

The Legal Center for People
with Disabilities  and Older People

Colorado's Protection & Advocacy System

January 11, 2010

SUBMITTED ELECTRONICALLY TO oira_submission@omb.eop.gov

Office of Information and Regulatory Affairs
Attention: Education Desk Officer
Office of Management and Budget
725 17th Street, NW, Room 10222
New Executive Office Building
Washington, DC 20503

RE: Department of Education Data Collection
FR Doc E9-29437 Filed 12-9-09, 74 FR 65525 (12/10/09)

To Whom It May Concern:

The Legal Center for People with Disabilities and Older People (“The Legal Center”) strongly endorses the Department of Education’s (“the Department”) initiative to significantly enhance the collection and reporting of critical data from schools across the country through proposed changes to the Civil Rights Data Collection (CRDC).

The Legal Center has advocated on behalf of students with disabilities in the Colorado school setting for decades. The Legal Center provides individual legal representation to ensure that children with disabilities receive a free appropriate public education and provides technical assistance and training to families and students with disabilities.

The Legal Center is part of the National Disability Rights Network (“NDRN”). NDRN is the membership association of Protection and Advocacy (“P&A”) organizations, which are located in all 50 states, the District of Columbia, Puerto Rico, and the territories (the U.S. Virgin Islands, Guam, American Samoa and the Northern Mariana Islands).

As the P&A for Colorado, The Legal Center has the authority and responsibility to protect people with disabilities, including students, from abuse and neglect; and investigate complaints regarding the abuse and neglect of individuals with disabilities. The Legal Center has taken a leadership role among the statewide P&A systems by focusing major resources, including two full time staff members, on this issue. We see it as fundamental to our mission to ensure that students with disabilities have the opportunity to receive an inclusive education free from harm.

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Since 2006, The Legal Center has conducted restraint investigations on behalf of over 30 students with disabilities in dozens of school districts across the state. These investigations have important, widespread consequences. For example, The Legal Center discovered that one district was using mechanical restraint desks to threaten students with disabilities. Due to our involvement, the district immediately ceased all use of the desks and has made policy changes to reflect a more complete understanding of the law. In another district, we received multiple, individual complaints from parents regarding abusive seclusion. Again due to our involvement, on a recent follow-up visit to three schools in the district, The Legal Center was pleased to see that the District has implemented a new documentation and staff training policy. Staff in the district reported that these new procedures have resulted in the near-cessation of the use of restraint in that district.

The Legal Center applauds the Department for maintaining its commitment to significantly expanding the scope of its data collection and for making modifications to its proposal in several areas. We would also urge that this proposed expanded scope be maintained.

However, The Legal Center continues to believe that enforcement of civil rights for our nation's school children would be more effective if the data was collected annually, from all schools that receive federal funds. While we appreciate the additional number of schools that will be covered by this effort, we would urge the Department to move toward annual reporting by all schools and school districts.

The Legal Center also makes these specific comments:

Discipline (Data Groups 174, 194): As we noted in our original comments, it has never been more important to monitor the use of exclusionary practices in schools. Our nation's schools expel over 100,000 students and suspend over 3,000,000 students at least once during each school year. Our current disciplinary rates are the highest in the nation's history, and have more than doubled over the past three decades. While these practices are troubling in and of themselves, they are of particular concern because of their disparate use against students of color and students with disabilities. African-American students are nearly 3 times as likely to be suspended and 3.5 times as likely to be expelled, and Latino students are 1.5 times as likely to be suspended and twice as likely to be expelled as their white peers. Students with disabilities are suspended and expelled at a rate roughly twice that of their non-disabled peers.

The Legal Center strongly endorsed the Department's proposal to broaden the collection of discipline data and continues to urge this expanded collection. We also greatly appreciate the decision to collect data on in-school suspensions and the decision to clarify the tracking of referrals to law enforcement agencies and school-related arrests and urge that these changes be maintained.

Restraint and Seclusion (Data Groups 713, 714, 715): NDRN authored the report *School is Not Supposed to Hurt* in January 2009, <http://www.ndrn.org/sr/SR-Report.pdf>, which documented the abuses inflicted upon school children through restraint and seclusion. This report led to a Congressional Hearing and a GAO report on restraint and seclusion in schools. It has also been a factor in the introduction of bills prohibiting the abuses of restraint and seclusion in schools.

The Legal Center continues to applaud the Department for including restraint and seclusion in the data collection. The Legal Center also appreciates the additional clarification made to the proposal by conforming the definition of physical restraint to the definition in the Children's Health Act at 42 U.S.C. § 290jj(d)(3).

Regarding seclusion, the Department has also adopted the definition from the Children's Health Act, 42 U.S.C. § 290jj(d)(4). However, the implementing regulations expand the definition of seclusion by not limiting seclusion to a locked room. For example, 42 C.F.R. § 482.13(e)(1)(ii) (Final Rule: Conditions of Participation for Hospitals) defines seclusion as "the involuntary confinement of a patient alone in a room or area from which the patient is physically prevented from leaving." The Legal Center would prefer an even broader definition of seclusion as follows: "a behavioral control technique in which a student is involuntarily confined to a room or area from which the student is physically prevented from leaving." The Legal Center believes this better captures the types of ways in which students may be secluded in schools than the older Children's Health Act definition.

A Local Perspective: Finally, The Legal Center would like to offer a local perspective. Under the Protection of Persons from Restraint Act and the Colorado Department of Education's Rules for the Administration of the Protection of Persons from Restraint Act, public education programs are required to conduct a review process for each incident of restraint used. The purpose of the review is to ensure that appropriate procedures are being followed and to minimize the future use of restraint. Additionally, public education programs are to conduct at annual general review process. This process is intended to ensure that schools' procedures are appropriate and must include an analysis of: incident reports, alternative techniques tried, and follow-up, as well as an analysis of the training needs of staff, staff to student ratio, and environmental considerations.

This process benefits Colorado's schools and students. The incident and general reviews schools are required to conduct are not unduly burdensome, but instead help schools assess conditions and make improvements if needed. In particular, the requirement that schools review preventative or alternative techniques should help eliminate the use of restraint in the classroom.

The Legal Center is committed to working tirelessly to keep students safe in school. We work across the entire education culture, from superintendants to school resource officers to paraprofessionals to general education teachers. To assist us in our initiative to effect lasting change, we need high level policy change. Collecting data on instances of

seclusion and restraint is necessary to limit the use of these practices to those circumstances when they are the only safe options.

Once again, we commend your continued attention to this crucial issue and we thank you for the opportunity to provide this input. If you have any questions or comments, please feel free to contact Elizabeth Collard, Attorney, at ecollard@thelegalcenter.org.

Sincerely,



Elizabeth Collard
Attorney