



A Partnership of The Arc & United Cerebral Palsy

November 9, 2009

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

Dear Ms. Arrington:

Thank you for the opportunity to comment on the Notice of Proposed Information Collection Requests published in the Federal Register on September 11, 2009 concerning the department's plan to modify its Civil Rights data collection by adding information about the use of restraints and seclusion to the Annual Mandatory Collection of Elementary and Secondary Education Data for ED Facts.

The Arc of the United States (The Arc) and United Cerebral Palsy (UCP) have been working on behalf of persons with intellectual and developmental disabilities for more than 60 years. The Arc provides a wide range of services and supports through 780 state and local chapters. UCP has an affiliate network of almost 100 provider organizations that provide direct services to more than 176,000 children and adults with disabilities.

The Disability Policy Collaboration (DPC) of The Arc and UCP applauds your effort to start collecting data on the use of restraint and seclusion in schools. DPC thanks you for your leadership on this issue. We feel strongly that the danger, harm, and trauma suffered by children as a result of the inappropriate use of restraint or seclusion make it imperative that these data be collected and analyzed.

DPC offers the following responses to items 1 and 4 in the notice in the September 11, 2009 Federal Register:

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

A major responsibility of the Department of Education is to protect the civil rights of public school students. Students with disabilities are protected through several federal laws, such as Section 504 of the Rehabilitation Act and the Individuals with Disabilities Education Act. Current data collection efforts support the Department in ensuring compliance with the federal non-discrimination provisions of federal statutes.

DPC believes that students with disabilities are subject to restraint and seclusion more frequently and for longer periods of time than their typical peers. DPC believes that students with disabilities are restrained and secluded at a higher rate due to their disabilities. There is ample anecdotal information to support these suspicions (National Disability Rights Network, *School is Not Supposed to Hurt*, 2009, www.ndrn.org, 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>).

Data collection is imperative in order to scientifically determine whether or not students with disabilities experience discrimination in public schools through the use of restraints and seclusion. Data will conclusively inform the Department and the public if restraint and seclusion are disproportionately used, or if one child or group of children is targeted and repeatedly restrained or secluded.

(4) How might the Department enhance the quality, utility, and clarity of the information to be collected?

DPC believes that data about mechanical restraint and physical restraint should be collected separately (each disaggregated by race, ethnicity, gender, IDEA disability category and gender). We also recommend that the terms mechanical restraint, physical restraint, seclusion, and time out be defined as follows (underscore indicates suggested new language; strike through indicates suggested omissions):

- 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 - involuntary confinement of an individual ~~alone~~ in a room, box, structure, space, or area which is locked or the individual 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.

There are myriad definitions of restraint, seclusion, and time out. In order to collect data that are accurate, the definitions must be clear and uniform.

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. In future, collection of additional data would be helpful, specifically

- Disaggregate incidents of restraint or seclusion by age
- Document duration of each incident of restraint or seclusion.

Again, DPC commends the Department for including restraint and seclusion in the data groups and we urge that data collection begin as quickly as possible.

Sincerely,

Maureen Fitzgerald
Director, Disability Rights, Family Supports, Technology