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INDEPENDENT REGULATORY
REVIEW COMMISSION

Mr. Jim Buckheit
Executive Director
State Board of Education
333 Market Street
Harrisburg, PA 17126-0333

July 27, 2007

Dear Mr. Buckheit:

As both a parent of children with disabilities and an advocate for other families, I am deeply concerned that the Pennsylvania State Board of Education is proposing to pass rules for implementation by the Department of Education, which receives funding from the U.S. Department of Education and program monitoring through RSA and OSEP, that are certain to result in an increase in the use of restraint on students with disabilities. The use of restraint on these students is clearly in opposition to the promotion of the use of positive behavior supports which has been articulated in the IDEA as Congress's choice of addressing challenging behavior. It is also in opposition to the national movement to decrease the use of these techniques that have ended in the suffering and death of students with disabilities across our country. In a 1999 report, *Improper Restraint or Seclusion Use Places People at Risk*, the U.S. General Accounting Office found that children are subjected to restraint and seclusion at a higher rate than adults despite the fact that they are at far greater risk of injury, and in 1998 the Hartford Courant report titled *Deadly Restraint* estimated annual restraint-related deaths in the U.S. to be between 50 and 150.

The importance of reducing and working to eliminate the use of dangerous and dehumanizing restraint on students with disabilities has been brought forth in public forums over the course of many years. In May of 1995 the National Council on Disability submitted a report entitled *Improving the Implementation of the Individuals with Disabilities Education Act: Making Schools Work for All of America's Children*. This report presented the results of an extensive research process regarding progress in the implementation of the Individuals with Disabilities Education Act (IDEA) over the previous 20 years and recommendations for improving the implementation of IDEA. These findings remain highly relevant to the Pennsylvania State Board of Education's proposals today:

Public funds intended to provide positive educational experiences and results for children should not be expended to have these children subjected to unproven, experimental, dangerous, or violent program procedures which--by design--result in pain, physical injuries, psychological damage, hunger, social deprivation, or other such negative experiences, whether they are authorized by desperate parents or not. In any other context the use of these procedures would be considered child (or dependent) abuse or neglect. They should not be viewed as "treatment" just because a student has a disability. Under the present situation, the potential for abuse is great. Indeed, through its support of these procedures used on children with disabilities, the United States could be cited for human rights violations against people with disabilities under its own *Country Reports on Human Rights* published annually by the Department of State.

In light of these considerations, I am joining with other parents and teachers to ask you not to roll back the present protections afforded Pennsylvania students. While restraint is permissible in a serious emergency, current regulations provide for reporting and follow-up to assure that everyone involved learns from such an incident and the same emergency does not recur. Putting restraint into a child's IEP brings an end to those protections and makes its use acceptable and routine -- a very bad idea which the major national disability organizations strongly condemn. The proposal to allow unreported 30-second restraint -- or an unlimited series of 30-second restraints, if the grip on the child is relinquished briefly at those intervals --

has such potential for mischief and harm that it is certain to ignite extensive legal challenges. Calling restraint by some other name in order to do an end-run around requirements for oversight and child protection simply will not fly. Permitting prone restraint, the most dangerous and lethal of all techniques, to be used on the bodies of children is another proposed regulation that must be reconsidered. Many programs and facilities, and even restraint training organizations, will no longer allow prone restraint under any circumstances, and Pennsylvania should follow their responsible lead. Finally, I strongly urge that the State Board insert the language of "positive" behavioral support whenever that term is used in the regulations. The answer to any perceived need for dangerous and coercive techniques on vulnerable children with disabilities is always to train and empower teachers and staff in the use of positive behavior supports which are proactive rather than reactive. Schools and programs that make a commitment to positive behavior support become safe, positive environments where students, staff, and parents collaborate, respect each other, and work together to solve any difficulties that may arise.

Thank you for this opportunity to respond to the proposed Chapter 14 regulations on restraint use in special education. I urge your serious consideration of the above concerns.

Sincerely,

Patricia A. Amos

CC: Arthur Coccodrilli, Chair, Independent Regulatory Review Commission
The Honorable James J. Rhoades, Senate Education Committee
The Honorable Jeffrey E. Piccola, Senate Education Committee
The Honorable James R. Roebuck, Jr., House Education Committee
The Honorable Jess M. Stairs, House Education Committee
The Honorable Dennis OBrien, Speaker, House of Representatives
The Honorable Barbara McIlvaine Smith, Chair, Subcommittee on Special Education