



November 10, 2009

Angela Arrington
Director, Information Collection Clearance Division
Regulatory Information Management Services
Office of Management
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Title: Re: Annual Mandatory Collection of Elementary and Secondary Education Data Through EdFacts, September 2009, Changes to Attachment B-4 and B5 Ed Facts Data for School Year 2009-10.

Dear Ms. Arrington,

Thank you for the opportunity to comment on the Department of Education Office for Civil Rights' plans to collect data on the use of restraints and seclusion in public schools, pending collection #4127. As the eighteen national organizations that make up the Alliance to Prevent Restraint, Aversive Interventions and Seclusion (APRAIS, www.tash.org/aprais), we thank you for your leadership on this issue. We applaud your effort to start collecting data on the use of restraint and seclusion in schools.

We unequivocally feel that the danger, harm, and trauma suffered by children as a result of the use of restraint or seclusion make it ***imperative that data collection proceed with all due haste.***

We are alarmed by the rising anecdotal reports of dangerous, traumatic, and inappropriate use of restraints and seclusion by adults who are entrusted to educate and supervise children in school. Restraints or seclusion should be techniques used as a last resort, and then only after intense training, under rigorous supervision, and after specified preconditions have been met. But data on the numbers of students in the U.S. being restrained or secluded are not available. In addition, school districts with high rates of restraint and seclusion remain unidentified. Data collection and analysis will assist state and local education agencies to focus on which schools need assistance in reducing the use of restraint and seclusion and whether particular groups of students are being restrained and secluded more than others. For example, Texas law requires school districts to collect data on the use of restraint and seclusion. A recent Texas Tribune review of Texas data shows public school educators used physical restraints on four of every 100 special education students for a total of 18,000 times, with some students being restrained

dozens of times. Certain school districts in Texas have particularly high rates of restraint and seclusion use. This information will help the Texas state education agency target which schools need help.

Furthermore, we believe the anecdotal information collected and reported in recent media articles and documents released by groups such as the National Disability Rights Network¹, the GAO² and the American Civil Liberties Union³ shows that children with cognitive disabilities, communication or social issues, and children with disabilities who are also of color are disproportionately subjected to these dangerous practices. Data regarding the different rates of restraint and seclusion may show that such children are being discriminated against on the basis of their disability and/or race, thus requiring corrective action to eliminate such discrimination.

The following responds specifically to items 1 and 4 from the notice in the September 11th Federal Register.⁴

(1) Is this collection necessary to the proper functions of the Department?

Absolutely. Schools must ensure that all students are safe from physical injury and emotional trauma and no group of students is differentially treated by virtue of their group status. No national data exist on the extent of this practice in public schools, and state data are spotty at best. Requiring schools to report clearly defined and consistent data provides public accountability on a very dangerous set of practices, benchmarks to measure reduction and prevention, and a mechanism to assess change over time where none currently exists. Current research about change in public practice indicates that assuring that data is a matter of public record serves as a catalyst to change the practice being measured.

The collection of data regarding use of seclusion and restraint in SEAs and LEAs enables districts to use this data to target training, technical assistance, and corrective action regarding the use of seclusion and restraint. It is particularly important to provide more (and more effective) training and technical assistance to SEAs and LEAs in states whose data reflect inappropriate identification, intervention, and integration policies for specific subsets of students.

2. How might the Department enhance the quality, utility, and clarity of the information to be collected?

¹ National Disability Rights Network, *School is Not Supposed to Hurt*, 2009, www.ndrn.org.

² Government Accountability Office, *Seclusions and Restraints: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers*, 2009, <http://www.gao.gov/new.items/d09719t.pdf>.

³ American Civil Liberties Union and Human Rights Watch, *Impairing Education: Corporal Punishment of Students with Disabilities in US Public Schools*, 2009, www.aclu.org/intlhumanrights/childrensrights/40643pub20090811.html.

⁴ Federal Register / Vol. 74, No. 175 / Friday, September 11, 2009

It is our understanding that the Department proposes a collection as follows (as outlined in Annual Mandatory Collection of Elementary and Secondary Education Data through *EDFacts* September 2009, Attachment B-5).

- Students subjected to restraints, disaggregated by race, ethnicity, IDEA disability category and gender
- Students subjected to seclusion, disaggregated by the same categories
- The number of times restraints were applied
- The number of times seclusion was applied

We applaud OCR's plans to measure the number of times restraint or seclusion is used, and urge OCR to require that schools and districts document each incident or occurrence; making clear the parameters of an incident or occurrence. This is a necessary first step in reducing the use of restraint and seclusion.

Rationale: It is critical that schools and educational facilities gather and report data on the number of incidents, not just the number of children on whom these techniques are used. Senior administrators need to analyze trends within the school and among schools; to identify situations where the techniques are disproportionately used, or where one child or group of children are targeted and repeatedly restrained or secluded. It is critical for data to be reported at the local, state, and federal levels, and available to the public on a website maintained by the U.S. Department of Education.

It is our strong recommendation that this collection plan be modified to ensure that **data about mechanical restraint and physical restraint are collected separately (each disaggregated by race, ethnicity, gender, age, IDEA, IEP, and 504).**

We also recommend that the terms be modified as follows, including mechanical restraint, physical restraint, seclusion, and time out:

- **Mechanical Restraint** – includes the use of devices as a means of restricting a student's freedom of movement. Such term does not include devices implemented by trained personnel for the specific therapeutic purposes for which they were designed or utilized by the student for the specific and approved safety purposes for which they were designed (e.g., seat belts in vehicles or protective sporting equipment).
- **Physical Restraint** – a restriction that immobilizes or reduces the ability of a student to move his or her arms, legs, torso or head freely. Such term does not include a physical escort or physical prompt.
- **Seclusion** - the involuntary confinement of a student in a room, box, structure, or space where the area is locked or the student is physically prevented from leaving. Such term does not include time-out.

- Time-out - the monitored separation of a student from the group for the purposes of calming, interrupting behavior that impedes the student's learning or the learning of others, or removing behavioral reinforcements. Time out may not include placing a child in seclusion as defined above.

Rationale: Heretofore, there has been no shared agreement on definitions of these terms, rendering interpretation of data that exists difficult. Reportedly Congress is in the process of considering a federal bill on restraint and seclusion use, and many states have passed legislation regulating their use. The suggested definitions stem from discussion among advocacy and education groups and are modeled after both federal and state statute. We believe these definitions clarify points of confusion from a staff perspective (e.g., regarding use of safety devices for their intended purpose as compared to use as a restraint). We encourage OCR to use these definitions to ensure clarity and collection of data that shows accurate rates of use for each technique.

We would like to emphasize that the definition of “seclusion” should not include the word “alone.” A student may be effectively secluded by placing a person in the doorway of the room with the student to prevent the student from leaving.

The term “time-out” has multiple meanings and intentions both within the behavioral research and in practice. Time-out sometimes refers to the practice of allowing an individual to voluntarily take a break from the current routine or activity, to move to a less stimulating or quieter location, or to enjoy appropriate privacy. Such practice should not be considered seclusion. Time-out can be problematic when it is used to seclude students as a method of punishment or when children are removed from educational programming for prolonged periods of time. Often a time-out room is a place where seclusion occurs, regardless of the intended purpose of sending a student there. Schools have developed a wide variety of names for the places students are sent to be secluded. Regardless of the name or purpose, if a student is prevented from leaving, it is seclusion.⁵

The data that OCR has announced it will collect on the use of restraint and seclusion in Eden Data groups 713, 714, and 715 are a positive first step. As OCR refines its initial data collection on restraint and seclusion, we believe that it is important for OCR to expand the permitted values for these groups (similar to the proposed expanded values for Discipline in Data Groups 174 and 194). Additional protection against differential treatment for students could be realized through the addition of five data groups:

- *Disaggregate students by age.*

Rationale: According to the GAO report, young children are more likely to be restrained than older children. Because of the relative vulnerability of children at this developmental stage, they are also more likely to be physically and emotionally harmed. A recent survey conducted

⁵ The Council for Children with Behavioral Disorders, a division of the Council for Exceptional Children, Position on The Use of Seclusion in School Settings (2009)

by APRAIS⁶ showed that 69% of all children restrained and secluded (of 837 subjects) were between the ages of 6 and 10 years old.

- *Determine if parent permission was granted in advance of any restraint or seclusion.*

Rationale: In a recent APRAIS survey, 67% of all parents reported they had never given permission for restraints or seclusion to be used. The absence of parental consent shows that districts acted unilaterally, ignoring the informed consent requirements in the Individuals with Disabilities Education Act (IDEA) and the legal requirement that parents, as equal members of the IEP team, should fully participate in making decisions about their children's needs and programming. Though consent is important, we also caution that parental consent for a strategy known to be dangerous or harmful is not justification to use such measures.

- *Determine if parents received notification that a restraint or seclusion was used.*

Rationale: Parents are often unaware for months or sometimes years that a school is restraining and/or secluding their child. Parents must receive notice that a school has restrained or secluded their child. Only then, will parents be able to take steps to protect their children. .

- *Duration of time restraint or seclusion was applied.*

For each incident of mechanical restraint, physical restraint or seclusion, report duration:

10 minutes or less

11-30 minutes

31 minutes – 1 hour

More than 1 hour

Rationale: The longer the duration, the greater the danger to the student, both physically and psychologically. Many incidents of extended duration of restraint and seclusion use have been documented, and often those students have been deeply traumatized and have not been able to return to the school environment; many have died. Time spent out of the classroom for disciplinary purposes is deeply disruptive to the educational progress of both the students being disciplined and their classmates.

- *Document Injury, Harm or Trauma to Student or Staff*

Rationale: Children have suffered physical harm, psychological injury and have died from the use of restraint and seclusion. Adults charged with applying such techniques have been injured as well. It is critical that data collection include information on any injury or trauma noted as a result of the use of restraint or seclusion

- *Document the educational setting in which restraint or seclusion was applied.*

⁶ Westling, D., Trader, B., Marshall, D., & Smith, C., *APRAIS Survey on the Use of Restraints, Aversive Interventions and Seclusion in Schools*, 2009, preparing for publication.

Rationale: It is important to analyze the setting (regular education classroom, resource room, separate class, public or private separate school, public or private residential facility, or homebound/hospital placements) in which these techniques are being used so that further comparison of disproportionate use and potential civil rights violations may be made.

Again, we applaud you for including restraint and seclusion in the data groups, we urge data collection to begin as quickly as possible, and pledge the expertise and experience of our member organization to assist the Department as it moves forward with plans for data collection.

Sincerely,

APRAIS Members:

TASH

COPAA – Council of Parent Attorneys and Advocates, Inc.

Families Against Restraint and Seclusion

Autistic Self Advocacy Network

National Autism Committee

CHADD – Children and Adults with Attention-Deficit/Hyperactivity Disorder

NAMI – National Alliance on Mental Illness

The Bazelon Center

The Family Alliance to Stop Abuse and Neglect

The RespectAbility Law Center

The Arc of the United States

AUCD – Association of University Centers on Disability

UCP

AAPD – American Association of People with Disabilities

NDRN – National Disability Rights Network

NDSS – National Down Syndrome Society

NDSC – National Down Syndrome Congress

NACDD – National Association of Councils on Developmental Disabilities

NASMHPD – National Association of State Mental Health Program Directors

Other Members of the Disability Community:

Boston Center for Independent Living

Center for Self Determination

Montana ADAPT

United Spinal Association

National Spinal Cord Injury Association

SABE – Self Advocates Becoming Empowered

Elmer Bartels

Family Voices of North Dakota

Family Voices

Topeka Independent Living Resource Center

Disability Rights Education and Defense Fund

Little People of America
National Coalition of Mental Health Consumer/Survivor Organizations
Access Living of Metropolitan Chicago
NCIL – National Council for Independent Living
Center for Disability Rights, Rochester, NY
New York Association of Psychiatric Rehabilitation Service
North Carolina Disability Action Network
National Center for Learning Disabilities
Boston Center for Independent Living

Cc: The Honorable Arne Duncan