



THE SECRETARY OF EDUCATION  
WASHINGTON, DC 20202

January 26, 2010

Ms. Nancy R. Weiss  
National Leadership Consortium  
on Developmental Disabilities  
Center for Disabilities Studies  
University of Delaware  
461 Wyoming Road  
Newark, Delaware 19716

Dear Ms. Weiss:

Thank you for your September 30, 2009, letter and October 1, 2009, electronic mail inquiry on behalf of 28 disability organizations in which you articulated a "Call to Action to Eliminate the Use of Aversive Procedures and Other Inhumane Practices." I appreciate the concerns raised in your letter and am pleased to respond.

In your letter you asked that the U.S. Department of Education (Department) take regulatory action to "put an end to the use of electric shock, other painful and aversive procedures, seclusion, unnecessary restraint, and food deprivation – all inhumane and unnecessary methods of behavior modification used in some schools and residential facilities for children and adults with disabilities in the United States."

Like you, I am very concerned that we do all we can to help ensure that schools are places of safety for all our children, and that the use of seclusion and restraint is very limited. No child should be subjected to the abusive or potentially deadly use of seclusion or restraint in a school. On July 31, 2009, I issued a letter to all Chief State School Officers asking them to develop or review and, if appropriate, revise their State policies and guidelines to ensure that every student in every school is safe and protected from being unnecessarily or inappropriately restrained or secluded. A copy of my letter is enclosed, for your information, and also is available at <http://www.ed.gov/policy/elsec/guid/secletter/090731.html>. To follow up on the letter, the Department's regional Comprehensive Centers recently collected States' policies and guidelines regarding the use of seclusion and restraints, and worked with the States to help ensure that the Centers had accurate information. We expect to post these policies and guidelines on the Department's Web site to assist in the sharing of information that will help protect our students.

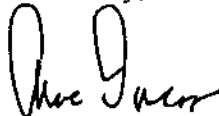
Additionally, the Department proposed in the Federal Register on September 11, 2009, changes to the school year 2009-2010 Civil Rights Data Collection that would require that the collection (1) disaggregate by race/ethnicity, sex, limited English proficient status, and disability status the total number of students subjected to restraint or seclusion; and (2) collect data on the total number of times that restraint or seclusion was applied. The Federal Register notice begins the review and approval process for this proposed data collection. The public was invited to submit comments on these and other proposed changes by November 10, 2009. As a part of the normal

review process, a second round of public comment began with a Federal Register notice posted on December 10, 2009, with comments due by January 11, 2010. These data, and the information gathered as a result of my July 31 letter, would provide national and State-specific profiles of the use of seclusion and restraint in our nation's schools.

Let me also touch on the limits to what we can do under current law. In the United States, unless Federal law provides otherwise, education matters are controlled by State and local laws. Neither the Individuals with Disabilities Education Act (IDEA), which provides funds to States in exchange for their agreement to provide special education and related services to children with disabilities consistent with provisions established in that law, nor Section 504 of the Rehabilitation Act of 1974 (Section 504), which prohibits discrimination on the basis of disability, gives us the legal authority to regulate in the manner that you request. For children with disabilities ages three through 21, the IDEA and its implementing regulations require that a child's individualized education program (IEP) team consider, in the case of a child whose behavior impedes the child's learning or that of others, the use of positive behavioral interventions and supports, and other strategies, to address that behavior (20 U.S.C. 1414(d)(3)(B)(i) and (C), and 34 CFR Section 300.324(a)(2)(i)). The IDEA emphasizes and encourages the use of positive behavioral interventions and supports, but does not prohibit the use of other measures, such as seclusion, non-emergency restraint, or aversive behavioral intervention, when appropriate to address student behavior. Whether to allow IEP teams to consider the use of these procedures in appropriate circumstances for individual children is a decision that is left, under the IDEA, to each State. Thus, you also may wish to raise your concerns with State authorities who are involved with the particular facility you mentioned in your letter. Under Section 504, the Department's Office for Civil Rights is charged with enforcing the prohibition against discrimination on the basis of disability, but that does not expressly authorize us to ban the procedures to which you object.

On December 9, 2009, Congressman George Miller, Chairman of the House Committee on Education and Labor, Congresswoman Cathy McMorris Rodgers, and Senator Christopher Dodd, Chairman of the Senate Subcommittee on Children and Families, introduced the "Preventing Harmful Restraint and Seclusion in Schools Act," H.R. 4247 and S. 2860. Prior to introduction of this legislation, I sent Chairman Miller, Congresswoman McMorris Rodgers, and Senator Dodd a list of principles that the Department believes would be useful for Congress to consider in the context of any legislation on this issue. Copies of my letters are enclosed, for your information, and may be viewed at <http://www.ed.gov/policy/gen/guid/secletter/091211.html>. I am committed to ensuring that schools foster learning in a safe environment for all of our children, teachers, and others. Thank you for your interest in this important issue.

Sincerely,



Arne Duncan

Enclosures



THE SECRETARY OF EDUCATION  
WASHINGTON, DC 20202

July 31, 2009

Dear Chief State School Officers:

On May 19, the Education and Labor Committee in the U.S. House of Representatives held a hearing to examine the abusive and potentially deadly misapplication of seclusion and restraint techniques in schools. Related to this hearing was the testimony issued on the same day by the Government Accountability Office on "Seclusions and Restraints: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers." The testimony is available on the Internet at the following Web address: <http://www.gao.gov/new.items/d09719t.pdf>.

I was deeply troubled by the testimony, as I am sure you would have been. As education leaders, our first responsibility should be to make sure that schools foster learning in a safe environment for all of our children and teachers. Therefore, I am encouraging each State to review its current policies and guidelines regarding the use of restraints and seclusion in schools to ensure every student is safe and protected, and if appropriate, develop or revise its policies and guidelines.

My home State of Illinois has what I believe to be one good approach, including both a strong focus upon Positive Behavior Intervention and Supports (PBIS) as well as State regulations that limit the use of seclusion and restraint under most circumstances (see <http://www.isbe.state.il.us/rules/archive/pdfs/oneark.pdf>). The State's requirements, which I found to be extremely helpful as chief executive officer of the Chicago Public Schools, were described in testimony at the hearing. Illinois prohibits the use of seclusion or restraint for the purpose of punishment or exclusion, and allows trained staff to restrain students only in narrow circumstances. The State allows the use of isolated time out or physical restraint only in situations when it is absolutely necessary to preserve the safety of self or others; includes rules that must be followed when these techniques are used; and requires documentation of each incident to be provided to parents within 24 hours. Several other States have also adopted effective seclusion and/or restraint policies, but there are many jurisdictions that have not, leaving students and teachers vulnerable.

Approximately 8,000 schools across the country are already implementing PBIS, a systems approach to establishing the social culture needed for schools to achieve social and academic gains while minimizing problem behavior for all children. PBIS provides a framework for decision making that guides the implementation of evidence-based academic and behavioral practices throughout the entire school, frequently resulting in significant reductions in office disciplinary referrals, suspensions, and expulsions. While the successful implementation of PBIS typically results in improved social and academic outcomes, it will not eliminate all behavior incidents in a school. However, PBIS is an important preventative approach that can increase the capacity of the school staff to

support children with the most complex behavioral needs, thus reducing the instances that require intensive interventions.

The American Recovery and Reinvestment Act provides significant one-time resources that districts can use to implement a school-wide system of PBIS. Districts could, consistent with program requirements, use funds provided for the State Fiscal Stabilization Fund, Title I of the Elementary and Secondary Education Act, the Individuals with Disabilities Education Act, and State and local funds to provide professional development, develop data systems, and offer coaching to establish and sustain these programs. The Department's Office of Special Education Programs funds the Center on Positive Behavioral Interventions and Supports, with a Web site (<http://www.pbis.org/>) where additional information and technical assistance on PBIS can be obtained free of charge.

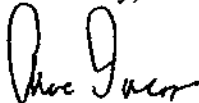
I urge each of you to develop or review and, if appropriate, revise your State policies and guidelines to ensure that every student in every school under your jurisdiction is safe and protected from being unnecessarily or inappropriately restrained or secluded. I also urge you to publicize these policies and guidelines so that administrators, teachers, and parents understand and consent to the limited circumstances under which these techniques may be used; ensure that parents are notified when these interventions do occur; and provide the resources needed to successfully implement the policies and hold school districts accountable for adhering to the guidelines.

I encourage you to have your revised policies and guidance in place prior to the start of the 2009-2010 school year to help ensure that no child is subjected to the abusive or potentially deadly use of seclusion or restraint in a school. I have asked Fran Walter of our Office of Elementary and Secondary Education to work with staff from our regional Comprehensive Centers to contact your office by August 15, to discuss the status of your State's efforts with regard to limiting the use of seclusion and restraint to protect our students. During this contact, we expect to discuss relevant State laws, regulations, policies, and guidance that affect the use of seclusion and restraint, and any plans for further development or revisions. We expect to post the results of these discussions on the Department's Web site to assist in the sharing of information that will help protect our students.

In the meantime, please feel free to contact Ms. Walter at (202) 205-9198 or at [Fran.Walter@ed.gov](mailto:Fran.Walter@ed.gov) with any information or questions about your State's efforts to limit the use of restraints and seclusion in schools.

Thank you for your cooperation on this important topic.

Sincerely,



Arnc Duncan



THE SECRETARY OF EDUCATION  
WASHINGTON, DC 20202

December 8, 2009

Honorable Christopher J. Dodd  
Chairman  
Subcommittee on Children and Families  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

I appreciate your efforts to develop legislation to limit the use of physical restraint and seclusion in schools and other educational settings that receive Federal funds, except when it is necessary to protect a child or others from imminent danger. I applaud your interest in addressing this very serious issue -- as you well know, abuse of restraint and seclusion has resulted not only in harm to children, but in their death. The Department of Education has identified a number of principles listed below that we believe would be useful for Congress to consider in the context of any legislation on this issue. These principles are that:

Any behavioral intervention must be consistent with the child's right to be treated with dignity and to be free from abuse, regardless of the child's educational needs or behavioral challenges.

Physical restraint and seclusion should never be used as punishment or discipline, nor in a manner that restricts a child's breathing.

Every instance of physical restraint and seclusion should be appropriately monitored to ensure the safety of the child, other children, teachers, and other personnel.

Teachers and other personnel should be trained regularly on the appropriate use of restraint and seclusion and the use of effective alternatives, such as positive behavioral intervention and supports.

Parents should be informed of the policies on restraint and seclusion at their child's school or other educational setting, as well as applicable State or local laws.

Parents should be notified promptly following the use of restraint or seclusion on their child, and any such use should be documented in writing.

Policies regarding the use of restraint and seclusion should be reviewed regularly and updated as appropriate.

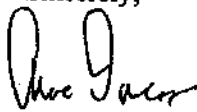
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Legislation should apply to all children, not just children with disabilities.

Legislation should promote the collection of data that would enable teachers, staff, and other educational personnel to understand and implement the preceding principles.

Again, I greatly appreciate your leadership on this important issue and look forward to continuing to work with you to address it. As you know, the Department is reviewing information about each State's laws, regulations, policies, and guidance on restraint and seclusion, which I will provide to you and make publicly available as soon as possible. The Office of Management and Budget advises that there is no objection to the submission of this letter from the standpoint of the Administration's program. If you have any questions, please do not hesitate to contact me.

Sincerely,



Arne Duncan



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December 8, 2009

Honorable George Miller  
Chairman  
Committee on Education and Labor  
House of Representatives  
Washington, DC 20515

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December 8, 2009

Honorable Cathy McMorris Rodgers  
House of Representatives  
Washington, DC 20515

Dear Congresswoman McMorris Rodgers:

I appreciate your efforts to develop legislation to limit the use of physical restraint and seclusion in schools and other educational settings that receive Federal funds, except when it is necessary to protect a child or others from imminent danger. I applaud your interest in addressing this very serious issue -- as you well know, abuse of restraint and seclusion has resulted not only in harm to children, but in their death. The Department of Education has identified a number of principles listed below that we believe would be useful for Congress to consider in the context of any legislation on this issue. These principles are that:

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