

March 1, 2010

The Honorable George Miller
United States House of Representatives
Washington, DC 20515

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

Dear Rep. Miller and Rep. McMorris Rodgers:

Thank you for your leadership in advancing the Preventing Harmful Restraint and Seclusion Act (H.R. 4247) through the legislative process. H.R. 4247 represents the first comprehensive effort to deal with the problem of inappropriate and dangerous restraint and seclusion against our nation's children. As we move closer to a floor vote on H.R. 4247, we are writing to express our full support for maintaining the current provision in the bill that prohibits a plan to use restraint and/or seclusion in a student's IEP and/or BIP.

Parents, advocates, researchers and many school-based professionals agree on the fundamental importance of keeping restraint and seclusion out of students' IEPs and/or BIPs. This facet of the bill is crucial because a "planned emergency" (as opposed to a plan to avoid an emergency) is an oxymoron. Based on successful prevention efforts, research on best practices, and surveys and information gathered from parents, here are some of the reasons why:

- The Individual with Disabilities Education Act requires public schools to develop an IEP for every student with a disability who is found to meet the federal and state requirements for special education. The IEP must be designed to provide the child with a free appropriate public education (FAPE). The IEP refers both to the educational program to be provided to a child with a disability and to the written document that describes that educational program.¹ Since restraint and seclusion do not constitute a program, treatment, therapy, or services and may actually deny a student FAPE, restraint and seclusion cannot be included in an IEP. However, the IEP, as well as the BIP which is part of an IEP, should include positive behavioral supports and other services, supports and assistance to prevent restraint and seclusion and to provide a student with FAPE. In addition, the IEP should include a trauma-informed care plan, if appropriate, which describes what special needs a student may have due to prior trauma or the likelihood that a child would experience trauma from certain practices.²

¹ Individuals with Disabilities Educ. Improvement Act of 2004, 20 U.S.C. § 1400 et. seq.

² See generally G.R. Hodas, *Responding to Childhood Trauma: The Promise and Practice of Trauma Informed*. (2006),

- Successful reduction of restraint and seclusion, as pioneered and achieved in the health care and mental health systems, depends on a recognition that their use almost always represents the failure of programming and treatment. Schools should not “plan” to fail routinely and repeatedly by writing ongoing failure into a child’s IEP or behavior plan.
- Placing restraint or seclusion into a student’s IEP or BIP is the education system’s equivalent or analog of PRN usage in the health care and mental health systems. PRN usage (i.e. as a standing order, or on an as-needed basis) of these techniques is prohibited by HHS. This PRN usage has been found to lead to overuse and use for convenience. To bring the education system into parity with the safeguards afforded to children in other care systems, blanket permission to use restraint and seclusion “as needed” must be prohibited in that system as well.³
- IEPs and behavior plans are required to be based on positive interventions. “Permission” to fail and acceptance of ongoing failure have no place in those positive, preventive documents. Placing restraint and seclusion into positive plans often confuses school staff into thinking that these interventions must be helpful and educational for certain students, and that their use ought to be encouraged rather than avoided. When restraint and seclusion are in a child’s education plan, parents report that school staff frequently make comments such as “that’s the way he/she learns” or “it’s the method we decided on to reach our target goal.”
- There is a double standard of accountability when restraint and seclusion can be considered either emergency or “planned.” Emergency restraint or seclusion must be taken more seriously and reported quickly and thoroughly to parents and the state agency; restraint or seclusion written into an IEP or behavior plan is permitted for ongoing and routine use while exempted from similar visibility and reporting. This double standard creates a strong, inevitable, and dangerous incentive for schools to place restraint and seclusion into students’ routine plans and avoid responding to their use as the emergency it is.
- Parents are frequently coerced into giving consent for the use of restraint and seclusion to be placed in their child’s education or behavior plan, often by threats of loss of the placement or implied threats of retaliation. The permission forms parents are required to sign do not rise to the level of “informed consent” and do not meaningfully disclose the dangers of restraint and seclusion. It is questionable whether parents have the legal right to consign a child to undergo a planned program involving physical and psychological risks

³http://www.nasmhp.org/nasmhpdcollections/collection5/publications/ntac_pubs/Responding%20to%20Childhood%20Trauma%20-%20Hodas.pdf.

generally associated only with medical treatments, settings, and oversight. If the use of restraint and seclusion is permitted in the IEP or BIP, the only way a parent can try to enforce an objection to this use is through due process, an expensive and difficult process foreclosed to many. Furthermore, as long as these interventions are permitted as part of students' education plans, parents are disadvantaged by the reality that they simply lack the resources and expertise available to school districts and are at a distinct disadvantage in hearings. Many families forego due process entirely or proceed without counsel for lack of resources and the inability to afford expert witnesses.

The memberships of the undersigned organizations that make up APRAIS include tens of thousands of school-based teachers, administrators, therapists and support staff as well as researchers who have spent decades studying behavioral science, positive behavior supports, special education methodologies, and other related areas of inquiry. APRAIS also includes parents of students with disabilities and self advocates. It is our shared belief that the current language in H.R. 4247 providing schools with the flexibility to resort to restraint and seclusion in emergency situations when all other interventions have failed to de-escalate dangerous behavior and for only as long as the danger exists is sufficient to maintain a safe environment for all students and staff, and does not single out a group of students for inequitable use of a dangerous intervention because of their disability label. We urge members of Congress to appreciate the deeply harmful impact of restraint and seclusion use on the students who experience them, the students who witness them, and the staff who implement them, and ensure that they are rarely if ever used. We look forward to working with you on this issue and thank you for your continued leadership in protecting our nation's children.

Regards,

American Association of People with Disabilities
American Network of Community Options and Resources
Association of University Centers on Disabilities
Autism National Committee
Autistic Self Advocacy Network
Autism Society of America
Bazelon Center for Mental Health Law
Center for Self Determination
Council of Parent Attorneys and Advocates
Children and Adults with Attention Deficit/Hyperactivity Disorder
Easter Seals
Epilepsy Foundation
Families Against Restraint and Seclusion
Family Alliance to Stop Abuse and Neglect
Family Voices
Higher Education Consortium for Special Education

Little People of America
National Alliance on Mental Illness
National Association of Councils on Dev. Disabilities
National Association of County Behavioral Health and Developmental Disabilities
Directors
National Association of the Deaf
National Association of State Head Injury Directors
National Center for Learning Disabilities, Inc.
National Council on Independent Living
National Disability Rights Network
National Down Syndrome Congress
National Down Syndrome Society
National Fragile X Foundation
National PTA
National Respite Coalition
National Spinal Cord Injury Association
Not Dead Yet
Respect ABILITY Law Center
TASH
The Arc of the United States
United Cerebral Palsy
United Spinal Association

Regional/ State Organizations:

ADAPT of Montana
Autism Support and Advocacy, Pennsylvania
Coalition of Inclusion Advocates, Pennsylvania
Family Voices, New Jersey
North Carolina Disability Action Network
Parent Advocacy Network, New Jersey