



UNITED STATES DEPARTMENT 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 be 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 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.

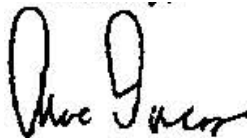
Let me also touch on the limits to what we can do under current law. In the United States, unless Federal law provides otherwise, education matters are controlled by State and local laws. Neither the Individuals with

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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,

A handwritten signature in black ink, appearing to read "Arne Duncan", written over a faint horizontal line.

Arne Duncan

Enclosures