

PREVENTING HARMFUL RESTRAINT AND SECLUSION IN
SCHOOLS ACT

FEBRUARY 23, 2010.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. GEORGE MILLER of California, from the Committee on
Education and Labor, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 4247]

[Including cost estimate of the Congressional Budget Office]

The Committee on Education and Labor, to whom was referred the bill (H.R. 4247) to prevent and reduce the use of physical restraint and seclusion in schools, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Preventing Harmful Restraint and Seclusion in Schools Act”.

SEC. 2. FINDINGS.

Congress finds the following:

(1) Physical restraint and seclusion have resulted in physical injury, psychological trauma, and death to children in public and private schools. National research shows students have been subjected to physical restraint and seclusion in schools as a means of discipline, to force compliance, or as a substitute for appropriate educational support.

(2) Behavioral interventions for children must promote the right of all children to be treated with dignity. All children have the right to be free from physical or mental abuse, aversive behavioral interventions that compromise health and safety, and any physical restraint or seclusion imposed solely for purposes of discipline or convenience.

(3) Safe, effective, evidence-based strategies are available to support children who display challenging behaviors in school settings. Staff training focused on the dangers of physical restraint and seclusion as well as training in evidence-based positive behavior supports, de-escalation techniques, and physical restraint and seclusion prevention, can reduce the incidence of injury, trauma, and death.

(4) School personnel have the right to work in a safe environment and should be provided training and support to prevent injury and trauma to themselves and others.

(5) Despite the widely recognized risks of physical restraint and seclusion, a substantial disparity exists among many States and localities with regard to the protection and oversight of the rights of children and school personnel to a safe learning environment.

(6) Children are subjected to physical restraint and seclusion at higher rates than adults. Physical restraint which restricts breathing or causes other body trauma, as well as seclusion in the absence of continuous face-to-face monitoring, have resulted in the deaths of children in schools.

(7) Children are protected from inappropriate physical restraint and seclusion in other settings, such as hospitals, health facilities, and non-medical community-based facilities. Similar protections are needed in schools, yet such protections must acknowledge the differences of the school environment.

(8) Research confirms that physical restraint and seclusion are not therapeutic, nor are these practices effective means to calm or teach children, and may have an opposite effect while simultaneously decreasing a child's ability to learn.

(9) The effective implementation of school-wide positive behavior supports is linked to greater academic achievement, significantly fewer disciplinary problems, increased instruction time, and staff perception of a safer teaching environment.

SEC. 3. PURPOSES.

The purposes of this Act are to—

- (1) prevent and reduce the use of physical restraint and seclusion in schools;
- (2) ensure the safety of all students and school personnel in schools and promote a positive school culture and climate;
- (3) protect students from—
 - (A) physical or mental abuse;
 - (B) aversive behavioral interventions that compromise health and safety;
 and
 - (C) any physical restraint or seclusion imposed solely for purposes of discipline or convenience;
- (4) ensure that physical restraint and seclusion are imposed in school only when a student's behavior poses an imminent danger of physical injury to the student, school personnel, or others; and
- (5) assist States, local educational agencies, and schools in—
 - (A) establishing policies and procedures to keep all students, including students with the most complex and intensive behavioral needs, and school personnel safe;
 - (B) providing school personnel with the necessary tools, training, and support to ensure the safety of all students and school personnel;
 - (C) collecting and analyzing data on physical restraint and seclusion in schools; and
 - (D) identifying and implementing effective evidence-based models to prevent and reduce physical restraint and seclusion in schools.

SEC. 4. DEFINITIONS.

In this Act:

- (1) **CHEMICAL RESTRAINT.**—The term “chemical restraint” means a drug or medication used on a student to control behavior or restrict freedom of movement that is not—
 - (A) prescribed by a licensed physician for the standard treatment of a student's medical or psychiatric condition; and
 - (B) administered as prescribed by the licensed physician.
- (2) **EDUCATIONAL SERVICE AGENCY.**—The term “educational service agency” has the meaning given such term in section 9101(17) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801(17)).
- (3) **ELEMENTARY SCHOOL.**—The term “elementary school” has the meaning given the term in section 9101(18) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801(18)).

(4) LOCAL EDUCATIONAL AGENCY.—The term “local educational agency” has the meaning given the term in section 9101(26) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801(26)).

(5) MECHANICAL RESTRAINT.—The term “mechanical restraint” has the meaning given the term in section 595(d)(1) of the Public Health Service Act (42 U.S.C. 290jj(d)(1)), except that the meaning shall be applied by substituting “student’s” for “resident’s”.

(6) PARENT.—The term “parent” has the meaning given the term in section 9101(31) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801(31)).

(7) PHYSICAL ESCORT.—The term “physical escort” has the meaning given the term in section 595(d)(2) of the Public Health Service Act (42 U.S.C. 290jj(d)(2)), except that the meaning shall be applied by substituting “student” for “resident”.

(8) PHYSICAL RESTRAINT.—The term “physical restraint” has the meaning given the term in section 595(d)(3) of the Public Health Service Act (42 U.S.C. 290jj(d)(3)).

(9) POSITIVE BEHAVIOR SUPPORTS.—The term “positive behavior supports” means a systematic approach to embed evidence-based practices and data-driven decisionmaking to improve school climate and culture, including a range of systemic and individualized strategies to reinforce desired behaviors and diminish reoccurrence of problem behaviors, in order to achieve improved academic and social outcomes and increase learning for all students, including those with the most complex and intensive behavioral needs.

(10) PROTECTION AND ADVOCACY SYSTEM.—The term “protection and advocacy system” means a protection and advocacy system established under section 143 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15043).

(11) SCHOOL.—The term “school” means an entity—

(A) that—

(i) is a public or private—

(I) day or residential elementary school or secondary school; or
(II) early childhood, elementary school, or secondary school program that is under the jurisdiction of a school, educational service agency, or other educational institution or program; and

(ii) receives, or serves students who receive, support in any form from any program supported, in whole or in part, with funds appropriated to the Department of Education; or

(B) that is a school funded or operated by the Department of the Interior.

(12) SCHOOL PERSONNEL.—The term “school personnel” has the meaning—

(A) given the term in section 4151(10) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7161(10)); and

(B) given the term “school resource officer” in section 4151(11) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7161(11)).

(13) SECONDARY SCHOOL.—The term “secondary school” has the meaning given the term in section 9101(38) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801(38)).

(14) SECLUSION.—The term “seclusion” has the meaning given the term in section 595(d)(4) of the Public Health Service Act (42 U.S.C. 290jj(d)(4)).

(15) SECRETARY.—The term “Secretary” means the Secretary of Education.

(16) STATE-APPROVED CRISIS INTERVENTION TRAINING PROGRAM.—The term “State-approved crisis intervention training program” means a training program approved by a State and the Secretary that, at a minimum, provides—

(A) evidence-based techniques shown to be effective in the prevention of physical restraint and seclusion;

(B) evidence-based techniques shown to be effective in keeping both school personnel and students safe when imposing physical restraint or seclusion;

(C) evidence-based skills training related to positive behavior supports, safe physical escort, conflict prevention, understanding antecedents, de-escalation, and conflict management;

(D) first aid and cardiopulmonary resuscitation;

(E) information describing State policies and procedures that meet the minimum standards established by regulations promulgated pursuant to section 5(a); and

(F) certification for school personnel in the techniques and skills described in subparagraphs (A) through (D), which shall be required to be renewed on a periodic basis.

(17) STATE.—The term “State” has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(18) STATE EDUCATIONAL AGENCY.—The term “State educational agency” has the meaning given the term in section 9101(41) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801(41)).

(19) STUDENT.—The term “student” means a student enrolled in a school defined in section 11, except that in the case of a private school or private program, such term means a student enrolled in such school or program who receives support in any form from any program supported, in whole or in part, with funds appropriated to the Department of Education.

(20) TIME OUT.—The term “time out” has the meaning given the term in section 595(d)(5) of the Public Health Service Act (42 U.S.C. 290jj(d)(5)), except that the meaning shall be applied by substituting “student” for “resident”.

SEC. 5. MINIMUM STANDARDS; RULE OF CONSTRUCTION.

(a) MINIMUM STANDARDS.—Not later than 180 days after the date of the enactment of this Act, in order to protect each student from physical or mental abuse, aversive behavioral interventions that compromise student health and safety, or any physical restraint or seclusion imposed solely for purposes of discipline or convenience or in a manner otherwise inconsistent with this Act, the Secretary shall promulgate regulations establishing the following minimum standards:

(1) School personnel shall be prohibited from imposing on any student the following:

- (A) Mechanical restraints.
- (B) Chemical restraints.
- (C) Physical restraint or physical escort that restricts breathing.
- (D) Aversive behavioral interventions that compromise health and safety.

(2) School personnel shall be prohibited from imposing physical restraint or seclusion on a student unless—

- (A) the student’s behavior poses an imminent danger of physical injury to the student, school personnel, or others;
- (B) less restrictive interventions would be ineffective in stopping such imminent danger of physical injury;
- (C) such physical restraint or seclusion is imposed by school personnel who—

- (i) continuously monitor the student face-to-face; or
- (ii) if school personnel safety is significantly compromised by such face-to-face monitoring, are in continuous direct visual contact with the student;

(D) such physical restraint or seclusion is imposed by—

- (i) school personnel trained and certified by a State-approved crisis intervention training program (as defined in section 4(16)); or
- (ii) other school personnel in the case of a rare and clearly unavoidable emergency circumstance when school personnel trained and certified as described in clause (i) are not immediately available due to the unforeseeable nature of the emergency circumstance; and

(E) such physical restraint or seclusion end immediately upon the cessation of the conditions described in subparagraphs (A) and (B).

(3) States and local educational agencies shall ensure that a sufficient number of personnel are trained and certified by a State-approved crisis intervention training program (as defined in section 4(16)) to meet the needs of the specific student population in each school.

(4) The use of physical restraint or seclusion as a planned intervention shall not be written into a student’s education plan, individual safety plan, behavioral plan, or individualized education program (as defined in section 602 of the Individuals with Disabilities Education Act (20 U.S.C. 1401)). Local educational agencies or schools may establish policies and procedures for use of physical restraint or seclusion in school safety or crisis plans, provided that such school plans are not specific to any individual student.

(5) Schools shall establish procedures to be followed after each incident involving the imposition of physical restraint or seclusion upon a student, including—

(A) procedures to provide to the parent of the student, with respect to each such incident—

- (i) an immediate verbal or electronic communication on the same day as each such incident; and
- (ii) within 24 hours of each such incident, written notification; and

(B) any other procedures the Secretary determines appropriate.

(b) SECRETARY OF THE INTERIOR.—The Secretary of the Interior shall ensure that schools operated or funded by the Department of the Interior comply with the regulations promulgated by the Secretary under subsection (a).

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to authorize the Secretary to promulgate regulations prohibiting the use of—

- (1) time out (as defined in section 4(20)); or
- (2) devices implemented by trained school personnel, or utilized by a student, for the specific and approved therapeutic or safety purposes for which such devices were designed and, if applicable, prescribed, including—
 - (A) restraints for medical immobilization;
 - (B) adaptive devices or mechanical supports used to achieve proper body position, balance, or alignment to allow greater freedom of mobility than would be possible without the use of such devices or mechanical supports;
 - or
 - (C) vehicle safety restraints when used as intended during the transport of a student in a moving vehicle; or
- (3) handcuffs by school resource officers (as such term is defined in section 4151(11) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7161(11)))—
 - (A) in the—
 - (i) case when a student’s behavior poses an imminent danger of physical injury to the student, school personnel, or others; or
 - (ii) lawful exercise of law enforcement duties; and
 - (B) less restrictive interventions would be ineffective.

SEC. 6. STATE PLAN AND REPORT REQUIREMENTS AND ENFORCEMENT.

(a) STATE PLAN.—Not later than 2 years after the Secretary promulgates regulations pursuant to section 5(a), and each year thereafter, each State educational agency shall submit to the Secretary a State plan that provides—

- (1) assurances to the Secretary that the State has in effect—
 - (A) State policies and procedures that meet the minimum standards, including the standards with respect to State-approved crisis intervention training programs, established by regulations promulgated pursuant to section 5(a); and
 - (B) a State mechanism to effectively monitor and enforce the minimum standards;
- (2) a description of the State policies and procedures, including a description of the State-approved crisis intervention training programs in such State; and
- (3) a description of the State plans to ensure school personnel and parents, including private school personnel and parents, are aware of the State policies and procedures.

(b) REPORTING.—

(1) REPORTING REQUIREMENTS.—Not later than 2 years after the date the Secretary promulgates regulations pursuant to section 5(a), and each year thereafter, each State educational agency shall (in compliance with the requirements of section 444 of the General Education Provisions Act (commonly known as the “Family Educational Rights and Privacy Act of 1974”) (20 U.S.C. 1232g)) prepare and submit to the Secretary, and make available to the public, a report with respect to each local educational agency, and each school not under the jurisdiction of a local educational agency, located in the same State as such State educational agency that includes the information described in paragraph (2).

(2) INFORMATION REQUIREMENTS.—

(A) GENERAL INFORMATION REQUIREMENTS.—The report described in paragraph (1) shall include information on—

- (i) the total number of incidents in the preceding full-academic year in which physical restraint was imposed upon a student; and
- (ii) the total number of incidents in the preceding full-academic year in which seclusion was imposed upon a student.

(B) DISAGGREGATION.—

(i) GENERAL DISAGGREGATION REQUIREMENTS.—The information described in subparagraph (A) shall be disaggregated by—

- (I) the total number of incidents in which physical restraint or seclusion was imposed upon a student—
 - (aa) that resulted in injury;
 - (bb) that resulted in death; and
 - (cc) in which the school personnel imposing physical restraint or seclusion were not trained and certified as described in section 5(a)(2)(D)(i); and

(II) the demographic characteristics of all students upon whom physical restraint or seclusion was imposed, including—

(aa) the categories identified in section 1111(h)(1)(C)(i) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311(h)(1)(C)(i));

(bb) age; and

(cc) disability status (which has the meaning given the term “individual with a disability” in section 7(20) of the Rehabilitation Act of 1973 (29 U.S.C. 705(20))).

(ii) UNDUPLICATED COUNT; EXCEPTION.—The disaggregation required under clause (i) shall—

(I) be carried out in a manner to ensure an unduplicated count of the—

(aa) total number of incidents in the preceding full-academic year in which physical restraint was imposed upon a student; and

(bb) total number of incidents in the preceding full-academic year in which seclusion was imposed upon a student; and

(II) not be required in a case in which the number of students in a category would reveal personally identifiable information about an individual student.

(c) ENFORCEMENT.—

(1) IN GENERAL.—

(A) USE OF REMEDIES.—If a State educational agency fails to comply with subsection (a) or (b), the Secretary shall—

(i) withhold, in whole or in part, further payments under an applicable program (as such term is defined in section 400(c) of the General Education Provisions Act (20 U.S.C. 1221)) in accordance with section 455 of such Act (20 U.S.C. 1234d);

(ii) require a State educational agency to submit, and implement, within 1 year of such failure to comply, a corrective plan of action, which may include redirection of funds received under an applicable program; or

(iii) issue a complaint to compel compliance of the State educational agency through a cease and desist order, in the same manner the Secretary is authorized to take such action under section 456 of the General Education Provisions Act (20 U.S.C. 1234e).

(B) CESSATION OF WITHHOLDING OF FUNDS.—Whenever the Secretary determines (whether by certification or other appropriate evidence) that a State educational agency who is subject to the withholding of payments under subparagraph (A)(i) has cured the failure providing the basis for the withholding of payments, the Secretary shall cease the withholding of payments with respect to the State educational agency under such subparagraph.

(2) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to limit the Secretary’s authority under the General Education Provisions Act (20 U.S.C. 1221 et seq.).

SEC. 7. GRANT AUTHORITY.

(a) IN GENERAL.—From the amount appropriated under section 12, the Secretary may award grants to State educational agencies to assist the agencies in—

(1) establishing, implementing, and enforcing the policies and procedures to meet the minimum standards established by regulations promulgated by the Secretary pursuant to section 5(a);

(2) improving State and local capacity to collect and analyze data related to physical restraint and seclusion; and

(3) improving school climate and culture by implementing school-wide positive behavior support approaches.

(b) DURATION OF GRANT.—A grant under this section shall be awarded to a State educational agency for a 3-year period.

(c) APPLICATION.—Each State educational agency desiring a grant under this section shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may require, including information on how the State educational agency will target resources to schools and local educational agencies in need of assistance related to preventing and reducing physical restraint and seclusion.

(d) AUTHORITY TO MAKE SUBGRANTS.—

(1) **IN GENERAL.**—A State educational agency receiving a grant under this section may use such grant funds to award subgrants, on a competitive basis, to local educational agencies.

(2) **APPLICATION.**—A local educational agency desiring to receive a subgrant under this section shall submit an application to the applicable State educational agency at such time, in such manner, and containing such information as the State educational agency may require.

(e) **PRIVATE SCHOOL PARTICIPATION.**—

(1) **IN GENERAL.**—A local educational agency receiving subgrant funds under this section shall, after timely and meaningful consultation with appropriate private school officials, ensure that private school personnel can participate, on an equitable basis, in activities supported by grant or subgrant funds.

(2) **PUBLIC CONTROL OF FUNDS.**—The control of funds provided under this section, and title to materials, equipment, and property purchased with such funds, shall be in a public agency, and a public agency shall administer such funds, materials, equipment, and property.

(f) **REQUIRED ACTIVITIES.**—A State educational agency receiving a grant, or a local educational agency receiving a subgrant, under this section shall use such grant or subgrant funds to carry out the following:

(1) Researching, developing, implementing, and evaluating strategies, policies, and procedures to prevent and reduce physical restraint and seclusion in schools, consistent with the minimum standards established by regulations promulgated by the Secretary pursuant to section 5(a).

(2) Providing professional development, training, and certification for school personnel to meet such standards.

(3) Carrying out the reporting requirements under section 6(b) and analyzing the information included in a report prepared under such section to identify student, school personnel, and school needs related to use of physical restraint and seclusion.

(g) **ADDITIONAL AUTHORIZED ACTIVITIES.**—In addition to the required activities described in subsection (f), a State educational agency receiving a grant, or a local educational agency receiving a subgrant, under this section may use such grant or subgrant funds for one or more of the following:

(1) Developing and implementing high-quality professional development and training programs to implement evidence-based systematic approaches to school-wide positive behavior supports, including improving coaching, facilitation, and training capacity for administrators, teachers, specialized instructional support personnel, and other staff.

(2) Providing technical assistance to develop and implement evidence-based systematic approaches to school-wide positive behavior supports, including technical assistance for data-driven decision-making related to behavioral supports and interventions in the classroom.

(3) Researching, evaluating, and disseminating high-quality evidence-based programs and activities that implement school-wide positive behavior supports with fidelity.

(4) Supporting other local positive behavior support implementation activities consistent with this subsection.

(h) **EVALUATION AND REPORT.**—Each State educational agency receiving a grant under this section shall, at the end of the 3-year grant period for such grant—

(1) evaluate the State's progress toward the prevention and reduction of physical restraint and seclusion in the schools located in the State, consistent with the minimum standards established by regulations promulgated by the Secretary pursuant to section 5(a); and

(2) submit to the Secretary a report on such progress.

(i) **DEPARTMENT OF THE INTERIOR.**—From the amount appropriated under section 12, the Secretary may allocate funds to the Secretary of the Interior for activities under this section with respect to schools operated or funded by the Department of the Interior, under such terms as the Secretary of Education may prescribe.

SEC. 8. NATIONAL ASSESSMENT.

(a) **NATIONAL ASSESSMENT.**—The Secretary shall carry out a national assessment to determine the effectiveness of this Act, which shall include—

(1) analyzing data related to physical restraint and seclusion incidents;

(2) analyzing the effectiveness of Federal, State, and local efforts to prevent and reduce the number of physical restraint and seclusion incidents in schools;

(3) identifying the types of programs and services that have demonstrated the greatest effectiveness in preventing and reducing the number of physical restraint and seclusion incidents in schools; and

(4) identifying evidence-based personnel training models with demonstrated success in preventing and reducing the number of physical restraint and seclusion incidents in schools, including models that emphasize positive behavior supports and de-escalation techniques over physical intervention.

(b) **REPORT.**—The Secretary shall submit to the Committee on Education and Labor of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate—

(1) an interim report that summarizes the preliminary findings of the assessment described in subsection (a) not later than 3 years after the date of enactment of this Act; and

(2) a final report of the findings of the assessment not later than 5 years after the date of the enactment of this Act.

SEC. 9. PROTECTION AND ADVOCACY SYSTEMS.

Protection and Advocacy Systems shall have the authority provided under section 143 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15043) to investigate, monitor, and enforce protections provided for students under this Act.

SEC. 10. HEAD START PROGRAMS.

(a) **REGULATIONS.**—The Secretary of Health and Human Services, in consultation with the Secretary, shall promulgate regulations with respect to Head Start agencies administering Head Start programs under the Head Start Act (42 U.S.C. 9801 et seq.) that establish requirements consistent with—

(1) the requirements established by regulations promulgated pursuant to section 5(a); and

(2) the reporting and enforcement requirements described in subsections (b) and (c) of section 6.

(b) **GRANT AUTHORITY.**—From the amount appropriated under section 12, the Secretary may allocate funds to the Secretary of Health and Human Services to assist the Head Start agencies in establishing, implementing, and enforcing policies and procedures to meet the requirements established by regulations promulgated pursuant to subsection (a).

SEC. 11. LIMITATION OF AUTHORITY.

(a) **IN GENERAL.**—Nothing in this Act shall be construed to restrict or limit, or allow the Secretary to restrict or limit, any other rights or remedies otherwise available to students or parents under Federal or State law or regulation.

(b) **APPLICABILITY.**—

(1) **PRIVATE SCHOOLS.**—Nothing in this Act shall be construed to affect any private school that does not receive, or does not serve students who receive, support in any form from any program supported, in whole or in part, with funds appropriated to the Department of Education.

(2) **HOME SCHOOLS.**—Nothing in this Act shall be construed to—

(A) affect a home school, whether or not a home school is treated as a private school or home school under State law; or

(B) consider parents who are schooling a child at home as school personnel.

SEC. 12. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this Act for fiscal year 2011 and each of the 4 succeeding fiscal years.

I. PURPOSE

The purpose of H.R. 4247 is to prevent and reduce the use of physical restraint and seclusion in public and private schools and to promote a positive school culture that ensures the safety of all students and personnel.

II. COMMITTEE ACTION

Full committee hearing: “Examining the Abusive and Deadly Use of Seclusion and Restraint in Schools”

On Tuesday, May 19, 2009, the Committee on Education and Labor held a hearing entitled, “Examining the Abusive and Deadly Use of Seclusion and Restraint in Schools.” The purpose of the hearing was to understand the nature and magnitude of the prac-

tice of abusive restraint and seclusion in public and private schools. The hearing focused on 10 cases, each resulting in the death or injury of a child, and included testimony from parents whose children had been harmed or died in restraint and seclusion incidents. The hearing exposed hundreds of cases of alleged abuse and at least 20 deaths related to the use of these methods, the devastating effects on the victims and their families, and the widely divergent state and local policies regulating the use of restraint and seclusion in schools. Testifying before the full Committee were Greg Kutz, Managing Director of Forensic Audits and Special Investigations, U.S. Government Accountability Office; Toni Price, Foster mother of a child victim who died; Anne Gaydos, Mother of a child victim; Elizabeth Hanselman, Assistant Superintendent for Special Education and Support Services, Springfield, Illinois; and Reece L. Peterson, Ph.D., Professor of Special Education, University of Nebraska.

Introduction of the “Preventing Harmful Restraint and Seclusion in Schools Act”

On Wednesday, December 9, 2009, Representatives George Miller (D–CA) and Cathy McMorris Rodgers (R–WA) introduced H.R. 4247, the “Preventing Harmful Restraint and Seclusion in Schools Act.” The bill sets out minimum standards limiting the use of restraint and seclusion in schools in order to ensure the safety of all students and personnel, and requires states to demonstrate that they have established, and will monitor and enforce, policies and procedures consistent with the federal standards.

Full Committee markup of H.R. 4247

On Thursday, February 4, 2010, the Committee on Education and Labor considered H.R. 4247 in legislative session, and reported the bill favorably, as amended, to the House of Representatives by a vote of 34–10.

The Committee adopted an amendment in the nature of a substitute offered by Mr. Miller, by voice vote. The amendment in the nature of a substitute contains minor technical edits and the following changes to H.R. 4247:

- provides for the inclusion of Bureau of Indian Education schools;
- requires state-approved crisis intervention training programs to describe state policies and procedures and to offer techniques for maintaining the safety of school personnel;
- permits school resource officers to use handcuffs in cases of imminent danger or in the lawful exercise of law enforcement duties;
- ensures that private school personnel have equitable access to activities supported by the legislation, and clarifies that private schools that do not receive support from funds appropriated to the Department of Education are excluded from the provisions of this Act; and
- excludes home schools from the provisions of this Act.

No further amendments were adopted.

III. SUMMARY OF THE BILL

H.R. 4247 establishes minimum safety standards to limit the use of restraint and seclusion in public and private early childhood, ele-

mentary and secondary schools that receive any form of support from federal education funds, as well as Head Start programs. The bill requires the Secretary of Education to promulgate regulations based upon the minimum standards, and gives each state two years to provide assurances that the state has in effect policies and procedures that meet or exceed the minimum standards as well as state mechanisms to effectively monitor and enforce such standards.

The bill prohibits the use of chemical restraints, mechanical restraints and physical restraints that restrict breathing, and aversive behavioral interventions that compromise health and safety.

H.R. 4247 establishes the conditions under which school personnel may implement physical restraint and seclusion, using such terms as defined by the Public Health Service Act. The bill limits the use of physical restraint and seclusion to circumstances when a student's behavior poses an imminent danger of physical injury and less restrictive interventions would be ineffective, and requires the cessation of the intervention when the danger has ended.

The bill also requires school personnel implementing physical restraint or seclusion to be trained and certified, and to continuously monitor students when using such interventions. The standards provide for emergency circumstances when no trained staff are immediately available. Under the bill, states and school districts must ensure that a sufficient number of personnel are trained and certified to meet the specific needs of the student population in each school.

H.R. 4247 prohibits physical restraint or seclusion to be written as planned interventions into individual student education documents, but does allow for classroom or school crisis plans. The standards also require schools to establish procedures to be followed after incidents, including parental notification.

Within two years, states must submit assurances to the Secretary that the state has in place policies and procedures to meet the minimum standards and mechanisms to monitor and enforce such standards. States are also required to report the number of restraint and seclusion incidents annually. For states that do not submit the required assurances or data, the Secretary shall withhold funds, require a corrective action plan or compel compliance through a cease and desist order.

H.R. 4247 provides for a discretionary grant program to assist states, districts, and schools to establish, implement and enforce state standards, to support collection and analysis of data, to support staff training, and to improve school climate and culture through the implementation of school-wide positive behavior supports.

The bill requires the Secretary to carry out a national assessment to determine the effectiveness of the Act in preventing and reducing restraint and seclusion incidents in schools.

To carry out the Act, H.R. 4247 authorizes the appropriation of such sums as may be necessary for each of fiscal years 2011–2015.

IV. COMMITTEE VIEWS

Background

Over the past two decades, a number of government, media and advocacy organizations have reported deaths, injuries and psychological harm caused by the use of restraint and seclusion in a variety of settings. In 1999, the Government Accountability Office (GAO) issued a report entitled, “Mental Health: Extent of Risk From Improper Restraint or Seclusion is Unknown,” which concluded that policies covering restraint and seclusion vary widely among federal programs, states, and types of facilities. Additionally, GAO indicated that “the experience of several states shows that the use of restraint and seclusion can be reduced and that patients and staff are safer as a result.”¹

In 2002, the Child Welfare League of America (CWLA) estimated that between eight and 10 children in the United States die each year due to restraint, while many more suffer injuries.² In 2003, the President’s New Freedom Commission on Mental Health reported on significant risks related to the use of restraint and seclusion, including serious injury or death, psychological harm (especially for individuals with a history of trauma), loss of dignity, and other dangers, and recommended that restraint or seclusion use be reduced.³ In recent years, the Substance Abuse and Mental Health Services Administration’s (SAMHSA) Center for Mental Health Services (CMHS) has established initiatives to promote the implementation and evaluation of best practice approaches to preventing and reducing the use of restraint and seclusion in mental health settings, acknowledging the goal of safe outcomes, for both individuals served and for staff, that can be met by reducing and eliminating restraint and seclusion use.⁴

Congress enacted provisions establishing federal protections against the improper use of restraint and seclusion in facilities receiving federal health funds in the Children’s Health Act of 2000 (Pub. L. 106–310). The statute protects the rights of children and youth in public and private hospitals, nursing facilities, intermediate care facilities, non-medical community-based facilities, and other health care facilities. The Children’s Health Act restricts the use of restraint and seclusion to emergency circumstances only to ensure the immediate physical safety of both children and staff.

Yet these basic protections do not apply to students in educational settings. The Committee believes this is an urgent problem that must be addressed before more children are harmed by the misuse of restraint and seclusion.

Restraint and seclusion in the schools

Recent reports have documented tragic outcomes for hundreds of students when restraint or seclusion have been used in school settings. The National Disability Rights Network issued a report in

¹ Testimony of Leslie G. Aronovitz, Associate Director, Health Financing and Public Health Issues, GAO/HEHS, Hearing, U.S. Senate, Committee on Finance, Mental Health: Extent of Risk From Improper Restraint or Seclusion is Unknown, October 26, 1999. <http://www.gao.gov/archive/2000/he00026t.pdf>.

² CWLA 2002

³ President’s New Freedom Commission on Mental Health. (2003). *Achieving the promise: Transforming Mental Health Care in America*. Rockville, MD: U.S. Department of Health and Human Services (DHHS Pub. No. SMA–03–3831).

⁴ See <http://ars.samhsa.gov/index.asp>.

January 2009 detailing allegations of the harmful use of these interventions in over two-thirds of the states, involving children as young as three years old in both public and private school settings.⁵ The Council of Parent Advocates and Attorneys chronicled additional cases in a May 2009 report, arguing that the use of restraint, seclusion and other aversive interventions in schools is “extensive” and most often applied to children under the age of 11.⁶

According to the Council for Children with Behavioral Disorders (CCBD), “Historically, a wide variety of injuries and deaths have occurred while students are in seclusion environments including suicide, electrocution, and self injury due to cutting, pounding, and head banging. Additionally students have been denied access to toilets, food, or water while in seclusion environments.”⁷ CCBD also reports, “physical restraints have been in widespread use across most human service, medical, juvenile justice, and education agency programs for a long period of time. While there have been some who have proposed physical restraint as a therapeutic procedure for some children, this view has no scientific basis and is generally discredited.”⁸

On May 19, 2009 the Full Committee heard testimony from Greg Kutz, Managing Director of Forensic Audits and Special Investigations at GAO, who described shocking and inexcusable cases of children subjected to abusive use of restraint or seclusion in schools. Mr. Kutz testified:

Some of the more troubling allegations that we identified include: a 3-year-old boy being strapped to a chair and secluded in a timeout room; a 5-year-old boy having his elbow fractured from a basket hold restraint; a teenage boy repeatedly being locked in a four-by-six timeout room and then being forced to stay there after defecating; a 13-year-old boy hanging himself in a seclusion room with a cord that teachers provided to him to hold up his pants; and a 17-year-old girl choking to death in her own vomit after being held in a facedown restraint.⁹

During the Full Committee hearing, Toni Price testified about the events leading up to her foster son’s death. She stated:

The morning of his death, Cedric was put on what the teacher called delayed lunch. Because he stopped working about 11 o’clock, this was apparently a common punishment for him . . . At 2:30, he still hadn’t been allowed to eat his lunch and got up to leave the classroom. After Cedric attempted to leave the classroom, he refused to sit back down in his chair, so the teacher forced him into his

⁵National Disability Rights Network. (2009). *School is Not Supposed to Hurt: Investigative Report on Abusive Restraint and Seclusion in Schools*. <http://www.napas.org/sr/SR-Report.pdf>.

⁶Butler, Jessica. (2009). *Unsafe in the Schoolhouse: Abuse of Children With Disabilities*. COPAA. http://www.copaa.org/pdf/UnsafeCOPAAMay_27_2009.pdf.

⁷The Council for Children with Behavioral Disorders. (2009). *CCBD’s Position Summary on: The Use of Seclusion in School Settings*. <http://www.ccbd.net/documents/CCBD%20Position%20on%20Use%20of%20Seclusion%207-8-09.pdf>.

⁸The Council for Children with Behavioral Disorders. (2009). *CCBD’s Position Summary on: The Use of Physical Restraint Procedures in School Settings*. <http://www.ccbd.net/documents/CCBD%20Position%20on%20Use%20of%20Restraint%207-8-09.pdf>.

⁹Testimony, Hearing, U.S. House of Representatives, Committee on Education and Labor, Seclusions and Restraints: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers, May 19, 2009. http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_house_hearings&docid=f:49597.pdf.

chair and restrained him. She is roughly six feet tall, weighs over 230 pounds. Cedric was short. He was a little—he was a little boy. Cedric struggled as he was being held in a chair so the teacher put him face down and sat on him. He struggled and said repeatedly, ‘I can’t breathe.’ ‘If you can talk, if you can speak, you can breathe,’ she snapped at him. Shortly after that, he stopped speaking, and he stopped struggling, and he stopped moving.

My son was dead.¹⁰

Unfortunately, these horrifying incidents are not isolated anecdotes. The GAO found “hundreds of cases of alleged abuse and death related to the use of these methods on school children.” Yet GAO “could not find a single Web site, federal agency, or other entity that collects information on the use of these methods or the extent of their alleged abuse.”¹¹ In the few states that do collect data in schools, tens of thousands of restraint and seclusion incidents are reported annually, in both public and private schools. For example, in Texas and California alone, over 33,000 instances were reported during the 2007–08 academic year.¹² Previous government reports have acknowledged that due to the lack of consistent reporting requirements, data on restraint and seclusion is likely to be understated.¹³

Parents often do not know that their schoolchildren are being subjected to these interventions. According to the GAO, only 19 states require parents to be notified after restraints have been used. Regulations governing parental notification related to seclusion are even less evident. One recent survey reported that 66% of parents whose children had been subjected to seclusion or restraint reported that they were rarely or never informed when these interventions had been used.¹⁴

The GAO found that children, most often children with disabilities, are subjected to seclusion and restraint at much higher rates than adults, and are at greater risk of injury as a result of these practices. Very young children are often at risk; recent data indicates that children under the age of 12 are restrained or secluded at substantially higher rates than any other age group.¹⁵ Even when no physical injury is sustained, individuals can be severely traumatized during restraint. Additionally, GAO has previously testified that physical restraint is often dangerous because such in-

¹⁰Testimony, Toni Price, Foster mother of child victim who died, Hearing, U.S. House of Representatives, Committee on Education and Labor, Seclusions and Restraints: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers, May 19, 2009. http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_house_hearings&docid=f:49597.pdf.

¹¹Testimony of Gregory D. Kutz, Managing Director of Forensic Audits and Special Investigations, Hearing, U.S. House of Representatives, Committee on Education and Labor, Seclusions and Restraints: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers (GAO–09–719T), May 19, 2009. <http://www.gao.gov/new.items/d09719t.pdf>.

¹²Testimony of Gregory D. Kutz, Managing Director of Forensic Audits and Special Investigations, Hearing, U.S. House of Representatives, Committee on Education and Labor, Seclusions and Restraints: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers (GAO–09–719T), May 19, 2009. <http://www.gao.gov/new.items/d09719t.pdf>.

¹³Testimony of Leslie G. Aronovitz, Associate Director, Health Financing and Public Health Issues, GAO/HEHS, Hearing, U.S. Senate, Committee on Finance, Mental Health: Extent of Risk From Improper Restraint or Seclusion is Unknown, October 26, 1999. <http://www.gao.gov/archive/2000/he0026t.pdf>.

¹⁴Marshall, D.S., Smith, C.A., Trader, B.R., & Westling, D.L., (2010). *Research and Practice for Persons with Severe Disabilities*, Vol. (). TASH.

¹⁵(2009). *National public rates—Age stratification report*. Behavioral Healthcare Performance Measurement System. Alexandria, VA: National Association of State Mental Health Program Directors Research Institute Inc.

cidents may involve physical struggling, pressure on the chest, or other interruptions in breathing.¹⁶

Students are not alone in being harmed during physical restraint; research shows that staff are also often injured when restraining children. In an ergonomics injury survey conducted by New York State United Teachers in 2000, the number one cause of injury to special education teachers and aides involved the restraint of students.¹⁷ Staff injury rates in mental health settings where seclusion and restraint are used have been found to be higher than those in high-risk industries such as lumber, construction, and mining.¹⁸ Mental health professionals argue “. . . there is no safe restraint, and that skillful de-escalation (and prevention of a restraint) are the safest alternatives available to staff members.”¹⁹

Current protections

While the Children’s Health Act provides federal protections for children in health settings, no federal laws restrict public or private schools in their use of restraint and seclusion, and state laws vary greatly in this respect. The GAO reported that 19 states have no laws or regulations whatsoever. Among states that do have statewide policies, there is significant variation: for example, seven states regulate only restraint but not seclusion; two states have rules on seclusion but not restraint; 17 states require that staff receive training before being permitted to restrain children; and eight states specifically prohibit the use of restraints that impede a child’s ability to breathe.²⁰

State and local policies also vary in their applicability, limiting or allowing restraint or seclusion only for children with disabilities, or in certain circumstances. In many jurisdictions, the use of restraint or seclusion for discipline, to force compliance, to prevent property damage, or for therapeutic purposes is not prohibited, despite the acknowledged dangers of these techniques, the lack of therapeutic benefit,²¹ and research demonstrating that use of restraint and seclusion often exacerbates the behaviors that staff are trying to eliminate.²²

The GAO concluded that the hundreds of allegations of abusive use of restraint and seclusion in public and private schools across the nation “raise serious issues for a significant number of chil-

¹⁶Testimony of Leslie G. Aronovitz, Associate Director, Health Financing and Public Health Issues, GAO/HEHS, Hearing, U.S. Senate, Committee on Finance, Mental Health: Extent of Risk From Improper Restraint or Seclusion is Unknown, October 26, 1999. <http://www.gao.gov/archive/2000/he00026t.pdf>.

¹⁷Ergo-Related Injury Survey Report, November 2000, New York State United Teachers Research and Educational Services.

¹⁸Hunter, M.E. & Love, C.C. (1996). Violence in public sector psychiatric hospitals. *Journal of Psychosocial Nursing*, 34(5): 30–34.; Weiss, E.M., et al. (1998) Deadly restraint: A nationwide pattern of death. *The Hartford Courant*, p. A1.

¹⁹Mohr, Wanda K. (2008). There’s No Such Thing as a Safe Restraint. Gannett Healthcare Group. <http://news.nurse.com/apps/pbcs.dll/article?AID=/20080310/NJ02/80305005>.

²⁰Testimony of Gregory D. Kutz, Managing Director of Forensic Audits and Special Investigations, Hearing, U.S. House of Representatives, Committee on Education and Labor, Seclusions and Restraints: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers (GAO–09–719T), May 19, 2009. <http://www.gao.gov/new.items/d09719t.pdf>.

²¹(2009). *National executive training institute curriculum for the creation of violence-free, coercion-free treatment settings and the reduction of seclusion and restraint*, 7th edition. Alexandria, VA: National Association of State Mental Health Program Directors, Office of Technical Assistance.

²²Ellis, J & Magee, S.K. (2001). The detrimental effects of physical restraint as a consequence for inappropriate classroom behavior. *Journal of Applied Behavioral Analysis*, 34(4): 501–504; Jones, R.J., & Timbers, G.D. (2002). An analysis of the restraint event and its behavioral effects on clients and staff. *Reclaiming Children and Youth*, 11, 37–41.

dren, families, and those entrusted with their education and care.”²³ The GAO investigation, and the independent reports and research findings related to the misuse of restraint and seclusion in the schools, indicate an urgent need for federal action. Children are protected by federal law from the abusive application of these techniques in other settings. The Committee expects that children should, at a minimum, have similar protections in our nation’s schools.

On May 20, 2009, Secretary of Education Arne Duncan testified before the Committee, and expressed concern “for the very disturbing and troubling information that came out of your hearing yesterday on restraints and seclusion.”²⁴ The Secretary subsequently sent a letter requesting that each state “develop or review and, if appropriate, revise your State policies and guidelines to ensure that every student in every school under your jurisdiction is safe and protected from being unnecessarily or inappropriately restrained or secluded.”²⁵ In the coming weeks, the Department of Education intends to post on their website a description of the relevant state laws, regulations, policies, and guidance based upon states’ responses to this request. The Committee believes that, despite some recent state and local efforts to improve guidelines and policies related to restraint and seclusion, minimum federal standards are necessary to keep students safe.

Minimum federal standards

The Committee believes that protecting the safety of both children and personnel in public and private schools is essential and urgent. Due to the lack of clear state standards and guidelines, children across the country have experienced serious harm, and even death, when being restrained or secluded in educational settings. Many schools do not have adequate guidance from states in order to establish policies and procedures to ensure that staff, families and students have a clear understanding of safe, positive and appropriate responses to behavioral challenges. Some schools continue to use restraint or seclusion for discipline or convenience, yet the use of these interventions for such purposes is illegal in other settings receiving federal health funds. The GAO investigation and other reports suggest that staff often do not have the training and support they need to manage situations involving undesirable behaviors. Parents are not adequately informed regarding the use of restraint and seclusion on their children; often parents have not provided consent nor are they notified after the fact. Data reporting and transparency related to the use of restraint and seclusion in the schools is inconsistent and rarely used to improve school practices.

H.R. 4247 addresses these important issues by establishing basic minimum safety standards related to the use of restraint and se-

²³ Testimony of Gregory D. Kutz, Managing Director of Forensic Audits and Special Investigations, Hearing, U.S. House of Representatives, Committee on Education and Labor, Seclusions and Restraints: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers (GAO-09-719T), May 19, 2009. <http://www.gao.gov/new.items/d09719t.pdf>.

²⁴ Testimony of Secretary of Education Arne Duncan, Hearing, U.S. House of Representatives, Committee on Education and Labor, The Obama Administration’s Education Agenda, May 20, 2009. http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_house_hearings&docid=f:49598.wais.

²⁵ Letter to Chief State School Officers, July 31, 2009, Secretary Arne Duncan <http://www2.ed.gov/policy/elsec/guid/secletter/090731.html>.

clusion in public and private schools that are supported by federal education resources. The Committee believes it is critical to encourage the prevention, reduction and elimination of these interventions. Within 180 days after enactment of H.R. 4247, the Secretary of Education must issue regulations implementing the minimum standards. The bill requires states to subsequently establish policies and procedures that meet or exceed the minimum standards within two years, requires data reporting to better inform future practice and identify problems, and provides for grants to assist states, districts and schools to implement, monitor and enforce the policies. The Committee believes this balanced approach places necessary limits on restraint and seclusion consistent with other federal laws, while also providing state flexibility in implementation and federal support for schools and districts to utilize evidence-based practices.

Prohibitions

The Committee is disturbed by reports of children tied to chairs, held in place by duct tape, inappropriately strapped to therapeutic equipment, or otherwise restricted in their movements by mechanical means. As such, H.R. 4247 prohibits the use of mechanical restraints in schools, other than devices used for the specific, intended and approved safety or therapeutic purpose for which they are designed, including medical immobilization. The Committee does not expect that mechanical restraints appropriately used for medical immobilization would include mechanical restraints used solely for behavior modification. The bill also specifically ensures that school resource officers may use handcuffs to mechanically restrain students in emergencies or in the exercise of law enforcement duties.

The Committee believes the use of chemical restraints (controlling behavior by using medications in any manner inconsistent with a doctor's prescription) is inappropriate and illegal. The bill prohibits chemical restraint in schools.

According to the GAO, many of the restraint deaths have involved the restriction of the victim's breathing. A substantial body of evidence has demonstrated the dangers of restraint-related positional asphyxia (when a person is forced into a position that does not allow proper and effective breathing).²⁶ While the Committee does not intend to endorse specific approaches to physical restraint, it is important to note that many behavioral health experts believe prone (face-down) restraints should be banned due to the high risk of death or serious injury. The GAO reports that currently eight states specifically prohibit the use of prone restraints or restraints that impede a child's ability to breathe.²⁷ It is the Committee's expectation that any physical restraint or physical escort that restricts breathing be prohibited, which may include limitations on certain restraint positions.

²⁶ Colorado Association of Family and Children's Agencies, (2006) *The Use of Prone Restraints in Psychiatric Residential Treatment Facilities: White Paper*. Denver, CO. <http://www.cafca.net/images/stories/publications/ProneRestraintPaper.pdf>.

²⁷ Testimony of Gregory D. Kutz, Managing Director of Forensic Audits and Special Investigations, Hearing, U.S. House of Representatives, Committee on Education and Labor, Seclusions and Restraints: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers (GAO-09-719T), May 19, 2009. <http://www.gao.gov/new.items/d09719t.pdf>.

The Committee is concerned about the use of aversive behavioral interventions that compromise health and safety. Examples of such interventions used for the purpose of reducing maladaptive behavior may include, but are not limited to, contingent electric shock, noxious stimuli in the form of sprays, tastes, inhalants or other substances, and the intentional withholding of sleep, shelter, bedding, bathroom facilities, clothing, nutrition or hydration. H.R. 4247 prohibits the use of aversive behavioral interventions that compromise health and safety in schools.

Safe and appropriate use of physical restraint and seclusion

The Committee believes the use of physical restraint and seclusion in public and private schools should be significantly limited, implemented in circumstances involving imminent danger of physical injury and only until the danger has passed; only when no other effective options are available to stop such injury; and when applied by trained staff. H.R. 4247 utilizes many of the standards and definitions established under the Children's Health Act of 2000. At the same time, the Committee intends to acknowledge the differences between the school environment and health facilities.

Based upon similar requirements in other settings, H.R. 4247 requires continuous monitoring of any student being restrained or secluded. The Committee believes that face-to-face monitoring is an important safeguard to ensure student health and safety during physical restraint or seclusion, yet understands that sometimes personnel will be unable to safely monitor students face-to-face. In these rare circumstances, school personnel must maintain direct visual contact with the student through another safe means, for example, through a window when a student is in seclusion. The Committee does not consider video monitoring to offer direct visual contact.

H.R. 4247 limits the use of physical restraint (defined as a personal restriction that immobilizes or reduces the ability on an individual to move his or her arms, legs or head freely) to situations involving a student whose behavior poses an imminent danger of physical injury. The GAO report revealed a number of circumstances in which staff physically restrained students by sitting on the child's torso.²⁸ The Committee anticipates that situations immobilizing the torso would also be considered physical restraint.

The Committee believes that as part of a safe, positive, productive learning environment for all students, school personnel may have reasonable, temporary physical contact with students that is not considered physical restraint. Physical restraint does not include temporary physical prompts such as a brief, light touch to encourage a response, physically escorting a child safely from one area to another or away from danger without force or physical coercion, or briefly holding or hugging a student without force or physical coercion to calm or comfort the student.

The Committee understands the importance of "time out" as a behavior management technique that provides an opportunity for students to calm and regain self-control, separated from other stu-

²⁸Testimony of Gregory D. Kutz, Managing Director of Forensic Audits and Special Investigations, Hearing, U.S. House of Representatives, Committee on Education and Labor, Seclusions and Restraints: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers (GAO-09-719T), May 19, 2009. <http://www.gao.gov/new.items/d09719t.pdf>.

dents in an area from which the student is not physically prevented from leaving. For example, asking a student to step into the hallway for a short period of time, or visit a quiet space in the classroom, would be considered “time out.” The Committee believes that, distinct from seclusion, “time out” can be an effective and appropriate approach for children experiencing challenging behaviors that are not posing an imminent danger of physical injury. As such, H.R. 4247 explicitly prevents the Secretary from prohibiting the use of time out (as defined in the Public Health Service Act), while limiting the use of isolated seclusion to crisis situations. The Committee believes that use of seclusion, including any involuntary confinement of a student alone in a room or an area from which the student is physically prevented from leaving, should be restricted to only those circumstances in which it is absolutely necessary to stop imminent danger of physical injury. The Committee also believes that rooms used for seclusion should be safe, ventilated, lit, free of dangerous fixtures, and meet all applicable building and fire codes.

Consistent with the intent to establish similar requirements and restrictions on the use of restraint and seclusion across settings, the Committee believes that the Secretary of Education should consider the regulations implementing the Children’s Health Act (42 CFR 483.352) when issuing regulations concerning the definitions of seclusion and time out.

State-approved crisis intervention training programs

In the GAO investigation, many cases of student injury or death involved staff who had not been trained in crisis prevention and the safe use of restraint and seclusion.²⁹ The Committee believes that staff who may be expected to respond to behavioral crises using these interventions should be trained and certified prior to subjecting students to restraint or seclusion, similar to requirements in other settings. Therefore, H.R. 4247 requires physical restraint or seclusion be imposed only by school personnel trained and certified by a state-approved crisis intervention training program. The Committee also recognizes that there may be rare and clearly unavoidable circumstances when trained staff may not be immediately available and other staff may need to intervene. For example, a teacher on a field trip might need to use physical intervention to stop a young child from running into traffic, or an administrator could need to step in and restrain a student while breaking up a fight. The legislation anticipates these situations and provides a narrow exception to the training requirement for these emergencies.

H.R. 4247 requires states to approve crisis intervention training programs that provide training and certification in evidence-based techniques for preventing and safely implementing restraint and seclusion in the schools. The Committee anticipates that states would benefit from engaging a variety of stakeholders, including individuals with disabilities, parents, educators, private school officials, and behavioral health experts, when considering appropriate

²⁹Testimony of Gregory D. Kutz, Managing Director of Forensic Audits and Special Investigations, Hearing, U.S. House of Representatives, Committee on Education and Labor, Seclusions and Restraints: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers (GAO-09-719T), May 19, 2009. <http://www.gao.gov/new.items/d09719t.pdf>.

crisis intervention training programs for approval. It is the Committee's expectation that such training should also acknowledge the linguistic and cultural diversity of students and staff. The bill also directs states and districts to ensure that a sufficient number of school personnel are trained and certified by state-approved crisis intervention training programs to meet the needs of the particular population in each school. The Committee expects that states will consult with private school officials in a timely and meaningful manner to determine the training needs of private schools, and to establish processes for ensuring a sufficient number of private school staff are trained in order to meet student needs. The Committee also believes that each state, district and school is unique in its staffing needs and population of students, and anticipates that the number of trained staff should reflect these differences. Public and private schools that do not utilize restraint or seclusion should not need to have any staff trained and certified by a state-approved crisis intervention training program.

Crisis intervention planning for individual students

The Committee believes that the use of both physical restraint and seclusion must be limited to emergency circumstances to stop imminent danger of physical injury, and only when there are no other effective alternatives. The Committee is also concerned about allegations that parents are being pressured to provide consent to the use of restraint and seclusion as a precondition to an educational placement or access to a program. Therefore, H.R. 4247 prohibits the inclusion of these techniques as planned interventions to be written into student education plans (including Individualized Education Programs (IEPs) and Behavior Intervention Plans (BIPs)) as routine or normal programming.

Under the Individuals with Disabilities Education Act, the IEP is intended to provide a student with a free appropriate public education and to identify services designed to enable students with disabilities to make educational progress in both academic achievement and functional performance.³⁰ Such services must be based on peer-reviewed research to the extent practicable.³¹ The Committee believes that the use of restraint and seclusion is not a program or service that meets this standard, nor do these interventions constitute a treatment providing educational benefit. The Committee intends that student education plans and programs, including IEPs and BIPs developed by IEP teams including parents, should include positive behavioral supports and services to prevent the use of restraint or seclusion. Additionally, the Committee believes IEP teams, including parents, may agree upon restrictions against the use of restraint and seclusion as crisis interventions in an IEP or BIP, particularly when a student may be at added risk of negative consequences due to disability or physical or mental health conditions. The Committee also believes IEP teams, including parents, may agree upon written trauma-informed care plans, as appropriate, describing the individual student needs related to crisis situations due to the nature of the student's disability or prior trauma.

³⁰ 20 U.S.C. 1414(d).

³¹ 34 CFR Sec. 300.320(a)(4).

The Committee also believes that for a very small number of students with an extensive history of violent behavior that has created an imminent danger of physical injury in school, individual crisis planning with educators and parents is appropriate. The Committee anticipates that the Secretary will utilize the regulatory process to establish a distinction between planned interventions and crisis interventions consistent with the standards established under the bill, to include the extremely limited circumstances under which physical restraint or seclusion may be written as a crisis intervention in an individual student plan, including IEPs and BIPs, requiring informed consent from parents. The Committee recognizes that such crisis planning should include, at a minimum, a review of the educational and functional needs of the student, an analysis of antecedents preceding any violent behavior, and a functional behavior assessment conducted by a qualified team of professionals, and that parent involvement and informed consent is a critical component of crisis planning.

The Committee expects that school personnel will rely on district, school and classroom safety plans consistent with the minimum standards and developed at the local level with appropriate stakeholders that establish procedures to be used when a student's behavior poses an imminent danger of physical harm.

Procedures following restraint and seclusion

H.R. 4247 requires schools to establish procedures to be followed after each incident involving the imposition of restraint or seclusion, including written notification to parents. The Committee believes it is critical that parents are aware of each use of these interventions. Further, the Committee encourages schools to consider additional procedures to enhance parental involvement as well as assist in prevention planning and the identification of antecedents leading up to the crisis event, such as debriefing sessions with staff and parents after restraint or seclusion incidents.

Grant authority

The Committee believes that some states, districts and schools may need assistance in implementing efforts to prevent and reduce restraint and seclusion in schools. H.R. 4247 provides for grants to support implementation of the standards, professional development and training, and data reporting. Additionally, the Committee believes expenditures related to these efforts to be an allowable use of certain federal education funds, such as professional development and training resources.

H.R. 4247 requires local educational agencies receiving subgrant funds to work with private school officials to ensure that private school personnel can participate equitably in activities funded by the grants. The Committee expects that private schools will be able to negotiate with state and local educational agencies to establish processes for participation in training and other grant activities, to help ensure that students in both public and private schools are protected from the misuse of restraint and seclusion.

Positive Behavior Supports

The Committee believes the implementation of Positive Behavior Supports (PBS) can assist in the prevention and reduction of the

use of harmful restraint and seclusion in schools, and education resources should be invested in such efforts. In the discretionary grant authority, H.R. 4247 provides for such investment. The Committee expects that PBS should not be used to diminish non-harmful behaviors related to a student's disability that do not interfere with the learning environment. For example, utilizing PBS to diminish the reoccurrence of self-injurious behavior, an objectively harmful behavior which interferes with student learning, is consistent with the purpose of this legislation, but utilizing PBS to stop hand-flapping or other self-stimulatory behavior, which is not harmful and stems from a child's disability, would be inconsistent with the purpose of this legislation.

Reporting

The GAO investigation revealed the lack of comprehensive data and information collection related to the use of restraint and seclusion in the schools. H.R. 4247 requires states to report on the number of restraint and seclusion incidents annually. The Committee hopes that improved data collection and analysis can contribute to the prevention, reduction and elimination of restraint and seclusion in the schools. It is the Committee's intent that public and private schools that do not have any restraint or seclusion incidents in a given year will not have to submit a report that year.

Enforcement

The Committee believes states and districts should be primarily responsible for monitoring and enforcing the minimum standards, so the bill gives states two years to provide the Secretary with assurances that such mechanisms are in place. For states that do not comply, H.R. 4247 provides the Secretary authority to utilize remedies established under the General Education Provisions Act or to require a State Educational Agency to implement a corrective plan of action.

Additionally, Section 9 of H.R. 4247 references Protection and Advocacy Systems. The Committee intends that Section 9 is not an expansion of Protection and Advocacy authority, but a reiteration of existing authorities under 42 U.S.C. Section 15041 et. seq., 42 U.S.C. Section 10801 et. seq., 29 U.S.C. Section 794e et. seq., and 42 U.S.C. Section 300d-53 et. seq. to monitor, investigate, and enforce the provisions of this Act.

V. SECTION-BY-SECTION ANALYSIS

This section-by-section analysis is based upon the bill as amended with the Amendment in the Nature of a Substitute that was adopted by the Committee.

Sec. 1. Short title. Provides that the short title is the "Preventing Abusive Restraint and Seclusion in Schools Act of 2009."

Sec. 2. Findings. Acknowledges the physical and emotional risks of physical restraint and seclusion in the educational setting, and acknowledges the right of all children to be supported in, as well as school personnel to work in, a safe and healthy educational environment.

Sec. 3. Purposes. Indicates the purpose of the Act is to prevent and reduce physical restraint or seclusion in schools, ensure the safety of students and staff, protect students from physical or men-

tal abuse, and support policies and procedures that promote a positive educational environment. Also to provide assistance to States, local educational agencies and schools for staff training, data collection and implementing evidence-based models.

Sec. 4. Definitions. Includes definitions of chemical restraint, educational service agency, elementary school, local educational agency, mechanical restraint, parent, physical escort, physical restraint, positive behavior supports, protection and advocacy system, school, school personnel, secondary school, seclusion, secretary, state-approved crisis intervention training program, state, state educational agency, student, time out.

Sec. 5. Minimum standards and rules of construction. Provides for minimum safety standards related to the use of physical restraint and seclusion in schools, and requires the Secretary of Education to issue regulations establishing such standards. The standards prohibit the use of mechanical restraints, chemical restraints, physical restraint or escort that restricts breathing, and aversive behavioral interventions that compromise health and safety. The standards limit the imposition of physical restraint or seclusion, require states to ensure that a sufficient number of personnel are trained to meet students' needs, and require parental notification after seclusion or restraint have been imposed upon a student. The standards also prohibit inclusion of physical restraint or seclusion as planned interventions written into student education plans or programs.

Sec. 6. State plan and report requirements and enforcement. Requires States to submit to the Secretary their policies and procedures that are in effect and are consistent with the minimum federal standards. Requires States to report disaggregated data on restraint and seclusion incidents. Provides for enforcement of the standards through withholding of funds, a corrective plan of action or a cease and desist order.

Sec. 7. Grant authority. Provides the Secretary authority to award grants to States to support activities in order to meet the minimum standards established in federal regulations, to collect data, and to implement school-wide positive behavior support approaches. Provides for the conditions of grants and subgrants, including required and allowable activities and reporting.

Sec. 8. National assessment. Requires the Secretary to conduct a national assessment to determine the effectiveness of the Act and submit a report to Congress.

Sec. 9. Protection and advocacy systems. Reinforces Protection and Advocacy Systems authority to investigate, monitor and enforce protections provided under the Act.

Sec. 10. Head Start programs. Requires the Secretary of Health and Human Services to promulgate regulations for Head Start agencies that establish standards consistent with this Act.

Sec. 11. Limitation of authority. Clarifies that the Act does not preempt rights or remedies available under Federal or State law or regulation. Provides non-applicability for private schools that do not receive federal support and for homeschools.

Sec. 12. Authorization of appropriations. This section authorizes such sums for 2011 and four succeeding years.

VI. EXPLANATION OF AMENDMENTS

The Amendment in the Nature of a Substitute is explained in the body of this report.

VII. APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1, the Congressional Accountability Act, requires a description of the application of this bill to the legislative branch. H.R. 4247 aims to prevent and reduce the use of physical restraint and seclusion in public and private schools and to promote a positive school culture that ensures the safety of all students and personnel, and has no direct impact on the legislative branch.

VIII. UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandates Reform Act, P.L. 104–4) requires a statement of whether the provisions of the reported bill include unfunded mandates. H.R. 4247 contains no intergovernmental or private-sector mandates as defined by the Unfunded Mandates Reform Act (UMRA).

IX. EARMARK STATEMENT

H.R. 4247 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clauses 9(d), 9(e) or 9(f) of rule XXI of the House of Representatives.

X. ROLL CALL

COMMITTEE ON EDUCATION AND LABOR

ROLL CALL: 1 BILL: H.R. 4247 DATE: 2/4/2010
 AMENDMENT NUMBER : ADOPTED: 34 AYES / 10 NOES
 SPONSOR/AMENDMENT: COURTNEY / MOTION TO FAVORABLY REPORT THE
 BILL, AS AMENDED, TO THE HOUSE

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. MILLER, Chairman	X			
Mr. KILDEE, Vice Chairman	X			
Mr. PAYNE	X			
Mr. ANDREWS				X
Mr. SCOTT	X			
Ms. WOOLSEY	X			
Mr. HINOJOSA	X			
Mrs. McCARTHY	X			
Mr. TIERNEY	X			
Mr. KUCINICH	X			
Mr. WU	X			
Mr. HOLT	X			
Mrs. DAVIS	X			
Mr. GRIJALVA	X			
Mr. TIMOTHY BISHOP	X			
Mr. SESTAK	X			
Mr. LOEBSACK	X			
Ms. HIRONO	X			
Mr. ALTMIRE	X			
Mr. HARE	X			
Ms. CLARKE	X			
Mr. COURTNEY	X			
Ms. SHEA-PORTER	X			
Ms. FUDGE	X			
Mr. POLIS	X			
Mr. TONKO	X			
Mr. PIERLUISI	X			
Mr. SABLAN	X			
Ms. TITUS	X			
Ms. CHU	X			
Mr. KLINE, Senior Republican Member		X		
Mr. PETRI		X		
Mr. McKEON		X		
Mr. HOEKSTRA				X
Mr. CASTLE	X			
Mr. SOUDER		X		
Mr. EHLERS	X			
Mrs. BIGGERT				X
Mr. PLATTS	X			
Mr. WILSON	X			
Mrs. McMORRIS RODGERS	X			
Mr. PRICE		X		
Mr. ROB BISHOP		X		
Mr. GUTHRIE		X		
Mr. CASSIDY		X		
Mr. McCLINTOCK				X
Mr. HUNTER		X		
Mr. ROE		X		
Mr. THOMPSON				X
TOTALS	34	10		5

XI. STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF
THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the body of this report.

XII. NEW BUDGET AUTHORITY AND CBO COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for H.R. 4247 from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, February 12, 2010.

Hon. GEORGE MILLER,
*Chairman, Committee on Education and Labor,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4247, the Preventing Harmful Restraint and Seclusion in Schools Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Justin Humphrey.

Sincerely,

DOUGLAS W. ELMENDORF,
Director.

Enclosure.

H.R. 4247—Preventing Harmful Restraint and Seclusion in Schools Act

H.R. 4247 would authorize the appropriation of such sums as may be necessary for fiscal years 2011 through 2015 to award grants to states to assist them in establishing and implementing policies and collecting and analyzing data related to the physical restraint or seclusion of elementary and secondary school students. Under the General Education Provisions Act, these authorizations automatically would be extended one year to 2016.

As shown in the following table, based on the funding levels for similar programs at the U.S. Department of Education, CBO estimates that implementing H.R. 4247 would increase discretionary spending by about \$250 million over the 2011–2015 period. For this estimate, CBO projects that approximately \$340 million would be appropriated over that period and that outlays would follow the historical spending pattern for similar programs. The costs of this legislation fall within budget function 500 (education, training, employment and social services). Enacting the bill would not affect direct spending or revenues.

	By fiscal year, in millions of dollars—					
	2011	2012	2013	2014	2015	2011–2015
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Estimated Authorization Level	66	67	67	68	69	337
Estimated Outlays	2	51	65	67	68	254

H.R. 4247 contains no intergovernmental or private sector mandates, as defined in the Unfunded Mandates Reform Act. State and local governments could benefit from grants provided by the bill. Any costs to state and local governments that result from participation in the grant programs would be incurred voluntarily as conditions of federal assistance.

The CBO staff contact for this estimate is Justin Humphrey. This estimate was approved by Holly Harvey, Deputy Assistant Director, Budget Analysis Division.

XIII. STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c) of rule XIII of the Rules of the House of Representatives, the goal of H.R. 4247 is to prevent and reduce the use of physical restraint and seclusion in public and private schools and to promote a positive school culture that ensures the safety of all students and personnel. The Committee expects the Department of Education to comply with H.R. 4247 and implement the changes to the law in accordance with these stated goals.

XIV. CONSTITUTIONAL AUTHORITY STATEMENT

Under clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee must include a statement citing the specific powers granted to Congress in the Constitution to enact the law proposed by H.R. 4247. The Committee believes that the amendments made by this bill are within Congress' authority under Article I, section 8, clause 1 of the U.S. Constitution.

XV. COMMITTEE ESTIMATE

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison of the costs that would be incurred in carrying out H.R. 4247. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

XVI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

Clause 3(e) of rule XIII of the Rules of the House of Representatives requires a showing of changes in existing law made by the bill, as reported, when amending or repealing an existing statute or part thereof. Because the bill does not amend or repeal an existing statute or part thereof, no comparative print is required here.

XVII. COMMITTEE CORRESPONDENCE

None.

ADDITIONAL VIEWS

Introduction

Committee Republicans believe all students should be able to learn in a safe, productive, and positive environment. Teachers, principals, and other school personnel have a responsibility to ensure this environment is maintained at all times. Even in situations in which students have serious problems that pose a threat to themselves and others, it is vitally important that school personnel use interventions and supports that are both physically and emotionally safe for the child. Sadly, efforts to maintain order in the classroom have sometimes led school personnel to misuse certain techniques resulting in the abuse or even death of students.

The legislation presented to the Committee in H.R. 4247 posits that the solution to the misuse of seclusion and restraint techniques lies in the hands of the Secretary of Education in Washington, D.C. Republicans, however, believe Washington does not always know best, and education policy is best handled at the state and local levels. We praise the work of school personnel who oftentimes work under very challenging circumstances. We commend those states and local areas that have passed comprehensive laws restricting the misuse of restraints and seclusion rooms. At the same time, we condemn those teachers and classroom aides who have been found guilty of child abuse and neglect, which has resulted in the injury or death of school-age children; their actions have no place in public or private school settings.

In determining whether the federal government, acting through the U.S. Department of Education, should begin the unprecedented step of regulating the use of restraint techniques and seclusion rooms in public and private schools, Committee Republicans raise four substantive concerns with H.R. 4247, the Preventing Harmful Restraint and Seclusion in Schools Act:

Lack of reliable data on the use of restraint and seclusion in public and private schools

First, Committee Republicans believe H.R. 4247 fails to recognize that the federal government, state educational agencies, local educational agencies, or schools lack any type of reliable data on the prevalence of harmful restraint techniques in public and private schools and whether they result in child abuse. This fact is indisputable. Gregory D. Kutz, Managing Director of Forensic Audits and Special Investigations for the U.S. Government Accountability Office, offered testimony before the Committee that the GAO “could not find a single Web site, federal agency, or other entity that collects information *on the use of these methods or the extent of their*

alleged abuse” (emphasis added).¹ The Democratic majority in the Committee Report accompanying H.R. 4247 also uses this startling statistic to make the case for action on federal legislation regulating the use of restraint and seclusion techniques, although a more appropriate precursor to taking any federal legislative action, would be to collect information from states in an effort to determine the problem’s prevalence first.

This point has also been substantiated by the actions of the U.S. Department of Education, through the Office for Civil Rights (OCR), which recently issued a draft regulation requiring state and local educational agencies to collect data on the use of restraint and seclusion in schools.² The Civil Rights Data Collection, which has been pending for more than five months since September 2009, is expected to include data from 7,000 school districts and 77,000 schools. Under the proposal, school districts would submit three tables of data on restraint and seclusion—one for all students, one for students with Individualized Education Plans (IEPs), and one for those without IEPs. OCR’s draft proposal was published in the Federal Register in an effort to use the Department’s current data collection authority to determine how prevalent the problem of restraint and seclusion techniques is at the state or local level so the Department could determine whether they needed to act to protect student safety.

In a letter dated May 22, 2009, Congressman Howard P. “Buck” McKeon attempted to gather relevant information on the topic by asking U.S. Secretary of Education Arne Duncan to provide information on the number, nature, and resolution of any allegations of abuse from restraint and seclusion techniques that have been reported to the Department for the last five years. In his response to the Committee, the Secretary stated:

With regard to your . . . question about allegations of abuse from seclusion and restraint, the Department received a copy of a letter sent by a parent to the parent’s State educational agency concerning the use of restraint on that parent’s child in 2004. The letter was sent to the Department as “information only”—no response was requested or provided.

In addition, the Office for Civil Rights (OCR) contacted its regional offices and was able to identify 89 OCR cases that appear to be responsive to your request. Of these 89 cases, 81 cases raised allegations of disability discrimination, four raised allegations of race/color/national origin discrimination, and four cases raised allegations of disability and race/color/national origin discrimination. As of September 8, 2009, of those 89 cases, nine cases are open and 80 are closed. Of those closed 80 cases, 33 cases were dismissed or closed for administrative reasons (e.g. lack of consent, the complaint was withdrawn, and the complaint was untimely); 40 of those cases were closed as “insufficient evidence/no violation found” with regard to allega-

¹ See “Testimony of Gregory D. Kutz, Managing Director of Forensic Audits and Special Investigations, U.S. Government Accountability Office (GAO), Hearing, U.S. House of Representatives, Committee on Education and Labor, Examining the Abusive and Deadly Use of Seclusion and Restraint in Schools” at <http://republican.edlabor.house.gov/Media/file/111th/hearings/fc/051909/gao.pdf>.

² See <http://edocket.access.gpo.gov/2009/pdf/E9-21935.pdf>.

tions involving restraint or seclusion . . . and four of those cases were resolved by Early Compliant Resolution . . .

Committee Republicans support the actions of the Department to begin collecting data on the use of restraint and seclusion techniques and believe the Democratic majority should suspend action on H.R. 4247 until OCR completes its review to see how widespread the problem of harmful seclusion and restraint techniques may be. To do otherwise suggests that the majority is supportive of legislating prematurely, bereft of any reliable or factual information on which to base federal education policy.

Creation of a one-size-fits-all federal mandate

Second, Committee Republicans believe H.R. 4247 fails to acknowledge the work of 31 states that have acted to address restraint and/or seclusion techniques. Instead, it creates a one-size-fits-all federal mandate. The use of restraint and seclusion techniques, including defining what constitutes a restraint or seclusion, is primarily regulated at the state level. Thirty-one states currently have laws and regulations in place that govern the use of restraint and/or seclusion in schools.³ In addition, school districts may also have their own guidelines governing the use of such practices in the classroom.

While state laws vary widely, an overwhelming majority of states are taking and have taken action to address problems that have arisen over time. The federal government should respect the rights of states to exercise their capacity and expertise to regulate in this area. The Democratic majority uses this fact in the Committee Report accompanying H.R. 4247 to criticize states for not developing uniform policies around restraint and seclusion policies; however it should recognize that states are in the best position to develop and implement policies and laws that protect their students.

In August 2009, U.S. Secretary of Education Arne Duncan conceded this fact by sending a letter to each Chief State School Officer urging them to review their current policies and guidelines regarding the use of restraints and seclusion in schools to ensure every student is safe and protected.⁴ The Secretary urged each state to do such a review prior to the start of the 2009–2010 school year and directed the Office of Elementary and Secondary Education to work with each state to discuss relevant state laws, regulation, policies, and guidance that affect the use of seclusion and restraint.

Unfortunately, the Secretary has failed to release the transcripts of the state reviews; more than seven months after he pledged to the Committee that he would take appropriate action, the transcripts have still not been released. These transcripts could include important information on recent actions taken by states, including those 19 states that lack any state laws regulating restraint and

³ For a full breakdown of state policy affecting restraint and seclusion techniques, see “Testimony of Gregory D. Kutz, Managing Director of Forensic Audits and Special Investigations, U.S. Government Accountability Office (GAO), Hearing, U.S. House of Representatives, Committee on Education and Labor, Examining the Abusive and Deadly Use of Seclusion and Restraint in Schools” at <http://republicans.edlabor.house.gov/Media/file/111th/hearings/fe/051909/gao.pdf>.

⁴ For a copy of the letter sent by Secretary Duncan, see <http://www2.ed.gov/policy/elsee/guid/secletter/090731.html>.

seclusion techniques, to protect the safety of students. Committee Republicans urge the Department to release the transcripts of state conversations immediately so federal and state policymakers can see whether states have made progress on preventing the misuse of restraint and seclusion techniques.

Inclusion of traditional private schools is unprecedented

Third, Committee Republicans believe H.R. 4247 fails to exempt traditional private schools from its broad reach. Even though the GAO's report⁵ found no instances of misuse of seclusion and restraint at traditional private schools, H.R. 4247 would apply to any school that receives federal funding or federal services under any federal education program. Under the Individuals with Disabilities Education Act (IDEA), students with disabilities are entitled to receive special education and related services if they attend a private school. This "equitable participation of private schools" provision is an important component of special education law and is mirrored in all major education statutes passed by the Committee, including the Elementary and Secondary Education Act (ESEA). Although private schools and their students do receive services entitled to them under the law, they do not receive funding. Nonetheless, they are covered by the bill's provisions, establishing a dangerous precedent that has been rejected for decades of federal education law.

In their February 17, 2010 letter⁶ sent to the Committee, the Council for American Private Education (CAPE) states that:

. . . this legislation would impose an unprecedented degree of federal mandates on religious and independent schools. The class of schools that would be affected by this bill is broad. Based on the definition of "school" found in section 4(11), a religious school with even a single student receiving math or reading instruction under Title I of the Elementary and Secondary Education Act (ESEA) would be subject to all of the provisions of this bill, as would a school receiving a single piece of instructional material or professional development for a single teacher under any other ESEA title. The U.S. Department of Education reported in 2007 that a full 80 percent of Catholic schools across the country participate in one or more programs under ESEA.

In the history of education legislation, the federal government has never imposed training or certification requirements on religious and independent schools for any reason (emphasis added).

Committee Republicans support long-standing federal policy that exempts private schools from the overreach of the federal government and urge the Democratic majority to exclude private schools from the provisions of H.R. 4247. This legislation represents an un-

⁵ See "Testimony of Gregory D. Kutz, Managing Director of Forensic Audits and Special Investigations, U.S. Government Accountability Office (GAO), Hearing, U.S. House of Representatives, Committee on Education and Labor, Examining the Abusive and Deadly Use of Seclusion and Restraint in Schools" at <http://republicans.edlabor.house.gov/Media/file/111th/hearings/fe/051909/gao.pdf>.

⁶ For a copy of the letter sent by the Council for American Private Education (CAPE), see <http://www.capenet.org/pdf/CAPEHouse4247.pdf>.

precedented expansion of the federal government into the affairs of private schools. In practice and contrary to the authors' intentions, most private schools may simply stop educating disruptive students, including disabled students, or decline the services offered by local school districts instead of subjecting themselves to federal control if this bill were to become law.

Inclusion of language that may open states and school districts up to litigation

Fourth, Committee Republicans believe H.R. 4247 may expose states and school districts to unnecessary and damaging litigation. While this bill does not contain a private right of action, it contains vague language on restricted actions and explicit language empowering the Protection and Advocacy system to investigate and enforce the protections under this Act, which would open schools to potential litigation. For example, the bill includes broad phrases such as requiring states to restrict "aversive behavioral interventions that compromise health and safety," an undefined term that would be defined and litigated across the country. Additionally, trial lawyers could be empowered to sue the 21 states that currently allow corporal punishment, since advocates may make the case that it compromises student health and safety. The legislation would also expand the role of the Protection and Advocacy system, the state-based system of trial lawyers, to enforce the protections under the bill.

In addition to these provisions, the bill's restriction on the use of restraints that could be used to protect the safety of teachers and the majority of students in the classroom could in itself open states and school districts to additional litigation. The lawsuits may come not only from overreaching trial lawyers intent on suing school districts for using restraint and seclusion techniques, but also from school personnel and students who were harmed because schools were not allowed to control disruptive students.

In order to avoid these and other lawsuits, schools may simply stop disciplining students and default to calling law enforcement to intercede rather than violate the law and guidance. This situation has occurred in several states, such as Kansas, which have implemented vague or overreaching restraint and seclusion requirements. As the American Association of School Administrators (AASA), the national association representing 13,000 educational leaders around the country, pointed out in their February 2, 2010⁷ letter to the Committee:

. . . the policy in HR. 4247 may result in schools relying on police to handle more dangerous situations because action by school employees is too restrained to be safely undertaken . . . the restrictive rules . . . will mean that students who have a history of explosive outbursts will be increasingly placed in more restrictive settings to reduce the difficulties of teachers in protecting students during violent outbursts.

⁷For a copy of the letter sent by the American Association of School Administrators (AASA) see http://www.aasa.org/uploadedFiles/Policy_and_Advocacy/files/Ed%20Labr%20Cmte%20Letter%20020210.pdf.

Again, supporters of H.R. 4247 claim it will not breed litigation because it does not expressly contain a private right of action. But, in reality, this bill will open schools to increased litigation through the power given to the protection and advocacy organizations under this bill and existing law.

Conclusion

As outlined in these Republican Views, Committee Republicans believe all students, regardless of their educational ability or behavioral problems, deserve to be treated with respect and are entitled to a safe and rich learning environment. While the federal government lacks any reliable and relevant information on the prevalence of restraint and seclusion techniques at public and/or private schools, state and local leaders are taking important steps to protect the safety of their students after recent revelations that school personnel have misused restraint techniques and seclusion rooms.

Committee Republicans certainly understand the goals of H.R. 4247; we support efforts to protect our children from abuse, neglect, and harm. However, we remain concerned that the bill legislates prematurely, ignores the work of the 31 states that have laws in place restricting the use of restraint and seclusion policies, creates a one-size-fits-all framework, imposes unprecedented bureaucratic and burdensome requirements on independent private schools, and opens states and school districts to a litany of lawsuits that will enrich trial lawyers.

JOHN KLINE, *Senior Republican Member.*

HOWARD P. "BUCK" McKEON.

MARK E. SOUDER.

ROB BISHOP.

BILL CASSIDY.

DUNCAN D. HUNTER.

DAVID P. ROE.

GLENN THOMPSON.

