

S.2036
Keeping All Students Safe Act
Introduced Feb. 24, 2014

Sponsored by Senator Tom Harkin (IA, Chair Senate Health Education Labor and Pensions Committee), Senator Chris Murphy (CT), Senator Tammy Baldwin (WI), and Senator Mazie Hirono (HI)

A BILL

**To protect all school children against harmful and life-threatening
seclusion and restraint practices.**

*Be it enacted by the Senate and House of Representatives of the United
States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the “Keeping All Students Safe Act”.

SEC. 2. DEFINITIONS.

In this Act:

(1) **APPLICABLE PROGRAM.**—The term “applicable program” has the meaning given the term in section 400(c)(1) of the General Education Provisions Act (20 U.S.C. 1221(c)(1)).

(2) **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, or other qualified health professional acting under the scope of the professional’s authority under State law, for the standard treatment of a student’s medical or psychiatric condition; and

(B) administered as prescribed by the licensed physician or other qualified health professional acting under the scope of the professional's authority under State law.

(3) ESEA DEFINITIONS.—The terms—

(A) “Department”, “educational service agency”, “elementary school”, “local educational agency”, “parent”, “secondary school”, “State”, and “State educational agency” have the meanings given such terms in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801); and

(B) “school resource officer” and “school personnel” have the meanings given such terms in section 4151 of such Act (20 U.S.C. 7161).

(4) FEDERAL FINANCIAL ASSISTANCE.—The term “Federal financial assistance” means any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the Department provides or otherwise makes available assistance in the form of—

(A) funds;

(B) services of Federal personnel; or

(C) real and personal property or any interest in or use of such property, including—

(i) transfers or leases of such property for less than fair market value or for reduced consideration; and

(ii) proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

(5) FREE APPROPRIATE PUBLIC EDUCATION.—For those students eligible for special education and related services under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), the term “free

appropriate public education” has the meaning given the term in section 602 of such Act (20 U.S.C. 1401).

(6) **MECHANICAL RESTRAINT.**—The term “mechanical restraint”—

(A) 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”; and

(B) does not mean devices used by trained school personnel, or used by a student, for the specific and approved therapeutic or safety purposes for which such devices were designed and, if applicable, prescribed, including—

(i) restraints for medical immobilization;

(ii) adaptive devices or mechanical supports used to allow greater freedom of mobility than would be possible without the use of such devices or mechanical supports; or

(iii) vehicle safety restraints when used as intended during the transport of a student in a moving vehicle.

(7) **PHYSICAL ESCORT.**—The term “physical escort” means the temporary touching or holding of the hand, wrist, arm, shoulder, waist, hip, or back for the purpose of inducing a student to move to a safe location.

(8) **PHYSICAL RESTRAINT.**—The term “physical restraint” means a personal restriction that immobilizes or reduces the ability of an individual to move the individual's arms, legs, body, or head freely. Such term does not include a physical escort, mechanical restraint, or chemical restraint.

(9) **POSITIVE BEHAVIORAL INTERVENTIONS AND SUPPORTS.**—The term “positive behavioral interventions and supports”—

(A) means a school-wide systematic approach to embed evidence-based practices and data-driven decisionmaking to improve school climate and culture 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; and

(B) encompasses a range of systemic and individualized positive strategies to reinforce desired behaviors, diminish reoccurrence of challenging behaviors, and teach appropriate behaviors to students.

(10) **PROTECTION AND ADVOCACY SYSTEM.**—The term “protection and advocacy system” means a protection and advocacy system established under subtitle C of title I of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15041 et seq.).

(11) **SECLUSION.**—The term “seclusion”—

(A) means the isolation of a student in a room, enclosure, or space that is—

(i) locked; or

(ii) unlocked and the student is prevented from leaving; and

(B) does not include a time out.

(12) **SECRETARY.**—The term “Secretary” means the Secretary of Education, and, where appropriate, the Secretary of the Interior and the Secretary of Defense.

(13) **STATE-APPROVED CRISIS INTERVENTION TRAINING PROGRAM.**—The term “State-approved crisis intervention training program” means a training program proposed by a local educational agency and approved by a State that, at a minimum, provides training in evidence-based practices shown to be effective—

(A) in the prevention of the use of physical restraint;

(B) in keeping both school personnel and students safe in imposing physical restraint in a manner consistent with this Act;

(C) in the use of data-based decisionmaking and evidence-based positive behavioral interventions and supports, safe physical escort,

conflict prevention, behavioral antecedents, functional behavioral assessments, de-escalation of challenging behaviors, and conflict management;

(D) in first aid, including the signs of medical distress, and cardiopulmonary resuscitation; and

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

(14) **STUDENT.**—The term “student” means a student who—

(A) is enrolled in a public school;

(B) is enrolled in a private school and is receiving a free appropriate public education at the school under subparagraph (B) or (C) of section 612(a)(10) of the Individuals with Disabilities Education Act (20 U.S.C. 1412(a)(10)(B), (C));

(C) is enrolled in a Head Start or Early Head Start program supported under the Head Start Act (42 U.S.C. 9831); or

(D) receives services under section 619 or part C of the Individuals with Disabilities Education Act (20 U.S.C. 1419, 1431 et seq.).

(15) **TIME OUT.**—The term “time out” means a behavior management technique that may involve the separation of the student from the group, in a non-locked setting, for the purpose of calming. Time out is not seclusion.

SEC. 3. PURPOSE.

The purposes of this Act are—

(1) to promote the development of effective intervention and prevention practices that do not use restraints and seclusion;

(2) to protect all students from physical or mental abuse, aversive behavioral interventions that compromise health and safety, and any restraint imposed for purposes of coercion, discipline or convenience, or as

a substitute for appropriate educational or positive behavioral interventions and supports;

(3) to ensure that staff are safe from the harm that can occur from inexpertly using restraints; and

(4) to ensure the safety of all students and school personnel and promote positive school culture and climate.

SEC. 4. MINIMUM STANDARDS; RULE OF CONSTRUCTION.

Each State and local educational agency receiving Federal financial assistance shall have in place policies that are consistent with the following:

(1) **PROHIBITION OF CERTAIN ACTION.**—School personnel, contractors, and resource officers are prohibited from imposing on any student—

(A) seclusion;

(B) mechanical restraint;

(C) chemical restraint;

(D) aversive behavioral interventions that compromise health and safety;

(E) physical restraint that is life-threatening, including physical restraint that restricts breathing; and

(F) physical restraint if contraindicated based on the student's disability, health care needs, or medical or psychiatric condition, as documented in a health care directive or medical management plan, a behavior intervention plan, an individualized education program or an individualized family service plan (as defined in section 602 of the Individuals with Disabilities Education Act (20 U.S.C. 1401)), or plan developed pursuant to section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), or other relevant record made available to the State or local educational agency.

(2) **PHYSICAL RESTRAINT.**—

(A) IN GENERAL.—Physical restraint may only be implemented if—

(i) the student’s behavior poses immediate danger of serious physical harm to self or others;

(ii) the physical restraint does not interfere with the student’s ability to communicate in the student’s primary language or mode of communication; and

(iii) less restrictive interventions have been ineffective in stopping the immediate danger of serious physical harm to the student or others, except in a case of a rare and clearly unavoidable emergency circumstance posing immediate danger of serious physical harm.

(B) LEAST AMOUNT OF FORCE NECESSARY.—When implementing a physical restraint, staff shall use only the amount of force necessary to protect the student or others from the threatened injury.

(C) END OF PHYSICAL RESTRAINT.—The use of physical restraint shall end when—

(i) a medical condition occurs putting the student at risk of harm;

(ii) the student’s behavior no longer poses immediate danger of serious physical harm to the student or others; or

(iii) less restrictive interventions would be effective in stopping such immediate danger of serious physical harm.

(D) QUALIFICATIONS OF INDIVIDUALS ENGAGING IN PHYSICAL RESTRAINT.—School personnel imposing physical restraint in accordance with this subsection shall—

(i) be trained and certified by a State-approved crisis intervention training program, except in the case of rare and clearly unavoidable emergency circumstances when school personnel

trained and certified are not immediately available due to the unforeseeable nature of the emergency circumstance;

(ii) engage in continuous face-to-face monitoring of the student; and

(iii) be trained in State and school policies and procedures regarding restraint and seclusion.

(E) PROHIBITION ON USE OF PHYSICAL RESTRAINT AS PLANNED INTERVENTION.—

(i) IN GENERAL.—Except as provided in clause (ii), the use of physical restraints as a planned intervention shall not be written into a student’s education plan, individual safety plan, plan developed pursuant to section 504 of the Rehabilitation Act of 1973 ([29 U.S.C. 794](#)), individualized education program or individualized family service plan (as defined in section 602 of the Individuals with Disabilities Education Act ([20 U.S.C. 1401](#))), or any other planning document for an individual student.

(ii) EXCEPTION.—The use of physical restraints as a planned intervention may be written into a student’s individualized education program, individual safety plan, or plan developed pursuant to section 504 of the Rehabilitation Act of 1973 ([29 U.S.C. 794](#)) if State law allows for the use of physical restraint as part of such program or plan, as agreed upon by school personnel, the family of the student, and the individualized education program committee if such individuals—

(I) have considered less restrictive means to address behavioral concerns that would meet the emergency standard described in subparagraph (A) and, when using such physical restraints in an emergency, meet the conditions described in subparagraphs (B), (C), and (D); and

(II) have conducted a research-based, individualized functional behavioral analysis and implemented a

corresponding positive intervention plan based on such functional behavioral analysis that—

(aa) addresses preventative measures used to reduce or prevent emergencies; and

(bb) is written into the student's individualized education program, individual safety plan, or plan developed pursuant to section 504 of the Rehabilitation Act of 1973 ([29 U.S.C. 794](#)).

(3) OTHER POLICIES.—

(A) IN GENERAL.—The State or local educational agency, and each school and educational program served by the State or local educational agency shall—

(i) establish policies and procedures that ensure school personnel and parents, including private school personnel and parents, are aware of the State, local educational agency, and school's policies and procedures regarding seclusion and restraint;

(ii) establish policies and procedures to keep all students, including students with the most complex and intensive behavioral needs, and school personnel safe;

(iii) establish policies and procedures for planning for the appropriate use of restraint in crisis situations in accordance with this Act by a team of professionals trained in accordance with a State-approved crisis intervention training program; and

(iv) establish policies and procedures to be followed after each incident involving the imposition of physical restraint upon a student, including—

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

(aa) a verbal or electronic communication on the same day as each such incident; and

(bb) within 24 hours of each such incident, written notification; and

(II) after the imposition of physical restraint upon a student, procedures to ensure that—

(aa) the person who imposed the restraint, the immediate adult witnesses, a representative of the administration, a school mental health professional, and at least 1 family member of the student participate in a debriefing session; and

(bb) the student who was restrained is given the opportunity to discuss the student's perspective about the event with a trusted adult who will communicate to the debriefing session group.

(B) DEBRIEFING SESSION.—

(i) IN GENERAL.—

(I) TIMING.—The debriefing session described in subparagraph (A)(iv)(II) shall occur as soon as practicable, but not later than 5 school days following the imposition of physical restraint unless it is delayed by written mutual agreement of the parent and school.

(II) OBSERVATIONS BY SCHOOL PERSONNEL.—Each adult witness in the proximity of the student immediately before and during the time of the physical restraint but not directly involved shall submit the witness's observations in writing for the debriefing session.

(III) PARENTAL LEGAL RIGHTS.—Parents shall retain their full legal rights for children under the age of majority concerning participation in the debriefing or other matters.

(ii) CONTENT OF SESSION.—The debriefing session described in subparagraph (A)(iv)(II) shall include—

(I) identification of antecedents to the physical restraint;

(II) consideration of relevant information in the student's records, and such information from teachers, other professionals, the parent, and student;

(III) planning to prevent and reduce reoccurrence of the use of physical restraint, including consideration of the results of any functional behavioral assessments, whether positive behavior plans were implemented with fidelity, recommendations of appropriate positive behavioral interventions and supports to assist personnel responsible for the student's educational plan, the individualized education program for the student, if applicable, and plans providing for reasonable accommodations under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794);

(IV) a plan to have a functional behavioral assessment conducted, reviewed, or revised by qualified professionals, the parent, and the student; and

(V) for any student not identified as eligible to receive accommodations under section 504 of the Rehabilitation Act of 1973 ([29 U.S.C. 794](#)) or services under the Individuals with Disabilities Education Act ([20 U.S.C. 1400 et seq.](#)), evidence of such a referral or documentation of the basis for declining to refer the student.

(iii) COMMUNICATION BY THE STUDENT.—When a student attends a debriefing session described in subparagraph (A)(iv)(II), information communicated by the student may not be used against the student in any disciplinary, criminal, or civil investigation or proceeding.

(4) NOTIFICATION IN WRITING ON DEATH OR BODILY INJURY.—In a case in which bodily injury or death of a student occurs in conjunction with the use of physical restraint or any intervention used to control behavior, there are procedures to notify, in writing, within 24 hours after such injury or death occurs—

(A) the State educational agency and local educational agency;

(B) local law enforcement; and

(C) a protection and advocacy system, in the case of a student who is eligible for services from the protection and advocacy system.

(5) PROHIBITION AGAINST RETALIATION.—The State or local educational agency, each school and educational program served by the State or local educational agency, and school personnel of such school or program shall not retaliate against any person for having—

(A) reported a violation of this section or Federal or State regulations or policies promulgated to carry out this section; or

(B) provided information regarding a violation of this section or Federal or State regulations or policies promulgated to carry out this section.

SEC. 5. INTERACTIONS; RULES OF CONSTRUCTION.

(a) RULES OF CONSTRUCTION.—

(1) RIGHTS AND REMEDIES OF STUDENTS AND PARENTS.—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 (including regulations) or to restrict or limit stronger restrictions on the use of restraint, seclusion, or aversives in Federal or State law (including regulations) or in State policies.

(2) RESTRICTIONS ON SECRETARIAL PROHIBITIONS.—Nothing in this Act shall be construed to authorize the Secretary to promulgate regulations prohibiting the use of—

(A) time outs; or

(B) 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—

(i) restraints for medical immobilization;

(ii) 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

(iii) vehicle safety restraints when used as intended during the transport of students in a moving vehicle.

(b) DENIAL OF A FREE APPROPRIATE PUBLIC EDUCATION.—Failure to meet the minimum standards of this Act as applied to an individual child eligible for accommodations developed pursuant to section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) or for education or related services under the Individuals with Disabilities Education Act ([20 U.S.C. 1400 et seq.](#)) shall constitute a denial of a free appropriate public education.

(c) EXHAUSTION OF DUE PROCESS.—

(1) IN GENERAL.—A student may file a civil action under the Constitution, the Americans with Disabilities Act of 1990 ([42 U.S.C. 12101 et seq.](#)), title V of the Rehabilitation Act of 1973 ([29 U.S.C. 791 et seq.](#)), or other applicable Federal law in the case of the use of seclusion or restraint in violation of this Act seeking relief from the use of seclusion or restraint with respect of such student.

(2) NONAPPLICABILITY.—Section 615(l) of the Individuals with Disabilities Education Act ([20 U.S.C. 1415\(l\)](#)) shall not apply to an action filed pursuant to paragraph (1).

SEC. 6. REPORT REQUIREMENTS.

(a) IN GENERAL.—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 following information:

(1) The total number of incidents in which physical restraint was imposed upon a student in the preceding full academic year.

(2) The information described in paragraph (1) shall be disaggregated—

(A) by the total number of incidents in which physical restraint was imposed upon a student—

(i) that resulted in injury to students or school personnel, or both;

(ii) that resulted in death; and

(iii) in which the school personnel imposing physical restraint were not trained and certified as described in section 4(2)(D)(i); and

(B) by the demographic characteristics of all students upon whom physical restraint was imposed, including—

(i) the subcategories identified in section 1111(h)(1)(C)(i) of the Elementary and Secondary Education Act of 1965 ([20 U.S.C. 6311\(h\)\(1\)\(C\)\(i\)](#));

(ii) age; and

(iii) disability category.

(b) **UNDUPLICATED COUNT; EXCEPTION.**—The disaggregation required under subsection (a) shall—

(1) be carried out in a manner to ensure an unduplicated count of the total number of incidents in the preceding full academic year in which physical restraint was imposed upon a student; and

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

SEC. 7. GRANT AUTHORITY.

(a) IN GENERAL.—From the amount appropriated under section 10, the Secretary may award grants to State educational agencies to assist in—

(1) establishing, implementing, and enforcing the policies and procedures to meet the minimum standards described in this Act;

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

(3) improving school climate and culture by implementing school-wide positive behavioral interventions and supports.

(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.

(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 State educational agency receiving grant 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 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 evidence-based strategies, policies, and procedures to reduce and prevent physical restraint in schools, consistent with the minimum standards described in this Act.

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

(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 a high-quality professional development and training program to implement evidence-based systematic approaches to school-wide positive behavioral interventions and 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 behavioral interventions and supports, including technical assistance for data-driven decisionmaking related to positive behavioral interventions and supports in the classroom.

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

(4) Supporting other local positive behavioral interventions and supports 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 in the schools located in the State, consistent with the minimum standards; and

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

SEC. 8. ENFORCEMENT.

(a) USE OF REMEDIES.—If a State educational agency fails to comply with the requirements under this Act, the Secretary shall—

(1) withhold, in whole or in part, further payments under an applicable program in accordance with section 455 of the General Education Provisions Act (20 U.S.C. 1234d);

(2) require a State or local 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;

(3) issue a complaint to compel compliance of the State or local 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); or

(4) refer the State to the Department of Justice or Department of Education Office of Civil Rights for an investigation.

(b) CESSATION OF WITHHOLDING OF FUNDS.—Whenever the Secretary determines (whether by certification or other appropriate evidence) that a State or local educational agency that is subject to the withholding of payments under subsection (a)(1) 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 subsection.

SEC. 9. APPLICABILITY.

(a) 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 provided by the Department of Education.

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

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

(2) consider a parent who is schooling a child at home as school personnel.

SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this Act for fiscal year 2015 and each of the 4 succeeding fiscal years.