



# EDUCATION LAW NOTES

## Federal and Virginia Developments in School Law

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A VASSP Bimonthly Publication • November, 2020 • Vol. 4, No. 2 • www.vassp.org

### ***PRINCIPALS ARE AT THE CENTER OF RESTRAINT AND SECLUSION CLAIMS***

On July 14, 2020, a Northern Virginia federal trial court in *Q.T., et al., v. Fairfax County School Board, et al.*, denied the Fairfax County Public Schools' ("FCPS") motion to dismiss claims that it violated the rights of multiple disabled students when it inappropriately and excessively used restraint and seclusion – allowing the litigation to proceed. Parents of six individual students, along with several organizations representing the interests of various disability groups, alleged that FCPS frequently restrained disabled students and secluded them from their educational programs. The case features alleged conduct by some principals and assistant principals.

The district court declined to dismiss the parents' Americans with Disabilities Act ("ADA") lawsuit (although it did grant FCPS' motion as to the organizations and did dismiss the individual plaintiffs' Section 504 of the Rehabilitation Act and §1983 claims), finding that the individual plaintiffs alleged sufficient facts to warrant allowing the case to proceed. The opinion comes as the Virginia Board of Education completes its final review/approval of draft restraint and seclusion regulations, which the Virginia General Assembly required when in 2015 it passed Virginia Code Section 22.1-279.1:1.

Among the allegations in *Q.T. v. FCPS* are that FCPS routinely restrained and secluded the six named students even when their behavior did not pose a danger to themselves or others. The court observed that on one occasion FCPS allegedly restrained one of the students for "30

minutes to 1.5 hours" for behaviors such as leaving the classroom without permission. The plaintiffs also alleged that in that instance the restraint was so restrictive that the individual who restrained the student "sustained injuries from holding [the student] for so long and with such force." In another example, the court noted that FCPS allegedly placed a different student in seclusion for using inappropriate language even though the student was exhibiting severe distress, said he "wanted to die," and requested that someone "kill him." The court cited to yet a third plaintiff who alleged that between five and twelve years of age he was improperly restrained and/or secluded 745 documented times, including for nearly two consecutive months at one point. Plaintiffs alleged that many instances went undocumented and without parental notification.

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Notably, FCPS argued that in 2012 it devised and implemented its own Guidelines on the Use of Physical Restraint and Seclusion for Students with Disabilities Receiving Special Education Services. Among the Guidelines' provisions was the following statement: "***Each principal*** or program administrator will determine a time and method to ensure that appropriate staff members, parents, and student are familiar with the school division's policies and procedures regarding the use of behavior management techniques, physical restraint, and seclusion in dangerous situations."

Despite this provision, one student's parents alleged that the student would run from the classroom to avoid bullying classmates; the administration threatened to call the police; and the student "grew fearful of the school's principal and staff and ran away from them." When confronting the administration about the child's issues, the plaintiffs claim that the principal advised them that "nothing could be done and claimed that [the student] had behavioral issues." On another occasion, these same parents alleged that their student was impermissibly placed in a "safe space" in his classroom (impermissible seclusion), which they described as a cardboard box. They alleged that on one occasion an assistant principal directed the student to take his safe space and go to a separate seclusion room; when the student did not do so, they allege the assistant principal "grabbed him by his leg, pulled him out of the classroom, and forced him down the hall into the seclusion room while [the student] clutched his box."

The district court's opinion centers on jurisdictional and legal pleading standards. Notably, the court determined that the plaintiffs were NOT required to exhaust administrative remedies before advancing their cause to court: that is, they were not required to first file an administrative due process hearing under the Individuals with Disabilities Education Act ("IDEA") because they were not, in essence, claiming a violation of the students' right to a free appropriate public education ("FAPE"). Rather, the court echoed earlier decisions that stand for the proposition that such "administrative exhaustion" is not required when the plaintiffs are seeking relief not available under the IDEA: here, plaintiffs seek relief for alleged unlawful restraint and seclusion giving rise to claims under the ADA, Section 504 of the Rehabilitation Act, and 42 U.S.C. § 1983. The court reached this conclusion conceding that the alleged actions took place in an educational setting. "Plaintiffs' claims before this Court state a stronger case for discrimination outside of a denial of FAPE, as here Plaintiffs describe the use of restraint

and seclusion as tools of oppressive discrimination, not just as inadequate tools of education."

The *Q.T. v. FCPS* opinion emphasizes the attention currently being paid to restraint and seclusion practices on k-12 school campuses across the country. Following the General Assembly's directive in 2015, the VDOE has developed draft "Regulations Governing the Use of Seclusion and Restraint in Public Elementary and Secondary Schools in Virginia." The comment period for the draft Regulations is now closed and observers expect very little revision to the working draft. Notably, Virginia Code §22.1-279.1:1 requires that the regulations be consistent with the (1) Guidelines for Development of Policies and Procedures for Managing Student Behavior in Emergency Situations, previously issued by VDOE, and (2) Fifteen Principles contained in the U.S. Department of Education's Restraint and Seclusion Resource Document.

The draft Regulations include fairly detailed definitions, criteria for use of seclusion and restraint, and restrictions on such use. They also include training requirements for all school division employees in the areas of positive behavior support, conflict prevention, de-escalation, crisis response and the underlying policy. At least one administrator in every school building must also receive advanced training in the use of physical restraint and seclusion. Important for principals, the draft Regulations contain parental notification and reporting requirements, as well as requirements for conducting follow-up meetings with involved school staff members after each use/instance of restraint and seclusion. The draft Regulations are detailed. Principals are advised to review them carefully, receive the appropriate training (and, where appropriate, arrange for training of staff members), and confer with school division legal counsel on implementation issues.

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