



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

December 16, 2010

XXXX XXXX XXXX
XXXX XXXX XXXX
XXXX XXXX XXXX

XXXX XXXX:

This is in response to your electronic mail (e-mail) dated November 2, 2010, to U.S. Department of Education (Department) Secretary Arne Duncan and others at the Department. Your e-mail was forwarded to the Office of Special Education and Rehabilitative Services for a response so that we may provide information to address your concerns and to follow up with you should you have additional questions. Specifically, you expressed concern with my comments regarding the use of seclusion and restraint with students with disabilities in our nation's schools. I appreciate the concerns raised in your e-mail and am pleased to respond.

On Friday, October 22, 2010, I participated in the Interagency Autism Coordinating Committee meeting. In your e-mail, you referred to a statement that I made at the meeting that the Department has not taken a position on the inclusion of seclusion and restraint in individualized education programs (IEPs). Like you, I believe that we must ensure that schools are places of safety for all our children. It is important that States publicize policies and guidelines so that administrators, teachers, and parents understand and consent to the limited circumstances under which seclusion and restraint may be used. Policies regarding the use of seclusion and restraint should be reviewed regularly and updated as appropriate. No child should be subjected to the abusive or potentially deadly use of seclusion or restraint in a school. Importantly, the Individuals with Disabilities Education Act (IDEA) promotes the use of positive behavioral interventions and supports to address behavior that impedes learning; neither the IDEA nor other federal laws specifically prohibit the use of seclusion and restraint techniques in schools. However, if the use of seclusion and restraint is implemented in a school in a discriminatory manner on the basis of race, color, national origin, sex, or disability, the Department's Office for Civil Rights would have jurisdiction over such use pursuant to Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act, or Title II of the Americans with Disabilities Act.

Under the IDEA and its implementing regulations, the vehicle for determining the content of a child's special education program is the IEP process. The IEP is a written statement for each child with a disability that is developed, reviewed, and revised at a meeting in accordance with 34 CFR §§300.320 through 300.324. 34 CFR §300.320(a). Each child's IEP must include, among other components: a statement of the child's present levels of academic achievement and functional performance; a statement of measurable annual goals, including academic and functional goals; and a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child or on behalf of the child, to enable the child to be involved in and make progress in the general education curriculum, and to participate in extracurricular and other nonacademic activities, and to be educated and participate with other children with and without disabilities in those activities. 34 CFR §300.320(a)(1), (2), and (4). The IEP is developed, reviewed, and

revised by the child's IEP Team, which includes the child's parents and school officials. 34 CFR §300.321. In the case of a child whose behavior impedes the child's learning or that of others, the IEP Team, in developing, reviewing, and revising the child's IEP, must consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior. 34 CFR §300.324(a)(2)(i) and (b)(2). The child's unique needs are the basis for determining what behavioral interventions and supports or behavioral management strategies are appropriate for the child and what interventions, supports, and strategies are included in the child's IEP.

It is important to note that we are committed to providing ongoing support and technical assistance to States and districts in this area. The Department's Office of Special Education Programs funds, under the IDEA, a technical assistance center on positive behavioral interventions and supports, the "PBIS Center." The technical assistance provided by the PBIS Center does not focus on a specific curriculum, intervention, or practice, but instead provides assistance to schools, districts, and States to establish a preventive, positive multitiered continuum of evidence-based behavioral interventions that support the behavioral competence of all students. The PBIS Center offers a decision-making framework that guides selection, integration, and implementation of the best evidence-based academic and behavioral practices for improving important academic and behavior outcomes for all students. 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.

Secretary Duncan believes, as I do, that parents should be informed of the policies on the use of seclusion and restraint at their child's school, as well as applicable State laws. As you know, on July 31, 2009, Secretary Duncan, concerned about reported abuses and wishing to aid the public in understanding current State policies, 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. The Department reviewed information about each State's laws, regulations, policies, and guidance on seclusion and restraint and has made that information available to the public on the Department's Web site at the following link: <http://www2.ed.gov/policy/seclusion/seclusion-state-summary.html>.

Thank you for your interest in this important topic and for your advocacy on behalf of your son and all students. If you need further assistance, please feel free to contact my office.

Sincerely,

A handwritten signature in black ink, appearing to read "Alexa Posny". The signature is fluid and cursive, written over a light grey circular stamp.

Alexa Posny, Ph.D.