

55 IDELR 20

110 LRP 32191

Letter to Dodd

U.S. Department of Education

N/A

December 8, 2009

Related Index Numbers

50.005 Aversives

Judge / Administrative Officer

Arne Duncan, U.S. Secretary of Education

Case Summary

While thanking Sen. Christopher Dodd (D-Conn.) for his efforts in developing legislation limiting the use of restraint and seclusion, U.S. Secretary of Education Arne Duncan hinted that Congress should incorporate several principles into the proposed legislation. The ED's suggestions focus on requiring educational agencies to take steps to ensure that the restraint and seclusion techniques are used safely, with parental knowledge, and as infrequently as practicable. Agencies applying the techniques should monitor each incident to ensure the safety of all involved, Duncan stated, and teachers should receive regular training on implementing such measures. However, training should encompass other safer methods as well, such as positive behavioral intervention and supports. Legislation should also address the role of parents by ensuring that they are informed of the applicable law and policies at their child's school, that they are promptly notified when restraint or seclusion is used on their child, and that the incident is documented in writing, the secretary stated. As to the character of the techniques, they must be consistent with a child's right to be treated with dignity and to be free from abuse, and they should never be used as discipline, or restrict a child's breathing.

Full Text

Appearances:

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.

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.