



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

MAR 17 2008

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This letter is in response to your inquiry to the U. S. Department of Education (Department) regarding the use of mechanical restraints on children with disabilities in the classroom. Your inquiry was forwarded to the Department's Office of Special Education Programs (OSEP), Office of Special Education and Rehabilitative Services, for reply.

You specifically ask:

"Where in the Education of the Handicapped Act of 1975, or in the 1997 or 2004 IDEA revisions is it written that mechanical restraints may not be used in the classroom?"

Alternatively, you ask:

"What is the policy/procedure regarding the use of mechanical restraints with special education students?"

Under Part B of the Individuals with Disabilities Education Act (IDEA), each State and its public agencies must have policies and procedures to ensure that a free appropriate public education (FAPE) is made available to all children with disabilities, residing in the State, between the ages of 3 and 21, inclusive, including children who have been suspended or expelled from school. 34 CFR §300.101(a); see also 34 CFR §300.201. The term FAPE includes, among other elements, special education and related services, at no cost to parents, that meet the standards of the State educational agency, including the requirements of 34 CFR Part 300, and provided in conformity with an individualized education program (IEP) that meets the requirements of 34 CFR §§300.320 through 300.324. 34 CFR §300.17. Part B expresses a strong preference for educating children with disabilities in regular classes alongside their nondisabled peers with appropriate aids and supports. This principle, known as least restrictive environment, requires each public agency to ensure that, to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled; and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 CFR §300.114(a)(2). Also, under IDEA, children with disabilities and their parents must be afforded procedural safeguards and due process rights, including additional protections in disciplinary situations. 34 CFR §§300.500 through 300.536.

The vehicle for determining the content of a child's special education program is the IEP process. 34 CFR §§300.320 through 300.324. The IEP is a written statement for each child with

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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 final decision on the provision of special education and related services for any child with a disability rests with the 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 of paramount importance in determining what behavioral interventions and supports or behavioral management strategies are appropriate for a child with a disability and must be included in the child's IEP.

While IDEA emphasizes the use of positive behavioral interventions and supports to address behavior that impedes learning, IDEA does not flatly prohibit the use of mechanical restraints or other aversive behavioral techniques. You may wish to consult your State law to see whether it addresses the use of mechanical restraints or other aversive behavioral techniques for children with disabilities. If Alaska law would permit the use of mechanical restraints or other aversive behavioral techniques for children with disabilities served under IDEA, the critical inquiry is whether the use of such restraints or techniques can be implemented consistent with the child's IEP and the requirement that IEP Teams consider the use of positive behavioral interventions and supports when the child's behavior impedes the child's learning or that of others.

Based on section 607(e) of the IDEA, we are informing you that our response constitutes informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented.

Should you have additional questions regarding IDEA, please feel free to contact Ms. Sara Doutre, OSEP's Part B State Contact for Alaska, at (202) 245-7447.

Sincerely,


William W. Knudsen
Acting Director
Office of Special Education
Programs

cc: Mr. Art Arnold