. Another one-third had policies that provided insufficient detail or were so broad in their language as to not clearly indicate which restraint interventions or special training programs were approved by the SELPA. The last 17% failed to provide PAI with policies responsive to the request.

Approximately one-quarter of the SELPAs limited the use of emergency intervention techniques, including restraint, to staff who were currently trained in such interventions, suggesting that the majority of SELPAs permit staff to apply restraint techniques, regardless of training. Eighteen SELPAs approved the use of prone containment, a dangerous restraint technique known to cause positional asphyxiation in some cases. Only 14 SELPAs listed which staff were required to participate in training; eight specified the time frame for attending refresher training.

Most of the SELPAs do not maintain public information regarding the number of time-out rooms or similar spaces used to segregate students during periods of crisis or behavioral difficulties. Many queried school districts to gather this information and provided it to PAI. Approximately one-third reported not having time-out rooms. Another one-third reported having such areas but, because some SELPAs reported the number of schools with such spaces rather than the number of time-out rooms, PAI is unable to determine how many rooms or spaces exist, or to compare the number of time-out spaces by SELPA.

The data collection and reporting requirements are rudimentary and insufficient to provide any meaningful oversight of restraint, time-out, and seclusion practices in California schools. Regardless, much of these data have not been collected by the SELPAs or submitted to the CDE in recent years. In the late 1990s, the CDE reportedly instructed the SELPAs that they were no longer required to submit annually the number of behavioral emergency reports completed within their SELPA. According to the CDE, SELPAs were to maintain the data locally and provide it to the CDE upon request. In September 2006, the CDE seemingly reinstituted the reporting requirement, sending an email notification with a report form to all SELPAs requesting the total number of behavioral emergency reports for the 2005-2006 school year. See the Addendum for additional details of PAI's survey.

FINDINGS & RECOMMENDATIONS

IN EACH OF THE CASES INVESTIGATED, SCHOOLS FAILED TO COMPLY WITH CURRENT LAWS AND REGULATIONS PERTAINING TO STUDENTS WITH SERIOUS BEHAVIOR PROBLEMS AND THE USE OF EMERGENCY INTERVENTIONS.

Finding 1: In each of the cases PAI investigated behaviors prompting the use of restraint and seclusion rarely posed an imminent risk of serious physical harm.

Emergency interventions, including restraint and seclusion, are only to be used to control unpredictable, spontaneous behavior that poses a clear and present danger of serious physical harm. They are never to be a planned intervention or a routine event to control a student's behavior in lieu of a systematic behavior plan. Yet, in these cases, they became the regular method of intervening when these students refused to comply with teacher direction. There is no evidence in the records that any of the students in the cases investigated posed an imminent risk of harm at the time of restraint or seclusion. The primary problem behavior identified was noncompliance with adult direction in non-emergency situations.

Some of the restraint and seclusion events lasted for hours, even over several consecutive days. The evidence does not support that any of the children posed an imminent, on-going threat over such a prolonged period and it is challenging to imagine such a circumstance existing. It is likely that the seclusion or restraint had rather become something else – a punitive intervention or something improvised by school personnel challenged by the student's problem behavior. Should a child's behavior in school really necessitate restraint or seclusion for any extended period, immediate notifications must be made and additional resources devoted to determining and addressing the issues underlying the dangerous behavior.

Recommendation 1: Schools must comply with current state law that limits the use of emergency interventions to only those situations where a student's unexpected behavior poses a clear and present danger of serious physical harm and all other less restrictive interventions are ineffective.

Current law requires that schools and school personnel limit emergency interventions to only those situations where a student unexpectedly displays behavior that poses a clear and present danger of serious physical harm and least restrictive means of intervention have failed. Verbal threats, profanity, non-compliance with a staff directive or school rule, disruption of school order, and property destruction alone do not constitute sufficient risk to necessitate emergency interventions.

Emergency interventions may be continued only for as long as necessary to protect the individual or others from an imminent risk of serious physical harm. As soon as that risk has passed, the emergency intervention must be terminated and less restrictive alternatives initiated. Emergency interventions must never be used as a substitute for behavioral intervention planning. Behavioral restraint and seclusion may cause serious injury or death, even when applied correctly. In light of this risk, schools must ensure that emergency interventions are reserved for only those situations where the student's behavior poses a commensurate risk of harm and less dangerous interventions have failed.

Finding 2: In some of the cases PAI investigates, prohibited emergency interventions were employed.

In several of the cases that PAI investigated, school personnel employed emergency interventions that are expressly prohibited. Aaron was repeatedly placed in locked seclusion, as were students at the non-public school described above. On one occasion, all four of Brian's limbs were mechanically restrained. His arms were tied to the wheelchair; his legs bound together with a Velcro strap. Eric, Jason, Jonathon, and students at the Inland Empire elementary school were manually restrained using restraint techniques not approved by the SELPA and were executed by staff not currently trained. Jason, Jonathon and Sean were placed in areas out of sight of school personnel, an intervention that precluded their adequate supervision. Each of these intervention techniques is expressly prohibited under current state law. Yet, school personnel persisted in using them. In several cases, school administrators and others beyond the classroom knew of

the practices and did not intervene. In Aaron's case, the locked seclusion room was built at the recommendation of the school's behavioral specialist. The CDE did not make a finding in any the cases that they investigated that the schools had employed prohibited emergency interventions.

Recommendation 2: Schools and the Department of Education must ensure that schools do not employ expressly prohibited emergency interventions.

School administrators and the CDE must ensure that schools comply with existing laws and regulations pertaining to students whose behavior require emergency intervention. Complaints regarding seclusion, behavioral restraint, emergency interventions resulting in serious physical injury, or expressly prohibited practices should prompt an immediate, unannounced complaint investigation by the CDE. The scope of the investigation must include interviewing alleged victims, potential witnesses, and the reporting party, and conducting a site visit to view the location of and documentation regarding the event. The CDE must verify that schools reported incidents as required and that staff involved were trained and properly executed emergency interventions approved by the SELPA. Schools found in violation must be ordered to institute immediate corrective action, including dismantling seclusion rooms that preclude adequate supervision, removing all locking mechanisms, and retraining all staff involved.

The CDE must ensure that SELPAs' policies provide school personnel with adequate guidance regarding approved emergency interventions, including (1) what techniques can be used and by whom and (2) who must attend training and how often. A generic policy listing one or more training programs, "and other professionally accepted physical intervention techniques offered by SELPA or the county Department of Education" lacks sufficient specificity.

Finding 3: Schools and SELPAs have failed to comply with reporting requirements regarding emergency interventions.

Parents in the cases above were not notified of restraint and seclusion events, and IEP teams failed to convene and address reportedly dangerous student behavior. None of the schools involved completed a behavioral emergency report, as required by law. Completion of the behavioral emergency report triggers the responsible school administrator to schedule an IEP team meeting. These reports set into motion an essential review process whereby the IEP team reviews the event and plans how best to address the student's underlying behavior. Without the

behavioral emergency report, this process seemingly fails to occur, as illustrated by the cases PAI investigated.

PAI's SELPA monitoring verified that schools and SELPAs have not been accumulating and reporting emergency interventions as required. Until recently, the CDE excused SELPAs from submitting the data, as required by law, although reportedly expected SELPAs to provide it upon request. More than half of the SELPAs acknowledged not maintaining aggregate data regarding the use of emergency interventions in more than five years. In those SELPAs that collect the data, there is evidence that not all emergency intervention events are being captured. For example, Aaron was reportedly placed in locked seclusion at least 15 times in one school year. Yet, that SELPA reported only 11 behavioral emergency reports in five years. By failing to record each emergency intervention, schools and SELPAs misrepresent the frequency of these serious events.

Recommendation 3: Schools and SELPAs must comply with existing regulations regarding reporting the use of emergency interventions following every incident and annually to the Department of Education and Advisory Commission on Special Education. The Department of Education must ensure that data is collected, reported and analyzed.

School personnel must notify parents (or the student's legal guardian) as soon as possible following every incident of emergency intervention, including restraint and seclusion. These are critical events about which parents must be informed and immediately involved to prevent in the future. Parents should also receive a copy of the behavioral emergency report documenting the event. The report is not only an important communication tool but also triggers the IEP review process and ensures accurate data collection and reporting about the systemic use of emergency interventions.

The CDE must ensure that schools and SELPAs fulfill their obligations to report emergency interventions, both following every incident and annually. SELPAs and the CDE must ensure that aggregate data regarding the use of emergency interventions are collected, reported, and analyzed. Data collection and publication informs the public and oversight entities about the incidence of these grave practices within SELPAs. Tracked over time, these data may provide information

about the success of a school's or SELPA's positive behavioral intervention program and about where to focus more attention and resources.

Information about the use of emergency interventions should be integrated into the CDE QAP, including criteria by which schools are selected for verification review by the CDE. Significant or chronic outliers should prompt CDE oversight.

Finding 4: Schools failed to provide students, in the above cases, with timely functional analysis assessments or failed to develop or modify behavioral intervention plans, as required by state regulation.

In the cases that PAI investigated, each student had a history of serious behavioral difficulties. The behaviors that prompted the use of restraint or seclusion had been seen repeatedly at the school and in the classroom serving the student. Yet, schools failed to comply with regulations requiring evaluation the student's serious behavior or development of a plan to proactively address it.[47] The IEP teams failed to convene following each incident to review the circumstances prompting the emergency intervention and to discuss indications for conducting a FAA or developing or revising a BIP.

Some of the schools claimed a classroom program (e.g., token system) sufficed for the student's BIP. Such generic classroom programs fail to meet regulatory requirements for BIPs which, as defined by regulation, require specific elements, individualized to the particular student's needs. The CDE supported this in its findings in the Inland Empire elementary school case, described above.

Recommendation 4: Schools must comply with current state law and regulations that require assessing, developing and implementing positive behavior intervention plans for students with serious behavioral problems. The Department of Education must enforce compliance.

Education experts agree that most emergency interventions can be prevented with individualized, targeted interventions, based on an analysis of the student's problem behavior. Therefore, emergency interventions are only necessary when a student unexpectedly demonstrates new and imminently dangerous behavior, so

[47] Only Brian and Eric had FAAs. Aaron was the only student with a BIP. Brian and Eric had behavior support plans. None of the plans incorporated the use of exclusionary time-out, seclusion, or restraint as was routinely used with these children.

unanticipated that the school has not had time to develop a plan to address it. California's regulatory scheme supports this approach.

Schools must comply with existing state laws and regulations that require schools promptly to identify students with serious behavior problems that interfere with their learning and proactively develop a behavior plan based upon a thorough functional analysis of the student's behavior. The behavior plan must be detailed in the student's IEP and reviewed periodically and following every emergency intervention.

The CDE must ensure that schools comply with existing laws and regulations pertaining to students with serious behavior problems. Parents must be assured that students will not be subjected to retaliation following complaints to the CDE about emergency interventions or insufficient behavioral intervention. Investigations into complaints involving behavioral interventions should include ensuring timely and thorough FAAs and BIPs, where indicated. School self- reviews and CDE verification surveys must include component measures addressing the school's positive behavioral support program for all students and, specifically, for those with serious behavior problems. Schools and school districts that fail to comply with these requirements must receive heightened scrutiny by the CDE until they have demonstrated a consistent pattern of compliance.

CURRENT EDUCATION LAWS AND REGULATIONS PROVIDE INSUFFICIENT SAFEGUARDS AND OUTDATED STANDARDS REGARDING THE USE OF RESTRAINT AND SECLUSION.

Finding 5: Current state education laws and regulations fail to adequately define and regulate restraint or seclusion in the school setting.

Pursuant to the Hughes Bill, California regulations set forth a relatively clear process for schools to identify, assess, and plan positive behavioral interventions for students with serious behavior problems or whose behavior requires emergency intervention. However, these regulations fail to provide clear definitions for critical terms, including emergency interventions, restraint and seclusion.

Currently, emergency interventions are not defined except by exclusion. Behavioral restraint and seclusion are implicitly referenced within some of the excluded practices, but are not otherwise defined. During the course of PAI's investigations, it became clear that school personnel are not familiar with these

terms or aware that the emergency interventions they had implemented in the cases described above would be considered restraint or seclusion in all other settings. In the past 10 years, there has been increased recognition of the grave risks and serious trauma associated with the use of behavioral restraint and seclusion. These terms have been consistently defined in most other settings where used and tightly regulated. Given that these are the same techniques used in schools, the same definitions and safeguards must apply.

- **Current Law Regarding Seclusion**

Current regulations prohibit locked seclusion in schools. Yet, as the above cases establish, students are secluded in conditions replicating a locked door, but without violating the exact letter of the law. Students were isolated alone in rooms or corridors where they were physically prevented from leaving by staff holding the door or using furniture to barricade the door closed. The student may be unaware of an available exit and, therefore, may believe the room is locked. Both are the equivalent of locked seclusion and should be prohibited.

Seclusion must be distinguished from time-out. Time-out involves removing a student from sources of positive reinforcement as a consequence of a specified undesired behavior. The spectrum of time-out ranges from taking a time-out at one's desk to removing the student to a separate area (exclusionary time-out). During time-out, a staff member should be continually present and immediately accessible to the student. Time-out must ensure continuous visual and auditory access by school personnel. In contrast, a student in seclusion is involuntarily sequestered from others, without access to school staff and where there is little or no view of the rest of the class.

- **Current Law Regarding Restraints**

Current regulations do not provide adequate safeguards when applying behavioral restraint. All forms of mechanical and manual restraint are permitted with two exceptions. School personnel may not mechanically immobilize all four limbs simultaneously; tying down three or fewer limbs at one time, however, is permissible. School personnel are also prohibited from restraining a student face down (i.e., prone containment) unless they have been trained in this technique. Prone restraint is a dangerous restraint position, even when applied correctly by staff trained in such interventions. Neither of the prohibited restraint techniques adequately address or appreciably minimize the serious risks associated with many restraint positions and techniques.

It is well known in the health care arena that seclusion and restraint are traumatic and dangerous events that can cause serious, lasting physical and psychological harm – even death. These risks are even greater with children. Physically restraining an individual can cause bruising, broken bones, muscles strains, and joint dislocation. Manual restraint techniques can severely limit an individual's respiratory capacity, causing asphyxiation in extreme cases. The stress associated with an individual struggling against restraint can cause dehydration, exhaustion, and increased heart and respiratory rates, which can cause death in patients either with certain pre-existing conditions or in combination with medication. Mechanical restraint devices have caused strangulation, particularly when used with individuals with cognitive impairments who became entangled in an attempt to escape their confinement.

Recommendation 5 A: The Department of Education or Legislature must define seclusion consistent with state and federal law in other settings. Seclusion should not be limited to locked settings.

The Legislature and/or CDE must define seclusion used in schools consistent with state and federal definitions applicable to other settings. Seclusion should be defined as the involuntary confinement of a person alone in a room or an area from which the person is physically prevented from leaving. No locking mechanism should be required to meet the definition of seclusion. Seclusion should include situations where the student is unable to exit due to the student's disability or where the student does not comprehend that an exit is available for the room or area where involuntarily restricted. The risk of harm and trauma from seclusion stems from being isolated in an area with no known ability to vacate and without the assistance, assurance, and constant observation of others.

Recommendation 5 B: Seclusion in schools should be prohibited with time-out used as a permissible alternative.

Seclusion is a traumatic experience, especially for children. What little research exists shows that children experience immediate and lingering psychological harm from seclusion events. Furthermore, safety dictates that a child exhibiting dangerous or problem behaviors not be isolated, alone, without constant adult supervision.

So, while it may be necessary at times to remove a student from a group area and provide him or her with a quieter space to complete a task or regain focus and

control (e.g., time-out), seclusion, as defined above, must be prohibited in all schools, unless they are otherwise licensed to perform seclusion. Time-out and positive behavioral interventions should be implemented instead. California regulations come close by prohibiting schools from "any intervention that precludes adequate supervision of the individual."[48] Yet, they do not expressly exclude the seclusion techniques used in many of the cases PAI investigated.

Recommendation 5 C: The Department of Education or Legislature must define restraint consistent with state and federal law in other settings.

Behavioral restraint should be defined consistent with the definitions used in other settings. Restraint should be defined as any manual method or physical or mechanical device, material, or equipment attached to or adjacent to the individual's body that the individual cannot easily remove and that restricts freedom of movement or normal access to one's body. This definition includes mechanical restraint with a device, manual or physical restraint, and use of medication to manage an individual's behavior and that is not a standard treatment for the individual's condition.

Recommendation 5 D: Temporary behavioral restraint should only be attempted when all other techniques are ineffective to prevent imminent serious physical harm and when there are sufficient safeguards to protect the individual.

As emphasized above, current law requires that temporary physical restraint should only be used when other techniques of intervention have been tried and have failed to prevent imminent serious harm. Everyone within the education system must ensure that the law is followed and that restraint is only used for such dire situations and not for mere noncompliance with adult instruction.

To minimize possible injury or death, all restraint techniques that impair the student's breathing or respiratory capacity or obstruct the student's airway should be prohibited, including techniques that place any pressure or weight on the student's chest, back, lungs, diaphragm, or stomach. This restricts the student's ability to breathe and further compromises respiratory and cardiac functioning.

[48] Cal. Code Regs. tit. 5, § 3052(l)(7).

Whenever possible, an observer, not restraining the student, should monitor the student closely for signs of distress or respiratory compromise.

Restraint should be prohibited with an individual who has a known medical, physical, or psychological condition that could be exacerbated by restraint. Known risk factors include history of trauma or abuse, obesity, agitated or excited syndromes, preexisting heart disease, and respiratory conditions, including emphysema, bronchitis, or asthma.

PAI cautions schools about the significant risk of death associated with certain physical restraint positions, in particular prone containment and basket holds. Both techniques may severely restrict the student's respiratory capacity, thereby reducing the supply of oxygen needed to meet the body's increased demands. Neither Crisis Prevention Institution (CPI) nor ProACT (two crisis intervention training programs used by many SELPAs) endorse basket holds. CPI does not sanction any floor restraint, including prone containment, because of the risk of positional asphyxiation. PAI recommends prohibiting these techniques.

Finding 6: Current law and regulations provide inadequate training standards for staff who apply restraint, seclusion, or other emergency interventions.

Aside from a reference to a training requirement for the application of prone containment, there is no requirement that staff executing emergency interventions be trained or that only staff who have completed training may apply emergency intervention techniques.[49] This reference is contained within the prohibition regarding mechanical restraint of all four limbs. Prone containment is usually defined as a face down manual restraint; its inclusion in this prohibition addressing mechanical restraint is misleading, particularly without further definition. This reference fails to establish a training requirement for the application of other emergency interventions, including other restraint procedures.

PAI's SELPA monitoring confirmed that many SELPAs' policies do not limit the application of emergency interventions to staff who have completed training. The majority of SELPAs (74%) did not prohibit staff that lacked training from engaging in behavioral emergency techniques or, conversely, limit the use of these techniques to those staff that are currently trained. One SELPA's list of approved

[49] Cal. Code Regs. tit. 5, § 3052(i)(4)(B). See also § 3052(l)(5) which extends the training requirement to techniques similar to prone containment without further definition.

emergency interventions requires training for prone containment but expressly permits "physical restraint by staff on hand" without a comparable training requirement.

Recommendation 6 A: The Department of Education must require that only staff currently trained and competent apply restraint, seclusion, and time-out interventions.

Emergency interventions, including restraint and seclusion, can be traumatic to the student and may cause serious injury or death. Only staff currently trained and competent in seclusion, restraint and de-escalation techniques should perform emergency interventions. Staff must regularly complete refresher training. At a minimum, PAI recommends refresher training annually. Emergency intervention training programs should include (1) information regarding the physical and psychological risks associated with restraint and seclusion and (2) early intervention and de-escalation techniques to avoid their use.

Occasionally school personnel may need to apply a brief manual hold to stop a child from darting into traffic or from a self-injurious incident or to break-up a school yard brawl. These impulsive events are distinguished from serious behavioral problems that impede a student's learning and for which emergency interventions, by trained staff, may be required.

Recommendation 6 B: School Administrators, Special Education and SELPA Directors, and the Department of Education must provide enhanced oversight of seclusion, restraint, time- out, and emergency intervention practices.

School administrators (i.e., the school principal or designee) should be notified of every emergency intervention, including seclusion, restraint, and unplanned time-out, and immediately contacted after any event resulting in physical injury. School administrators have the duty to ensure that the IEP team convenes, complies with existing laws and regulations, and has the necessary resources to address the underlying issues. The CDE should set minimum standards for critical events requiring CDE notification, including any seclusion, restraint, or time-out event resulting in serious injury[50] or death to any person.

[50] Serious injury means any significant impairment of the physical condition as determined by qualified medical personnel, and includes, but is not limited to, burns, lacerations, bone fractures, substantial hematoma, or injuries to internal organs. Health & Safety Code § 1180.1(g).

Prolonged or recurring use of any emergency intervention or time-out should trigger ever-increasing administrative oversight and involvement (e.g., any emergency intervention lasting more than 15 minutes, two or more seclusion or restraint events in one week, time-out from normal school activities of more than three class periods a week, etc.). Extended seclusion, restraint, and time-out have not been found to be effective at reducing problem behavior, and they increase the risk of injury and trauma. Some experts recommend that time-out not exceed 15 minutes or one minute per year of age of the child (whichever is less). SELPA Directors and/or Directors of Special Education should be notified of repeated and prolonged use of seclusion, restraint and time-out. Experts in child trauma, and restraint and seclusion should be consulted for guidance regarding reasonable reporting parameters.

Recommendation 6 C: School personnel should debrief every emergency event similar to that required in other settings.

A debriefing of the incident should follow every restraint, seclusion, and unplanned time-out event to discuss how to avoid a similar situation in the future. Experts have found incident debriefing to be critical to successful restraint and seclusion reduction initiatives. Debriefing should occur as quickly as possible, no later than the following school day, and should include the staff involved in the event, the student and the student's legal guardian, and, if reasonably available, school administrators. The debriefing should attempt to:

- identify the precipitant of the incident and suggest methods of more safely and constructively responding;
- assist school personnel to understand the precipitants and develop alternative methods of helping the child avoid or cope with those incidents;
- help the IEP team evaluate the need for a FAA or develop/revise a BIP; and
- assess whether the intervention was necessary and implemented in a manner consistent with staff training and school and SELPA policy.

A notation regarding the debriefing should be recorded in the student's education file.

Recommendation 6 D: The Department of Education must require enhanced data collection and public reporting of emergency interventions, including seclusion and restraint, and time-out use.

Using data in a non-punitive manner to elevate oversight of such practices, address trends, and identify successful alternative strategies is an essential component to reducing restraint and seclusion. PAI recommends enhanced data collection of every seclusion, restraint, and time-out incident. PAI includes recording information about time-out in this recommendation because overuse or extended time-out does not positively affect student behavior and may be abusive or traumatic.

Schools should minimally record:

- Type of intervention (e.g., seclusion, method of restraint, planned[51] or unplanned time-out, exclusionary time-out, etc.);
- Duration of intervention;
- Time of initiation and release;
- Date and day of week;
- Location of incident, including school and classroom/area where incident occurred;
- Episode or events preceding incident, including whether harm was directed to self, peers, staff, or others;
- Staff involved in restraint, seclusion, or time-out[52];
- Resulting injuries, if any;
- Age of student;
- Type of disability of student, if any; and
- Whether student has an FAA and/or BIP and date of most recent version.

Schools should maintain a copy of this information in the student's education file for integration into the student's FAA and/or BIP, and examination and review by the IEP team, the school's Behavioral Intervention Case Manager[53], or behavioral

[51] Planned time-out means use of time-out according to the student's BIP.
[52] This information should be kept confidential and not part of the publicly posted data.
[53] Behavioral Intervention Case Manager is a designated certificated school/district/ county/nonpublic school or agency staff member(s) or other qualified personnel contracted by the school district or county office or nonpublic school or agency who as been trained in behavior analysis with an emphasis on positive behavioral intervention. Cal. Code Regs. tit. 5, § 3001(e).

consultant. For comparison of incidents across schools and districts, minimal demographic information regarding the school and district population should also be collected (student population, rural/urban, etc.).

Except for statistics about staff member involvement, aggregate data should be tallied quarterly, graphed, and posted publicly. School personnel should use this information to identify baseline use and set performance improvement goals. Subsequent data, monitored over time, can be used to identify and address trends and recognize successful programs so strategies can be shared. Schools with a proportionately higher incidence in one measure should compare their program and philosophy regarding positive behavioral support with other comparable schools. Information about staff members involved may be used by school and district administrators to identify training needs and individual coaching opportunities.

Recommendation 6 E: The Department of Education must provide enhanced oversight regarding behavioral emergency interventions in schools.

The CDE must make the reducing use of emergency interventions a top priority. The CDE should provide schools with technical assistance to support efforts to reduce the use of emergency interventions and to develop school-wide positive behavioral support practices.

The CDE must collect and review data regarding the use of emergency interventions, extended time-out, and unplanned time-out. Data must be used by the CDE to conduct spot checks of school compliance with conducting FAAs and developing or revising BIPs. Significant or chronic outliers should prompt CDE oversight. Information about emergency intervention use should be integrated into the CDE QAP, including criteria by which schools are selected for verification review by the CDE.

Educational leaders in schools, school districts, and SELPAs are encouraged to elicit input from individuals who have experienced restraint or seclusion, parents, and leading experts in the field to gain a better understanding of these practices, their significant risks, and ways to prevent and avoid their use. Many health care providers have found embedding consumers in roles within the facility critical to eliminating these practices. Such roles may include consumers sitting on key district or SELPA committees, assisting with satisfaction surveys, participating in debriefings, and working directly with staff regarding the trauma of restraint and seclusion.

ADDENDUM

In 2006, PAI conducted a limited survey of every identifiable SELPA regarding their time-out and emergency intervention policies and practices. PAI specifically requested the following information:

1. A list of schools within the SELPA that have time-out rooms, quiet rooms, or similar spaces used to separate students with disabilities from others during periods of crisis or behavioral difficulties;
2. The SELPA's policies and procedures pertaining to the use of behavioral and emergency interventions, including the special training of school personnel in the use of emergency interventions, including physical restraint and containment, and the types of interventions requiring such training; and
3. Annual data of behavioral emergency reports collected by the SELPA and reported to the CDE, from school year 2000 to 2006.

PAI requested the information pursuant to the Public Records Act. In many SELPAs, item numbers 1 and 3 above were not maintained as a public record and, therefore, were not subject to or available for disclosure. In response to item number 2, many SELPAs provided PAI with relevant portions of their local plan or policy manual.

PAI received responses from 117 of the 122 SELPAs queried (96% return rate). Due to limitations inherent in this survey process, it is imprudent to draw definitive conclusions about the information received. Rather, PAI presents this information as informative regarding general practice and possible gaps in the current oversight and regulation of emergency interventions, including seclusion and restraint.

Table 1 summarizes the responses received.

Table 1
Summary of SELPA Responses to Public Records Act Request

Issue	Detail
Query	- Total Queried = 122 total and 100% - Responded = 117 total and 96% - No Response = 5 total and 4%
Time-Out Rooms	- No = 35 total and 30% - Yes = 39 total and 33.3% - No data/list = 43 total and 36.7%
Policies	- No Policy = 6 total and 5.1% - Policy very general and does not specify which emergency behavioral interventions can be used = 40 total and 34.2% - Policy provides detail and specifies which emergency behavioral interventions can be used = 51 total and 43.6% - Policies not provided to PAI or lacked content regarding emergency interventions = 20 total and 17.1%
Policy Details	- specifies which staff must be trained in emergency behavioral interventions = 14 total and 11.9% - permits prone restraint = 18 total and 15.4% - permits only trained staff to use emergency behavioral interventions = 31 total and 26.5% - specifies refresher training time frame for emergency behavioral intervention training = 8 total and 6.8%
Behavioral Emergency Report Data	- No data = 65 total and 55.6% - Data provided = 33 total and 28.2% -2005-2006 only = 19 total and 16.2%

A. Time-out rooms, quiet rooms, or similar spaces used to separate students with disabilities from others during periods of crisis or behavioral difficulties.

SELPAs were roughly equally divided between those reporting to lack time-out rooms (30%), those having time-out rooms or spaces in some schools (33.3%) and those who do not maintain the data as a record (36%). Descriptions of these spaces varied from three-sided open cubicles where students are readily visible to small isolation rooms vacant of furnishings where students are segregated from all others behind a closed door. Because some SELPAs reported the number of schools with such spaces rather than the number of time-out rooms, PAI is unable to determine how many rooms or spaces exist or compare the number of time-out spaces by SELPA. The SELPA in Sean's case, described above, did not report the corridor used to seclude Sean as a time-out room or space. Therefore, it is possible that students are being isolated or secluded by teachers in other areas not designated or recognized by schools or SELPAs as a time-out space.

B. SELPA policies and procedures pertaining to the use of behavioral and emergency interventions.

Approximately half of responding SELPAs (51) specifically listed in their policy the behavioral emergency interventions that are approved for use, either by designating a crisis intervention training program or listing specific restraint and self-defense techniques. Approximately another one-third of the SELPA policies (40) were too broadly stated to readily identify which interventions were approved for use. Some policies essentially repeated verbatim that which is required by code or in regulation without further clarification or specification. For example, one policy states, "Only emergency interventions approved by the SELPA may be used," without further information or detail. Other policies list specific crisis intervention training programs and "other professionally accepted programs."

Such policy statements lack sufficient specificity to meet regulatory requirements or to provide guidance to school personnel regarding which procedures have been approved for use. Six SELPAs reported having no policy addressing behavioral emergency procedures. Thirteen SELPAs provided policies regarding students with behavioral difficulties generally but which failed to address the use of behavioral emergency interventions specifically.

There appears to be considerable variation in the restraint practices and the requirements regarding staff training in behavioral emergency, de-escalation and

restraint techniques. Few SELPAs (14) expressly listed which school personnel are required to participate in training. The majority of SELPAs (74%) did not prohibit staff that lacked training from engaging in behavioral emergency techniques, including restraint or, conversely, limit the use of these techniques to those staff that are currently trained. Some SELPAs (18) specifically endorsed prone (or facedown) physical restraint, a technique that places some individuals at risk for positional asphyxiation.

C. SELPA Data Regarding Behavioral Emergency Reports

The majority of the SELPAs (65) acknowledged failing to collect annual behavioral emergency report data or sending them to the CDE. The SELPAs reported that, many years before, the CDE suspended the reporting requirement. According to the CDE, SELPAs were instructed to maintain the data and provide it to the CDE upon request, such as during a periodic survey.

Of the SELPAs reporting the data, there was considerable variation in the number of behavioral emergency interventions. A few of the SELPAs provided a more detailed breakdown of the data. Emergency interventions were categorized as:

- To stop assault/injury of another student;
- To stop assault/injury of staff;
- To protect the student from self-injury;
- To prevent run-away;
- To prevent throwing objects/missiles; and
- To prevent property damage.

While this breakdown provides some useful information about the nature of the student's behavior, it lacks sufficient detail for meaningful oversight and systemic reform.

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Mary Margaret Kerr received her Bachelor's and Master's degrees from Duke University and her doctorate from American University in Washington, D.C. The author of several textbooks and many articles, she has taught in special education and alternative education classrooms and continues to consult with school districts across the country. A former faculty member at Vanderbilt University, Dr. Kerr joined the faculty of the School of Medicine and the School of Education at the University of Pittsburgh in 1980.

In 1989, Dr. Kerr joined the Pittsburgh City Schools as Director of Pupil Services. In 1994, she returned to her faculty position at the University of Pittsburgh, to administer the school serving patients at Western Psychiatric Institute and Clinic and to direct outreach services for the University's youth suicide and violence prevention center, STAR-Center. In 1996 Dr. Kerr was appointed by the United States Court for the Central District of California as a Consent Decree Administrator for Los Angeles Unified School District. In this capacity, Dr. Kerr worked for eight years with educators and parents to improve services for 85,000 students with disabilities.

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GLOSSARY

Behavioral Intervention Plan (BIP) A written document, based upon a functional analysis assessment, which is developed when a student exhibits a serious behavior problem that significantly interferes with the implementation of the goals and objectives of the student's IEP. The plan must include a summary of relevant information gathered from a functional analysis assessment, an objective and measurable description of the target behaviors, individual goals and objectives, and a detailed description of behavioral interventions, among other requirements.

Behavioral support plan A written document, supplementing the IEP; a proactive action plan to address behavior(s) impeding learning that include positive behavioral interventions, strategies, and supports.

CDE California Department of Education. See http://www.cde.ca.gov/

Functional analysis assessment (FAA) A detailed, individual assessment of the student to determine the function the behavior serves; the basis of a BIP.

Hughes Bill California legislation (AB 2586) enacted in 1990, codified in Education Code §§ 56520-56524 which prohibited the use of aversive behavior intervention and mandated the development and implementation of positive behavior intervention plans for special education students with serious behavior problems.

Joint Commission on Accreditation of Healthcare Organizations (JCAHO) An independent nonprofit health care accreditation organization. JCAHO's comprehensive accreditation process evaluates a health care organization's compliance with performance standards and other accreditation requirements. JCAHO accreditation is recognized nationwide as a symbol of quality that reflects an organization's commitment to meeting certain performance standards. JCAHO evaluates and accredits nearly 15,000 health care organizations and programs in the United States. See http://www.jointcommission.org/

Individualized education program (IEP) A written educational plan for the student with special needs, developed by a team, including the student if appropriate, the student's parent or legal guardian, special education teacher, regular education teacher if appropriate, and district representative/school administrator, and others with knowledge or special expertise regarding the child (e.g., child's therapist or school nurse).

PAI (Protection & Advocacy, Inc.) An independent, private, nonprofit agency authorized under state and federal law to protect and advocate for Californians with disabilities. 29 U.S.C. § 794e; 42 U.S.C. §§ 10801 and 15001 et seq.; Welf. & Inst. Code §§ 4900 et seq.; See www.pai-ca.org

Positive Environment, Network of Trainers (PENT) A CDE positive behavior training program for educators regarding the use of proactive positive strategies. See www.pent.ca.gov

Quality Assurance Process (QAP) CDE Special Education key performance measures. See http://www.cde.ca.gov/sp/se/qa/qap.asp

Restraint Any manual method or physical or mechanical device, material, or equipment attached to or adjacent to the individual's body that s/he cannot easily remove that restricts freedom of movement or normal access to one's body.

Seclusion The involuntary confinement of a person alone in a room or an area from which the person is physically prevented from leaving.

SELPA = Special Education Local Planning Area.

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