

[AUCD Legislative Summary](#)

Preventing Harmful Restraint and Seclusion in Schools Act

H.R. 4247, S. 2860

On December 9, Representatives George Miller (D-CA) and Cathy McMorris-Rodgers (R-WA) introduced the Preventing Harmful Restraints and Seclusion in Schools Act (H.R. 4247). Senator Christopher Dodd (D-CT) introduced a companion bill (S. 2860) by the same name on the same day. The bills are very similar, and establish federal standards to reduce restraint and seclusion in schools.

The purposes of the legislation include reducing the use of restraint and seclusion, ensuring the safety of students and school personnel, promoting a positive school culture and protecting students from abuse. For more information, including the full text of both bills, see the [resource page](#) on our website.

More support is needed for both bills, and advocates hope to get more cosponsors (especially Republicans) for this valuable legislation. The next step is for AUCD and other interested organizations to provide feedback and suggestions to Congressional staff before the bill is marked up in committee. Please review this summary of the bills and provide us with your comments as soon as possible.

Overview of the bills:

(Note: for definitions, see the definitions page after the summary)

I. Minimum Standards

What is banned

The bills ban the use of mechanical and chemical restraints, physical restraints that impede breathing, and aversives that compromise health and safety (refer to definitions page). The House version also bans physical escort that restricts breathing. Physical restraint and locked seclusion are permitted only when there is an “imminent danger of physical injury” and when “less restrictive interventions would be ineffective”. The restraint or seclusion must end when the imminent risk no longer exists or when a less restrictive intervention becomes effective.

Rules for using physical restraint and seclusion

Face to face monitoring is required when restraint or seclusion is being implemented, thus children cannot be left unattended. If face to face monitoring would be dangerous for school personnel, the personnel must remain in continuous visual contact with the student. Restraint and seclusion can only be used by trained and certified school personnel. Uncertified personnel can only implement restraint and seclusion in the rare case of an emergency where trained and certified personnel are not immediately available.

Trained & certified personnel

States and local education agencies must ensure that a sufficient number of trained and certified staff are present to serve the school’s population. Personnel must be certified by a “state-approved training program”, which, at a minimum, provides: evidence-based techniques for prevention and safe use of

physical restraint and seclusion; skills training related to positive behavioral supports, safe physical escort, conflict prevention, de-escalation and conflict management; and first aid and CPR training.

Not allowed in IEP

Restraint and seclusion cannot be written into a student's IEP, individual safety plan, or behavioral plan. The House version provides that the methods can be in a school safety or crisis plan, but the plans cannot be specific to any individual student. This provision further ensures that restraint and seclusion will only be used in emergency circumstances when absolutely necessary to protect the safety of the student or personnel, and will not be considered "therapeutic".

Parental notification and other procedures

Schools must develop procedures to be followed after each incident involving restraint or seclusion. The bills require immediate verbal or electronic notification to parents the same day (the Senate version requires a documented, reasonable attempt), and written notification within 24 hours.

The Senate bill requires a debriefing session within 72 hours after the imposition of restraint or seclusion. All school personnel involved in the restraint/seclusion and appropriate supervisory and administrative staff must attend. The school must have procedures which give the parents advance notice of the debriefing and an opportunity to attend. The debriefing session must include documentation of antecedents to the physical restraint or seclusion and prevention planning.

The Senate bill also provides that in a case where serious bodily injury or death resulted from the use of seclusion or restraint, the school must have procedures in place to notify, in writing, the State protection and advocacy system within 24 hours of the incident.

What is allowed

Both bills include a rule of construction stating that the legislation does not prohibit the use of time outs, body positioning and other therapeutic devices when used as intended, or vehicle safety restraints. Body positioning and therapeutic devices include restraints for medical immobilization, adaptive devices or mechanical supports used to achieve proper body position, balance or alignment.

II. State plan, reporting requirements and enforcement

State plan

Within two years after regulations are promulgated, each state must submit a plan that assures it has policies and procedures that meet the minimum standards and mechanisms to monitor and enforce those standards. It must describe those policies and procedures, including a description of the State-approved training programs in the state.

Reporting

Each State educational agency (SEA) must submit a report each year that includes information on the total number of incidents when restraint and seclusion was imposed on a student. This information must be disaggregated into categories including those incidents resulting in injury or death, where the

personnel implementing were not trained and certified, and the demographic characteristics of the students (including age and disability status).

The bills state that the disaggregation shall be carried out in a manner to ensure an unduplicated count of the incidents where seclusion and physical restraint were used. Disaggregation will not be required if it would reveal personally identifying information about the student.

Enforcement

If an SEA fails to comply with the minimum standards, state plan or reporting requirements, the Secretary of Education must withhold funding under an applicable program (see (c)(1)(A)(i)), require the SEA to implement a corrective plan of action, or issue cease and desist order. When the SEA comes into compliance, funding will be restored.

III. Grant authority

Grants to SEAs

The Secretary may issue three-year grants to SEAs to assist in establishing, implementing and enforcing the minimum standards, improving data collection and analysis (House version only), and implementing school-wide positive behavior support approaches (House and Senate). The SEAs may issue sub-grants to local education agencies (LEAs).

SEAs or LEAs receiving grants must use the funds to:

- carry out activities (research, policies, procedures, etc.) to prevent and reduce (House) restraint and seclusion in schools (Senate version says “reduce or eliminate seclusion and physical restraint”)
- provide professional development, training and certification to school personnel
- carry out the reporting requirements and analyzing the data collected to identify student, personnel and school needs related to restraint and seclusion.

SEAs or LEAs may use grant funds to:

- develop/implement professional development and training programs to implement evidence-based approaches to school-wide positive behavioral supports (PBS), including improving coaching, facilitation, and training capacity for administrators, teachers, specialized instructional support personnel and other staff.
- provide technical assistance to develop and implement PBS approaches
- research, evaluate and disseminate evidence-based programs and activities that implement PBS with fidelity
- (House version) supporting other local PBS implementation activities consistent with this subsection

Evaluation and report

Each SEA receiving grant funding must evaluate the State's progress toward either "the prevention and reduction" (House) or "the reduction and elimination" (Senate) of restraint and seclusion, and submit a report to the Secretary at the end of the three year grant period.

IV. National Assessment

The Secretary must perform a national assessment to determine the effectiveness of the legislation, including analyzing data collected related to restraint and seclusion incidents and identifying types of programs and personnel training models that have achieved success in reducing restraint and seclusion. The Secretary must submit an interim report summarizing the findings of the assessment to the House Committee on Education and Labor and the Senate Committee on Health, Education, Labor and Pensions within three years after the enactment of the Act. The Secretary must submit a final report within five years.

V. Protection and Advocacy Systems

Protection and Advocacy systems maintain their authority under the DD Act to investigate, monitor and enforce protections provided for students under this Act.

VI. Head Start Programs

The Secretary of Health and Human Services, in consultation with the Secretary of Education, shall promulgate regulations consistent with the minimum standards and reporting and enforcement requirements of the Act. The Secretary may allocate grant funds to assist Head Start agencies to meet the requirements established by the regulations.

VII. Limitation of Authority

Nothing in this Act restricts, limits or allows the Secretary to restrict or limit other rights or remedies otherwise available to parents or students under Federal or State law.

VIII. Authorization of Appropriations

The bills authorize "such sums as may be necessary to carry out this Act for fiscal year 2011 and each of the four succeeding fiscal years."

Definitions

House Definitions

- (1) Chemical restraint: 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: a regional public multiservice agency authorized by State statute to develop, manage, and provide services or programs to local education agencies.
- (3) Elementary school: a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under state law.
- (4) Local educational agency:
 - a. (A) In general: The term "local educational agency" means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or of or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public elementary schools or secondary schools.
 - b. (B) Administrative control and direction: The term includes any other public institution or agency having administrative control and direction of a public elementary school or secondary school.
 - c. (C) BIA schools: The term includes an elementary school or secondary school funded by the Bureau of Indian Affairs but only to the extent that including the school makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the local educational agency receiving assistance under this chapter with the smallest student population, except that the school shall not be subject to the jurisdiction of any State educational agency other than the Bureau of Indian Affairs.
 - d. (D) Educational service agencies: The term includes educational service agencies and consortia of those agencies.
 - e. (E) State educational agency: The term includes the State educational agency in a State in which the State educational agency is the sole educational agency for all public schools.
- (5) Mechanical restraint: the use of devices as a means of restricting a resident's freedom of movement
- (6) Parent: The term "parent" includes a legal guardian or other person standing in loco parentis (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare).

- (7) Physical escort: the temporary touching or holding of the hand, wrist, arm, shoulder or back for the purpose of inducing a resident who is acting out to walk to a safe location.
- (8) Physical restraint: a personal restriction that immobilizes or reduces the ability of an individual to move his or her arms, legs, or head freely. Such term does not include a physical escort.
- (9) Positive behavior supports: “a systematic approach to embed evidence-based practices and data-driven decision-making 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: a protection and advocacy system established under sec. 143 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000.
- (11) School: an entity that
- a. 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
 - b. Receives, or serves students who receive, support in any form from any program supported in whole or in part, directly or indirectly, with funds appropriated to the Dept. of Education.
- (12) School personnel:
- a. Includes teachers, principals, administrators, counselors, social workers, psychologists, nurses, librarians, and other support staff who are employed by a school or who perform services for the school on a contractual basis.
 - b. Includes school resource officers: The term “school resource officer” means a career law enforcement officer, with sworn authority, deployed in community oriented policing, and assigned by the employing police department to a local educational agency to work in collaboration with schools and community based organizations to—
 - i. (A) educate students in crime and illegal drug use prevention and safety;
 - ii. (B) develop or expand community justice initiatives for students; and
 - iii. (C) train students in conflict resolution, restorative justice, and crime and illegal drug use awareness.
- (13) Secondary school: a nonprofit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under State law, except that the term does not include any education beyond grade 12.
- (14) Seclusion: a behavior control technique involving locked isolation. Such term does not include a time out.
- (15) Secretary: the Secretary of Education
- (16) State-approved training program: 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, and safe use, of physical restraint and seclusion
 - b. Evidence-based skills training related to positive behavior supports, safe physical escort, conflict prevention, de-escalation, and conflict management;
 - c. First aid and cardiopulmonary resuscitation; and
 - d. Certification for school personnel in the techniques and skills described in (a) through (c), which shall be required to be renewed on a periodic basis.
- (17)State: means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas
- (18)State educational agency: the agency primarily responsible for the State supervision of public elementary schools and secondary schools.
- (19)Student: a student enrolled in a school defined in paragraph (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, directly or indirectly, with funds appropriated to the Dept. of Education.
- (20)Time out: a behavior management technique that is part of an approved treatment program and may involve the separation of the resident from the group, in a non-locked setting, for the purpose of calming. Time out is not seclusion.

Senate Definitions

All definitions are substantively the same, with the addition of “applicable program”.

- (1) Applicable program: any program for which the Secretary or the Department has administrative responsibility as provided by law or by delegation of authority pursuant to law. The term includes each program for which the Secretary or the Department has administrative responsibility under the Department of Education Organization Act or under Federal law effective after the effective date of that Act.