Background

Over the past 3 years, CEC has actively worked with its division, the Council for Children with Behavioral Disorders (CCBD), Congress, the Administration and other advocacy organizations to promote the inclusion of CEC and CCBD’s recommendations on the appropriate use of restraint and seclusion in federal legislation. The focus on the inappropriate use of restraint and seclusion techniques in the public schools came to the forefront of the national agenda in January, 2009, when the National Disability Rights Network released a report that highlighted the use of physical restraint and seclusion in public schools. This report chronicled several cases of abuse and death and pointed out the inconsistency in state policies. It also moved Congress to act.

Congressional Investigation & Hearing

Shortly after the report’s release, then House Education and Labor Committee Chairman George Miller (D-CA), asked the Government Accountability Office (GAO) to investigate the use of restraint and seclusion in public schools. The GAO’s report, issued in May of 2009, presented some alarming statistics and information. Following this, Chairman Miller convened a congressional hearing, Examining the Abuse and Deadly Use of Restraints and Seclusion in the Schools, to further consider the scope of the situation and possible solutions. Dr. Reece Peterson, a long-time CEC and CCBD member, testified at the hearing and presented many of CEC and CCBD’s recommendations. In July 2009, shortly after this hearing, CCBD released two white papers on proper use of restraint and seclusion and the challenges facing the field. After a discussion by CEC’s Representative Assembly, the CEC Board approved a new CEC policy on physical restraint and seclusion.

Legislation

In December of 2009, Representative Miller and then Senator Chris Dodd introduced the Preventing Harmful Restraint and Seclusion Act H.R. 4247 and S. 2860. The House passed its bill, renaming it the Keeping All Students Safe Act, but it failed to garner support in the Senate. CEC supported this legislation and was pleased it passed the full House. Unfortunately, even though in the next session of congress, on April 6, 2011, Representative Miller re-introduced the Keeping All Students Safe Act, now numbered H.R. 1831, many of the Representatives who voted for it the first time around have failed to support it. This is the exact same bill which passed the House during the last congress. Unfortunately, for now, it has not even been heard by the education committee. CEC continues to support this legislation and continues to work for its passage.

On December 16, 2011, Senator Harkin (D-IA) introduced his own version of the Keeping All Students Safe Act, S. 2020. Importantly, like the House bill, this legislation would provide training for educators, ensure policies exist and that data is reported. It would also prohibit addressing the use of restraint and seclusion in a student’s Individual Education Plan (IEP) as an educational intervention. But the legislation is also very different from the version in the House in some areas which cause CEC concern. For example, it would require that any violation of the act would be an automatic denial of FAPE. Although CEC supports the legislation in principle, and applauds Senator Harkin for keeping this important issue at the forefront of the national debate, we have real concerns about some of the provisions and believe there is more work to be done.

Recent Data

In March 2012, the Office of Civil Rights released the results from its most recent civil rights data collection and they demonstrated that although students with disabilities (under IDEA and Section 504) represented only 12% of the students in the national sample, they were nearly 70% of all students who were physically restrained by adults in their schools. Even more disturbing, African American students and Hispanic students were restrained.
and secluded at much higher levels than their white peers. This disturbing evidence indicates our nation needs to do more on this important issue.

CEC’s Commitment

CEC will continue working with Congress and the Administration to ensure that the federal government sets appropriate minimum standards for the use of restraint and seclusion and helps to provide the training and resources all educators need.

Fundamental Principles

CEC and CCBD support the following principles as related to the use of restraint or seclusion procedures:

- Behavioral interventions for children must promote the right of all children to be treated with dignity.
- All children should receive necessary educational and mental health supports and programming in a safe and least-restrictive environment.
- Positive and appropriate educational interventions, as well as mental health supports, should be provided routinely to all children who need them.
- Behavioral interventions should emphasize prevention and creating positive behavioral supports.
- Schools should have adequate staffing levels to effectively provide positive supports to student and should be staffed with appropriately trained personnel.
- All staff in schools should have mandatory conflict de-escalation training, and conflict de-escalation techniques should be employed by all school staff to avoid and defuse crisis and conflict situations.
- All children whose pattern of behavior impedes their learning or the learning of others should receive appropriate educational assessment.

Specific Recommendations

Restraint and Seclusion are for Emergency Use Only

- Physical restraint or seclusion procedures should be used in school settings only when the physical safety of the student or others is in immediate danger – neither should ever be used as a punishment, to force compliance or as a substitute for appropriate educational support.

- Mechanical or chemical restraints should never be used in school settings when their purpose is simply to manage or address student behavior (other than their use by law enforcement or when students are in travel restraints in vehicles). Their use for other instructional related purposes should be supervised by qualified and trained individuals and in accord with professional standards for their use.

Written Procedures, Training and Better Data Collection are Necessary

- Any school which employs physical restraint or seclusion procedures must have a written positive behavior support plan specific to that program, pre-established emergency procedures, specific procedures and training related to the use of restraint and seclusion, and data to support the implementation of the principles of positive behavior supports in that environment as well as data regarding the specific uses of restraint and seclusion.

- “Guidelines” and “technical assistance documents” are not adequate to regulate the use of these procedures since abuses continue to occur in states or provinces where guidelines are in place and these guidelines have few mechanisms for providing oversight or correction of abuses.
Therefore, CEC calls for federal and/or state legislation or regulation which would require the implementation of:

- Recognition that restraint and seclusion procedures are emergency, not treatment, procedures.
- Requirement that preventive measures such as conflict de-escalation procedures be in place in schools where restraints or seclusion will be employed.
- Requirements that individualized safety plans are created for students whose behavior could reasonably be predicted to pose a danger.
- Requirements that comprehensive debriefings occur after each use of restraint or seclusion and that reports of the incident are created.
- Requirement that data on restraints and seclusion are reported to an outside agency such as the state or provincial department/ministry of education.

Seclusion Environments Must Meet Certain Non-negotiable Standards

- All seclusion environments should be safe and humane and should be inspected at least annually not only by fire or safety inspectors but for programmatic implementation of guidelines and data related to its use.
- Any student in seclusion must be continuously observed by an adult both visually and aurally for the entire period of the seclusion. Occasional checks are not acceptable.

Additional Research is Necessary and Must Be Funded

- Additional research is needed regarding the use of physical restraint and seclusion with students across all settings.