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# A TIME OUT OR A KNOCK OUT: HAS THE USE OF RESTRAINT AGAINST STUDENTS WITH DISABILITIES BECOME A FORM OF CORPORAL PUNISHMENT?

*by* SUSIE BUCARO

**O**n May 25, 2006, a 7-year-old girl with Attention Deficit Disorder suffocated under the body weight of a daycare clinic staff member who pinned her to the floor.<sup>1</sup> Angie Arndt would not stop blowing bubbles in her

milk.<sup>2</sup> As punishment, Bradley Ridout laid his 250-pound body on her torso while two other staff members held down her arms and ankles.<sup>3</sup> After 50 minutes in this position, Angie's crying and resistance subsided.<sup>4</sup> A medical examiner ruled positional asphyxia as the cause of her death.<sup>5</sup>

The use of corporal punishment in public schools, although legal in 20 states,<sup>6</sup> generates controversy when a routine disciplinary measure results in the death of a child.

Under the Individuals with Disabilities Education Act (IDEA), students with disabilities are statutorily entitled to a Free and Appropriate Public Education (FAPE).<sup>7</sup> An appropriate education allows a child to make educational progress,<sup>8</sup> and to prepare and equip her to further her education, live independently and participate in the workforce.<sup>9</sup> IDEA, however, does not explicitly prohibit the use of physical restraint or other forms of corporal punishment.<sup>10</sup>

Angie's death raises the question: should it?

#### THE LEGALITY OF RESTRAINING STUDENTS WITH DISABILITIES

In response to Angie Arndt's death and reports of similar incidents involving restraint-induced injuries, the American Civil Liberties Union (ACLU) and the Human Rights Watch launched a study on the use of corporal punishment against students with disabilities.<sup>11</sup> The investigation culminated in a seventy-page report entitled "Impairing Education: Corporal Punishment of Students with Disabilities in US Public Schools."<sup>12</sup>

The report, based on 202 in-person and telephonic interviews conducted between December 2007 and June 2009, suggested that a quarter of a million school children are subject to violent forms of punishment.<sup>13</sup> Furthermore, students with disabilities are affected at a disproportionately high rate: 19 percent of students subjected to corporal punishment are students with disabilities, even though they comprise only 14 percent of the nationwide student population.<sup>14</sup>

Corporal punishment often takes the form of paddling. From 2006 to 2007, nearly 42,000 students with disabilities nationwide were paddled at least once.<sup>15</sup> Face-down restraint, however, is one of the most lethal school prac-

tices, since it may result in sudden fatal cardiac arrhythmia or respiratory arrest.<sup>16</sup> Restraint can also lead to cerebral oxygen deprivation, lacerations, abrasions, muscle injuries, hyperextension of the arms, as well as forms of psychological trauma.<sup>17</sup>

Despite these consequences, both corporal punishment and restraint are legal. In *Ingraham v. Wright*, the U.S. Supreme Court validated the constitutionality of corporal punishment in public schools, finding that the protection against cruel and unusual punishment did not apply to students.<sup>18</sup> More recently, under the George W. Bush Administration, the Office of Special Education Programs took the position that IDEA does not expressly prohibit the use of physical restraints on students with disabilities.<sup>19</sup>

Students who qualify for assistance under IDEA receive an Individualized Education Program (IEP).<sup>20</sup> An IEP includes the individualized educational and related services a student with a disability needs to receive a FAPE.<sup>21</sup> According to Jennifer O'Connell, a Speech Language Pathologist at Reinberg Elementary School in Chicago, IDEA also requires the personalization of the disciplinary action to be used on a specific child.<sup>22</sup> Under "IDEA and what is stated in a [child's] IEP," she states, "we must treat [every] child as an individual."<sup>23</sup> If restraint is permitted by state law, the IEP team must consider whether its use is consistent with the terms of a given child's IEP.<sup>24</sup>

The IDEA standard, therefore, delegates a significant amount of deference to the disciplinarian. In an educational environment where resources and training for alternative methods of discipline are unavailable, disciplinarians may resort to corporal punishment because it is quick and easy to administer.<sup>25</sup>

Furthermore, a trend toward teacher victimization suggests that educators resort to restraints because they often face threats of injury or physical attacks from students.<sup>26</sup> From 2003 to 2004, the percentage of public school teachers who reported being threatened during the school year ranged from 4 to 18 percent by state.<sup>27</sup> A teacher facing imminent violence may be justified in exercising physical restraint in order to protect herself or others. The danger, perhaps, lies in misuse: when corporal punishment becomes the answer to non-violent misbehavior, like Angie Arndt blowing bubbles in her milk.<sup>28</sup>

## RESTRAINT IN PRACTICE: A FORM OF CORPORAL PUNISHMENT?

Bridget Connolly, Special Education Coordinator at Niles West High School in Skokie, Illinois, believes lawful bans against corporal punishment contribute to resolving the problem.<sup>29</sup> Even though federal law permits corporal punishment, a majority of states have enacted legislation outlawing it.<sup>30</sup> “Although there are some isolated incidents that you hear happen in the Chicago area schools,” says Connolly, “corporal punishment has been banned in Illinois.”<sup>31</sup>

Jo Pelishek, however, has another opinion.<sup>32</sup> Pelishek, a Wisconsin advocate for children with disabilities, believes that the use of corporal punishment against students with disabilities is more widespread than most people think.<sup>33</sup>

Indeed, even though corporal punishment is unlawful under Wisconsin law, restraint remains legal.<sup>34</sup> In 2006, the Centers for Medicare and Medicaid Services (CMS) issued a policy defining restraint for facilities receiving Medicaid and other types of federal funding.<sup>35</sup> The CMS definition reflects the most current federal thinking on restraint, defining it as any manual method that immobilizes or reduces the ability of an individual to move his or her arms, legs, body or head freely.<sup>36</sup> Only five states – Colorado, Connecticut, Iowa, Michigan and Pennsylvania – have rejected the CMS definition and banned restraint.<sup>37</sup> Wisconsin and the remaining 90 percent of state jurisdictions allow it.<sup>38</sup>

Following Angie’s death, the Northwest Counseling and Guidance Day Clinic in Rice Lake, Wisconsin, pled no contest to a felony count of negligent abuse.<sup>39</sup> In a statement to Pioneer Press, Ridout’s attorney stated, “he was simply doing what he was trained to do by the facility.”<sup>40</sup> The facility, following Wisconsin state law, permitted its staff to use restraint in emergency situations.<sup>41</sup> Again, perhaps the danger of restraint lies in its misuse: when blowing bubbles in one’s milk is mislabeled as an emergency situation.<sup>42</sup>

A recent incident on Chicago’s south side further supports Pelishek’s position. In October 2009, a police officer tackled Marshawn Pitts, a student receiving special education services, to the ground at the Academy for Learning High School in Dolton, Illinois.<sup>43</sup> When the police officer asked Marshawn to tuck in his shirt, he allegedly cursed at him and responded, “You can’t make me.”<sup>44</sup>

The officer placed Marshawn, a 15-year-old boy, in a face down restraint position, injuring his mouth and breaking his nose.<sup>45</sup>

Marshawn receives special education services because he has a learning disability resulting from a brain injury he suffered as a child.<sup>46</sup> Pelishek notes that students like Marshawn tend to have disabilities that impair impulse control or understanding, leading them to be more prone to difficult behavior.<sup>47</sup> “Using physical intervention. . . [and] corporal punishment,” adds Pelishek “only perpetuates the problem.”<sup>48</sup> Pelishek advocates the approach taken by the ACLU and Human Rights Watch report, which calls for more positive behavioral support programs, rather than violent forms of discipline.<sup>49</sup>

Marshawn has transferred to another school and is seeking a legal remedy against the police officer who assaulted him.<sup>50</sup> However, for Angie Arndt, any remedial measures come too late. For other children with behavioral problems, there is hope that staff members will learn when to restrain not only the children under their care but also themselves.

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## NOTES

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