

# *What's Holding Our Students Down?*

## **Restraint in Colorado Schools**

September 2016



*Presented by*



**DISABILITY LAW**  
**COLORADO™**

Protecting the rights of Coloradans of all ages since 1976



# DISABILITY LAW COLORADO

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Disability Law Colorado's website has an electronic version of this report along with additional information about Restraint and Seclusion in Colorado and many other topics related to protecting the rights of people with disabilities.

Visit us at: [www.disabilitylawco.org](http://www.disabilitylawco.org).



## Who is Disability Law Colorado?

Disability Law Colorado, formerly The Legal Center for People with Disabilities and Older People, was established in 1976 by a group of parents who wanted to ensure that their children with disabilities could receive education in the public school system in Colorado. In 1977, Governor Lamm designated Disability Law Colorado as Colorado's federally mandated Protection and Advocacy System (P&A).

One of Disability Law Colorado's most important tasks is to protect the rights of children with disabilities in school. Although the Colorado Department of Education (CDE) has enacted rules regarding restraint that apply to *all* students, through 85 investigations and years of advocacy, DLC has found that **students with disabilities are disproportionately restrained and secluded in school.**

## The Problem with Restraint in Schools

Disability Law Colorado (DLC) has been investigating allegations of abuse and neglect against people with disabilities since it was founded; however, after receiving extremely troubling reports from parents of young children about the use of restraint in schools, in 2006 DLC began focusing its investigative efforts on this important issue. Some of the complaints DLC has received include **school staff restraining children with rope, duct taping children to wheelchairs, locking children in desks and confining children to rooms as small as broom closets for hours** throughout the day.

Since 2006, DLC has gathered data on restraints from 122 school districts across the state, completed 85 investigations of improper use of restraint in schools and provided over 25 trainings for school districts, service providers and parents. From these efforts, DLC has concluded that many school district staff members and parents are not aware of the law regarding restraints in school and, as a result, children are being inappropriately restrained and secluded in schools across the state. This is not just a disability rights issue; it is a human rights issue. We need your help to make a change - now.



## The Current Law

In 1999, in response to a number of deaths caused by restraints, Colorado enacted a statute, The Protection of Persons from Restraint Act, to regulate the use of restraint in schools and other facilities like hospitals, residential treatment facilities, and mental health facilities. Thereafter, the Colorado Department of Education (CDE) enacted The Rules for the Administration of the Protection of Persons from Restraint Act (The Rules), which applies to public schools licensed by CDE. According to the statute and CDE's Rules, there are several types of restraint, including:



- **Chemical Restraint**: Medication administered on an as needed basis to involuntarily limit a child's movement.
- **Mechanical Restraint**: A physical device used to involuntarily restrict a child's movement.
- **Physical Restraint**: The use of bodily, physical force to involuntarily restrict a child's movement.
  - Holding a student for less than 5 minutes is not considered a physical restraint.
- **Seclusion**: The placement of a student alone in a room from which egress is involuntarily prevented.

According to CDE's Rules, school staff may not use mechanical or chemical restraint, but **physical restraint and seclusion are allowed** in the case of emergencies.



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## *Gaps in the Law*

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After receiving a grant from the Colorado Developmental Disabilities Council (CDDC), DLC partnered with CDE and gathered data from 122 school districts across the state on their use of restraint in schools. Additionally, Disability Law Colorado also embarked on a state-wide training campaign, providing training and information on the law regarding restraints to school districts and parents from Durango to Grand Junction to Denver and beyond. From this work, DLC found that - despite the statute and The Rules – there were many wide-spread deficiencies among school districts across the state.

*“I don’t want him to go back to that school, he was there 17 days and they restrained him 42 times. That doesn’t teach him anything; I’m afraid they’re going to kill him.”*

~ Parent of a 10-year-old child with autism.

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## *Specific & Problematic Trends*

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Some of the most prevalent problems among school districts include:

- Inaccurate documentation and notification procedures
- A misunderstanding of what constitutes seclusion
- Failure to provide standardized forms to staff for documentation of the use of restraint
- A lack of understanding of what constitutes an emergency
- A failure to recognize the deadly potential of the use of prone restraint

Despite the efforts of numerous advocacy and enforcement efforts, it has become apparent that the law does not provide enough protection for our students and changes are needed.



## Problems with the Current Law

**No Ban on Prone Restraint** - The Restraint Rules do not ban prone restraint, but instead state that a restraint cannot be used if it restricts a child's breathing. This places responsibility and discretion in the hands of school district staff. Prone restraint is dangerous because of the possibility of restricting breathing, and should not be used for any reason. Prone restraints are currently prohibited by all facilities licensed by the Colorado Department of Human Services (CDHS), including day treatment and residential facilities and mental health facilities, but it is still allowed in public schools.

*“When I walked into the room they had him face down on the floor and they were holding his arms and legs. As soon as they heard me they let him go, he jumped up and ran to me sobbing.”*

~ Grandparent of a 5-year-old kindergartener with developmental disabilities.

**No Oversight** - The Restraint Rules require that each school district conduct an annual review of all of the restraints in the district, but their review data does not have to be written or submitted to CDE or any other state or federal agency. This means that school districts are essentially policing themselves without any state or federal oversight.

**No Enforcement** - There is no enforcement mechanism within the statute or The Rules. This means that if school district staff violates The Rules, there is no complaint or grievance process provided for a parent. In contrast, if a parent believes that their child's rights have been violated in regard to special education services, there is a full complaint and hearing process provided by CDE. This lack of an administrative enforcement mechanism forces parents to choose between allowing their child's rights to be violated and filing a lawsuit in state or federal court.



# How Are Children Harmed by Restraint?



The problems related to restraint in schools are real and have been widely documented. For example:

**Congress** found that physical restraint and seclusion have resulted in physical injury, psychological trauma, and death to children in public and private schools.

**Children** who have been restrained have reported nightmares, anxiety and mistrust of adults in authority, and can experience post-traumatic stress disorder for years to come.

**Parents** are afraid to send their children back to school where restraints are used.

**Students** who are forced into unmonitored seclusion may also suffer psychological harm, including feelings of anger, depression, humiliation, despair, and delusion.

*“When they want to restrain you the teacher takes the other kids out and the helper puts you down on your stomach, sits on your back and holds your arms down with his knees and then other people come in and hold your legs and arms...one time I fell asleep.”*

(student likely actually passed out).

~ Colorado Student, 7 years old



# *Alternatives to Restraint*

There are many alternatives to restraint. Individual schools, school districts and even entire states have banned the use of restraint, but have managed to find alternative ways to deal with non-preferred behaviors. Some examples include:

## **Increased Teacher Training**

It is true that dealing with unruly behaviors in the classroom is challenging, however, the key to reducing the use of restraint in response to behaviors is by ensuring that teachers receive training in identifying behaviors, looking at the issues underlying the behaviors and creating open communication to help create individualized behavior supports for students.

## **Positive Behavior Intervention and Supports (PBIS)**

PBIS is a school or district-wide program that rewards positive behaviors; however, the goal of PBIS is not simply to suppress or eliminate unwanted behaviors, but rather to understand and respond thoughtfully to their cause and/or purpose. With this knowledge, the staff member can then assist the child in substituting more appropriate behaviors which allow the child to effectively communicate her needs, feelings or choices. This individualized response is coupled with a commitment to work on changes to physical environments and other triggers, as well as improving interactions and relationships between the child and school staff members. PBIS is used across the country and CDE has staff members and community contractors who are dedicated solely to teaching school district staff how to effectively implement PBIS. Despite this, Colorado school districts continue to rely unnecessarily on restraint and seclusion.

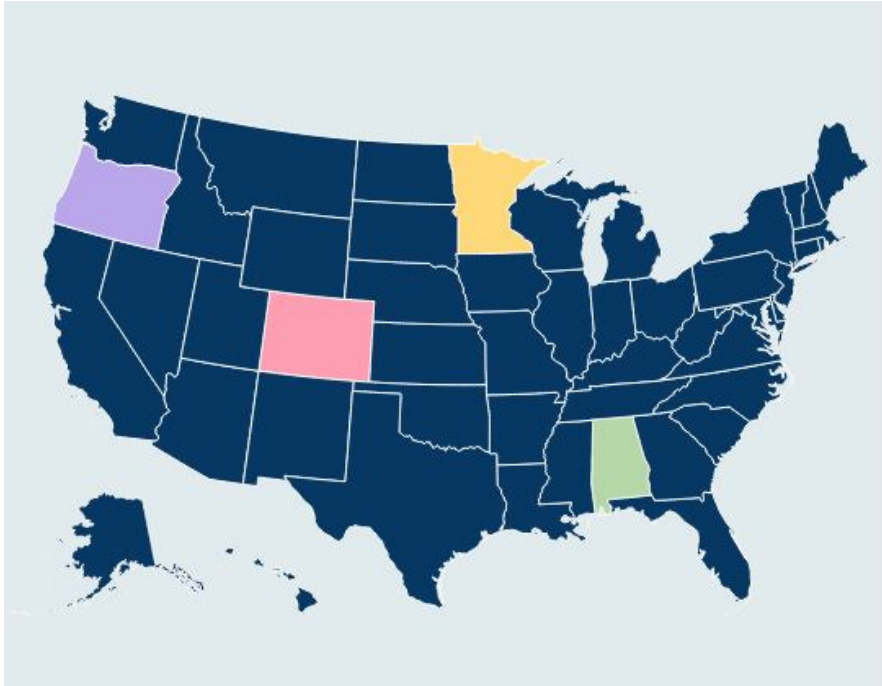
## **Behavior Intervention Plans**

Another intervention alternative to restraint is the use of Behavior Intervention Plans (BIPs). These are plans created by a child's team of teachers, administrators, therapists and parents to provide detailed responses for school district staff to use in response to various behaviors. They are, in-effect, step-by-step guides to walk a staff member through difficult situations and to try and de-escalate situations before they evolve into emergencies.





# == How Does Colorado Compare to Other States? ==



## Colorado

No ban on prone restraint  
No data collection  
No Enforcement  
5,456,000 state population  
899,000 student population  
(pre K-12)



## Oregon

Ban on prone restraint  
Report created each year of all restraints in schools, accessible to the public  
4,028,000 state population  
576,407 student population  
(K-12)



## Minnesota

Ban on prone restraint  
Districts must prepare reports to the Department of Education annually  
5,489,000 state population  
837,154 student population  
(pre K-12)



## Alabama

Ban on seclusion  
Districts must prepare reports to the Department of Education annually  
4,858,000 state population  
740,511 student population  
(pre K-12)

*“They called and said they restrained him. When he came home, he had a scrape on his cheek and there were bruises on the backs of his legs and arms.”*

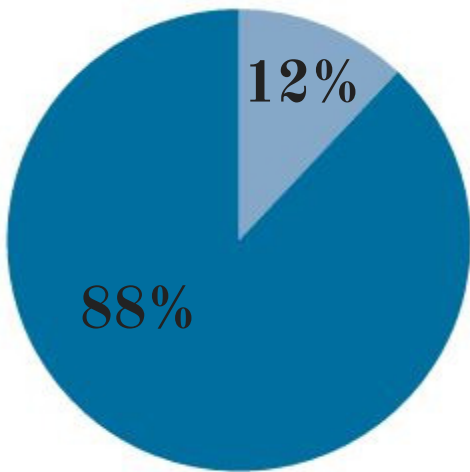
~ Mother of an 8-year-old child with autism.



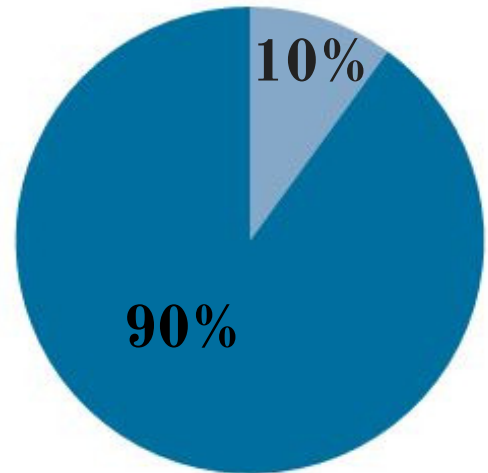
## The Graphic Truth

Although students with disabilities make up a small minority in schools, they are restrained far more often than their peers without disabilities.

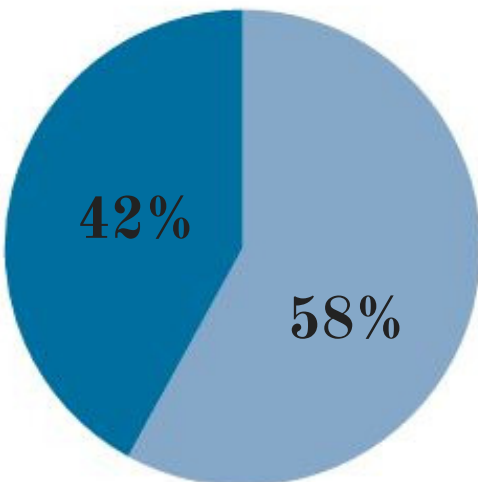
### Students with Disabilities Nationwide



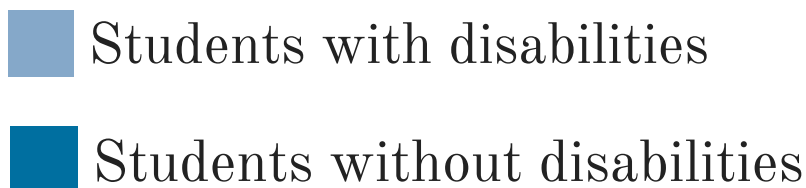
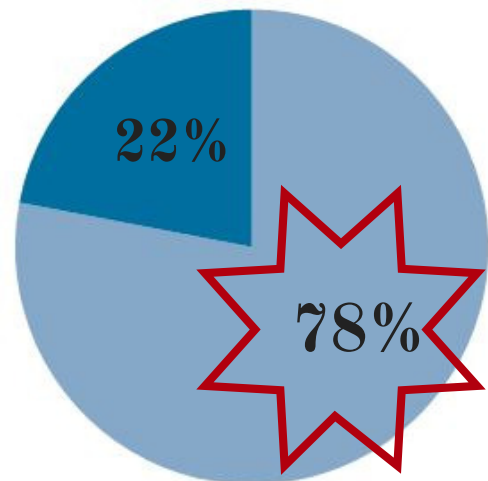
### Students with Disabilities in Colorado



### Restraints Nationwide



### Restraints in Colorado



# *Call to Action*

Based on the work that Disability Law Colorado has engaged in over the last ten years, we are convinced that we cannot stand by while students with disabilities suffer unnecessary restraint and seclusion in school. Therefore, we urge that the following changes are made to the law. Specifically:

**1. BAN PRONE RESTRAINT** - *This is a serious safety issue for all children.*

**Prone restraint is already banned** by CDHS facilities, including:

- **Residential treatment facilities** (for children whose behaviors have been determined to require residential treatment)
- **The Department of Youth Corrections** (for incarcerated youth)
- **State Regional Centers** (facilities for people with intellectual/developmental disabilities that need residential treatment)

**2. REQUIRE DATA COLLECTION & REVIEW** - *We need transparency.*

Currently school districts are allowed to police themselves when it comes to reporting incidents of restraint or seclusion in school. This does not allow for transparency and puts our children at risk. We must enable CDE to collect all school district data on restraint and seclusion annually.

**Over twenty other states currently require districts to report their data to their state education agency.** Reporting will allow CDE to engage in effective monitoring and oversight of school districts.

**3. ENFORCEMENT OF THE RULES** - *We need accountability.*

Under the current rule, there is no enforcement mechanism. This means that if a parent is concerned about his or her child being secluded in a small room, multiple times a week as a behavior intervention rather than as a result of an emergency situation, the parent has no effective administrative recourse. Rather, **the parent has to accept the situation or be forced to file a lawsuit in state or federal court.** This is a waste of public resources. Colorado has adopted a system of written complaints and formal hearings for parents bringing a complaint regarding special education services. A similar system should be created to handle complaints of unlawful restraint or seclusion.



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