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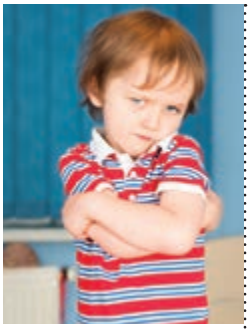

Has Time Expired for Time-Out Rooms?

By Charles J. Russo, J.D., Ed.D.

The legality of time-out rooms as a behavior management strategy for students with disabilities has come under fire.

An issue that continues to raise serious concerns for education leaders surrounds the treatment of students with disabilities who behave unacceptably. In *Honig v. Doe* (1988), the Supreme Court acknowledged that in such cases, among the procedures available to educators is "the use of study carrels, timeouts, detention, or the restriction of privileges" (p. 325). Time-out rooms—typically small rooms where students who misbehave are sent until they can safely regain their composure—continue to be used in most jurisdictions, subject to state oversight via statutes and regulations (U.S. Department of Education 2010).

A recent case involving the placement of a student with disabilities in a time-out room originated in Oklahoma. *Muskrat v. Deer Creek Public Schools* (2013), involved JM, a child with a disability who, under the Individuals with Disabilities Education Act (IDEA), had an individualized education program (IEP). JM, who was 5–10 years of age during the relevant time frame, had the mental age of a 2- or 3-year-old. JM also experienced impaired gross and fine motor skills plus seizures and problems with his balance.

JM occasionally yelled, threw objects, kicked, had tantrums, and engaged in other disruptive behavior that led teachers to sometimes place him in a time-out room attached to his classroom. Although small, the time-out room was large enough to allow a teacher and a child inside, and it had a light fixture, a door without a lock, and a window that was high enough that children could not peer out.

Board policy limited the time that children could spend in time-out rooms by multiplying their mental ages by two to establish a maximum number of minutes, but officials did not always keep track of whether staff complied with this directive. Based on school records, it appears that the longest that JM spent in the time-out room was four minutes.

When JM's parents became aware of his being placed in the time-out room, they asked officials to stop doing so because he lacked that mental maturity to comprehend why he was being treated in this manner. At his parents' request, education officials modified JM's IEP in November 2005 directing that he not be placed in the time-out room. However, records revealed that during the 2004–2005 and 2005–2006 school years, the principal directed that JM be placed in seclusion on at least 30 occasions. During the 2005–2006 academic year, even though JM demonstrated signs of stress, such as sleeplessness and a documented decline in his cognitive and physical functions, neither his doctors nor his parents connected these symptoms to the time-out room.

Before the start of the 2006–2007 school year, JM's IEP was amended so that he would not be placed in a time-out room or in a classroom with a time-out room. School officials also stopped using the time-out room in general that year. At some point during the year, when JM was placed in a classroom with a no-longer-used time-out room, his parents claimed that his proximity to the former time-out room increased his anxiety.

The parents further alleged that educators subjected JM to three instances of physical abuse: his teacher "popped" JM on the cheek because he would not sit still in the cafeteria; his full-time aide slapped his arm hard enough to leave a red mark; and the teacher and aide acted jointly to restrict one of his shoulders so he could not stand.

There was no evidence that any of these incidents subjected JM to permanent harm. At the end of the 2006–2007 year, JM's parents removed him from the school and eventually the district, filing suit in October 2008 against the school board, the principal, and the two educators involved in the alleged incidents of abuse.

Trial Court

With regard to JM's treatment vis-à-vis the time-out rooms, his parents filed suit in a federal trial court in Oklahoma based primarily on state law. However, the parents did allege that the educators violated JM's constitutional rights pursuant to the Fourteenth Amendment and the Civil Rights Act of 1871, 42 U.S.C. § 1983.

The court rejected the school board's motion for summary judgment premised on the notion that the parents failed to exhaust administrative remedies under the IDEA by not pursuing due process hearings before filing suit. After allowing the parents to amend their deficient state law claims, the court granted the board's motion for summary judgment because the parents failed to allege sufficiently that the claimed violations met the Fourteenth Amendment standard of behavior that is sufficiently egregious.

Further, the court rejected the parents' claim that their case could proceed under the Fourth Amendment's reasonableness standard because it was too late in the process to raise such allegations. Not surprisingly, the parents appealed to the Tenth Circuit.

Tenth Circuit

A three-judge panel of the Tenth Circuit unanimously affirmed in favor of the school board. The Tenth Circuit was satisfied that in light of the facts as pleaded, and the timeliness of the parental request for relief, it was excused from the IDEA's exhaustion of remedies requirement. In so ruling, the Tenth Circuit reviewed the claims of three alleged incidents of physical abuse and the use of time-out rooms separately.

Neither the IDEA nor its regulations address time-out rooms or seclusion.

Starting with the abuse charges, the Tenth Circuit affirmed that insofar as the claims arose more from the educators' frustration in handling a difficult child than a legitimate disciplinary concern, it would have made little sense to have required due process hearings. As to the time-outs, the court conceded that complaints about placements in time-out rooms incident to a student's IEPs would ordinarily be subject to the exhaustion remedy. Yet since educators had stopped placing JM in time-out rooms and his parents sought only damages, the court thought that it would have been futile for them to have sought a due process hearing because it could not grant the relief they sought.

Having found that the suit could proceed even though the court eventually rejected all of their allegations, the Tenth Circuit turned to the merits of the parents' claims.

With regard to the three incidents in which the teacher and aide touched JM, the court ruled that JM did not suffer lasting physical effects from the alleged mistreatment. In noting that the most time JM spent in a time-out room was four minutes, the court was not convinced that this was egregious. The court rejected the supervisory liability charge against the principal essentially because she did not act with the intent of infringing on JM's constitutional rights. Finally, the court refused to impose liability on the school board because the parents failed to demonstrate that any harm that JM experienced was due to an official policy or custom.

In concluding, the Tenth Circuit affirmed the grant of summary judgment in favor of the school board on all claims.

Recommendations

Litigation such as *Muskrat* is likely to continue over the legality of time-out rooms even though, according to the most recent federal report, 31 states do "not have any statutory [or regulatory] requirements regarding the use of . . . seclusion practices in schools" (U.S. Department of Education 2010, p. 19). Interestingly, though, neither the IDEA nor its regulations address time-out rooms or seclusion. As such, the remainder of this column provides recommendations for school business officials and other education leaders in school systems where boards use or are considering the use of time-out rooms when students with disabilities misbehave.

Many behavior management techniques or options exist with regard to the use of time-out rooms.

First, it is important to note that many behavior management techniques or options exist with regard to the use of time-out rooms, also known as seclusion, for students who engage in unacceptable behavior. Time-outs can entail sitting students in the corners of their classrooms away from peers. Students can be placed outside of classrooms, in halls near the classroom door, or in the offices of principals or other school personnel. Actual time-out rooms—regardless of what they may be called or where they are located—are the most restrictive form of student behavior control.

Second, if school boards are using or are considering the adoption of time-out rooms, they should assemble broad-based teams of stakeholders to ensure that the rights of students are protected. Teams should include, but not necessarily be limited to, a school board

member; central office personnel, such as the school business official and special-education director; the board's attorney; building-level administrators; a special-education teacher and an aide; a school psychologist or counselor; and parents of students with disabilities. Such teams can help ensure that all reasonable perspectives are heard.

Time-out rooms are the most restrictive form of behavior control.

Third, consistent with state statutes and regulations, policies should address the following issues:

- Parental approval: whether—consistent with student IEPs and behavior intervention plans under the IDEA, both of which must be developed in consultation with parents—policies should require parental approval before allowing children to be placed in time-out rooms.
- Provisions for notifying parents on the day that their children are placed in time-out rooms.
- Reasons for which children can be placed in time-out rooms, keeping in mind that the rooms are designed to provide misbehaving children with cooling-off periods, not for the convenience of teachers who may have difficulty handling children who are disruptive.
- Limits on the use of time-out rooms where children present an immediate risk to themselves or others.
- Ways in which time-outs can be used for positive behavioral interventions designed to help students learn to correct their actions.
- Who has the authority to place or direct others to put children in these rooms.
- Frequency: how often students can be placed in seclusion during terms or school years.
- Duration for which children can be kept in seclusion, taking their chronological ages, mental ages, grade levels, and disabilities into consideration.
- Students' use of time in seclusion settings: whether behavior intervention plans provide guidance on how children should be handled and what they should do during their time away from classes.
- Location of time-out rooms: whether in, adjacent to, or near classrooms.
- Size and dimensions of rooms, making certain that they are clean and have adequate light, heating, and ventilation.
- Who is charged with supervising students who are placed in seclusion and how their safety is maintained, whether watching them through observation windows or remaining with the children (if children are left alone, there should be a means of providing continuous visual and auditory monitoring of their conditions).
- Training in psychological distress, medical distress, or both for all who supervise children who may be placed in time-out rooms.

Fourth, school business officials should work with their boards and other education leaders to review policies annually to ensure that they are as up-to-date as possible, reflecting the most recent developments in case law, statutes, and educational trends.

References

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