



January 28, 2010

The Honorable George Miller
The Honorable Cathy McMorris-Rodgers
United States House of Representatives
Washington, DC 20515

The Honorable Christopher J. Dodd
United States Senate
Washington, DC 20510

Dear Representatives Miller, McMorris Rodgers and Senator Dodd:

On behalf of the undersigned organizations dedicated to the integration and inclusion of children and adolescents with disabilities, we thank you for introducing H.R. 4247 and S. 2680, the Preventing Harmful Restraint and Seclusion in Schools Act. Seclusion, restraint and other aversive interventions in schools cause unnecessary trauma, injury and death to America's children, and we support your efforts in addressing this important issue.

As you work to consolidate the two bills and prepare them for consideration in the House and the Senate, we respectfully request consideration for the following changes:

- Please amend Section 3 (4) to say:
(4) ensure **no student shall be subjected to** physical restraint and seclusion **unless the student's** behavior poses an imminent danger of physical injury to the student, school personnel, or others; and
- Please amend Section 4 (8) PHYSICAL RESTRAINT to include — The term “physical restraint” has the meaning given the term in section 8 595(d)(3) of the Public Health Service Act (42 9 U.S.C. 290jj(d)(3)) **and also includes a personal restriction that reduces the ability to move or places pressure on the torso of an individual.**
- Please amend Section 4 (14) SECLUSION.—to include **locked isolation or a room or space from which the student is physically prevented from leaving.** *RATIONALE:* This is the position in 11 of the 24 states with seclusion laws and/or regulations. Another 8 states simply ban locked seclusion all together. The bill as written imposes restrictions on "locked seclusion," but does not apply to other spaces from which students are physically prevented from exiting, e.g. because the door is held shut by staff, furniture is moved in front of it, or because of age or disability, a child cannot open the door (e.g. child who cannot operate her wheelchair; lacks motor ability to open a simple

childproofing device; or otherwise cannot leave the room). It also would not apply to various makeshift seclusion spaces (e.g. large appliance delivery boxes) that parents have reported, which lack doors entirely and are held down over the child. Approximately 1/3 of the seclusion cases documented in NDRN's *School is Not Supposed to Hurt* involved children put into unlocked spaces from which they could not exit (roughly 1/3 were identified as locked seclusion, and the others were unclear. Even if all were locked seclusion, it still would leave 1/3 of the cases in unlocked seclusion). They included children in California forced into an unlit padded room for such infractions as failing to write 50 sentences, while staff held the door shut (California prohibits locked seclusion), an 11 year old child in Illinois placed in isolation with staff holding the door shut despite physician's instructions not to use seclusion; and children forced into spaces with doors blocked by furniture. COPAA's *Unsafe in the Schoolhouse* report also identified children physically prevented from leaving unlocked rooms. Because the bill does not apply to these spaces from which children are involuntarily prevented from leaving, it means that schools can place children in the rooms or spaces for any reason (including punishment), do not have to monitor them, do not have to report to parents that the spaces were used, and do not have to report any data to the public or Department of Education. Changing the language as proposed would solve these inadequacies in protections.

- Please amend Section 5. (a) (1) (C) as follows: **Prone restraint, supine restraint and any other form of restraint that restricts the airway. RATIONALE:** Prone and supine restraint are so dangerous they must be prohibited by name in order to optimally protect children, and to leave no question in the minds of parents, training companies or school personnel about the intention of this prohibition.
- Please amend Section 5 (a) (4) to include: **This provision shall not be interpreted as preventing the writing into the IEP restrictions against the use of restraint and seclusion in general or restrictions against the use of particular types of restraint or seclusion which may place a student at added risk due to the nature of the student's disability, mental health condition, or previous trauma.**
- Please include S. 2680 5. (a) (6) (A) and (B) in the final bill, and amend as follows: (A) documentation of antecedents to the physical restraint or seclusion, **including but not limited to a review of the student's IEP, Functional Behavioral Assessment, and/or Behavior Intervention Plan.**
- Please amend 6.(a) (3) as follows: **a description of the plans to ensure school personnel and parents are aware of the State policies and procedures, including but not limited to annual notice to parents of their rights and requirements under the law.**
- Please amend 4.(16) as follows: Change (D) to (E) and add a new (D) **Requirements of the state and federal laws regarding the use of restraint and seclusion.**
- Please amend 6. (a) by adding (4) **the process by which Local Education Agencies will report all incidents of restraint, seclusion, and the use of aversive interventions to**

the State Education Agency for tracking such incidents and use, and for reporting such incidents and use to the public.

Thank you again for introducing this legislation to prevent this harmful practice. We stand ready to assist in enacting legislation that fully protects each student's right to be safe at school.

Sincerely,

Association of University Centers on Disabilities
Autism National Committee
Autistic Self Advocacy Network
Bazelon Center for Mental Health Law
CHADD, Children and Adults with Attention Deficit/Hyperactivity Disorder
Council on Parent Attorneys and Advocates
Families Against Restraint and Seclusion
Family Alliance to Stop Abuse and Neglect
National Alliance on Mental Illness
National Association of State Directors of Mental Health Programs
National Disability Rights Network
National Down Syndrome Congress
National Down Syndrome Society
National Fragile X Foundation
Respect ABILITY Law Center
TASH
UCP