

**CLASSROOMS IN CRISIS: EXAMINING THE
INAPPROPRIATE USE OF SECLUSION AND
RESTRAINT PRACTICES**

HEARING

BEFORE THE

SUBCOMMITTEE EARLY CHILDHOOD, ELEMENTARY,
AND SECONDARY EDUCATION

COMMITTEE ON EDUCATION
AND LABOR

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTEENTH CONGRESS

FIRST SESSION

HEARING HELD IN WASHINGTON, DC, FEBRUARY 27, 2019

Serial No. 116-5

Printed for the use of the Committee on Education and Labor



Available via the World Wide Web: www.govinfo.gov

or

Committee address: <https://edlabor.house.gov>

U.S. GOVERNMENT PUBLISHING OFFICE

35-659 PDF

WASHINGTON : 2019

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CLASSROOMS IN CRISIS: EXAMINING THE INAPPROPRIATE USE OF SECLUSION AND RESTRAINT PRACTICES

**Wednesday, February 27, 2019
House of Representatives
Committee on Education and the Workforce,
Subcommittee on Early Childhood, Elementary,
and Secondary Education
Washington, DC.**

The subcommittee met, pursuant to notice, at 10:02 a.m., in room 2175, Rayburn House Office Building, Hon. Gregorio Kilili Camacho Sablan (chairman of the subcommittee) presiding.

Present: Representatives Sablan, Schrier, Hayes, Shalala, Davis, Morelle, Allen, Grothman, Taylor, and Timmons.

Also present: Representatives Beyer, Lee, Bonamici, Levin, and Foxx.

Staff present: Tylease Alli, Chief Clerk; Nekea Brown, Deputy Clerk; Ilana Brunner, General Counsel Health and Labor; Christian Haines, General Counsel Education; Ariel Jona, Staff Assistant; Kimberly Knackstedt, Disability Policy Advisor; Stephanie Lalle, Deputy Communications Director; Andre Lindsay, Staff Assistant; Veronique Pluviose, Staff Director; Banyon Vassar, Deputy Director of Information Technology; Cyrus Artz, Minority Parliamentarian, Courtney Butcher, Minority Coalitions and Member Services Coordinator; Bridget Handy, Minority Legislative Assistant; Blake Johnson, Minority Staff Assistant; Amy Raaf Jones, Minority Director of Education and Human Resources Policy; Hannah Matesic, Minority Legislative Operations Manager; Kelley McNabb, Minority Communications Director; Jake Middlebrooks, Minority Professional Staff Member; Brandon Renz, Minority Staff Director; Mandy Schaumburg, Minority Chief Counsel and Deputy Director of Education Policy; Meredith Schellin, Minority Deputy Press Secretary and Digital Advisor; and Brad Thomas, Minority Senior Education Policy Advisor.

Chairman SABLAN. Good morning. The Subcommittee on Early Childhood, Elementary, and Secondary Education will come to order.

Good morning, and welcome everyone. I know that quorum is present. I ask unanimous consent that Mr. Beyer of Virginia, Ms. Bonamici of Oregon, Ms. Lee of Nevada, and Mr. Levin of Michigan be permitted to participate in today's hearing, with the under-

standing that their questions will come only after all have completed with theirs.

So today we are here to discuss the Federal Government's role in protecting the health and safety of students and school staff. Every student in our country, from Congressman Morelle's district in New York to my district in the Northern Marianas, and all points in between, deserve a healthy school climate where they can learn and grow. And every educator deserves to feel safe in the classroom.

Unfortunately, we know that this is too often not the case. The widespread use of dangerous restraint and seclusion discipline practices are undermining school climate and putting students and school staff at risk. A growing number of research shows that each year hundreds of thousands of students exercise—experience restraint or seclusion. In a 2015–2016 school alone 122,000 students were physically restrained, mechanically restrained, or secluded.

While we do not have data on injuries to school staff, anecdotal evidence suggests that there are untold numbers of educators who are also physically and emotionally harmed by the use of seclusion and restraint. Without proper training teachers conducting restraint can further escalate the situation and unintentionally inflict costly injury on themselves, which can require them to seek physical rehabilitation.

All of these scenarios require resources and time that could be otherwise spent in the classroom teaching students. And while Federal law restricts the use of these practices for children in hospitals and treatment facilities to emergency circumstances, Congress has never addressed seclusion or restraint for students in our Nation's classrooms.

This is particularly harmful because while more than 30 states, including the Northern Mariana Islands, have enacted policies to limit classroom seclusion and restraint practices, these policies vary widely and at least 11 states have no policy at all.

While the Northern Marianas public school system Congress Well Congress has a responsibility to protect students and school staff in the classroom, while also helping school districts build healthy school climates. Thus far, we have failed to do our part. Today's hearing is an important step toward ensuring that all students and educators in all states and territories spend their days in safe and healthy schools.

I look forward to our discussion today and yield to the Ranking Member, Mr. Allen, for purposes of making an opening statement. [The information referred to follows:]

**Prepared Statement of Hon. Gregorio Kilili Camacho Sablan, Chairman,
Subcommittee Early Childhood, Elementary, and Secondary Education**

Today, we are here to discuss the Federal Government's role in protecting the health and safety of students and school staff. Every student in our country, from Congressman Morelle's district in New York to my district in the Northern Marianas and all points in between, deserves a healthy school climate where they can learn and grow. And every educator deserves to feel safe in the classroom.

Unfortunately, we know that this is too often not the case.

The widespread use of dangerous restraint and seclusion discipline practices are undermining school climate and putting students and school staff at risk.

A growing body of research shows that, each year, hundreds of thousands of students experience restraint or seclusion. In the 2015–2016 school year alone, 122,000 students were physically restrained, mechanically restrained, or secluded.

While these practices were originally intended as a last-resort to protect students and staff in cases of emergency, they now play a more central role in school discipline. This has had serious consequences.

Students have described being tied to chairs, having their mouths taped shut, and being locked in small dark spaces. In rare cases, restraint has resulted in students' death. Just last year in California, a 13-year-old boy with autism was held in a face-down restraint for so long that he suffocated to death.

The disparities that exist within school discipline broadly also appear in the application of seclusion and restraint. Students of color and students with disabilities are more likely to experience these practices than their peers. Recent data show that 70,000 students with disabilities were restrained or secluded in a single school year. Though Black students make up only 15 percent of school enrollment, they account for nearly a third of these cases.

While we do not have data on injuries to school staff, anecdotal evidence suggests there are an untold number of educators who are also physically and emotionally harmed by the use of seclusion and restraint. Without proper training, teachers conducting restraint can further escalate the situation and unintentionally inflict costly injury on themselves, which can require them to seek physical rehabilitation. All of these scenarios require resources and time that could be otherwise spent in the classroom teaching students.

And while Federal law restricts the use of these practices for children in hospitals and treatment facilities to emergency circumstances, Congress has never addressed seclusion or restraint for students in our nation's classrooms.

This is particularly harmful because, while more than 30 States including the Northern Marianas have enacted policies to limit classroom seclusion and restraint practices, these policies vary widely and at least 11 States have no policy at all. While the Northern Marianas Public School System requires the principal or his/her designee to submit a detailed written report with justifications informing parents or guardians following the use of restraint or seclusion, in fact, in many States, parents aren't even notified if their child is restrained or placed in seclusion.

This is simply unacceptable.

That is why, to address this classroom crisis, we have introduced in past years the Keeping All Students Safe Act.

This bill, which I cosponsored, would keep students safe from seclusion and restraint practices by:

Making it illegal for any federally supported school to seclude a child,

Limiting schools to using physical restraint on a child only when it is necessary to protect other students and staff, and

Better equipping school personnel with evidence-based strategies to proactively address challenging behavior.

Congress has a responsibility to protect students and school staff in the classroom, while also helping school districts build healthy school climates. Thus far, we have failed to do our part. Today's hearing is an important step toward ensuring that all students and educators—in all states and territories—spend their days in safe and healthy schools.

I look forward to our discussion today and yield to the Ranking Member, Mr. Allen.

Mr. ALLEN. Thank you, Chairman, for yielding. If you ask any parent, grandparent, teacher, or volunteer who has been entrusted with caring for more than one child at a time—and I have 13 grandchildren, so I can certainly attest to this—they will tell you that every child is uniquely created. They will also tell you that uniqueness can sometimes present many challenges, especially when it comes to maintaining a sense of order and safety in a classroom.

When an authority figure in a classroom has to take measures to keep order and safety, several things are happening at once. They are dealing with the child at the center of the disruption in

a very personal way and the other children watching are learning lessons about leadership and compassion that they often don't realize until later in life. In the best of situations the teacher has to make an in the moment judgment called to address the disruptive of potentially disruptive situation in a way that protects everyone in the room.

And as we will see today, sometimes they get it very wrong. In business we talk about how a one size fits all approach just doesn't work. This is even more true when it comes to children. This committee has worked hard in a largely bipartisan way over the past several years to listen more carefully and defer whenever possible to the people who have been called to educate the children. They know better than we ever will.

A most recent example of this is the Every Student Succeeds Act. This committee made it clear when finishing our work on this law that we expected each state to articulate how it will support and provide resources to school districts to reduce techniques, strategies, interventions, and policies that compromise the health and safety of students, such as the seclusion and restraint.

Some 44 states have laws or policies on the books governing the safe and appropriate use of seclusion and restraint in the classroom, with an additional three states providing guidance to school districts on how to properly use these techniques when necessary.

Finding new, better ways to address behavioral problems in the classroom requires states to engage thoughtfully and meaningfully with parents, local stakeholders, disability advocates, school safety experts, and members of the community to ensure that students are safe and local needs are met. We are certainly united in the opinion that improper seclusion and restraint practices shouldn't have a place in education moving forward.

Our good intentions do not change the fact that the policy details matter.

Every community is different. A Federal one size fits all mandate would interfere with the important work that states, the Department of Education, and the Department of Justice are already doing on this issue.

We also need to be reasonable in our expectations. None of us can be in every classroom and we can probably never know the specifics, or even the larger context, in which every incident has occurred.

Those are just some of the reasons those of us in this room should be very careful in assuming we can draft additional legislation to deal with this issue.

I am grateful to today's witnesses for making the time to be here, to share your experience and expertise on this emotional and difficult issue. I am eager to hear how we have come in moving away from problematic discipline practices while simultaneously protecting educators' ability to respond swiftly, effectively, and safely in rapidly changing circumstances to ensure the safety of all students and personnel.

And I yield back.

[The information referred to follows:]

**Prepared Statement of Hon. Rick W. Allen, Ranking Member,
Subcommittee Early Childhood, Elementary, and Secondary Education**

Thank you for yielding.

Ask any parent, grandparent, teacher, or volunteer who has been entrusted with caring for more than one child at a time, and they will tell you that every child is created to be unique. They'll also tell you that uniqueness can sometimes present challenges, especially when it comes to maintaining a sense of order and safety in a classroom.

When an authority figure in the classroom has to take measures to keep order and safety, several things are happening at once. They're dealing with the child at the center of the disruption in a very personal way. And the other children watching are learning lessons about leadership and compassion that they often don't realize until later. In the best of situations, the teacher has to make an in-the-moment judgment call to address the disruptive or potentially disruptive situation in a way that protects everyone in the room. And as we'll see today, sometimes, they get it very wrong.

In business, we talk about how a one-size-fits-all approach just doesn't work. This is even more true when it comes to children. This committee has worked hard, in a largely bipartisan way, over the past several years to listen more carefully and defer wherever possible to the people who have been called to educate the children they know better than we ever will.

The most recent example of this is the Every Student Succeeds Act. This Committee made it clear when finishing our work on that law that we expected each State to articulate how it will support and provide resources to school districts to "reduce techniques, strategies, interventions, and policies that compromise the health and safety of students, such as seclusion and restraint."

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We are certainly united in the opinion that improper seclusion and restraint practices shouldn't have a place in education moving forward. Our good intentions do not change the fact that the policy details matter, every community is different, and a Federal one-size-fits-all mandate would interfere with the important work that States, the Department of Education, and the Department of Justice are already doing on this issue.

We also need to be reasonable in our expectations. None of us can be in every classroom, and we can probably never know the specifics, or even the larger context, in which every incident has occurred. Those are just some of the reasons those of us in this room should be very careful in assuming we can draft additional legislation on this issue.

I'm grateful to today's witnesses for making the time to be here today to share your experience and expertise on this emotional and difficult issue. I am eager to hear how far we have come in moving away from problematic discipline practices while simultaneously protecting educators' ability to respond swiftly, effectively, and safely in rapidly changing circumstances to ensure the safety of all students and personnel.

Ms. HAYES. [Presiding] Without objection, all of the members who wish to insert written statements into the record may do so by submitting them to the committee clerk electronically by Microsoft Word format by 5 p.m. on March 6.

I will now introduce our witnesses.

Dr. George Sugai is professor and Carole J. Neag Endowed Chair in the Neag School of Education Department of Educational Psychology at the University of Connecticut.

Over the last 40 years his research and practice interests include a school wide positive behavior support, behavior disorders, applied

behavioral analysis, and classroom and behavior management and school discipline.

He is a research scientist at the Center on Behavioral Education and Research at UConn and has been co-director of the OSCP National Technical Assistance Center on Positive Behavioral Interventions and Supports for the last 20 years.

Welcome, Dr. Sugai.

Mrs. Renee Smith is from Coventry, Rhode Island. She graduated from Rhode Island College with a BS in computer information systems and works for a technology company as a web project manager. She and her husband have two boys, Dillon, who is eight, and he is the subject of her testimony, and Connor.

Mrs. Smith is a strong advocate for her son Dillon since he started having difficulties at age three. She has advocated for support in school and eventually a move to a healthier school environment that uses school wide positive behavior interventions and support in which he is now thriving.

Thank you, Mrs. Smith, for being here.

Mrs. Jacqueline Nowicki is a director in the Education, Workforce, and Income Security Team at the U.S. Government Accountability Office in Boston. Ms. Nowicki joined GAO in 1998. Her current portfolio covers a wide range of education issues, including special education services and funding, educational outcomes for children, data privacy, and school choice. Prior to joining GAO Ms. Nowicki worked in private sector consulting, leading projects on education, work force development, and social policy issues for State and local government clients, and served as senior fiscal analyst at the Pennsylvania Department of Revenue.

She earned a master's degree in public policy from the University School of Maryland School of Public Affairs and a bachelor's degree in finance from Lehigh University.

Welcome, Ms. Nowicki.

And, finally, Ms. Allison Sutton is a special education teacher from Wichita, Kansas. She has been teaching for 6 years. Ms. Sutton began teaching in a middle school and is now in an elementary school. She primarily supports students with autism. In addition to supporting students she manages two to four paraprofessionals.

After teaching for 3 years she entered a master's program at Benedictine College to further her knowledge about behavioral supports and advance her students' successes based on their individualized needs.

We appreciate all of the witnesses for being here today and I look forward to your testimony.

Let me remind the witnesses that we have read your written Statements and they will appear in full in the hearing record. Pursuant to committee rule 7D and committee practice, each of you is asked to limit your oral presentation to a 5 minute summary of your written Statement.

Let me remind the witnesses that pursuant to Title 18 of the U.S. Code Section 1001 it is illegal to knowingly and willfully falsify any testimony, representation, writing, document, or material fact presented to Congress, or otherwise conceal or cover up a material fact.

Before you begin your testimony, please remember to press the button on the microphone in front of you so that it will turn on and the members can hear you. As you begin to speak the light in front of you will turn green. After 4 minutes the light will turn yellow to signal that you have 1 minute remaining. When the light turns red your 5 minutes have expired and we ask you to please wrap up.

I feel like standardized test directions.

We will let the entire panel make their presentations before we move to member questions. When answering a question please remember once again to turn your microphone on.

I will first recognize Dr. Sugai.

STATEMENT OF GEORGE SUGAI, PH.D., PROFESSOR AND CAROLE J. NEAG ENDOWED CHAIR, NEAG SCHOOL OF EDUCATION, UNIVERSITY OF CONNECTICUT

Dr. SUGAI. Good morning. And thank you to the committee for this opportunity and the invitation to present a little bit of information about—to speak in favor of the Keeping All Students Safe Act and specifically to prohibit and prevent seclusion and restraint and to prevent and reduce the use of physical restraint in schools.

I applaud your interest in this Act and its important benefits to children and adults with behavior and mental health challenges, their families, and those educators and other professionals who support those individuals for their improved quality of life.

Over the last 20 years, with the support of the U.S. Department of Education, I have been in the fortunate position of being able to develop a framework called Positive Behavioral Interventions and Supports, and I will reflect a little bit upon that as part of my comments.

I refer you to the technical assistance website for PBIS at PBIS.org for more in depth information. And, as mentioned, I have also submitted a more in depth written statement for you to look at.

I also want to ask you to please reflect back on some of the other testimonies that have been presented in the past, because there is some great information about this particular issue that has not gone away and will continue to be in front of us. So I encourage you to look at those.

I also encourage you to look at many of the position statements that have been provided by professional organizations who have the same concern about supporting kids and families that have issues around restraint and seclusion. And they have done an excellent job of summarizing the situation.

In the remaining portion of my time what I would like to be able to do is emphasize four messages. The first message is that every student and educator has the right to a safe, respectful, effective, and constructive learning environment, especially students who are high risk for developing challenging behavior or have histories of such behavior.

The second thing I would like to communicate is that restraint and seclusion is not a therapeutic treatment, intervention, or practice.

Third main message is that effective, empirically supported, relevant tools, practices and systems are available to achieving safe, respectable, constructive teaching and learning environments. And some of the other witnesses will reflect upon those.

And, fourth, efforts like this Act are needed at the Federal level to increase and maintain our focus on ensuring that we have the motivation, capacity, and opportunity to protect all children from harm at the classroom, school, district, and state levels.

So in support of those four messages I would like to highlight a couple of considerations. First is that restraint and seclusion, as I mentioned, is not a constructive treatment, intervention, or therapy. The evidence is clear that students who experience restraint and seclusion do not learn proactive skills, they do not develop or maintain positive relationships with others, they do not enhance their capacity to function in more normalized environments, and do not restore environments and relationships with others.

Second, restraint and seclusion may be required for a small number of crisis emergency situations where the potential for students to harm self or others is imminent. Restraint and seclusion should never be used as a means of enforcing rules violations, assigning punishment, or forcing compliance.

Third, challenging behavior does not occur in a vacuum, it occurs in a social context and interactions with others, and typically is at the end of an interaction chain. And that is an important message to remember.

Fourth, students who are high risk for developing challenging behavior or have such histories must be provided preventative and constructive supports. Having reactive procedures in place is a good thing, but it is important to be thinking about how do we anticipate these in the future.

Fifth, school district and state leaders must provide multi-tiered organizational policy and procedural supports, like PBIS, for example, that enable educators to be effective in preventing and responding to problem behaviors, including restraint and seclusion.

Sixth, educators, family, community members, other professionals must have opportunities to develop high levels of implementation fluency in the use of effective behavior support practices for all students, but especially students who are high risk for challenging behavior, and again that may have those histories.

And, finally, the challenge is formidable, but achievable I believe. However, efforts thus far have been slow and variable with respect to sustained and scaled policy, funding, and implementation and impact. The Act, therefore, is important, because we must acknowledge the clear and strong messages expressed by professional organizations, research, and community and family advocates. We must provide informed and effective guidance and protections in response to the inappropriate use of restraint and seclusion and the potential harm that is associated with them. We must provide minimum criteria or benchmarks to motivate, focus, and evaluate improvement efforts, and we must encourage increased attention to the prevention aspects of supporting the social, emotional, academic, and behavioral development of all students, but especially students who might be presenting challenges.

So to conclude, I would like to applaud and encourage the efforts of the subcommittee in their efforts to prohibit the inappropriate use of restraint and seclusion. And I hope my comments give support and substance to this effort. It gives hope to students, educators, family, and community members, and other care professionals who are concerned about promoting student social, emotional, academic, behavioral development; preventing harm; and promote the use of preventative positive tiered systems of support as a framework for action.

I appreciate this opportunity to testify in favor of the Act and I look forward to further discussing your questions and comments. Thank you.

[The statement of Mr. Sugai follows:]

Statement of George Sugai, Ph.D.
George.sugai@uconn.edu
Neag School of Education
University of Connecticut

Before the U.S. House of Representatives
Subcommittee on Early Childhood, Elementary, and Secondary Education
Hearing on "Classrooms in Crisis: Examining the Inappropriate Use of Seclusion
and Restraint Practices"

February 27, 2019
Rayburn House Office Building
Washington DC

Thank you for this invitation and opportunity to Testifying in favor of the "Keeping All Students Safe Act," specifically, "To prohibit and prevent seclusion and to prevent and reduce the use of physical restraint in schools, and for other purposes." And, to discuss comments and questions related to this important federal effort.

I applaud your interest in this Act and its important benefit to children and adults with behavior and mental health challenges, their families, and those educators, and other professionals who dedicate their careers to enhancing the quality of life for these individuals

I am Professor and Carole J. Neag Endowed Chair in the Neag School of Education at the University of Connecticut where I have worked for the past 15 years. Prior to being at UConn I was at the University of Oregon for 21 years. And, prior to that I worked as a special educator in the public schools.

My interests, experiences, and expertise focus on (a) educating students with disabilities, especially, students with behavior challenges; (b) developing positive and preventive classroom and school environments that are safe, respectful, effective, and relevant; (c) identifying and disseminating empirically supported behavior-related practices that range from general to specialized; and, (d) preparing and supporting educators and other school-related personnel with the capacity to delivery these supports through effective and doable implementation systems.

Over the last 20+ years, my colleagues and I have developed an implementation framework with support from the Office of Special Education Programs, U.S. Department of Education under an organizational framework, mostly commonly referenced as “Positive Behavioral Interventions and Supports” (PBIS).

I refer you to our technical assistance website at pbis.org for information about available resources and supports. I also submitted for the record a brief FAQ about the PBIS framework. For the record, I also refer you to a more detailed prepared statement about the importance of the Keeping All Students Safe Act.

I also ask that you review previous efforts on this important topic which I’ve included as selected resources. For example, in my preparation for this testimony, I re-read previous testimony by Dr. Daniel Crimmins in School of Public Health at Georgia State University.

On July 12, 2012, Dan testified before H.E.L.P. on a hearing titled “Beyond Seclusion and Restraint: Creating Positive Learning environments for All Students.” In this testimony, Dan provides an excellent summary related to definitions; prevalence; need for technical assistance, training, and research; and state level rule adoption to prohibit use of restraint and seclusion (R/S).

I also refer you to samples of excellent position statements by a number of experienced professional organizations that have presented clear evidence and solutions for the prohibition of the use of R/S, including, Council for Exceptional Children, Council for Children with Behavior Disorders, Association for Positive Behavior Supports, Association for Applied Behavior Analysis, Association of University Centers on Disabilities, and Association of School Psychologists

These are only a few examples of organizations many that provide clear, unified support and evidence for this important Bill.

In the remaining portion of my time, I have 4 messages. First, every student and educator has the right to a safe, respectful, effective, constructive learning environment, especially students who are high-risk for developing challenging behavior or have histories of such behavior.

Second, R/S is not a therapeutic treatment, intervention, or practice. Third, effective, empirically-supported, and relevant tools, practices, and systems are available for achieving safe, respectful, and constructive teaching and learning environments

Fourth, efforts like this Act are needed at the federal level to increase and maintain our focus on ensuring that we have the motivation, capacity, and

opportunity to protect all our children from harm at the classroom, school, district, and state levels by (a) increasing our attention to the teaching of the social, emotional, and behavior skills needed for academic, personal, interpersonal success; (b) arranging our teaching and classrooms so that behavior challenges are less likely to develop and occur and prosocial skills are more likely to be observed; (c) providing our educators and other school personnel with formal opportunities to learn, implement, and adjust the most effective and relevant behavior support practices; and (d) empowering school administrators, family and community members, professional organizations, and personnel training institutions to work collaboratively and effectively.

In support of these 4 messages I will use my remaining time to highlight a few considerations.

First, R/S is not a constructive treatment, intervention, or therapy. The evidence is clear that students who experience R/S do not learn proactive skills, but instead develop increased likelihood of future uses of challenging behavior.

They do not develop or maintain positive relationships with others, but instead maintain more negative, and sometimes adversarial, relationships. They do not enhance their capacity to function in more normalized environments, and they do not restore environments and relationships, but instead traumatize, worsen, or break these relationships.

Second, R/S may be required for a small number of crisis/emergency situations where the potential for students to harm self and/or others is eminent. R/S should never be used as a means of (a) enforcing rule violations, (b) assigning punishment, and/or forcing compliance.

Third, challenging behavior does not occur in a vacuum, and severe challenging behavior is likely to be at the end of a chain of escalating behavior interactions. The key word here is "interactions" which means that environmental or interpersonal conditions often "assist" the student to escalate to levels where the potential for harm and injury is elevated such that R/S is required. Many students who have experienced R/S have minor challenging behaviors that are linked to major challenging behavior that are associated with use of R/S.

Fourth, students who are high-risk for developing challenging behaviors or have histories of such behaviors must be provided preventive and constructive supports that (a) teach prosocial skills, (b) remove conditions that promote and weaken development and occurrence of problem behavior, and enhance

conditions that promote and strengthen development and occurrence of prosocial behaviors.

Fifth, school, district, and state leaders must provide multi-tiered organizational, policy, and procedural supports, like PBIS, that enable educators to be effective in preventing and responding to problem behaviors, including R/S.

Multi-tiered support systems, like PBIS, provide this organizational and implementation framework that includes (a) team-based decision making; (b) data-driven problem solving and action planning; (c) continuum of integrated and outcome-aligned empirically supported social, emotional, and behavioral practices; (d) classroom and school-wide teaching, prompting, and encouraging of prosocial expected behaviors for all students and staff and family members; (e) function-based, systemic, specialized, and individualized supports for students who are high risk for developing and/or have a history of serious challenging behavior; and (f) integration of social, emotional, and behavioral development efforts by school, family, and community.

Every effort should be directed to establishing, maintaining, and enhancing these environments in an effort to promote academic achievement and positive social, emotional, and behavioral development.

If done effectively, these efforts will be associated with reductions in the need for R/S and other aversive procedures by increasing the impact of preventive protective factors.

These protective factors include (a) academic engagement and success; (b) regular social skills teaching, prompting, and reinforcement (e.g., problem solving, anger and conflict management, requesting assistance); (c) regular and continuous positive interactions; (d) positive peer and adult mentoring; and (e) fluent use of restorative, de-escalation strategies.

Sixth, educators, family and community members, and other professionals must have opportunities to develop high levels of implementation fluency in the use of effective behavior support practices for all students, but especially, students who are high risk for developing challenging behavior or have histories of such behavior, including, pre-service personnel preparation, in-service professional development, supporting policy and procedural guidelines, preparation of school leaders, cross-disciplinary planning and problem solving, and family and community participation and engagement.

Finally, the challenge is formidable, but achievable; however, efforts thus far have been slow and variable with respect to sustained and scaled policy, funding, implementation, and impact.

The Keeping All Students Safe Act, therefore, is important because

- We must acknowledge the clear and strong messages expressed by professional organizations, researchers, and community and family advocates about the need to formalize our understanding of challenging behavior and the prohibition of the inappropriate use of R/S.
- We must provide informed and effective guidance and protections in response to the inappropriate use of R/S and the potential harm to students, educators, and family members.
- We must provide minimum criteria or benchmarks to motivate, focus, and evaluate improvement efforts at the classroom, school, district, state, and federal levels.
- Finally, we must encourage increased attention to the prevention aspects of supporting the social, emotional, academic, and behavioral development of all students, especially for students with challenging behaviors.

Use of R/S should be considered for exceptional and rare emergency/crisis situations where imminent potential for damage or harm to self, others, or property. R/S actions are not therapeutic interventions or treatments, disciplinary actions, or compliance-forcing responses.

Every student or adult who has risk factors for or history of high-risk behavior should experience actions that enhance protective factors.

- An assessment of the conditions under which high-risk behaviors are likely or have occurred in the past.
- Preplanned and practiced strategies for modifying those high probability conditions, removing triggers, adding prompts for desired behavior, and adding encouragement for displays of more appropriate behavior
- Directly and continuously teaching, practicing, and encouraging more appropriate than high risk behaviors
- Handling crisis/emergency situations should they occur

Every educator should be fluent on

- General strategies that promote a positive, preventive, and supportive classroom and school climate and emphasize establishment of protective factors
- Specific strategies that prevent likelihood of crisis/emergency situations that might require R/S to protect student and others
- Individual behavior support plans for students who have risk factors for or history of high-risk behavior
- Use of de-escalation, safety, and redirection strategies if directly involved in a situation that might require R/S
- Coaching and assistive techniques if indirectly involved in a situation that might require R/S
- Procedures and strategies for analyzing and debriefing crisis/emergency situations and explicitly developing plans to reduce likelihood of future situations

Every school administrator should

- Establish a school behavior-related leadership team to monitor status of classroom and school climate and the status of the social, emotional, and behavioral development of all students
- Establish school-wide behavior support policies that identify outcomes, data, practices, and related systems that support the social, emotional, and behavioral development of all students.
- Provide on-going professional development opportunities to (a) self-assess behavioral competence of school staff members, (b) train on positive behavior support practices and their implementation, and practice use of behavior support practices, including R/S protocols and policies.
- Actively participate in and model efforts to develop and implement school-wide positive behavior support practices and systems.
- Develop and regularly use school data to (a) systematically screen for students with high-risk factors, behaviors, or histories; (b) regularly evaluate status of classroom and school climate and social, emotional, and behavioral status of all students; and (c) assess implementation fidelity of required positive behavior support practices and systems, including R/S policies and procedures.

- Conduct annual evaluation of status of school-wide positive behavior supports that includes status of (a) social, emotional, and behavioral development of all students; (b) individualized, preventive and positive behavior support plans for students who have risk factors for or histories of high-risk behavior; (c) classroom and school climate; (d) implementation fidelity of positive behavior support practices, including R/S policies and procedures; and (d) disciplinary infractions across students, educators, settings, times, and locations.

Every district and state leadership team should

- Establish policies and guidance that supports effective behavior support practice at the school and classroom level.
- Establish integrated, cross disciplinary organizational structures that give priority to student academic, social, emotional, and behavioral development outcomes.
- Give priority to empirically valid practices that align with these outcomes.
- Develop a continuum of behavior support that supports all students, especially students who are high risk for challenging behavior or have histories of such behaviors.
- Ensure that short and long-term funding is in place to support implementation of effective implementation of behavior support.
- Include stakeholders (including students and family and community members) in decisions related to implementation of behavior support.
- Provide adequate funding and opportunity for continuous professional development that considers new and returning school personnel.
- Establish a data and information systems that aligns data collection, summarization, and reporting with important implementation decisions and questions.
- Develop and sustain implementation training and coaching supports at the classroom and school levels.
- Identify, acknowledge, and sustain high fidelity implementation examples that document improvement of student academic, social, emotional, and behavioral development of all students.

I applaud and encourage the effort of this subcommittee to prohibit the inappropriate use of R/S, and I hope my comments give supportive substance to this effort; give hope to students, educators, family and community members, and other care professionals who are concerned about promoting student social, emotional, academic, and behavioral development and preventing harm; and, promote the use of preventive and positive tiered systems of support as a framework for action.

I appreciate this opportunity to provide testimony in favor of the Act, and I look forward to further discussing your questions and comments.

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FREQUENTLY ASKED QUESTIONS ABOUT PBIS

OSEP National Technical Assistance Center on PBIS

29 June 2018

1. What is Positive Behavioral Interventions and Supports (PBIS)?

- a. PBIS is an implementation **framework** for maximizing the selection and use of evidence-based prevention and interventions practices along a multi-tiered continuum that supports the academic, social, emotional, and behavioral supports of all students
- b. The interplay of 4 **implementation elements** is considered in all decisions
 - i. **Data** – What information is needed to improve decision making
 - ii. **Outcomes** – What students need to do for academic and behavior success
 - iii. **Practices** – What students experience to support the learning and improvement of their academic and behavior success, e.g., teaching, prompting, and recognizing expected social behaviors
 - iv. **Systems** – What do educators experience to support their use of evidence-based academic and behavior practices, e.g., school leadership teams, data-based decision making, continuous professional development and coaching
- c. The multi-tiered “**continuum**” is comprised of carefully selected, evidence-based practices at three different levels of support intensity. Specific practices are matched both to the level of support need, and the local cultural context
 - i. **Tier 1: Universal practices** are experienced by all students and educators across all settings to establish a predictable, consistent, positive and safe climate
 - ii. **Tier 2: Targeted practices** are designed for groups of students who need more structure, feedback, instruction and support than Tier 1 alone
 - iii. **Tier 3: Indicated practices** are more intense and individualized to meet the challenges of students who need more than Tiers 1 and 2 alone

2. What is the PBIS Center?

- a. Brief History
 - i. Initiated in 1997 and supported for the past **20 years** by the Office of Special Education Programs, US. Department of Education.
 - ii. Co-directed by Universities of OR, CT, and MO and comprised of a working group of 25 technical assistance providers

- iii. Began providing in 2013 TA support to 70 LEA and 20 SEA School Climate Transformation Grantees (OESE funding)
- iv. Currently (August 2017), the PBIS Center and its national network support **26,316 schools, representing 13,896,697 students**
 - 1. Of 14,324 reporting Tier 1 fidelity in 2016-17, 9564 (65%) report high fidelity implementation
 - 2. Of 9407 reporting T2/3 fidelity, 3114 (33%) and 1837 (19%) report high fidelity, respectfully

3. Technical assistance (TA)

- a. Direct on-site TA to district and state leadership teams to enhance their capacity to establish and maintain a full continuum of implementation capacity for schools
- b. Indirect TA to school, district, and state leadership teams through websites, on-line webinars, regional and national conferences and forums, research and practitioner briefs, national database, and collaborations with other TA Centers and national organizations
- c. Facilitation of a national TA network of implementers comprised of (a) designated state contact person for each state, (b) assignment of PBIS Center partner to each state, and (c) regional coordination networks
- d. Collection and development of published evaluation and research articles that support implementation practices and systems

4. What do students and staff members gain in PBIS schools?

- a. All **students** enhance their social, emotional, and behavioral competence by
 - i. Regularly reviewing their school's agreed upon school-wide social values.
 - ii. Frequently experiencing specific recognition when they engage in expected behavior
 - iii. Extending expected behaviors to all parts of the school, especially in classrooms to enhance their academic engagement and success
 - iv. Experiencing predictable instructional consequences (reteaching) for problem behavior without inadvertent rewarding of problem behavior
 - v. Using a common language for communication, collaboration, play, problem solving, conflict resolution, and securing assistance
- b. All **educators** develop positive, predictable, and safe environments that promote strong interpersonal relationships with their students by
 - i. Prompting, modeling, teaching, and acknowledging expected student behavior

- ii. Actively supervising all their students across all settings
- iii. Maximizing academic instruction to enhance student achievement and support social, emotional, and behavioral development
- iv. Providing clear and predictable consequences for problem behavior and following up with constructive support to reduce probability of future problem behavior
- v. Intensifying their PBIS supports (T2/3) if students are unresponsive to universal practices (T1)

5. What do students and educators experience when PBIS is implemented with fidelity over time?

- a. Reductions in major disciplinary infractions, antisocial behavior, and substance abuse.
- b. Reductions in aggressive behavior and improvements in emotional regulation.
- c. Improvements in academic engagement and achievement.
- d. Improvements in perceptions of organizational health and school safety.
- e. Reductions in teacher and student reported bullying behavior and victimization.
- f. Improvements in perceptions of school climate.
- g. Reductions in teacher turnover.

6. How does PBIS contribute to the development of positive school climate, school safety, and student-educator relationships?

- a. In the context of school and community violence, a majority of kids consider school a safe place.
- b. Perceptions of safety are greater when students have an adult they can talk with, go to, receive support from, etc.
- c. Adult-student trusting relationships are the result of positive school and classroom climate, experiences of academic and social success, predictable school routines and supports, positive adult modeling.
- d. PBIS/MTSS framework provides a continuum of supports that enables educators to address the full range of student needs and experiences.

7. What is needed to put PBIS in place?

- a. At **district** level
 - i. Superintendent and school board endorsement
 - ii. Data-based decision making and problem solving
 - iii. Implementation leadership team
 - iv. Integrated initiative priority

- v. Implementation capacity
 - vi. Multi-tiered systems approach and expertise
 - vii. Policy supporting efficient and long term behavior support priority
 - viii. Continuous and embedded professional development opportunities
- b. **At school level**
- i. School Principal participation and modeling
 - ii. School leadership team
 - iii. Data-driven decision making
 - iv. 3-5 year implementation investment
 - v. Integrated initiative priority
 - vi. Data-based decision making and problem solving
 - vii. Implementation practice and systems capacity
 - viii. Multi-tiered systems approach and expertise
 - ix. Continuous and embedded professional development opportunities
 - x. Participation by all staff members across all settings
- c. **At classroom at classroom**
- i. Integration with school-wide expectations and classroom practices
 - ii. Teacher participation in non-classroom settings
 - iii. Effective instructional practices
 - iv. Daily use of effective classroom management practices
 - v. Peer collaborations and support

8. What is NOT PBIS?

- a. PBIS is NOT an intervention or practice.
 - i. PBIS IS an implementation framework for selection and use of proven practices
- b. PBIS is NOT just for special education students.
 - i. PBIS support the academic, social, emotional, and behavioral success of ALL students.
- c. PBIS is NOT a fad.
 - i. PBIS Center has been in place for 20 years and the PBIS framework is visible in all 50 states.
 - ii. The practices within PBIS have been used successfully in schools and documented in research literature since the 1980s.
- d. PBIS is NOT implementable in one professional development day.

- i. PBIS develops local organizational structures (e.g., leadership teams) and implementation capacity (e.g., coaching and data-based decision making) that enables continuous and local professional development and technical assistance.
- e. PBIS is NOT focused only on promoting positive behaviors.
 - i. PBIS develops preventive supports to enhance and align with the procedures outline in discipline handbooks and codes of conduct.
- f. PBIS is NOT implemented independently of academic instruction.
 - i. PBIS practices and systems are aligned with and integrated into academic instruction, professional development, school improvement goals, etc.
- g. PBIS is NOT a replacement for other effective social, emotional, and behavioral curricula and practices.
 - i. PBIS establishes a continuum framework that guides alignment and integration of practices aligned with prioritized student outcomes.
 - ii. PBIS provides the systems and organizational structure that align with social emotional learning, restorative practices, the Good Behavior Game, and other proven practices.

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Ms. HAYES. Ms. Smith.

STATEMENT OF RENEE SMITH, COVENTRY, RHODE ISLAND

Ms. SMITH. Good morning, Chairwoman Hayes, Ranking Member Allen, and members of the Committee on Education and Labor. Thank you for the opportunity to share my family's story.

Dillon is 8 years old; this is a picture of him. He is not here in person because he is still traumatized by what happened to him in his old school, and we worry that reliving his experience here would set him back.

Let me start by giving you a little background on Dillon. When he was about 2 years old Erik and I started to suspect that Dillon's lack of self-regulation and aggression might indicate he had a disability. It wasn't until he was nearly 5 years old when we received an official diagnosis of Autism Spectrum Disorder. After Dillon was expelled from a private pre-K program we put him in a local public school to finish out the year. His new pre-K class provided positive supports and a short school day and Dillon did really well there.

After Dillon began kindergarten, we noticed he was having difficulty with transitions, frequent meltdowns, and shutdown behavior in school. Dillon is a smart child, so we never worried about his academics, we worried about his ability—sorry—to function in a classroom environment without any supports. Despite the Autism diagnosis and Dillon's difficulty functioning in the classroom environment we fought for over a year for a 504 plan and then an IEP. Positive reinforcement was made as a part of the initial IEP, but it was not enforced until a year—a full year later.

I began to receive phone calls to pick him up early from school. Next I received calls that 911 was contacted and I needed to pick him up before the ambulance.

This continued to occur several times a month, sometimes weekly.

As Dillon began first grade, he was enrolled in a program for children with Autism Spectrum Disorder [ASD] in the same school. The program included some supportive features, like extra breaks, but it also contained a walled-off area in the middle of the classroom for children to calm down. This area has walls that are about four or five feet high, and is padded on three and a half sides with an opening that could be covered to keep kids from leaving the space.

After being dragged into the room several times a week, Dillon increasingly refused to do his school work. His work avoidance, we now know, was in direct reaction to the restraint and seclusion he was experiencing. With this a shared space, other students were present for Dillon's meltdowns and shutdowns. Dillon was aware of the other students and added to the trauma. The more he was restrained and secluded the less he was interested in school work, which resulted in more restraint and seclusion, a constant downward spiral.

It broke my heart when Dillon told us that he no longer trusted any of the adults in that school.

During all these incidents we rarely received verbal notification of restraint being used and never received timely written notification. Noncompliance aggression meltdowns are all a form of com-

munication. Dillon was trying to communicate the strategies used were not working for him and not allowing him to develop coping skill for the future.

During one IEP meeting in first grade Dillon's teacher canceled our parent-teacher conference because she didn't have any grades for him and rarely saw him in the classroom. A week later 911 was called and resulted in a police officer threatening our 6-year-old son, at the time, that if he didn't compose himself, dress, and leave with Erik, Dillon would be forcibly removed from the school in handcuffs naked. Dillon has taken his clothes off in this space as a clear act of despair and frustration that children with Autism sometimes exhibit as a way to communicate their feelings. Eventually he regained composure and left with my husband. The same day Erik informed the assistant special education director they had failed our son and we would be seeking outside placement.

Within a week we agreed on a in-district school transfer. We gladly agreed to transfer him from a school attended mostly by children from an upper income family to one that serves largely low income students and receives Title I funding in order to find the right fit. Within only 2 weeks of the new placement Dillon was in a regular ed classroom 100 percent of the time with supports. The new school's behavior program allows kids to float between a special education classroom and a regular education classroom. There are several cool down spaces and one open space in the school behaviorist's office. The entire school participates in the Positive Behavior Intervention and Supports program and all students and staff all staff receive special training to focus on behavior.

Teachers provide positive reinforcement in their classroom, one-to-one with students. They use creative fun and an age appropriate rewards system. For example, "paw bucks" is like Monopoly money that kids get when they are observed the major principles of the school culture, and they can be exchanged every month for picks out of a treasure box.

Another example is a jar of marbles. Every time Dillon did something expected or transitioned well he would place a marble in the jar, one or more marbles in the jar, and once it was full he could pick from the chest.

Fortunately, because of the positive behavioral approaches that this school uses I can close my testimony on a positive note. Dillon is doing very well with the proper supports. He has blossomed as a student. He now earns at grade or above grade level in every subject. He loves math. He enjoys school and talks about it regularly.

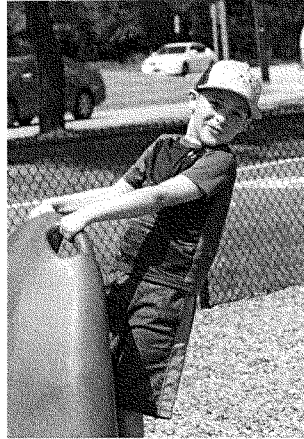
I urge the committee to help the hundreds and thousands of kids like Dillon each year who experience the trauma of restraint and seclusion by working to end these unnecessary practices. Thank you.

[The statement of Ms. Smith follows:]

Renee Smith
Testimony for the Record
Classrooms in Crisis: Examining the Inappropriate Use of Seclusion and Restraint Practices
February 27, 2019

Chairman Sablan and Ranking Member Allen – thank you for the opportunity to testify this morning.

My name is Renee Smith and I am from Coventry, Rhode Island. My Son Dillon (pictured at right) is 8 years old and has repeatedly experienced the trauma of restraint and seclusion in his school. I believe that if our school district had provided the appropriate supports when Dillon most needed them, our family would have been spared years of pain and stress.



When Dillon was about 2 years old, my husband, Erik, and I started to suspect that Dillon's lack of self-regulation and aggression might indicate he had a disability. At the time, however, many people just assured us that "boys will be boys." We began to realize these behaviors were not typical shortly after Dillon began attending a private pre-K. Soon after, Dillon was expelled from the private school due to his inability to self-regulate and control his emotions. At this time, we began to seek professional mental health services and evaluations on our own. Mental health professionals stressed Dillon's need for positive reinforcement. We put him in our local public school to finish out the year. His new Pre-K class provided positive supports and a short school day. Dillon did well in that environment.

After Dillon began kindergarten, we noticed he was having difficulty with transitions, frequent meltdowns, and shutdown behavior in school. The school initially refused to provide a 504 plan or individualized education program (IEP), even after receiving Dillon's diagnosis of Autism Spectrum Disorder (ASD). We had to fight for over a year for a 504 and then an IEP, despite the diagnosis of ASD and Dillon's difficulty functioning in the classroom environment. Positive reinforcement was made a part of the initial IEP, but was not enforced until a full year later.

In kindergarten Dillon had a meltdown in which he shut down and was unable to regain control. The school called 9-1-1 and requested that I get there before the rescue if I did not want him transported to the hospital. I received such crisis calls several times a month, sometimes weekly, throughout Kindergarten. I later learned that before I was called, the school had been restraining him, removing him from the classroom, and transporting him to the principal's office or other rooms that were available.

Dillon is a smart child. We never worried about his academics. We worried about his ability to function in a classroom environment without any supports.

As Dillon began first grade, he was enrolled in a program for children with ASD in that same school. The program included some supportive features (like extra breaks) but it also contained a walled-off area in the middle of the room for children to calm down. This area, called the "blue space," has walls that are about 4-5 feet tall, and is padded on 3 1/2 sides with an extra pad that can cover the opening to keep a child from leaving the space.

After being dragged into this room for several weeks, Dillon increasingly refused to do his school work. His work avoidance, we now know, was in direct reaction to the restraint and seclusion he was experiencing. Since the "blue space" was within a shared space, other students would be present for Dillon's meltdowns and shutdowns. Dillon was aware of the other students and this added to the trauma. The more he was restrained and secluded, the less he was interested in school work, which resulted in more restraint and seclusion, a constant downward spiral. It broke my heart when Dillon told us that he no longer trusted any of the adults in that school.

During this time, we were attending IEP meetings every 2-3 weeks to analyze various reports and data regarding Dillon's behavior. Erik and I consistently stressed the need for positive intervention strategies, however, most discussions revolved around providing more breaks and how to react to negative behaviors. Our family acutely felt the effects of this stress. I was reaching my breaking point. I began to see a therapist, as I was always on edge waiting for the next phone call from the school while I was in a meeting or on a conference call at work. If Dillon had a bad morning, I would spend the day anxiously waiting for the other shoe to drop. The constant stress caused anxiety and put incredible strain between Erik and me. I became moody, irritable, and short-tempered. I would swing from snapping at my other son who was three at the time to weeping at the way I had reacted to him. Erik had been working nights during this time and began losing sleep as the school would call him when they could not immediately reach me. Both of us were under great stress as the school's inability to fulfill Dillon's IEP was now threatening our ability to perform our jobs.

Through it all, we received very few verbal notifications of restraint and no written notification. In our final IEP meeting with this school, at the advice of our advocate, we requested the restraint documentation. We received the documents approximately two weeks later. The documents were only dated for the current year. We still have not received any documents for the previous year in school.

During one IEP meeting in first grade, Dillon's teacher canceled our parent/teacher conference because she did not have any grades for Dillon as he was rarely in her classroom. A week later another call was made to 9-1-1 which resulted in a police officer threatening our then 6-year-old son that if he did not compose himself, dress, and leave with Erik, Dillon would be removed forcibly from school in handcuffs – naked. That same day, Erik informed the Assistant Special Education Director for the School District that they had failed our son and we would be seeking outside placement.

Noncompliance, aggression, and meltdowns are all a form of communication. Dillon was trying to communicate that the strategies used were not working for him and not allowing him to develop coping skills for the future. He was being forced into fight/flight on a regular basis and did not know how to express this. Dillon learned not to trust adults responsible for his education. He learned that he could

not be compelled to participate in his education. Dillon refused to talk about school and often claimed he 'forgot' about the events that day or plainly 'didn't want to talk about it'.

In the middle of first grade, we agreed to an in-district school transfer. We gladly agreed to transfer him from a school that is attended mostly by children from upper income families to one that serves largely low incomes students (and receives Title I funding) in order to find the right fit for Dillon. Within only two weeks of the new placement, Dillon was in a regular education classroom 100% of the time with supports.

The new school's behavior program allows children to float between a special education classroom and a regular education classroom, depending on which subjects they function best within. There are several cool down spaces and one open space within the office of the school behaviorist. The school behaviorist is highly respected by students and staff alike. All school staff have received special training focused on behavior. The entire school participates in a Positive Behavior Intervention Supports program. 'Pawbucks' are accessible to all staff to present to students when they are observed following the major principles of the school's culture. All children received these reward, since there is always an opportunity to find something positive about a student. These rewards can be exchanged every month for picks out of the school's treasure box of toys. Teachers provide positive reinforcement in their classrooms and individualized one-on-one with their students. One example was a jar with marbles. Every time Dillon did something expected, followed instruction, or transitioned well, he could place one or more marbles in the jar. Once the jar was full, he could pick out of the treasure chest.

As a result, Dillon is now doing really well at school. With the proper supports, he has blossomed as a student. He now earns grades at or above grade level in every subject. He loves math and recess. He enjoys school and talks about it regularly.

Now that Dillon's needs are being met at school, a huge stress has been lifted from our family. Instead of anxiety we feel calm knowing that even on his most challenging days, Dillon is receiving needed supports from well-trained staff.

Thank you.

Ms. HAYES. Thank you, Ms. Smith. And please don't be nervous here today. You are Dillon's voice.

Ms. NOWICKI. Did I say that right?

Ms. NOWICKI. Nowicki. Thank you.

Ms. HAYES. Nowicki.

STATEMENT OF JACQUELINE NOWICKI, DIRECTOR OF EDUCATION WORKFORCE AND INCOME SECURITY, GOVERNMENT ACCOUNTABILITY OFFICE (GAO)

Ms. NOWICKI. No worries. Good morning and thank you for inviting me here today to discuss restraint and seclusion in public schools.

As you probably know, education has issued guidance stating that restraint and seclusion should never be used except when a child's behavior poses imminent danger of serious physical harm to self or others. And while its use in schools nationwide is very rare, we are all aware of tragic examples of misuse that sadden our hearts.

We had issued a number of reports over several years analyzing data from the Department of Education's Civil rights Data Collection, or the CRDC. All public schools in the Nation are required to report data for the CRDC. We also recently began work in response to a congressional mandate, looking at concerns of misreporting of restraint and seclusion data.

My statement today will focus on how education collects data on restraint and seclusion, what this data tells us, and then Federal response to the inappropriate use of restraint and seclusion.

Regarding education's data, education began collecting data in school year 2009 and has since published four waves of that data, the most recent being for school year 2015–16. The CRDC collects information on physical and mechanic restraint as well as seclusion. Education defines these terms in the CRDC instructions and schools and districts are to use them when reporting their data. The CRDC also collects information on students' race, gender, and disability status and school type, which allows us to determine the demographic characteristics of students being restrained and secluded and where it is happening.

Public schools and districts self-report their data and districts are to certify the accuracy of the data submitted by schools. However, because these data are self-reported there is potential for misreporting. Education has put in place quality control mechanisms to attempt to reduce misreporting in the CRDC. We at GAO use this data in our work only after determining that it is sufficiently reliable in the context of each particular study.

Regarding what the CRDC data tell us, nationally the data show that the use of restraint and seclusion is very rare. For example, about 61,000 students were physically restrained in 2013–14. That is about 0.1 percent of all public school students. Mechanical restraint and seclusion were even less common. These data also show that students with disabilities were particularly represented. For example, students with disabilities represented less than 12 percent of all public school students, but accounted for about 75 percent of students physically restrained and nearly 60 percent of stu-

dents secluded. In addition, boys were consistently restrained or secluded at higher rates than girls.

Regarding the Federal response, in recent years the Departments of Education and Health and Human Services have made available on their websites guidance and resources on restraint and seclusion and behavioral supports. For example, in 2016 Education informed school districts about how the use of restraint and seclusion may result in unlawful discrimination against students with disabilities. Its 2012 restraint and seclusion resource document States that restraint or seclusion should not be used as a routine school safety measure or as strategies to address instructional problems or inappropriate behavior, and also outlines principles for school districts to consider when developing policies around restraint and seclusion. For example, it says these policies should apply to all children, not just children with disabilities. It also States that repeated use of restraint and seclusion for an individual child, multiple uses within that same classroom, or multiple uses by the same individual should trigger a review and potentially a revision of strategies in place to address behavior issues.

Education has also encouraged the use of positive behavioral interventions and supports, known as PBIS, as evidence based alternatives to restraint and seclusion. It funds the PBIS Technical Assistance Center, which we heard a little about from Dr. Sugai. According to Education, over 25,000 schools have implemented PBIS. HHS funds a Technical Assistance Center that helps schools eliminate the use of restraint and seclusion and increase knowledge and awareness of trauma informed approaches to addressing behavioral issues.

Last month Education announced a new initiative to address the inappropriate use of restraint and seclusion in schools. The Office of Civil Rights and the Office of Special Education and Rehabilitation will oversee this effort. OCR plans to conduct compliance reviews focused on the inappropriate use of restraint and seclusion on children with disabilities and help schools correct noncompliance. OCR also plans to conduct data quality reviews and help districts improve their CRDC data reporting. These Offices also expect to provide technical assistance to districts to understand how Federal laws, such as IDEA and Title II of the ADA should inform restraint and seclusion policies.

In closing, what the national data tell us is that while restraint and seclusion is very rare, the students most affected are among the Nation's most vulnerable. What these data alone don't tell us is why this happens or the extent to which restraint and seclusion is being used inappropriately. We are hopeful that our new work on seclusion and restraint, as well as Education's new initiative, will help shed light on these important issues.

This completes my prepared remarks. I would be pleased to answer any questions you may have.

[The statement of Ms. Nowicki follows:]

United States Government Accountability Office



Testimony
Before the Subcommittee on Early
Childhood, Elementary and Secondary
Education, Committee on Education
and Labor, House of Representatives

For Release on Delivery
Expected at 10 a.m. ET
Wednesday, February 27, 2019

K-12 EDUCATION

Federal Data and Resources on Restraint and Seclusion

Statement of Jacqueline M. Nowicki, Director,
Education, Workforce, and Income Security

GAO Highlights

Highlights of GAO-19-418T, a testimony before the Subcommittee on Early Childhood, Elementary and Secondary Education, Committee on Education and Labor, House of Representatives

Why GAO Did This Study

GAO's work has shown that the use of restraint and seclusion in K-12 public schools nationwide is more prevalent among students with disabilities and boys. Education has issued guidance stating that restraint or seclusion should never be used except in situations where a child's behavior poses imminent danger of serious physical harm to self or others. In January 2019, Education released information on a new initiative focused on the inappropriate use of restraint and seclusion, particularly for students with disabilities.

This testimony discusses (1) how Education collects data on the use of restraint and seclusion, (2) what Education's data tells us about the use of restraint and seclusion in public schools, and (3) resources or initiatives at the federal level to address the use of restraint and seclusion. It is based on a report GAO issued in March 2018. This testimony also includes updated data on Education's ongoing civil rights investigations related to the restraint and seclusion of students with disabilities and Education's recent initiative on the use of these practices.

View GAO-19-418T. For more information, contact Jacqueline M. Nowicki at (617) 788-0580 or nowickij@gao.gov.

February 27, 2019

K-12 EDUCATION

Federal Data and Resources on Restraint and Seclusion

What GAO Found

The Department of Education (Education) collects a range of information—including incidents of restraint and seclusion of public school children—from nearly every public school and school district in the nation, as part of its biennial Civil Rights Data Collection (CRDC). Schools and districts are to use the CRDC's definitions of restraint and seclusion when counting and reporting incidents. Specifically, under Education's definitions, physical restraint broadly refers to restricting the student's ability to freely move his or her torso, arms, legs, or head. Mechanical restraint broadly refers to the use of any device or equipment to restrict a student's freedom of movement. Seclusion broadly refers to involuntarily confining a student alone in a room or area from which he or she cannot physically leave.

In March 2018, GAO reported on the use of discipline, including the prevalence of restraint and seclusion in K-12 public schools, using CRDC data for school year 2013-14, the most recent available data at the time of the work. Nationally, these data showed that the use of restraint and seclusion was very rare, but that some groups of students, in particular students with disabilities and boys, experience these actions disproportionately. For example, approximately 61,000 students were physically restrained in school year 2013-14, representing about 0.1 percent of all K-12 public school students. Mechanical restraint and seclusion were less prevalent, but again disproportionately affected the same groups of students.

Education's Office for Civil Rights and the Department of Justice's Civil Rights Division are responsible for enforcing a number of civil rights laws, which protect students from discrimination on the basis of certain characteristics. As part of their enforcement responsibilities, both agencies conduct investigations in response to complaints or reports of possible discrimination. Federal agencies have also provided guidance and resources on restraint, seclusion, and behavioral supports in recent years. For example, Education's 2012 Restraint and Seclusion Resource Document outlines principles for school districts and stakeholders to consider when developing policies to avoid the use of restraint and seclusion. In January 2019, Education announced a new initiative to address possible inappropriate use of restraint and seclusion in schools. According to Education, the Office for Civil Rights in partnership with the Office of Special Education and Rehabilitative Services will be conducting compliance reviews focused on the inappropriate restraint and seclusion of students with disabilities and will work with schools to correct noncompliance.

February 27, 2019

Chairman Sablan, Ranking Member Allen, and Members of the Subcommittee:

I am pleased to be here today to discuss the issue of restraint and seclusion in K-12 public schools. As you may know, while the restraint and seclusion of K-12 public school students nationwide is reported to be very rare, it disproportionately affects students with disabilities and boys. In broad terms, the Department of Education (Education) has defined restraint as restricting the student's ability to move his or her torso, arms, legs, or head freely, and seclusion as confining a student alone in a room or area that he or she is not permitted to leave. Education and the Department of Justice (Justice) are responsible for enforcing a number of civil rights laws protecting students from discrimination and protecting the rights of students with disabilities. Education has issued guidance stating that restraint or seclusion should never be used except in situations where a child's behavior poses imminent danger of serious physical harm to self or others. Further, Education has said that schools' or districts' use of restraint and seclusion could result in a denial of a student with disability's right to receive a free appropriate public education (FAPE), which is required by Education's regulations.

We have issued a number of reports on other issues, such as students' access to college preparatory courses, analyzing data from Education's Civil Rights Data Collection (CRDC); public schools nationwide are required to report a range of information to the CRDC every 2 years. We also currently have work underway in response to the explanatory statement from the House Committee on Appropriations accompanying the Consolidated Appropriations Act, 2018, which includes language that provides for GAO to conduct further study on data reported to Education's Office for Civil Rights (OCR) on the use of restraint and seclusion for all students at the school and district level and on efforts to reduce the use of restraint and seclusion practices. My statement today is based largely on our previous work and will focus on (1) how Education collects data on the use of restraint and seclusion, (2) what Education's data tells us about the use of restraint and seclusion in public schools, and (3) resources or initiatives at the federal level to address the use of restraint and seclusion.

We used our previous work to obtain insight on the use of restraint and seclusion in public schools and to determine what steps Education and Justice are taking to address restraint and seclusion. Specifically, we

used our analysis of Education's CRDC for 2013-14, which was the most recent data collection available at the time we did our work, and our interviews with agency officials and reviews of agency documentation, administrative data, relevant federal laws and regulations, and a non-generalizable selection of resolved school discipline investigations undertaken by Education and Justice. We determined these sources were sufficiently reliable for the purposes of our work by reviewing documentation, conducting electronic testing on data, and interviewing agency officials. More detailed information on our objectives, scope, and methodology for that work can be found in the issued report.¹

We conducted the work on which this statement is based in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Education Regularly Collects Data on Restraint and Seclusion in Public Schools

Every other year, Education collects a range of information, including incidents of restraint and seclusion of public school children, from nearly every public school and school district in the nation, as part of the CRDC. Education began collecting information on restraint and seclusion starting in school year 2009 and has now published four waves of data on its website and in reports. The CRDC collects information on physical and mechanical restraint of students and seclusion of students. Education defines these terms in the CRDC instructions, and schools and districts are to use them when counting and reporting incidents of restraint and seclusion. Specifically, under Education's definitions:

- Physical restraint refers to restricting a student's ability to freely move his or her torso, arms, legs, or head; it does not include a physical escort, such as temporary touching of the arm or other body part for the purpose of inducing a student who is acting out to walk to a safe location.

¹GAO, *K-12 Education: Discipline Disparities for Black Students, Boys, and Students with Disabilities*, GAO-18-258, (Washington, D.C.: March 22, 2018). This original work was addressed to Representative Robert "Bobby" C. Scott of the House Committee on Education and Labor and Representative Jerrold Nadler of the House Judiciary Committee.

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- Mechanical restraint refers to the use of any device or equipment to restrict a student's freedom of movement; this does not include vehicle safety restraints or medical devices.
 - Seclusion refers to involuntarily confining a student alone in a room or area from which he or she cannot physically leave; it does not include a timeout, which the CRDC instructions define as a behavior management technique that is part of an approved program, involves the monitored separation of a student in a non-locked setting, and is implemented for the purpose of calming.

The CRDC also collects information on the student's race, gender, and disability status, as well as the type of school the student attends, which allows one to determine the demographic characteristics of students being restrained and secluded and where it is happening.

The CRDC is required by Education, and public schools and districts self-report their data.² Further, districts are to certify the accuracy of the data submitted by schools. However, because these data are self-reported, there is the potential for misreporting of information. Education has put in place quality control mechanisms to attempt to reduce misreporting of information to the CRDC, and we determined that the data we used from the CRDC were sufficiently reliable for the purposes of our work as mentioned above.

Reported Use of Restraint and Seclusion

In March 2018, we reported on the prevalence of restraint and seclusion in K-12 public schools using CRDC data for school year 2013-14.³ Nationally, these data showed that the use of restraint and seclusion was very rare. For example, approximately 61,000 students were physically restrained in 2013-14, representing about 0.1 percent of all K-12 public school students. Mechanical restraint and seclusion were less prevalent (see table 1).

²In school year 2013-2014, the CRDC collected data from nearly every public school in the nation, with a response rate of 99.2 percent.

³GAO-18-258. The 2013-14 CRDC data were the most recent available at the time of our analysis. Education released CRDC data for school year 2015-16 in April 2018.

Table 1: Number and Percent of K-12 Public School Students Who Were Restrained or Secluded, School Year 2013-14

	Mechanical restraint	Physical restraint	Seclusion	Total enrollment
Number of students	7,001	61,440	33,578	50,035,746
Percent of enrolled students	0.01%	0.1%	0.1%	100%

Source: GAO analysis of Department of Education, Civil Rights Data Collection. | GAO-19-418T

We also reported on restraint and seclusion by student demographics (see table 2).

Table 2: Number and Percent of K-12 Public School Students Who Were Restrained or Secluded, by Student Characteristics, School Year 2013-14

	Mechanical restraint	Physical restraint	Seclusion	Total enrollment
Sex				
Boys	Number of students	5,220	48,530	25,711,953
	Percent of enrolled students	0.02%	0.2%	0.1%
Girls	Number of students	1,781	12,910	24,323,793
	Percent of enrolled students	0.01%	0.1%	0.03%
Students with disabilities				
	Number of students	2,376	46,435	5,851,455
	Percent of enrolled students	0.04%	0.8%	0.3%
Race or Ethnicity				
White students	Number of students	2,322	33,320	19,870
	Percent of enrolled students	0.01%	0.1%	0.1%
Black students	Number of students	2,346	15,200	7,449
	Percent of enrolled students	0.03%	0.2%	0.1%
Hispanic students	Number of students	1,980	8,161	3,430
	Percent of enrolled students	0.02%	0.1%	0.03%
Asian students	Number of students	53	904	437
	Percent of enrolled students	.002%	0.03%	0.02%
American Indian/Alaska Native students	Number of students	106	886	562
	Percent of enrolled students	0.02%	0.2%	0.1%
Two or more races students	Number of students	194	2,969	1,830
	Percent of enrolled students	0.01%	0.2%	0.1%

Source: GAO analysis of Department of Education, Civil Rights Data Collection. | GAO-19-418T

The data in table 2 on the demographics of students experiencing restraint and seclusion show that students with disabilities were particularly overrepresented.⁴ Specifically, students with disabilities represented 11.7 percent of all public school students in school year 2013-14, though they accounted for 33.9 percent of students mechanically restrained, 75.6 percent of students physically restrained, and 59.1 percent of students secluded during that school year. In addition, boys were consistently restrained or secluded at higher rates than girls.

Federal Agencies' Role in Addressing the Use of Restraint and Seclusion

Education's Office for Civil Rights and Justice's Civil Rights Division are responsible for enforcing a number of civil rights laws, which protect students from discrimination on the basis of certain characteristics. As part of their enforcement responsibilities, both agencies conduct investigations in response to complaints or reports of possible discrimination. According to publicly available information on Education's website, as of February 1, 2019, its Office for Civil Rights had 86 open investigations of potential discrimination involving restraint and seclusion based on disability status at the elementary and secondary levels. The investigations dated back to 2014 (see table 3).

Table 3: Number of Ongoing Restraint and Seclusion Investigations Based on Disability Status, Education's Office for Civil Rights, by Year Opened, 2014-January 2019

Number of restraint and seclusion investigations based on disability status opened at K-12 level	
2014	8
2015	19
2016	20
2017	22
2018	13
2019 (Jan. only)	4

Source: Department of Education (Education) Office for Civil Rights website. | GAO-19-418T

⁴Disparities in experiencing restraint and seclusion may support a finding of discrimination, but taken alone, do not establish whether unlawful discrimination has occurred.

In addition to investigations, federal agencies have provided guidance and resources on restraint, seclusion, and behavioral support in recent years. These guidance and resource documents are publicly available on Education's and the Department of Health and Human Services' websites. For example, a 2016 Dear Colleague Letter explains the limits that federal civil rights laws enforced by Education impose on the use of restraint and seclusion by public K-12 school districts. In particular, this guidance informs school districts how the use of restraint and seclusion may result in unlawful discrimination against students with disabilities.⁵ In another 2016 Dear Colleague Letter, Education noted that schools are required to provide appropriate strategies to address behavior in individualized education programs (IEPs) for students with disabilities. Moreover, this letter states that providing behavioral interventions and supports to students with disabilities is part of ensuring FAPE and placement in the least restrictive environment.⁶

With regard to providing resources to the public, Education's 2012 Restraint and Seclusion Resource Document states that restraint or seclusion should not be used as routine school safety measures or as strategies to address instructional problems or inappropriate behavior.⁷ Instead, the document notes that physical restraint or seclusion should only be used when a child's behavior poses imminent danger of serious physical harm to self or others. This resource also outlines principles for school districts and stakeholders to consider when developing policies to avoid the use of restraint and seclusion. For example, one of the principles states that policies restricting the use of restraint and seclusion should apply to all children, not just children with disabilities. Another principle is that the repeated use of restraint and seclusion for an individual child, multiple uses within the same classroom, or multiple uses by the same individual, should trigger a review and potentially a revision of strategies in place to address behavior that poses imminent danger of serious physical harm to self or others.

⁵Specifically, the Dear Colleague letter states that such use may result in discrimination under Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (Title II) (both as amended). See <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201612-504-restraint-seclusion-ps.pdf>.

⁶See <https://www2.ed.gov/policy/gen/guid/school-discipline/files/dcl-on-pbis-in-ieps-08-01-2016.pdf>.

⁷See <https://www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf>.

The federal government has encouraged the use of positive behavioral interventions and supports (PBIS) as alternatives to restraint and seclusion. In particular, Education's Office of Special Education Programs funds the PBIS Technical Assistance Center, which supports implementation of a multi-tiered approach to social, emotional and behavior support. In addition, it offers resources on cultural responsiveness, addressing discipline disproportionality, and interconnecting mental health with behavior support systems, among other issues. According to Education, over 25,000 schools have implemented this approach. In addition, the Department of Health and Human Services funds a technical assistance center that develops approaches to eliminate the use of restraint and seclusion while advancing the knowledge base related to implementation of trauma-informed approaches.

In mid-January 2019, Education announced a new initiative to address the possible inappropriate use of restraint and seclusion in schools.⁸ According to Education, OCR in partnership with the Office of Special Education and Rehabilitative Services will be conducting compliance reviews focused on the inappropriate use of restraint and seclusion on children with disabilities and will work with schools to correct noncompliance. Education noted that OCR will also conduct data quality reviews and will provide technical assistance and work with school districts to review and improve restraint and seclusion data submitted to the CRDC. Education further noted that the two offices will work together to provide joint technical assistance to districts to help them understand how the relevant federal laws, such as the Individuals with Disabilities Education Act and Title II of the Americans with Disabilities Act of 1990, should inform the development of policies related to restraint and seclusion.

Chairman Sablan, Ranking Member Allen, and Members of the Subcommittee, this completes my prepared statement. I would be pleased to respond to any questions that you may have at this time.

⁸See <https://www.ed.gov/news/press-releases/us-department-education-announces-initiative-address-inappropriate-use-restraint-and-seclusion-protect-children-disabilities-ensure-compliance-federal-laws>.

**GAO Contact and
Staff
Acknowledgments**

For further information regarding this testimony, please contact Jacqueline M. Nowicki, Director of Education, Workforce, and Income Security Issues at (617) 788-0580 or nowickij@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement.

GAO staff who made key contributions to this statement include Sherri Doughty (Assistant Director), David Watsula (Analyst-in-Charge), Deborah Bland, Holly Dye, Monika Gomez, Lara Laufer, Sheila R. McCoy, John Mingus, Amy Moran Lowe, Cady Panetta, and James Rebbe.

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Please Print on Recycled Paper.

Ms. HAYES. Thank you, Ms. Nowicki. Ms. Sutton.
Your microphone is off.

**STATEMENT OF ALLISON SUTTON, M.ED, SPECIAL EDUCATION
TEACHER, WICHITA PUBLIC SCHOOLS (USD 259)**

Ms. SUTTON. It does not work.

As you said this morning regarding the critical issue of restraint and seclusion in our classrooms.

I graduated with my undergraduate degree in 2013 and began teaching that August. I was assigned 13 middle schoolers with autism. Today, it is hard for me to think back and recall the how exhausting and brutal that first year was. I was unprepared; I didn't have sufficient resources and support was limited at best. I was hired to start a program for students with autism at my school. As a result, the expectations were not widely understood among school staff, nor were staff able to offer tangible solutions to help me with behavioral situations I encountered in the classroom.

During that first year I was using restraints at a high rate without the necessary training to do so. After extreme behaviors were occurring with regularity in my classroom I was told that I was supposed to be Crisis Prevention Institution (CPI) certified.

I attended my first CPI training in October 2013. While this training is a good resource, only attending an initial full day training and then a half day refresher training in the following years, is not sufficient. Additionally, I typically only see special education teachers and paraprofessionals in attendance. In my opinion, it would be beneficial to have all staff on the same page when working with a student and trying to de-escalate varying circumstances. Nor should this be the only training that school personnel receive. In addition to CPI staff should receive training on behavior management, de-escalation techniques, conducting functional behavioral assessments, and writing behavior plans.

It became abundantly clear to me that if I wanted my students to be successful I needed more strategies and tools, such as positive behavioral interventions and supports, visual supports, prompting hierarchies, how to identify reinforcement, behavior data collection, what to do with the behavior data after it is collected, and tools for identifying interventions to implement based on individual behaviors and needs. Once I started acquiring this knowledge and implementing it in my classroom, I have seen a drastic decrease in seclusion and restraint.

In order to get the support and training I needed for my students to be successful in the classroom, I actively sought out opportunities to gain those tools and strategies described above. I first attended a conference centered on individuals with autism. This proved to be very helpful and I was able to gain insight into my students and also able to build critical connections in the community.

Three years into teaching I decided to get my masters in low incidence special education. This again helped me to gather strategies to immediately start implementing in my classroom. In my master's program I was able to gain both teaching and behavioral tools, but my biggest take away has been the need to build rela-

tionships with all stakeholders for each individual child. While this may look differently for each student, the necessity for honest, consistent, and valuable communication holds true for every stakeholder.

Also, I recently attended and presented at the Council for Exceptional Children Conference. This conference allowed me the chance to attend multiple sessions based on my own experiences and interests and learn from others and take ideas back to my class. It is vital for me to build relationships with others who understand my day to day, who can offer advice, feedback, and even praise based on their own knowledge and understanding.

I do want to mention, The Kansas Seclusion and Restraint Law (K.A.R. 91-42-2) called Emergency Safety Intervention (ESI), which was initially rolled out in 2015, the early stages of when I started teaching. I remember specifically when I had questions regarding documentation of restraint and seeking out one of the district teaching specialists to assist me. Each year during the back to school in-service the special education teachers and staff receive an overview of the law. According to ESI "An emergency safety intervention shall be used only used when a student presents a reasonable and immediate danger of physical harm to the student or others with the present ability to effect such physical harm. Less restrictive alternatives to emergency safety interventions, including positive behavior interventions support, shall be deemed inappropriate or ineffective under the circumstances by the school employee witnessing the student's behavior before the use of any emergency safety interventions." So this is typically a PowerPoint presentation that is presented to us by our Department of Due Process. Throughout the presentation specific situations are discussed and staff are reminded of what is permitted and what is prohibited.

Now 6 years in, I don't consider myself a veteran teacher but rather a teacher who will find ways to assist every student in becoming successful based on their own individual needs. I have learned over the years how to identify when behaviors are likely to occur and allow for preventative measures and work through de-escalation techniques with my students to decrease the likelihood of extreme behaviors. While many restraints occurred in my classroom my first year, I am proud to say there has been one this year. My classroom is one in which expectations are clear, consistent, and tailored to meet the needs of each student.

To be clear, consistent support, training, and resources are fundamental to giving teachers the ability to create safe environments for all students in which they are able to thrive and learn.

Thank you for allowing me to speak today on this critical issue and to hopefully be a part of reducing the use of restraints in our schools.

[The statement of Ms. Sutton follows:]

Testimony of Allison Sutton, February 27, 2019**Classrooms in Crisis: Examining the Inappropriate Use of Seclusion and Restraint**

Chairman Sablan and Ranking Member Allen – thank you for the opportunity to testify this morning regarding the critical issue of restraint and seclusion in our classrooms. My name is Allison Sutton and I am a teacher in Wichita, Kansas.

I graduated with my undergraduate degree in 2013 and began teaching that August. I was assigned thirteen middle schoolers with autism. Today, it's hard for me to think back and recall the how exhausting and brutal that first year was. I was unprepared, I didn't have sufficient resources, and support was limited at best. I was hired to start a program for students with autism at my school. As a result, the expectations were not widely understood among school staff nor were staff able to offer tangible solutions to help me with behavioral situations I encountered in the classroom. During that first year I was using restraints at a high rate without the necessary training to do so. School security was also called on a regular basis for issues in my classroom and one time they handcuffed one of my students. Additionally, I got a concussion from one of my students. It's important to remember I just had graduated from undergrad when this school year started. I had received little to no behavior management training in general nor any tailored to the specific population I was teaching.

After extreme behaviors were occurring with regularity in my classroom, I was told that I was supposed to be Crisis Prevention Institute (CPI) certified. I attended my first CPI training in October of 2013. "The CPI Crisis Development Model represents a series of recognizable behavior levels that an individual may experience during a crisis moment and the corresponding staff attitudes/ approaches used to de-escalate challenging behaviors." This refresher workbook is ten units and the first seven of them focus on preventative and de-escalation means while the last couple units focus on the physical interventions. On the first page of the CPI refresher workbook it breaks down the integrated experience looking at it from the student and the staff behavior levels and approaches. This is one of the most valuable components, being able to identify how I, as the staff, am responding and approaching the situation and the impact I am having on the student.

While this training is a good resource, only attending an initial full day training and then half a day refresher training in the following years is not sufficient. When I have attended these trainings I typically only see special education and para professionals in attendance. In my opinion, it would be beneficial to have all staff on the same page when working with a student and trying to de-escalate varying circumstances. These tools would be useful in all settings and for all staff in a school. This shouldn't be the

only training that school personnel receive, in addition to CPI, staff should receive training on behavior management, de-escalation techniques, conducting functional behavioral assessments, and writing behavior plans.

Beyond CPI, there was very little training on seclusion and restraint, best practices, parental notification and documentation. In my classroom I have sought out answers to my questions, and received the answers that I need. I would, however encourage clear dissemination of all relevant information and protocols to all school staff. There should be training on positive behavioral interventions and supports, behavior data collection methods, how to identify functions of behavior, how to interpret the data collected, and what interventions to implement based on interpretations of data collection.

It quickly became abundantly clear to me that if I wanted my students to be successful, I needed more strategies and tools such as positive behavioral interventions and supports, visual supports, prompting hierarchies, how to identify reinforcement, behavior data collection, what to do with the behavior data after it is collected, and tools for identifying interventions to implement based on individual behaviors and needs. Once I started acquiring this knowledge and implementing it in my classroom, I've seen a drastic decrease in seclusion and restraint.

In order to get the support and training I needed for my students to be successful in the classroom, I actively sought out opportunities to gain those tools and strategies described above. I first attended a conference centered on individuals with autism. This proved to be very helpful and I was able to gain insight into my students, and also able to build critical connections in the community.

Three years into teaching I decided to get my Masters in Low Incidence Special Education. This again helped me to gather strategies to immediately start implementing in my classroom. In my master's program I was able to gain both teaching and behavioral tools, but my biggest take away has been the need to build relationships with all stakeholders for each individual child. While this may look differently for each student, the necessity for honest, consistent and valuable communication holds true for every stakeholder. In my program I was also able to network with other professionals who had similar jobs to mine and this has time and time again proved invaluable. In my school building I wasn't able to build connections with staff who understood my world, through my master's classes I was able to build community based on a shared understanding. Through my program and my final project I was able to seek out opportunities I wouldn't have done otherwise.

Also, I recently attended and presented at the Council for Exceptional Children conference. This conference allowed me the chance to attend multiple sessions based on my own experiences and interests and learn from others and take ideas back to my class. It is vital for me to build relationships with others who understand my day to day, who can offer advice, feedback and even praise based on their own knowledge and understanding. This conference enabled me to do just that.

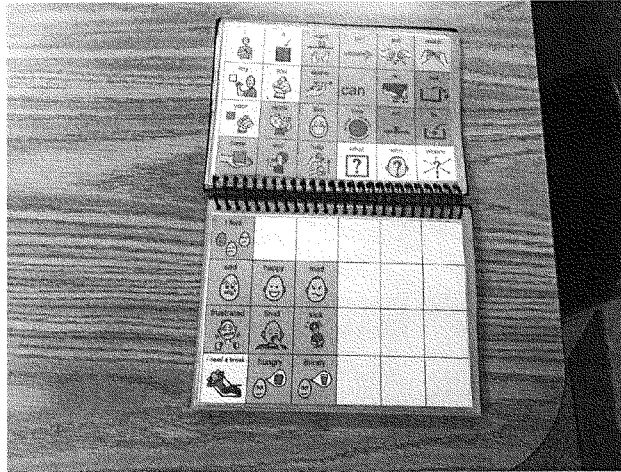
I do want to mention, The Kansas Seclusion and Restraint Law (K.A.R. 91-42-2) called Emergency Safety Intervention (ESI) was initially rolled out in 2015, the early stages of when I started teaching. I remember specifically when I had questions regarding documentation of restraint and seeking out one of the district teaching specialists to assist me. Each year during the back to school in-service special education teachers and staff receive an overview of the ESI. According to ESI, "An emergency safety intervention shall be used only used when a student presents a reasonable and immediate danger of physical harm to the student or others with the present ability to effect such a physical harm. Less restrictive alternatives to emergency safety interventions, including positive behavior interventions support, shall be deemed inappropriate or ineffective under the circumstances by the school employee witnessing the student's behavior before the use of any emergency safety interventions." This is typically a PowerPoint presentation that is presented to us by our Department of Due Process. Throughout the presentation specific situations are discussed and staff are reminded of what is permitted and what is prohibited.

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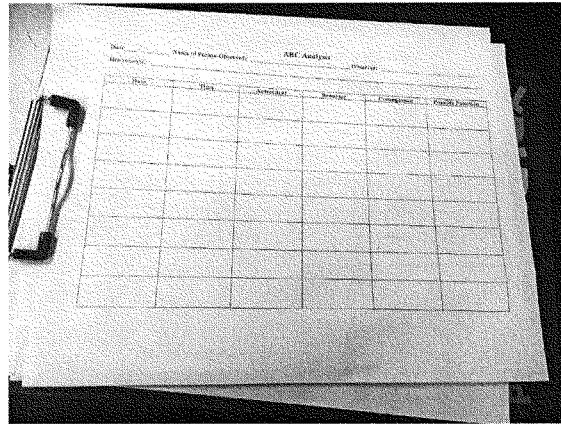
I'm now consciously aware of what will work for one student will not work necessarily work for another. Throughout my entire day from 7:45 to 3:15 I am hyper aware of my environment in hopes of preventing and/or de-escalating behaviors. This is evident in the way I position my body, my tone of voice, how loud our smart board is, and the physical structure of my classroom. I focus on finding ways to motivate each individual student. For one student his reinforcement is taking a walk, another student likes to build with legos, while another one likes to write. I have to know these things to motivate my students, build relationships with them and to reinforce the positives throughout each day. After I know what my students are motivated by I need to implement reinforcement schedules. Again, this is based on individual needs and it could look different every day. One day I might reinforce positive behaviors every 30 minutes, but the next I might need to offer reinforcement every 5 minutes. A component to all of this is ensuring that each student has the opportunity to communicate in a way that makes sense to them. This could be verbally, through gestures, or through alternate/assistive communication devices. It's my job to find ways to meet each child where they are at. To be clear, consistent support, training and resources are fundamental to giving teachers the ability to create safe environments for all students in which they are able to thrive and learn.

Thank you for having me here today. It is an honor to hopefully be a part of reducing restraints.

Appendix



A picture inside a communication book. This helps for this particular child to identify how he is feeling, especially in moments of escalation. Once he identifies "I feel mad" we are able to turn to other pages and ask why, and what he wants.



I'm currently using A-B-C data (antecedent, behavior and consequence) data for a student who will reach these points of refusal and will last extended periods of time. This helps to me identify what is happening, before, during and after behaviors.



This has been my ticket to gathering accurate data. I've put clickers on lanyards and each color represents a child and or a behavior for that child. I write down the totals each day and every week I graph the data.

 A handwritten data table on a piece of paper. The table has columns and rows. The rows are labeled with dates on the left side: 1/28, 1/29, 1/30, 1/31, 2/1, 2/2, 2/3, 2/4, 2/5, 2/6, 2/7, 2/8, 2/9, 2/10, 2/11, 2/12, 2/13, 2/14, 2/15, 2/16. The columns have headers that are partially legible: "Clicker", "Clicker", "Clicker", "Clicker", "Clicker". The data is entered in the cells.

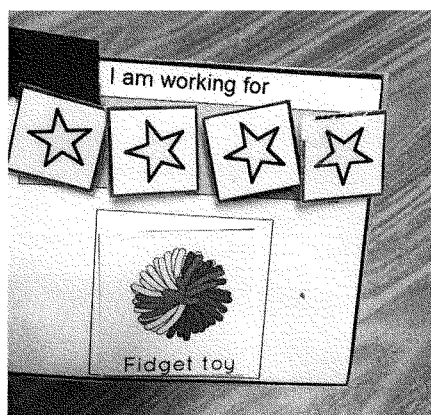
Date	Clicker 1	Clicker 2	Clicker 3	Clicker 4	Clicker 5
1/28	0	0	0	0	0
1/29	1	1	1	1	1
1/30	2	2	2	2	2
1/31	3	3	3	3	3
2/1	4	4	4	4	4
2/2	5	5	5	5	5
2/3	6	6	6	6	6
2/4	7	7	7	7	7
2/5	8	8	8	8	8
2/6	9	9	9	9	9
2/7	10	10	10	10	10
2/8	11	11	11	11	11
2/9	12	12	12	12	12
2/10	13	13	13	13	13
2/11	14	14	14	14	14
2/12	15	15	15	15	15
2/13	16	16	16	16	16
2/14	17	17	17	17	17
2/15	18	18	18	18	18
2/16	19	19	19	19	19

Clicker data. This is what I use to graph.

What work was completed? How well did they do? How much prompting was needed?

Time	Monday AM	Monday PM	Monday W	Monday L

This data sheet is at each student's desk and staff is able to write down how their rotation went which helps the next staff member who will work with that child to see how much work was completed. If the student needed more prompts today. It could also say the student is working hard so it offers a place to compile data on specific times of day, subject matter, and staff to student dynamics.



Each student has an "I'm working for card" and they are able to choose what they are working for- a fidget toy, swing, legos, cars, etc. Some students need to earn four stars until their break while some need to earn 2 stars. It's based on their individual needs.

Ms. HAYES. Good morning, and thank you all for being here. Under committee rule 8A we will now question witnesses under the 5 minute rule. As chair, I have decided to go at the end, so I will yield to the next senior member on the majority side who will be followed by the ranking member. We will then alternate between the parties.

Ms. SHALALA. Madam Chair, I ask unanimous consent to insert a letter in the record from the Autism Society of America in support of this hearing and in bringing to light how disproportionately seclusion and restraint practices affect students with disabilities.

Ms. HAYES. So ordered. I recognize the gentlelady from Florida.
[The information follows:]



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Statement of the Autism Society Regarding House Hearing on Restraints and Seclusion in Schools

February 27, 2019, Bethesda, MD -- The Autism Society of America is extremely pleased to see that the U.S. House of Representatives Committee on Education and Labor is bringing attention to the issue of improper use of restraints and seclusion in schools through a hearing today.

When we send our children to school, we assume that they are going to be treated fairly and that they are going to be safe from abuse and neglect. However, that is not always the case. Far too often, we hear stories from parents whose children with autism or other disabilities have been subjected to dangerous and improper use of restraints and unnecessary and abusive seclusion. In fact, data from the U.S. Department of Education [civil rights data collection](#) shows that most students restrained and secluded are students with disabilities. Students with disabilities make up 12 percent of all students but represent 71 percent of those restrained and 66 percent of those secluded.

This problem has been going on for far too long. In 2009, the [U.S. GAO did a study](#) of the issue and found no federal laws restricting the use of seclusion and restraints and it documented hundreds of cases of alleged abuse and death related to these dangerous methods. Examples of these cases include a seven-year-old dying after being held face down for hours by school staff, five-year-olds being tied to chairs with bungee cords and duct tape; and a 13-year-old hanging himself in a seclusion room. In spite of this evidence, legislation aimed at reducing the use of restraints and seclusion in schools has languished in Congress for years without action.

"I am very pleased the U.S. Congress is finally addressing this issue," said Jonathan Kratchman, New Jersey self-advocate and Autism Society Public Policy Committee member. "I have experienced restraints first-hand and am still haunted by those experiences. I hope this never happens to another student," he said.

The Autism Society of America has been advocating for federal legislation, such as the Keeping All Students Safe Act, to address this issue for many years. We strongly urge lawmakers to pass federal legislation to prevent unnecessary harm to students.

The [Autism Society of America](#) is the nation's oldest and largest grassroots organization representing children and adults with autism. For more information, contact Kim Musheno at 301-657-0881, ext. 9020.

###

Ms. SHALALA. That is all right. We are all freshman. Madam Chair, when I was HHS Secretary the tragic death of 11 year old Andrew McClain shocked the Nation. It was the misuse of physical force against Andrew that caused him to suffocate after two mental health workers wrestled him to the ground and restrained him. He was held down due to a disagreement over whether he would sit for a breakfast. They sat on his chest and he died.

My department adopted new regulations in 1999 to ban the use of restraints unless a doctor certifies that restraints are needed to ensure the safety of the patient or other patients or staff members. That regulation applied to any acute care psychiatric, rehabilitation, long-term, and children's hospitals. And I pledged at the time we would extend the same protections to residential care facilities for children and other providers by the end of the year. And we actually signed a piece—And President Clinton signed a piece of legislation into law in October 2000. Unfortunately, it did not extend to schools.

But I make the point because this issue of restraint and seclusion is a long time issue that reflects on our values as a Nation. And in my judgment, it is barbaric for schools to confine students alone in locked rooms or to use abusive methods to restrain little children. Treating school kids this way should not be tolerated in this country, period.

And so we are talking about a piece of legislation here and I would like to start with a question for Dr. Sugai. Because the data tells us that students with disabilities are often more likely to be the students secluded and restrained. In my own school district of Miami-Dade, which is one of the largest in the country, we have spent a lot of resources trying to reduce the number of children that are Baker Acted—that is, restrained and taken to a psychiatric facility. And we have done pretty well in training people in the schools.

But I want to dig a little deeper into that population. Recently a student in my school district experienced a crisis that required immediate intervention to protect the child and those around him. Measures that were applied quite frankly were uncomfortable and disheartening and even unacceptable to witness. The child's aggressive and atic behavior prompted an officer with the Miami-Dade schools police department to initiate the Baker Act. Many times a disruption caused by a student is in part due to learning disabilities or other disabilities. And as Mrs. Smith Stated in her testimony, behavior was her son's—her son Dillon's form of communication. What is the prevalence of the usage of seclusion and restraint on students who are non-verbal and what do you recommend to school districts?

Dr. SUGAI. A lot to unpack there. Thank you for the question. Let me start out by answering generally first. And that is I think it is pretty important to understand that PBIS, which has been mentioned a number of times, isn't an intervention either, that instead it is really this framework that we use to improve the quality of the decisions that we make around the interventions.

I am a special educator. I was a special ed teacher, I train special education teachers, school psychologists, and so forth, so I am pretty close to the world of disabilities. However, much of the work I

do is with all kids inside of all schools. And the primary reason that I would like to mention that is because how we support individual kids with disabilities is related to how we support all kids.

Now, kids who present challenges through their behavior, through their disability, what have you, often times present challenges that are new and different and kind of foreign to many of us and we respond sort of without thinking very carefully about it. I think the PBIS structure allows us to identify interventions that are going to be the most effective, most supportive.

I want to make another comment based on your question around disabilities, and that is I think there are two parts to this question. One is what do we do when the event happens and we engage in restraint and seclusion, and the other part is what do we do before. Many of the kids, like Dillon and others, have had a history of challenging behaviors and failures in a variety of forms. And we probably knew that the kid was communicating through his or her behaviors some needs that were unmet. And we are not always responding very favorably to those communications, if you will. Kids who are non-verbal tell us through their behaviors, they tell us by running away, they tell us by acting out, they tell us by withdrawing, they are telling us by crying. And as we have learned, as Ms. Sutton has indicated, those behaviors often times tell us a little bit about what to do next. Many of the kids who are engaging in some of our behaviors that we are concerned about do it to get access to attention and help. Some of those kids to those behaviors to escape. Kids with disabilities rely upon their behaviors as a way to communicate and sometimes their disability gets in the way of indicating effectively.

So I think your question is really an important one about the use of restraint and seclusion with kids who are non-verbal because we don't understand how to interpret kids' behaviors or individuals' behaviors.

Ms. HAYES. Can we wrap up? The time is expired.

Dr. SUGAL. Oh. Thank you very much. I think. Yes. OK. So, anyway, I just wanted to make sure that you understood that, you know, have the context in which that question is being presented.

Thank you. Sorry.

Ms. HAYES. Now I yield to the gentleman from Georgia.

Mr. ALLEN. Thank you so much, and thank you all for your testimony this morning. This is a very complex subject and obviously, you know, listening to the testimonies. Mrs. Nowicki, it looks like this may be more of a training and certification issue because each teacher looks like, if they are trained properly in how to deal with these things that the—and as—again, was witnessed in testimony this morning that there is a procedure and a process that you go through to deal with, you know, this type behavior.

In your research, you know, when you gather research obviously, you know, some of it you said is unreported, and are you getting any feedback as far as like the capabilities of the teacher, whether they have been trained? Like Ms. Sutton said, at first she really didn't—I mean she had to deal with this differently, but when she learned—I mean I would think that a teacher, particularly a special education teacher, would be trained and certified in dealing

with this. Does your data reflect anything about the success of the training or certification of the teachers?

Ms. NOWICKI. Thank you, Mr. Allen, for the question. So we have not yet looked in depth at that issue, but we do have ongoing work, as I mentioned, on restraint and seclusion in response to a congressional mandate, in which we hope to learn a little bit more about the types of responses that are commonly used and the types of outcomes that one sees when one applies them.

Mr. ALLEN. Mm-hmm. Well, I know we have a special needs grandchild, my 12th, and we have learned a lot, and she is precious. But, again, it is an ongoing learning—learned process. As far as the current government programs—because we mention it—Health and Human Services is somewhat involved in this, Department of Education. What Federal programs out there—and obviously we have the Government Accounting Office that is reviewing this—what do we have going on out there today dealing with this and how do we do it more successfully as far as accountability goes?

Ms. NOWICKI. So that is some of what we hope to dig into a little deeper in this work that we are doing on seclusion and restraint. We hope to learn a little bit more about the degree to which PBIS is being used in schools. Education does describe PBIS as a best practice alternative to restraint and seclusion. We hope to talk to some schools and districts and States and see what their experience has been in that space. We have—I think it is important to sort of remember that the Federal data is numbers, you know, on percentages, and they don't really tell the full complete story. But what you are asking is some of what we are hoping to get at when we do this work to sort of see what is going on the ground and learn a little bit more about the experiences that schools and districts have had when they used this practice that has been identified as education as a best practice.

Mr. ALLEN. Exactly. You know, in the Every Student Succeeds Act each State is required to submit to the Federal Government a plan as far as accountability is concerned. Would it be appropriate, or is this something that we might want to think about, is in having this addressed in that accountability plan? Or it may already be addressed, I am not sure. I am going to research that. But as these—I know the State of Georgia submitted a plan which was accepted by the Department of Education. Again, I want to check to see if it—anything about restraint in that compliance requirement, but have you had any experience as far as what the States re submitting to the Federal Government for approval?

Ms. NOWICKI. We haven't looked at that specifically. To my knowledge that is not something that—to my knowledge that is not required in the State plan template that most States use to submit their State plans. So I am not aware.

Mr. ALLEN. These are just ideas that I am throwing out there that might be an easy way to get more—well, we want absolute accountability; this should not happen, you know. And so, but you have got to deal with it. And the best way to do it, in my opinion, is local, State, and then reporting this data to the Federal Government.

Thank you so much and I yield back.

Ms. HAYES. Thank you. I now recognize the gentlelady from California.

Ms. DAVIS. Thank you, Madam Chair, and thank you to all of you for joining us today and being with us. I think all that you bring is really critically important.

I wonder if you could turn to the school-parent relationship, school-teacher relationship and what you found in that was helpful and also not helpful. I think, Ms. Sutton, you spoke about in Kansas that there is a State law about the seclusion and restraint which does involve the parent-teacher relationship. And certainly, Mrs. Smith, in terms of what you experienced yourself personally and, you know, all of you have had so much experience with this.

So what is it that is so important in having good notification from the school and what can we particularly be advised about when considering this kind of legislation? What is good policy, what should be scripted policy I guess I would like to ask?

Ms. SMITH. Ok. Thank you for your questions. I can add a little bit to that.

So my personal thought is that if a restraint or a seclusion is occurring, we should receive notification immediately to let us know, OK, this is what we had to do, this is why we did it. And then I know that some States have required documentation. So I think there should be—it should be documented and that should be provided within, you know, 24 hours of that period. And a meeting should occur to discuss why that happened and what can be done to prevent it.

One interesting example that I can give you, in the new school with my son, not including our—specifically that, but just as far as communication goes, at the beginning of this year he was coming into school very agitated and they couldn't figure out why. So I have a very good relationship with the school and they called me up and said we have noticed this now for a week, he is very agitated as soon as he comes in school, what is going on. And we kind of talked about it back and forth and said he is spending a lot of time on the bus and he is spending a lot of time on the bus with other kids that, you know, can have challenges as well. So we said here is a good idea, what we will do is we will give him a break as soon as he comes into school and that will help him hopefully kind of even out and get the day off on a good foot. And it did. Immediately they saw results.

So I think a lot of it is you are a team and you have to remember that you are a team and that you are there together to work to get your child's education to where it needs to be.

Ms. DAVIS. Thank you. I am going to move on just because we are limited in time.

Ms. Sutton, in terms of the Kansas law, what in that was helpful? We all know with an IEP that there should be an ongoing relationship with parents, but I think also this key notification time.

Ms. SUTTON. So everything that she just said is something that in Kansas we do. So in Kansas you have the day that the seclusion or restraint occurs you need to be contacting parents and you need to do so—like you need to try two different methods. You can't get them one way, you need to try another. And then beyond that there needs to be documentation within 24 hours. Like by the next school

day there needs to be written documentation. And in that documentation there is like 10 different components to that, and one of them is like to set up a time to have a followup meeting.

So—And that just builds everything she was talking about, that team minded atmosphere. You can build that with parents when you are consistently communicating with them.

Ms. DAVIS. Mm-hmm. And I wonder, Dr. Sugai, are there times when people think that those—that that prescriptive behavior could be burdensome to schools? Should everybody follow that? What would you suggest?

Dr. SUGAI. You know, I think the parent involvement is absolutely essential to the team plan component. And I just want to reinforce one thing that was mentioned earlier, which is it is about building a prevention plan, about what have we learned from this particular episode that would cause us to do something differently next time.

And I would add to that by saying it is a school wide response. It is not just one teacher's response or one person's response. I know that when Dillon moves through his school he connects with the bus driver, the office staff, the music teacher, the PE teacher. Every adult needs to be on the same page with respect to this.

And as a parent myself, I am going to be more comfortable if I know it is a school wide response as opposed to an individual response. And family members are key players in this whole process, as well as students participating in their own action planning and intervention planning. They have a voice in this process as well. And we sometimes forget that because we want to put something on top of them.

Ms. DAVIS. Mm-hmm. Yes. Thank you very much. I think what you refer to as all the people in the school are so critical, aren't they? And I appreciate that.

Thank you very much for your testimony today.

Ms. HAYES. And now I yield to the gentleman from Texas.

Mr. TAYLOR. Thank you, Ms. Chairman. I appreciate that.

Thank you all for being here. I think this is an important hearing. I served in the Texas legislature where we dealt with some of these issues. And we have actually we basically have eliminated seclusion in our state and we have greatly reduced restraints to only emergency situations.

And, Mrs. Smith, your testimony has very much touched my heart. It must be a lot to go through with Dillon. And he is lucky to have a mom that cares. And I think what is interesting about your testimony is just the extent to which it takes a parent and it takes people working together at the local level. And as much as we may want to fix this problem from Washington, it really is the mom who cares about her son and loves her son that is really make that effect and making that change.

Ms. Nowicki, a question for you. I understand that we have Federal policies on seclusion and restraint at the Department of Education's Office for Civil Rights. And while that may not—it is something I am not as familiar with because in Texas we basically I think have dealt with this particular issue, can you speak to what that has done nationally, where they have had an effect, if any?

Ms. NOWICKI. So, thank you for the question, Mr. Taylor. We in our ongoing work on seclusion and restraint hope to learn a little bit more about the level of awareness that districts and schools have about the guidance that Federal agencies have out there, the degree to which they have used it, if they have found it useful, if it is not useful, why not. So those are some of the issues that in our ongoing work we hope to be able to shed some light on.

Mr. TAYLOR. And then another question for you is there is a new initiative the Department of Education is undertaking to review some school districts' data. And I know that data is not consistent state to state, district to district, and so you will watch some districts say that wasn't an incident and another district will say that is an incident, and so you have very different numbers. And not by anybody trying to be nefarious, just different standards are applied in different systems—different school districts. And these might be very substantial sophisticated school districts that are spending, you know, a \$1 billion a year budget that have hundreds of thousands of children that are being educated there.

And so what is being done at DOE to try to get more consistent data so that we can really understand this problem?

Ms. NOWICKI. So that is another thing that we hope to be able to dig into in this ongoing work that we have on seclusion and restraint. That issue—The initiative was announced less than a month ago, so we really don't have a lot of information about it, but we are going to be interested to see, you know, what Education really means when they say that they are going to be conducting data quality reviews and working with schools and districts to improve the quality of their data.

What we do know is, right now about that data from a national picture is that there are strong patterns of disproportionality of seclusion and restraint with boys and students with disabilities. But we hope to learn a little more about what Education is doing there.

Mr. TAYLOR. Can you speak to the differences in what states have done in terms of, you know, some—I mean, so, for instance, it appears that Connecticut does not have State laws against something that Texas does, right. And so I am just trying to figure out how, you know—we are trying to legislate nationally, or that is what this chamber does. So currently Texas I think has solved some of this problem that Connecticut has not. Have you looked at that, have you researched in that, have you evaluated the 50 states and said, hey, these 30 States are doing it right and these states have yet to address this problem?

Ms. NOWICKI. We do not have work looking nationally at state laws and policies around seclusion and restraint. I think what you are getting at is are there best practices or lessons that can be learned, you know, maybe from one state to another. I think when, you know, we look at different approaches that states are taking, I think we generally want to see whether there is evidence out there that they are working in the context in which they are applied. We have not independently determined best practices around seclusion and restraint, but as we discussed earlier, Education has indicated that PBIS is a best practice and we do hope to learn more about states and districts that are using that framework in their approaches and what sort of experience they have had with it.

Mr. TAYLOR. Thank you. I yield back.

Ms. HAYES. Thank you. Just for clarification, I just want to add that while we do have guidance from the Department of Education's Office of Civil Rights, there is no binding policy on this right now.

I now yield to the gentleman from New York.

Mr. MORELLE. Thank you very much, Madam Chair. And I am grateful to the panelists for coming and sharing your thoughts on this important subject.

I really think just to set the table for the few minutes that I have, I served in the state legislature in New York for 28 years, wrote the law that required insurance companies to be mandated to provide habilitative services for people on the spectrum and those who had pervasive developmental delays. I also wrote the law that licensed applied behavioral analysts for the first time in New York. So I come a little bit from that perspective.

Second, work that I am doing around children in poverty in Rochester, New York where I represent, one of the concerns I have is the traumas inflicted on young people and how trauma impacted—or trauma informed care is important.

So I think from both of those, I thought this was a fascinating panel. So I wanted to—first of all, I appreciate your testimony and I did look a little back at what New York is doing since the GAO report in 2009 detailed disturbing, and at times fatal, restraint and seclusion practices. So I am going to have some more work to do in New York, which I will take up with the State Education Department, but I think they are actually—made some real progressive moves. But there is probably more to be done.

I wanted to quickly get to questions about PBIS, which I think, Dr. Sugai, you described as an organizational framework. But I would be curious on student outcomes. Those organizations, those districts that have been using PBIS as the framework, can you talk about outcomes? And can you talk a little bit about teacher retention in places? Does this affect the ability for teachers to be successful and to not get discouraged? And then I will probably have a question for Ms. Sutton as well, but if you could just address that, that would be great, sir.

Dr. SUGAI. Good question. So, again, thank you for kind of reiterating that PBIS is not an intervention. We don't PBIS kids at all. You know, PBIS I think again is a structure that helps adults make better decisions about how to support kids, not for all kids.

I think it is also important to remember that PBIS offers this tiered framework. How do we work with all kids, some, and a few, to make sure that their individual needs are being met. In general, the research we have accumulated over the last 25 years or so, if not more, just because of the behavioral interventions we kind of focus on, have been pretty clear about dealing with many of the risk factors that contribute to the events that result in restraint and seclusion.

As you mentioned earlier, trauma is not just a kid, trauma is on family, trauma is on teachers, trauma is on everybody. So, one is we have been able to demonstrate pretty significant impact on major office discipline referrals associated with fights, you know, substance use, and so forth, which are also kind of precursors for

other problems. Improvements in school climate, decreases in bullying behavior, increases in positive school climate, improvement in organizational health, improvement in how teachers perceive their working environment as being safer and being more efficient, more effective. And that comes to your retention question in a second. There is improvement in attendance and so forth. We have done a pretty good job I think in documenting sort of the overall effects on school wide implementation.

Some similar kind of outcomes are associated with working with individual students, like Dillon and others, and how to improve their individual goals on their IEPs and so forth. Going to your question a little bit about, you know, how do we think about that in the context of, you know, focusing specifically on restraint and seclusion, PBIS is really a protective strategy in order to deal with those risk factors that precede those chains of events that lead to restraint and seclusion. And I really would suggest to you that, you know, we really need to have a focus on what is required to make sure people do the right thing at the state, district, school level. And even if it is reinforcing something that is in place in one place versus another, having one common message will be an important kind of goal.

Thank you.

Mr. MORELLE. Thank you. If I can, Ms. Sutton, as I often say, my wife is a retired middle school teacher. Special place in heaven for middle school teachers. But I know that time is not a luxury for—or time is a luxury for teachers and I applaud all the work they have done.

I just wonder if you could—and I understand also, you mentioned in your testimony you moved from frequent high rates of restraint in the first year to only one restraint this year, which obviously is pretty impressive. In a short answer, could you just share with us how reducing restraint has sort of impacted your life as a teacher, particularly as it relates to your relationship with your students and sort of the climate in your classroom?

Ms. SUTTON. Yes, it is pretty straightforward. Everyone in my classroom can breathe a little easier now. When there were high rates of restraint, my classroom was no longer a safe, inviting place for my students to come every day. But decreasing that number, my students feel safer, I am able to work better with my paraeducators [paras], I can build relationships with families, I feel better. It's just all around better. There is like a calmness that was not there before.

Mr. MORELLE. Well, thank you. I—I do appreciate the panelists being here. This is an important subject.

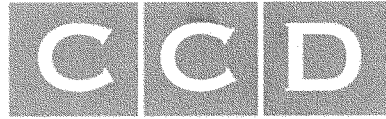
And I would say, as a former state legislator, that I don't see this as a conflict. I appreciate the comments my colleagues made. This is really the Federal, state, and local governments working hand in hand on trying to address a more progressive way of dealing with the children that are in our collective care. So I don't see it necessarily as a conflict, but rather a coming together. So I appreciate that and I appreciate all the great work you do.

Madam Chair, I ask unanimous consent to submit the following letters, one from the Consortium for Citizens with Disabilities, and one—I apologize, I have to put my glasses on—The Alliance to Pre-

vent Restraint, Aversive Interventions and Seclusions. The first urges the elimination of using dangerous and dehumanizing practices and means of managing challenging behavior, and the second regarding national minimum standards to prohibit the use of seclusion and prevent the use of restraint in schools.

Ms. HAYES. So ordered. I now yield to the gentleman from Washington. I am sorry, Wisconsin.

[The information follows:]



**CONSORTIUM FOR CITIZENS
WITH DISABILITIES**

February 25, 2019

The Honorable Gregorio Kilili Camacho Sablan
United States House of Representatives
Washington, DC 20515

The Honorable Rick Allen
United States House of Representatives
Washington, DC 20515

Dear Chairman Sablan and Ranking Member Allen:

On behalf of the undersigned members of the Consortium for Citizens with Disabilities (CCD), we write to ask for your leadership to protect the safety of children in our schools today. The CCD has advocated for many years that federal legislation is needed to establish national minimum standards to prohibit the use of seclusion and prevent the use of restraint in schools. Restraint and seclusion are dangerous practices that continue to cause children trauma, injury and death. We need more than the current patchwork of state laws to ensure that every child is afforded protection. Such legislation will strengthen protections in every state and ensure the safety of all students and school personnel.

Unfortunately, the use of restraint and seclusion is widespread. Data from the U.S. Department of Education Civil Rights Data Collection shows that most students restrained and secluded were students with disabilities, who comprised 12 percent of all students enrolled, yet represented 71 percent of all students restrained and 66 percent of all students secluded.ⁱ Our nation's children deserve better.

These practices, in addition to being harmful and unnecessary, are costly. In 2018, research on a single behavioral healthcare facility showed that trauma-informed, less restrictive alternatives provided safer treatment for individuals with a variety of disabilities and saved over \$16 million in lost staff time expenses, turnover costs, and workers compensation policy costs.ⁱⁱ

Our organizations want to work with Congress to move restraint and seclusion legislation forward. As such, we point to work conducted in previous Congresses to develop the *Keeping All Students Safe Act* (KASSA), legislation designed to protect our nation's school children from seclusion and unnecessary use of restraint and to help states provide districts with resources and training for school personnel. Under your leadership, that bill can now be seriously considered in the House Education and Labor Committee.

We urge you to support the bill's prohibition of seclusion, limitation of physical restraint to true emergencies; and use of de-escalation techniques, conflict management and evidence-based positive behavioral interventions and supports. Such a shift of focus will also ensure school personnel receive much needed training to help them understand the needs of their students and

safely address the source of challenging behaviors – a better result for everyone in the classroom. KASSA also includes important provisions to update data collection to ensure greater transparency in the use of restraint.

CCD thanks you for your commitment to examining this important issue and looks forward to working with you.

Sincerely,

ACCSES
American Association of People with Disabilities
American Civil Liberties Union
American Music Therapy Association
American Network of Community Options and Resources
American Physical Therapy Association
American Therapeutic Recreation Association
Autism Society of America
Autistic Self Advocacy Network
American Occupational Therapy Association
Center for Public Representation
Children and Adults with Attention-Deficit Hyperactivity Disorder
Council for Exceptional Children
Council for Learning Disabilities
Council of Parent Attorneys and Advocates
Disability Rights Education & Defense Fund
Division for Early Childhood of the Council for Exceptional Children
Division for Learning Disabilities of the Council for Exceptional Children
Easterseals
Family Voices
National Association of Councils on Developmental Disabilities
National Association of School Psychologists
National Association of State Head Injury Administrators
National Center for Parent Leadership, Advocacy, and Community Empowerment
National Center for Learning Disabilities
National Center for Special Education in Charter Schools
National Disability Institute
National Disability Rights Network
National Down Syndrome Congress
National Health Law Program
National PTA
Teacher Education Division of the Council for Exceptional Children
The Advocacy Institute
The Arc of the United States

cc: The Honorable Bobby Scott
The Honorable Virginia Foxx

The Consortium for Citizens with Disabilities, headquartered in Washington DC, is the largest coalition of national organizations working together to advocate for federal public policy that ensures the self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society. Since 1973, CCD has advocated on behalf of people of all ages with physical and mental disabilities and their families. CCD has worked to achieve federal legislation and regulations that assure that the 54 million children and adults with disabilities are fully integrated into the mainstream of society.

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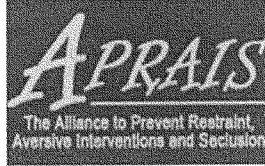
¹ Civil Rights Data Collection 2015-2016, (updated 2018) U.S. Department of Education at:

<https://www2.ed.gov/about/offices/list/ocr/docs/school-climate-and-safety.pdf>

¹¹ J. Craig, K. Sanders, Evaluation of a Program Model for Minimizing Restraint and Seclusion, *Advances in Neurodevelopmental Disorders* 2:344-352 (2018), at:

https://link.springer.com/epdf/10.1007/s41252-018-0076-2?author_access_token=RuZcKbb97PTjYe3GXxTJ2_e4RwiQNehNBvi7wbcMAY576viY1zy1Cz24BL9xsV7xYTTTQERi3OljhSM1NV9kaWDo3usQ66oJrA1jli3cWWtj8vdVGA2q1v4jI XzFm0UiCm0tF6cNEBWORUmPv7cg%3D%3D

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February 25, 2019

The Honorable Gregorio Kilili Camacho Sablan
 United States House of Representatives
 Washington, DC 20515

The Honorable Rick Allen
 United States House of Representatives
 Washington, DC 20515

Dear Chairman Sablan and Ranking Member Allen:

The Alliance to Prevent Restraint, Aversive Interventions and Seclusion (APRAIS) was established in 2004 by leading education, research and advocacy organizations with a common goal: to eliminate the use of dangerous and dehumanizing practices as a means of managing challenging behavior. Comprised of over 25 civil rights and disability advocacy organizations at both the national and state levels, APRAIS seeks to end of use of unnecessary and dangerous interventions in schools, treatment programs and residential facilities. We also seek to ensure that all children with disabilities grow up free from the use of aversive interventions including restraints and seclusion to respond to or control their behavior.

Though the use of restraint and seclusion is widespread, national data indicates that students with disabilities are roughly 20 times more likely than their peers without disabilities to be restrained and/or secluded. *All* of our nation's students deserve better. Children with disabilities should also be free from the fear that these harmful forms of behavior management will be used on them, their siblings, classmates, or their friends.

Today, APRAIS writes to urge the House Subcommittee on Early Childhood, Elementary and Secondary Education to engage in a meaningful and data-driven dialogue regarding the use of seclusion and restraint in our nation's schools – which have been demonstrated to result in emotional and physical trauma, serious injury, and even death. There is no evidence of their effectiveness in improving behavior or academic performance. In fact, the evidence on these practices that are neither ethical nor beneficial is that they are far more likely to have a spiraling effect resulting in additional unwanted behaviors. Further, there is an existing and growing body of evidence in support of positive alternatives in addressing challenging behaviors.

To that end, we ask you to work with your colleagues to develop legislation that will prohibit seclusion and limit physical restraint to true emergencies; and, support preventing problematic behavior through use of de-escalation techniques, conflict management, and evidence-based positive behavioral interventions and supports. This improved focus on prevention and training will greatly benefit students and school personnel alike.

Last Fall, APRAIS supported the *Keeping All Students Safe Act (KASSA)*, introduced by Rep. Beyer (D-VA) which includes these important provisions. We therefore encourage the House Education and Labor Committee to thoughtfully consider all components of KASSA to ensure a comprehensive bill is developed for consideration by the 116th Congress.

We stand ready to assist you and look forward to engaging with you in the development of the legislation so that all children, including children with disabilities, can be free of these harmful practices in school.

Sincerely,

The Arc of the United States
American Association of People with Disabilities
Autism Society of America
Autistic Self-Advocacy Network
Bazelon Center for Mental Health Law
Center for Public Representation
Council of Parent Attorneys and Advocates
Council for Exceptional Children
Disability Rights Education and Defense Fund
Family Alliance to Stop Abuse and Neglect
National Alliance on Mental Illness
National Association of Councils on Developmental Disabilities
National Association of State Directors of Special Education
National Autism Association
National Center for Learning Disabilities
National Disability Rights Network
National Down Syndrome Congress
Parent to Parent USA
Respectability Law Center
SPAN Parent Advocacy Network
TASH

cc: The Honorable Bobby Scott
The Honorable Virginia Foxx

Mr. GROTHMAN. Wisconsin. Bip, bip, bip, bip, bip. Kind of together up there in the northern part of the country.

Ms. NOWICKI, do you believe that the public is aware that the Department of Education and Health and Human Services have resources regarding restraint and seclusion? Does the public know that do you think?

Ms. NOWICKI. That is part of what we hope to learn in our ongoing work on restraint and seclusion.

Mr. GROTHMAN. So you think the agencies can maybe do more to educate the public that they have resources available?

Ms. NOWICKI. Again, that is part of what we hope to learn during our ongoing work.

Mr. GROTHMAN. Ok. And you are doing work broadly. What do you feel you are going to learn from your work dealing with—

Ms. NOWICKI. I think we hope to learn about the challenges that schools and school districts face in providing accurate data on restraint and seclusion. We hope to learn a little bit more about why data might be misreported. And to your earlier question, we hope to learn a little bit more about whether there is anything that the Federal Government can do to help increase awareness of guidance it may have, whether it is perceived as being helpful.

Mr. GROTHMAN. Ok. I guess, and I apologize, I have two hearings going on right now, but initially we heard I believe some horrific stories of abuses of restraint in the schools. Is that correct?

Ms. NOWICKI. There was testimony to that account, yes.

Mr. GROTHMAN. Right. Across the country, when this abuse is happening, is there anything that you can tell us that you find in common in these situations, that it involved teachers who had previously done bad things and were not adequately trained? What sort of conclusions can you draw from the high profile horrific things that have happened?

Ms. NOWICKI. My sense is that you may be asking about the report that GAO did about 10 years ago on restraint and seclusion that reported on those types of cases. I think, you know, what I would draw from that report is that highlighted a number of tragic cases that should not have happened. What I think that report—

Mr. GROTHMAN. Should never happen. I mean just unbelievable. But go ahead.

Ms. NOWICKI. I think, you know, what that report does not do, we did not have the benefit—we, all of us, did not have the benefit of national data on the degree to which restraint and seclusion is occurring back then as we do now. So that report didn't really have the context in which that is happening. I testified earlier that restraint and seclusion in general is very rare.

I think that report also—it is important to understand that whenever anyone looks at a illustrative case examples, they are—that methodology is never intended to be a full accounting or a full picture of what is going on the ground as well, so.

Mr. GROTHMAN. No, no, no. But I think when horrific things happen, and when they happen several times, when you read about them you can't help but draw conclusions or find similarities. And that is what I am trying to get at. I mean were there—there has to be a degree of callousness out there to over apply restraint or seclusion. And I wondered if, you know, was it disproportionately

happening in given states, was it disproportionately happening with education staff that didn't know what they were doing or under qualified, were there examples of staff that were admonished and came back and did things again? I guess that is what I am looking for. I would think whenever you have a series of bad things happening, you can't help but draw some broad conclusions, and that is what I am looking for.

Ms. NOWICKI. I think the broad conclusions that we can draw from the national data that we have available is that restraint and seclusion is incredibly rare and that it overwhelmingly or disproportionately affects students with disabilities and boys.

Mr. GROTHMAN. Right, but the horrible abuses should never happen. In cases where people are actually hurt, do you draw any similarities between those? Any conclusions that you can draw that would cause these things not to happen again?

Ms. NOWICKI. The work that I have done has not gone down that path. I am sorry.

Mr. GROTHMAN. Ok. I guess then I will fall—because I missed the beginning I am afraid to mispronounce your name—Doctor—

Dr. SUGAI. Sugai.

Mr. GROTHMAN. Sugai. Ok. Are there any broad conclusions that you draw of the most horrific things that have happened?

Dr. SUGAI. You know, I think one of the things we have learned is that most educators want to do the right thing. And what happens is two things. One is we may not have the skills to be able to respond appropriately, we may have the skills but we are not good at it. You know, the kids are really good at what they do and we are sometimes not as good in our response. Third thing we have learned is that, you know, sometimes the structures are not in place in a school wide system to be able to have a reasonable response that prevents some of these horrific things from happening.

I agree that the restraint and seclusion traumatic events are relatively infrequent, but at the same time, I also would argue that there are other events that are similar that might lead to that are not responded to in favorable ways. And I really do think that it is important to kind of think about people are trying to do the right thing, but we are not creating teaching and learning environments that actually support development of a safe, caring, and predictable environment for kids to be successful, all kids in particular.

So I am right on the same page with respect to your concern. I think it is not about good and bad people, it is more about are we supporting staff to be able to implement the right thing over time in the right place.

Mr. GROTHMAN. Ok.

Ms. HAYES. Thank you. I now yield to the gentlelady from Washington.

Ms. SCHRIER. Thank you, Ms. Chairwoman. My question is for Dr. Sugai. I am a pediatrician and so I have seen up close and personal kids who act out and the benefits of positive behavioral reinforcement, and also the effects of fight and flight and toxic stress, and seclusion and restraint. And when this happens over and over again—we have already discussed what happens in the classroom and in the contemporary setting, but I wonder if you could talk for

my colleagues about the long-term implications and what happens to these kids later on in life, what the implications are?

Dr. SUGAI. Yes. Great question. And I am going to respond to it generally, not just with kids with disabilities, but all kids who experience these kinds of events. And I fall back on some of the research out there on trauma, and the effects of trauma, regardless of what it is. This is a traumatic event and it has an effect not only on the student, but the teacher and the family members, and so forth. So if you look at that trauma literature it is pretty clear what the impact is. It affects kids' academic progress, it affects their ability to develop and maintain relationships, it affects their ability to be able to be successful in their own personal lives, with friendships, family, and work. So the implications are pretty significant and we really upon that trauma literature to help us with that.

The restraint and seclusion literature is not as strong about the long-term effects, except that one thing we have learned is those kids, because often times they cannot communicate in ways that are more typical, have a much more difficult time trying to express their needs in the long-term. We end up seeing kids that have had experiences with restraint and seclusion also ending up getting involved in the juvenile justice system as well as mental health.

So I think the long-term factors are significant and I think that is one of the concerns we have about, you know, making sure we have appropriate restrictions in place on the use of this stuff.

Ms. SCHRIER. Sorry. Thank you for that answer. I would also note that it is my understanding that kids exposed to toxic stress—and this would likely be included because there is a whole milieu there—also have problems later with mental health, with drug abuse, but also with things like type 2 diabetes, hypertension, and heart disease that we don't often relate, but physical health and mental health are tightly intertwined there.

So thank you for your testimony.

And I yield the rest of my time to my colleague, Ms. Shalala.

Ms. SHALALA. Thank you. Thank you very much. Dr. Sugai, I don't think I gave you enough time to answer my question, so I was going to offer you that time now.

Dr. SUGAI. I talked too much that I don't remember the question now.

Ms. SHALALA. Yes. It really had to do with children with disabilities and these restraints and what are the specific things, in addition to the kind of framework training program that you have given us.

Dr. SUGAI. Right. So two things, and I will kind of restate something that was made earlier. I think sort of a function based approach to this is really important. There was a comment earlier about what meaning or communications are occurring around behavior. And we have to understand what kids are communicating through their behavior, especially in an escalating chain.

The other thing we have learned is these escalations, if you will, or what results in restraint and seclusion, are often also the adult is escalating at the same time. And we want to ask ourselves the question about what can adults do differently to diffuse or redirect these experiences.

And the last thing I would like to comment on is that if I was working a child like Dillon, you know, I would be asking what are the conditions under which this is increased likelihood of happening and what can we do to arrange the environment that would enable the kid to be successful in that environment as opposed to being unsuccessful.

I know that every one of us in this room set an alarm clock to be here on time and that alarm clock is a way to pre-correct for an error. And we need to be setting alarm clocks with our kids so that we avoid the likelihood of problems occurring.

I also know that some of you had to set two alarms on your smart phone to get here on time. That means that some kids need a little extra, and Dillon might be one of those students who needs a little extra support in order to be successful.

And there are some of you who had to call your mother last night and say, mom, call me in the morning to wake me up to make sure I get here on time. And that is a third level of intervention that some kids need to have in order to prevent those cycles from happening in which restraint and seclusion is the outcome.

So when I think about kids with disabilities, I really think about what kinds of alarms can we set that can catch kids before they go down that pathway, but help adults be more successful in supporting those kids. I worry about waiting for the kids to tell us when they are ready or not, because they just don't have the skills or the means to communicate that to their environment.

Ms. SHALALA. Thank you, Dr. Sugai, and I thank the gentlelady from Washington for the time.

Dr. SUGAI. Thanks for the extra time.

Ms. HAYES. Thank you. I now yield to the gentlelady from Nevada.

Ms. LEE. Thank you, Ms. Chairman—Chairwoman. First of all, I want to thank you all and I am very happy that we are taking up this issue in this subcommittee today. My background is working for nonprofit organizations that help our most at-risk students graduate from high school, and obviously students with disabilities being among the most vulnerable.

So I agree with Dr. Sugai who says that teachers want to do the right thing and it is really providing with them with the supports. And having been—I am the mother of a daughter who is—was diagnosed with ADHD and dealt with interventions. She does not have a disability, but the stress that our family went through—Mrs. Smith, when I read your testimony, and thank god you had a resolution that worked for your family, but the stress that it places on a family. And having read the GAO report with so many families that did not have that resolution just breaks my heart.

Ms. Sutton, I—you know, I know there are so many teachers like you who want to do the right thing. And I wanted to ask you, had you not taken upon yourself to get the education, where do you think you would be today?

Ms. SUTTON. It is tough to think about, and I don't really like to think about where I would be at. I don't know that I would still be teaching. I would be, I think I would be burnt out, honestly.

Ms. LEE. I wanted to ask you about incidents. You know, in Las Vegas we had an incredibly troubling incident where a mother

went to school to find that her son was secluded in an outside area when it was 105 degrees outside. And, you know, my heart breaks for her. So I know we need to make changes and have a national guidance. And its, You know, to me it is really just guidance. But I wanted to talk about parents and documentation. When you find that you have to—your one incident, can you explain how did you document that and what does that look like?

Ms. SUTTON. So in my district we like have to document restraint and seclusion through a district website. So everyone has to do that. And then we call parents and we discuss it. And for me, I found like the most beneficial is to like really like talk to parents, like hey, this is what I am seeing at school, what are you seeing at home. And then, again, that team minded atmosphere, like oh, you tried that at home and that worked, let me try that at school. So just working together.

Ms. LEE. Mm-hmm. And any account—. No, Sorry, I want to move on. In Nevada, my state, mechanical and physical restraints are prohibited unless extenuating circumstances, such as an emergency or medical order, but even in these cases, parents should be aware of how their children are being treated.

Do you discuss restraint as a possibility in advance?

Ms. SUTTON. No, because it is never the goal. Restraint is never the goal. My goal as the teacher is to provide the students coping skills and that is what I include in documentation, not restraint.

Ms. LEE. Ok. And then my last question really is around time. And clearly having this type of one on one interaction with parents, in a perfect world what do you feel would be needed for teachers to have the type of—you know, provide the type of support you do?

Ms. SUTTON. I think it is just the willingness to do it, because if you are not doing it, you are doing a disservice to the kids and the families. So you need to be willing to make the time to communicate with people.

Ms. LEE. Thank you. I yield the remainder of my time.

Ms. HAYES. Thank you, Ms. Lee. I am going to ask the next set of questions.

First of all, as a teacher, I know that the last thing that a teacher wants to do is ever restrain a child. As I sit here I am a little surprised though that this conversation hasn't really expanded outside of just special ed and regular ed because I know that even without the data, having been in a classroom, that we really need to begin to disaggregate this data by race, by gender, by learning disorders, behavior disorders. Because I know that boys, especially boys of color, are disproportionately impacted in my district. I have seen it all over the country. And I think that has to be a part of the conversation. What does that look like, why, you know, why are we going right to restraint in many of these issues.

Ms. Smith, thank you so much for being here and being a voice for your child. I am always very cognizant of the fact that not every parent is able to do what you did for your son or to seek those services or to demand that his needs are met. So in my mind I always say that the school has to do it, you know, that the educators have to be ready because our job is to in essence educate children.

Ms. Sutton, you just said that you don't have conversations with parents before, and I recognize why. I heard your answer that it

is usually an emergency. And I know that there is concern about the use of planned restraints, but we also know that there are some situations or some students—do you ever have conversations with parents that start with, you know, if this were to happen, or if we ever had to use a restraint, here is information, this is why, this is what that looks like? Not to say that you are preparing for it, but just beginning to have those conversations so that a parent is not getting a call that says 911 has been dispatched and you need to get here before the police and the ambulance. Do you think that there is a space for those conversations to happen?

Ms. SUTTON. I think there is a space for it, but I think it comes with—it is not going to seem so intense when you have a trusting relationship with the family. So it is going to be open communication anyway. So it doesn't need to be this big daunting thing, but it could be this might happen.

Ms. HAYES. But, Ms. Smith, can I ask you would you have felt better prepared for a situation where your son was being restrained if the conversation was had before you were in this high-pressure situation where—and now you are making these decisions like in the moment with your son being threatened to be put in handcuffs? Would you have appreciated at least a conversation about why a school would even go down a path of restraining your child?

Ms. SMITH. Yes. I would have been interested in receiving documentation of what the process is, at what point do they do each one of these steps. So at what point do they feel the need to restrain, what requires restraint. And then if the restraint doesn't work, what is the next step, what do they do. So that would have been something that—it would have been nice to receive that and to kind of understand what brought them to that point.

Ms. HAYES. Information is good. Dr. Sugai, it is always great to have someone from Connecticut here in this room, especially someone from our flagship educator preparation program. And we have known that the work that you and your colleagues are doing to help reduce challenging behaviors and improve school climate, we have known about all that. But have you seen much implementation nationwide on these programs? I mean I was in a district that supported PBIS, but how can we in Congress better support schools to use PBIS and reduce seclusion and restraint?

Dr. SUGAI. Good question. So if I may, I just want to respond a little bit to the previous question, and that is just to say that I think all schools have to be prepared for crisis and emergencies. It could be the child who has a substance abuse, you know, problem, it could be a gang fight going on, it could be a rabid dog in the hallway, it could be a fire. We need to have planned responses for those unfortunate events are likely to happen at the individual kid level or other.

I also think though that has to be balanced with, again, a positive climate in which you feel comfortable in responding to those kinds of situations in ways that are proactive and preventative.

So I just wanted to respond a little bit by saying I do think you need to have a planned response for the full range of problems that might occur, which might include restraint and seclusion. And that has to be a planned response, you have got to be competent at it

and so forth. But it has got to be balanced with a proactive positive support system, which is your first real question.

We have been really fortunate. We have about 26,000 schools that have touched PBIS in some way or fashion. And the challenge for us is how do we increase implementation fidelity. About 65 percent of those schools are implementing with high degrees of fidelity based on our measure that we use. The supports for more intensive interventions, for kids with more significant challenges, isn't as great because the intensity of the support is much more complicated.

I think our implementation nationally could be scaled up, if you will, and current efforts sustained if we had the ability to give districts and States some structure that allowed them to be able to use their resources efficiently and effectively. And I think that is where the Federal Government could give guidance, because there is so much variability right now and a lack of ability to be able to organize their resources.

Ms. HAYES. Thank you. I now yield to the gentleman from Virginia.

Mr. BEYER. Thank you, Madam Chair, very much.

Ms. HAYES. Thanks for joining us.

Mr. BEYER. Thank you. It is an honor to be here, however temporarily. And I want to thank all of you for being at such an important meeting.

Seclusion and restraint are dangerous, ineffective practices that can cause students permanent harm and should be eliminated or tightly regulated in all our schools. I was very proud to inherit the Keeping All Students Safe Act from then-Chairman George Miller, and now champion it with Chairman Bobby Scott, a bill which aims to prevent such harmful discipline practices.

Every child should be safe and protected in school, every parent should know when something happens to their kids. And we know the alternative to seclusion and restraint exists. Many schools around the country are implementing behavioral interventions that respond and resolve the behavior before it escalates and that maintain the dignity of the child in distress and the safety of both students and school personnel.

I am the father of four. More than once I have been called into school when the kids were out of control. This Keeping All Students Safe Act has been introduced in every Congress since the 111th. We are now at the 116th. It has passed the House before, but a new improved version will be shortly introduced. But your feedback today really helps this bill, makes it better, and builds the support that we need.

Ms. Sutton, in the ranking statements the ranking member's opening statement he argued that every State is different and that we should, to the extent possible, let the States' individual school systems decide, which, you know, has some merit. But there are 11 States that have no laws or regulations and there are 39 states that do, and they vary widely from state to state.

So three quick questions. Are students the same from state to state? Is seclusion ever appropriate? And what is wrong with the minimum standard across the country for those receiving Federal funds?

Ms. SUTTON. What was the first part of that?

Mr. BEYER. Are students relatively the same between Kansas and Virginia and Nevada?

Ms. SUTTON. I think students—yes, they have similar qualities, but I think every—it would be nice to have guidelines because if a student is going from one State to another, like the standards are going to be different. So it would be nice to have like consistent guidelines.

Mr. BEYER. So is there anything inherently evil about have a minimum standard for the country?

Ms. SUTTON. No, not inherently evil.

Mr. BEYER. Ok. You know, Ms. Smith, you know, one of the most troubling and challenging pieces of this issue is that parents don't know about seclusion or restraint. And I can't tell you how upsetting that has to be as a parent. Thanks for sharing your story, which I know is very difficult. How are you ultimately made aware of the restraint incident, how long had it been going on with Dillon as a kindergartener before you knew?

Ms. SMITH. It just kind of happened. So 1 day I received a call and they would tell me, oh, just so you know, this is what happened and we restrained him today. And I wasn't sure what they meant because I know that there are all different kinds of restraints, but I believe it is the first time they did give me a phone call and they did tell me, we had met. We had subsequent meetings. But I was made aware after that, that they were doing it very regularly and I wasn't—I didn't know. Through various comments from various people it seemed like it was just happening more than I was aware of.

Mr. BEYER. How specifically should a parent be notified? Every time, the first time, after the 10th time?

Ms. SMITH. I—Well, I think every time that it happens they should receive a phone call of what kind of restraint was used, why it was used, what started the whole situation. And then, you know, a meeting should be held shortly after to discuss that further and find out what can be done to prevent further restraint or seclusion.

Mr. BEYER. Thanks. Ms. Sutton, the bill that we are about to introduce talks about this minimum standard, but I don't think it specifically requires training for teachers. How should we best address that? Because you certainly talked about how the training changed your life and your teaching.

Ms. SUTTON. There needs to be training because we have talked a lot about the effect it has on students, but like teachers who have to implement these restraints, it is exhausting. It really takes a toll on you mentally and physically. So if there is not training for teachers or all school personnel, then restraints are not going to be happening appropriately.

Mr. BEYER. And my able staff just corrected me and said there is training in the bill. So we are moving in the right direction.

Madam Chair, I yield back.

Ms. HAYES. Thank you. I think all of our questioning has ended. I remind my colleagues that pursuant to committee practice, materials for submission for the hearing record must be submitted to the committee clerk within 14 days following the last day of the hearing, preferably in Microsoft Word format. The materials sub-

mitted must address the subject matter of the hearing. Only a member of the committee or an invited witness may submit materials for inclusion in the hearing record. Documents are limited to 50 pages each. Documents longer than 50 pages will be incorporated into the record via an internet link that you must provide to the committee clerk within the required timeframe. But please recognize that years from now that link may no longer work.

Again, I want to thank the witnesses for your participation today. What we have heard is very valuable. Members of the committee may have some additional questions for you and we ask the witnesses to please respond to those questions in writing. The hearing record will be held open for 14 days in order to receive those responses.

I remind my colleagues that pursuant to committee practice, witness questions for the hearing record must be submitted to the majority committee staff or committee clerk within 7 days. The questions submitted must address the subject matter of this hearing.

I now recognize the distinguished ranking member for his closing statement.

Mr. ALLEN. Good. And thank you for your chairing this hearing. This has been very educational for me in trying to understand a very complex subject. Mrs. Smith, thanks for being a great mom. You are a real example for all moms out there and to come and tell your story is very moving. But thanks to all the witnesses. Again, you have laid out the issues. I do believe that this really centers around understanding the situation and being trained to deal with the situation and then some type of a process that we can make sure that each child is loved on and cared for and that anything like this would be an absolute last resort.

So we have just got to figure out how is the best way to go about that. I applaud Kansas. I think you all have done some great work on this. And some other States that need to get involved in that.

With that, thank you so much, again.

And I yield back.

Ms. HAYES. Thank you. I now recognize myself for the purposes of making my closing statements.

First, I seek unanimous consent to submit letters in support of Federal minimum safety standards and the Keeping All Students Safe Act. The letters are from the American Civil Liberties Union, the Council of Parent Attorneys and Advocate, the National Council on Disability, The Arc, the Council for Exceptional Children, the National Association of School Psychologists, and the National Center for Special Education in Charter Schools.

[The information follows:]

February 25, 2019

The Honorable Gregorio Kilili Camacho Sablan
Chairman
Subcommittee on Early Childhood, Elementary and Secondary
Education
House Committee on Education and Labor
2176 Rayburn House Office Building
Washington, DC 20515

The Honorable Rick Allen
Ranking Member
Subcommittee on Early Childhood, Elementary and Secondary
Education
House Committee on Education and Labor
2176 Rayburn House Office Building
Washington, DC 20515



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Susan Herman
President

Anthony Romero
Executive Director

Ronald Newman
*National Political
Director*

Dear Chairman Sablan and Ranking Member Allen:

On behalf of the American Civil Liberties Union and our more than three million members, activists, and supporters, we submit this letter for the record of the Subcommittee on Early Childhood, Elementary and Secondary Education's hearing on "Classrooms in Crisis: Examining the Inappropriate Use of Seclusion and Restraint Practices." We strongly support the Subcommittee's scrutiny of the harmful use of aversives, restraint, and seclusion in our schools which deny students an equal educational opportunity and violate their civil and human rights.

The practice of restraining and secluding schoolchildren is not new and has been implicated in countless and often ongoing cases of severe, pervasive, and traumatic abuse across the country. Despite numerous studies, investigations, and governmental hearings at the state and federal level, too many of our schoolchildren continue to be subjected to actions by teachers, administrators, and other school personnel that threaten their health and safety. Over the years, we have become aware of the horrifying stories that pierced the public's consciousness—stories of children being locked in closets, arms bound in handcuffs behind their back or even suffocating to death from inappropriate use of force.¹ Even when these techniques are used in less dramatic fashion, children often

experience lifelong trauma. And the alarming truth is that most incidents of restraint and seclusion occur in the shadows, with impunity, and far from public or even parental view. Indeed, a large percentage of school districts reported no data on students being subject to restraint and seclusion—despite parent reports of horrific abuses.

These draconian and dangerous practices are most frequently used against students with disabilities and students of color. Based on data provided by the Department of Education, while students with disabilities represent only 12% of school enrollment, they constitute 71% of those students subject to restraint and 66% of those students subject to seclusion.ⁱⁱ Although African-American students made up just 15.5% of total student enrollment, they were 25.1% of students subject to physical restraint, 33.7% of students subject to mechanical restraint and 22.4% of students subject to seclusion.ⁱⁱⁱ

The effects include substantial and disproportionate physical and emotional injuries and disruptive exclusions from the educational process. The use of unnecessary restraint and seclusion by federally funded schools—either directly or through contractual arrangements with private special education schools—has no pedagogical basis, discriminates against students with disabilities, and impairs the educational objectives of public schools with respect to children with disabilities. Often, restraint and seclusion is carried out because of inadequate teacher training, a desire to punish a student on the part of school personnel, or bias against students with disabilities, students of color or those students who fall into both categories. This is not how we should treat our children. They deserve better.

Currently, no federal laws restrict the use of restraint and seclusion in schools. At the state level, as of the end of 2016, less than half of states and the District of Columbia have laws limiting restraint of all children to immediate threats of physical danger.^{iv} Only five states have laws banning seclusion for children with disabilities, and only two bar all uses of seclusion for every child.^v A national response is necessary and long overdue.

The Keeping All Students Safe Act (KASSA) would provide much needed protections for all students, and particularly those disproportionately impacted by these practices. It would put in place national standards regarding these practices. KASSA would prohibit the use of seclusion, mechanical restraint, chemical restraint and aversives, and limit the use of physical restraints to emergency situations where a student's behavior poses an imminent danger of serious physical injury and where less restrictive interventions would be ineffective in stopping such imminent danger. Additional KASSA provisions would increase reporting and accountability by requiring that Protection and Advocacy organizations be notified when physical injury or death results from any intervention used to control behavior at school. It would also provide support to school staff by requiring states to ensure that a

sufficient number of school personnel are trained and certified by a state-approved crisis intervention training program, and establish a system of competitive grants to assist states in meeting the legislation's minimum standards.

Creating safer, more positive and supportive learning environments requires addressing the entire spectrum of counterproductive and excessively harsh punishments that disproportionately affect our country's most vulnerable students—most often low-income students, students with disabilities, and students of color. Eliminating the use of seclusion and drastically reducing the use of restraints in our schools is a critical component of that effort. We look forward to working with members of the committee to achieve this goal.

If you have any questions, please contact Vania Leveille at vleveille@aclu.org or Mike Garvey at mgarvey@aclu.org.

Sincerely,



Ronald Newman
National Political Director



Vania Leveille
Senior Legislative Counsel

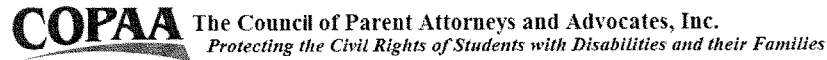


Mike Garvey
Senior Policy Analyst

CC: Chairman Bobby Scott, Committee on Education and Labor
Ranking Member Virginia Foxx, Committee on Education and Labor

¹ U.S. Gov't Accountability Office, *Seclusions and Restraint: Selected Cases of Death and Abuse and Public and Private Schools and Treatment Centers (May 2009)*, available at gao.gov/new.items/d09719t.pdf; U.S. Dep't of Educ., Office for Civil Rights, *Civil Rights Data Collection, Data Snapshot: School Discipline Data (Mar. 21, 2014) (OCR Data)*; National Disability

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- ¹¹ U.S. Dep't of Educ., Office for Civil Rights, *School Climate and Safety: Data Highlights on School Climate and Safety in Our Nation's Public Schools 12* (2018), *available at* <https://www2.ed.gov/about/offices/list/ocr/docs/school-climate-and-safety.pdf>.
- ¹² U.S. Dep't of Educ., Civil Rights Data Collection, *2013-14 State and National Estimations*, *available at* https://ocrdata.ed.gov/StateNationalEstimations/Estimations_2013_14.
- ¹³ Jessica Butler, Autism Nat'l Comm., *How Safe is the Schoolhouse? An Analysis of State Seclusion and Restraint Laws and Policies 25* (2017), *available at* <http://www.autcom.org/pdf/HowSafeSchoolhouse.pdf>.
- ¹⁴ *Id.* at 5.



February 25, 2019

The Honorable Gregorio Kilili Camacho Sablan
United States House of Representatives
Washington, DC 20515

The Honorable Rick Allen
United States House of Representatives
Washington, DC 20515

Dear Chairman Sablan and Ranking Member Allen:

The Council of Parent Attorneys and Advocates (COPAA) is writing on behalf of the 6.8 million students with disabilities under the Individuals with Disabilities Education Act (IDEA) and over 700,000 students with plans under Section 504 of the Rehabilitation Act of 1973 and their families.

The students we represent are disproportionately traumatized and have lost their lives in school in response to challenging behaviors that are a manifestation of their disabilities. Teachers and staff, and others in the vicinity are traumatized and hurt as well. Right now, hundreds of students are locked alone in a room, or space from which they cannot exit; afraid, often unsure how they got there or how they will get out. This abuse must stop.

COPAA thanks you for leading the discussion in the 116th Congress regarding the need for legislation that prohibits seclusion and seeks to prevent and limit the use of restraint in schools. States have the responsibility, and many have standards and regulations regarding the use of restraints, seclusion and aversive interventions, however, to have the impact needed to protect our children, we need clear, unambiguous federal guidelines that states can enforce.

In 2008 COPAA was among the first to call for the end to these harmful practices with the release of **COPAA Declaration of Principles Opposing the Use of Restraint, Seclusion and Aversive Interventions**. The dignity, rights and protections of students with disabilities is at the fore of our mission and policy agenda and we support the introduction of the *Keeping All Students Safe Act* (KASSA).

We hope the House Committee on Education and Labor will take immediate steps to consider KASSA. This bill, if enacted, would considerably strengthen protections in every state and ensure the safety of all students and school personnel. Schools should be positive environments that foster learning, respect and self-worth. Restraint and seclusion have no efficacy and are dangerous; causing trauma, injury and death. Though the imposition of restraint and seclusion on students is widespread, national data indicates that students with disabilities are roughly 20 times more likely than their peers without disabilities to be restrained and/or secluded. No child should intentionally be subjected to traumatizing and dangerous behavior in school.

Every child is entitled to be treated with dignity and respect. No child with a disability should be subjected to abusive treatment under the guise of providing educational services. Civilized nations protect the human rights of all their citizens and residents, particularly those who are unable to advocate for themselves, including children.

We appreciate that the *Keeping All Students Safe Act* will prohibit seclusion and seek to prevent and reduce the use of physical restraint. The bill also promotes a shift, through training, toward preventing challenging behavior through use of de-escalation techniques, conflict management, and evidence-based positive behavioral interventions and supports. The bill includes the resources schools need to understand the needs of their students and safely address the source of their behaviors – a result that will keep everyone safe and increase learning.

We urge you to act quickly to see that the *Keeping All Students Safe Act* becomes law. We look forward to working with you and your staff to help pass this important legislation.

Sincerely,



Denise Marshall
Executive Director

cc: The Honorable Bobby Scott
The Honorable Virginia Foxx

COPAA is an independent, nonprofit organization of parents, attorneys, advocates, and related professionals. COPAA members nationwide work to protect the civil rights and secure excellence in education on behalf of the 6.5 million children with disabilities in America. COPAA's mission is to serve as a national voice for special education rights and is grounded in the belief that every child deserves the right to a quality education that prepares him or her for meaningful employment, higher education and lifelong learning, as well as full participation in his or her community.



National Council on Disability

An independent federal agency making recommendations to the President and Congress to enhance the quality of life for all Americans with disabilities and their families.

February 25, 2019

The Honorable Gregorio Kilili Camacho Sablan
Chairman
Subcommittee on Early Childhood, Elementary, and Secondary Education
House Committee on Education and Labor
U.S. House of Representatives
2411 Rayburn House Office Building
Washington, DC 20515

The Honorable Rick Allen
Ranking Member
Subcommittee on Early Childhood, Elementary, and Secondary Education
House Committee on Education and Labor
U.S. House of Representatives
2400 Rayburn House Office Building
Washington, DC 20515

Chairman Sablan and Ranking Member Allen,

I write on behalf of the National Council on Disability ("NCD"), an independent non-partisan federal agency with a mission to advise Congress, the President and other federal agencies on disability policy issues and to advance the goals of the ADA, equality of opportunity, full participation, independent living, and economic self-sufficiency for people with disabilities. From the beginning of our more than 40-year history when we were established as a small advisory Council within the Department of Education in 1978 NCD has worked to promote policies that promote safe educational environments for children with disabilities free from unnecessary and inappropriate restraint and seclusion. We applaud this committee for taking up the important discussion of how to ensure that all children, including children with disabilities, are educated in environments where they are treated with dignity and respect.

In November of last year, NCD wrote to the House and Senate sponsors of the "Keeping all Students Safe Act" (H.R. 7124) to applaud its introduction and reiterate our long-held position that no school should receive federal funds when their policies and procedures lead to the unnecessary, inappropriate and disproportionate restraint and seclusion of children with disabilities.

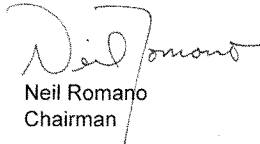
Additionally, NCD has repeatedly recognized the importance of federal data collection conducted by the Department of Education's Office of Civil Rights' (OCR) Civil Rights Data Collection (CRDC), recommending that the Department of Education Office of Civil

Rights engage in robust enforcement of the mandatory CRDC reporting requirements to ensure that public schools (including charter schools) and Local Education Agencies (LEAs) submit all data on suspensions, expulsions, incidents of restraints and seclusion, and school-based arrests disaggregated by disability.

Finally, NCD has also long opposed the use of any type of aversive therapy and specifically has issued several calls for the FDA to take action to stop the use of "aversive conditioning" at the Judge Rotenberg Center in Massachusetts and we are pleased that they are moving forward with finalizing regulations to end that odious practice.

NCD commends this Committee for taking steps to further elevate this important conversation about how to improve the educational environment for all students, including children with disabilities. We look forward to working with all the members of this Committee to explore ways to maintain safe and productive educational environments and rise to the challenge of educating children with and without disabilities while eliminating the inappropriate use of restraint and seclusion.

Respectfully,



Neil Romano
Chairman

CC: Chairman Scott
Ranking Member Foxx



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Written Statement for the Record
Before the House Education and Labor Subcommittee on Early Childhood, Elementary and
Secondary Education

February 27, 2019

Chairman Sablan, Ranking Member Allen and other members of the Subcommittee and the full Committee, The Arc appreciates your leadership to protect our Nation's students from restraint and seclusion. Your subcommittee's hearing, titled *Classroom in Crisis: Examining the Inappropriate Use of Seclusion and Restraint Practices*, is a welcome opportunity to highlight the need for federal legislation to end these harmful and unnecessary practices.

The Arc is the largest national community-based organization advocating for and serving people with intellectual and developmental disabilities (I/DD) and their families. Advocating with and on behalf people with I/DD and their family members, with over 620 state and local chapters nationwide, The Arc promotes and protects the human rights of people with I/DD and actively supports their full inclusion and participation in the community throughout their lives.

Seclusion and restraint have various technical definitions in state laws and regulations, but generally refer to techniques used to control or modify challenging behavior by isolation or force. In practice, they are used most frequently on younger (elementary school aged) children to address relatively minor behaviors (such as non-compliance) rather than situations that present genuine threats to health or safety.

In schools across the country, children are being dragged out of classrooms, knocked to the ground, head locked, sat upon, hand cuffed, and locked in makeshift holding cells - frequently without their parents' knowledge. These practices cause trauma, injury, and even death. And they create poor school climates that make it harder for students to learn and for teachers to teach.

According to the Office of Civil Rights (OCR) Data Collection, there were 280,728 instances of restraint or seclusion in public schools during the 2013-14 academic year.ⁱ However, there is good reason to believe that these figures are significantly below the actual incidence. For instance, due to longstanding concerns about the accuracy of this data, advocates in the state of Wisconsin have been collecting and analyzing district level data for each of the state's 425 school districts. In response to their open records requests, a total of 20,131 incidents of seclusion and restraint were reported across Wisconsin schools for the 2013-14 academic year.ⁱⁱ This figure is well above the 14,458 incidents reported by OCR for that period.ⁱⁱⁱ Their study also revealed widespread confusion regarding data reporting by the districts.^{iv}

Achieve with us.

Students with disabilities bear the brunt of restraint and seclusion. While students receiving special education services make up 12% of the student population, they are 71% of students restrained and 66% of students secluded. African American students are similarly over represented, accounting for 15% of all students enrolled, but 27% of students restrained and 23% of students secluded.^v

It is essential that Congress act and pass legislation to provide meaningful protections for all students rather than continue with the current patchwork of state laws that leave far too many students at risk. Such legislation should include prohibition of chemical, mechanical, and physical restraints; seclusion; and other interventions that compromise student health and safety.

This is an opportune time to address school violence in all of its forms. The Every Student Succeeds Act of 2015 included language for the very first time requiring states and local education agencies improve school conditions by reducing the use of aversive interventions, including restraint and seclusion. Congress has an opportunity to build on that requirement and provide schools with a roadmap to accomplish that goal.

Again, The Arc thanks you for your leadership and stands ready to work with you in protecting school children. For more information, please contact Annie Acosta at 202-783-2229 or acosta@thearc.org.

ⁱ U.S. Department of Education, Office for Civil Rights, Civil Rights Data Collection, 2013-14, available at <http://ocrdata.ed.gov>

ⁱⁱ Seclusion & Restraint in Wisconsin Public School Districts 2013-2014: Miles to Go. Disability Rights Wisconsin, Wisconsin Family Ties, and WI FACETS, 2016. Available at <http://www.disabilityrightswi.org/wp-content/uploads/2018/12/Seclusion-and-Restraint-in-Wisconsin-Public-Schools-District-2013-2014-Miles-to-Go.pdf>

ⁱⁱⁱ U.S. Department of Education, Office for Civil Rights, Civil Rights Data Collection, 2013-14, available at <http://ocrdata.ed.gov>

^{iv} Seclusion & Restraint in Wisconsin Public School Districts 2013-2014: Miles to Go. Disability Rights Wisconsin, Wisconsin Family Ties, and WI FACETS, 2016. Available at <http://www.disabilityrightswi.org/wp-content/uploads/2018/12/Seclusion-and-Restraint-in-Wisconsin-Public-Schools-District-2013-2014-Miles-to-Go.pdf>

^v 2015-16 Civil Rights Data Collection, School Climate and Safety. U.S. Department of Education Office for Civil Rights. Available at: <https://www2.ed.gov/about/offices/list/ocr/docs/school-climate-and-safety.pdf>



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February 26, 2019

The Honorable Gregorio Kilili Camacho Sablan
 United States House of Representatives
 Washington, DC 20515

The Honorable Rick Allen
 United States House of Representatives
 Washington, DC 20515

Dear Chairman Sablan and Ranking Member Allen:

The Council for Exceptional Children (CEC) recognizes access to the most effective educational strategies as the basic educational right of each child or youth with a disability. CEC believes that the least restrictive positive educational strategies should be always used to respect the child's or youth's dignity and that this especially pertains to the use of physical restraint and seclusion.

A physical restraint is defined as any method of one or more persons restricting another person's freedom of movement, physical activity, or normal access to his or her body. It is a means for controlling that person's movement, reconstituting behavioral control, and establishing and maintaining safety for the out-of-control individual, other individuals, and school staff. Physical restraints have been in widespread use across most human service, medical, juvenile justice, and education programs for a long period of time. While some have proposed physical restraint as a therapeutic procedure for some children and youth, this view has no scientific basis and is generally discredited. Today most schools or programs that employ physical restraint view it as an emergency procedure to prevent injury to the child or youth or others when a child or youth is in crisis.

Seclusion is the involuntary confinement of a child or youth alone in a room or area from which the child or youth is physically prevented from leaving. This includes situations where a door is locked as well as where the door is blocked by other objects or held closed by staff. Any time a child or youth is involuntarily alone in a room and prevented from leaving should be considered seclusion, regardless of the intended purpose or the names applied to this procedure and the place where the child or youth is secluded. Seclusion is often associated with physical restraint in that physical restraint is regularly used to transport a child or youth to a seclusion environment. However, seclusion may occur without employing physical restraint.

In addition, schools may employ a variety of environments that may not meet the definition of seclusion (confinement alone without immediate ability to leave), but which have at least some of the elements of seclusion. These might include detention rooms and in-school suspension rooms where children and youth may not be alone or where they are not technically prevented from leaving, although they may perceive that they are prevented from leaving.

CEC supports the following principles related to the use of physical restraint and seclusion procedures in school settings:

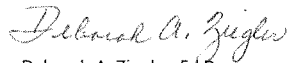
- Behavioral interventions for children and youth must promote the right of all children and youth to be treated with dignity.
- All children and youth should receive necessary educational and mental health supports and

programming in a safe and least-restrictive environment.

- Positive and appropriate educational interventions, as well as mental health supports, should be provided routinely to all children and youth who need them.
- Behavioral interventions should emphasize prevention and positive behavioral supports.
- Schools should have adequate staffing levels to effectively provide positive supports to children and youth and should be staffed with appropriately trained personnel.
- All staff in schools should have mandatory conflict de-escalation training, and conflict de-escalation techniques should be employed by all school staff to avoid and defuse crisis and conflict situations.
- All children and youth whose pattern of behavior impedes their learning or the learning of others should receive appropriate educational assessment, including Functional Behavioral Assessments. These should be followed by Behavioral Intervention Plans that incorporate appropriate positive behavioral interventions, including instruction in appropriate behavior and strategies to de-escalate their own behavior.

Please find *CEC's Policy on Physical Restraint and Seclusion Procedures in School Settings* as an enclosure to this letter. CEC stands ready to assist you and looks forward to engaging with you in the development of legislation so that all children, including children and youth with disabilities can be free of these harmful practices in school. If you need clarification on CEC's letter please contact Deborah A. Ziegler, Director of Policy and Advocacy at debz@cec.sped.org.

Sincerely,



Deborah A. Ziegler, Ed.D.
Director of Policy and Advocacy

Enc: CEC's Policy on Physical Restraint and Seclusion Procedures in School Settings

CC: The Honorable Bobby Scott
The Honorable Virginia Foxx



CEC's Policy on Physical Restraint and Seclusion Procedures in School Settings

The Council for Exceptional Children (CEC) recognizes access to the most effective educational strategies as the basic educational right of each child or youth with a disability. CEC believes that the least restrictive positive educational strategies should be always used to respect the child's or youth's dignity and that this especially pertains to the use of physical restraint and seclusion.

A physical restraint is defined as any method of one or more persons restricting another person's freedom of movement, physical activity, or normal access to his or her body. It is a means for controlling that person's movement, reconstituting behavioral control, and establishing and maintaining safety for the out-of-control individual, other individuals, and school staff. Physical restraints have been in widespread use across most human service, medical, juvenile justice, and education programs for a long period of time. While some have proposed physical restraint as a therapeutic procedure for some children and youth, this view has no scientific basis and is generally discredited. Today most schools or programs that employ physical restraint view it as an emergency procedure to prevent injury to the child or youth or others when a child or youth is in crisis.

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In addition, schools may employ a variety of environments that may not meet the definition of seclusion (confinement alone without immediate ability to leave), but which have at least some of the elements of seclusion. These might include detention rooms and in-school suspension rooms where children and youth may not be alone or where they are not technically prevented from leaving, although they may perceive that they are prevented from leaving.

CEC supports the following principles related to the use of physical restraint and seclusion procedures in school settings:

- Behavioral interventions for children and youth must promote the right of all children and youth to be treated with dignity.
- All children and youth should receive necessary educational and mental health supports and programming in a safe and least-restrictive environment.
- Positive and appropriate educational interventions, as well as mental health supports, should be provided routinely to all children and youth who need them.
- Behavioral interventions should emphasize prevention and positive behavioral supports.
- Schools should have adequate staffing levels to effectively provide positive supports to children and youth and should be staffed with appropriately trained personnel.
- All staff in schools should have mandatory conflict de-escalation training, and conflict de-escalation techniques should be employed by all school staff to avoid and defuse crisis and conflict situations.
- All children and youth whose pattern of behavior impedes their learning or the learning of others should receive appropriate educational assessment, including Functional Behavioral Assessments. These should be followed by Behavioral Intervention Plans that incorporate appropriate positive behavioral interventions, including instruction in appropriate behavior and strategies to de-escalate their own behavior.

It is the policy of the Council for Exceptional Children that:

- Physical restraint or seclusion procedures should be used in school settings only when the physical safety of the child or youth or others is in immediate danger. Prone restraints (with the student face down on his/her stomach) or supine restraints (with the student face up on the back) or any maneuver that places pressure or weight on the chest, lungs, sternum, diaphragm, back, neck, or throat should never be used. No restraint should be administered in such a manner that prevents a student from breathing or speaking.
- Mechanical or chemical restraint should never be used in school settings when their purpose is simply to manage or address a child's or youth's behavior. Prescribed assistive devices such as standing tables and chairs with restraints are not considered mechanical restraints for purposes of this document. Their use should be supervised by qualified and trained individuals in accord with professional standards. Vehicle restraints and those restraints used by law enforcement officers are not considered mechanical restraints for purposes of this document.
- Neither restraint nor seclusion should be used as a punishment to force compliance or as a substitute for appropriate educational support.
- All seclusion environments should be safe and humane and should be inspected at least annually, not only by fire or safety inspectors, but for programmatic implementation of guidelines and data related to its use.
- Any child or youth in seclusion must be continuously observed by an adult both visually and aurally for the entire period of the seclusion. Occasional checks are not acceptable.
- Guidelines or technical assistance documents are generally not adequate to regulate the use of these procedures, since abuses continue to occur in states or provinces where guidelines are in place and these guidelines have few mechanisms for providing oversight or correction of abuses. Policy is needed in the form of legislation or regulation.
- Federal, state, and provincial legislation or regulations should:
 - Recognize that restraint and seclusion procedures are emergency, not treatment, procedures.
 - Require that preventive measures such as conflict de-escalation procedures be in place in schools where restraint or seclusion will be employed.
- Require that individualized emergency or safety plans are created for children or youth whose behavior could reasonably be predicted to pose a danger. If an emergency or safety plan is deemed necessary for a child or youth with a disability, that document should be created by the IEP team and may be appended to the child's or youth's IEP.
- Require that comprehensive debriefings occur after each use of restraint or seclusion and that reports of the incident are created including parental notification.
- Require that data on restraint and seclusion are reported to an outside agency such as the state or provincial department of education.
- Any school that employs physical restraint or seclusion procedures should have a written positive behavior support plan specific to that program, pre-established emergency procedures, specific procedures and training related to the use of restraint and seclusion, and data to support the implementation of positive behavior supports and specific uses of restraint and seclusion in that environment.
- Additional research should be conducted regarding the use of physical restraint and seclusion with children or youth across all settings.

This policy is adopted from a position summary published by the Council for Children with Behavior Disorders, a division of the Council for Exceptional Children: *Physical Restraint and Seclusion Procedures in School Settings, VA, Author.*

More detailed information is available in the following white papers:

Council for Children with Behavior Disorders of the Council for Exceptional Children (May July 2009). CCBD Position on the Use of Physical Restraint Procedures in School Settings. Arlington, VA: Author.

Council for Children with Behavior Disorders of the Council for Exceptional Children (May July 2009). CCBD Position on the Use of Seclusion Procedures in School Settings. Arlington, VA: Author.

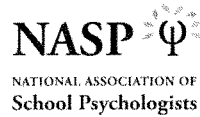
To access CEC's Policy on Physical Restraint and Seclusion Procedures in School Settings online, go to www.cec.sped.org>Policy & Advocacy>CEC Professional Policies. For further information, contact Deborah A. Ziegler, Associate Executive Director, Policy and Advocacy Services, Council for Exceptional Children, 703-264-9406 (P), 703-243-0410 (F), 800-224-6830 (Toll free), 866-915-5000 (TTY), debz@cec.sped.org.

Reference

Council for Exceptional Children 2009 Policy Manual; Section Three, Part 1, Paragraph 17

Date Adopted

Approved by the Council for Exceptional Children Board of Directors September 2009



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February 26, 2019

The Honorable Gregorio Kilili Camacho Sablan
 United States House of Representatives
 Washington, DC 20515

The Honorable Rick Allen
 United States House of Representatives
 Washington, DC 20515

Dear Chairman Sablan and Ranking Member Allen:

Re: "Classrooms in Crisis: Examining the Inappropriate Use of Seclusion and Restraint Practices."

On behalf of the National Association of School Psychologists (NASP) I would like to thank you for your attention to the issue of seclusion and restraint in our nation's schools. NASP represents 25,000 school psychologists who work with students, educators, and families to support the academic achievement, positive behavior, and mental wellness of all students, especially those who struggle with barriers to learning. School psychologists work with parents and educators to help shape individual and system-wide supports that provide the necessary prevention and intervention services to ensure that students all have access to the mental health, social-emotional, behavioral, and academic supports they need to be successful at school. School psychologists help ensure that teachers, administrators, and other school staff have knowledge of positive behavioral interventions and supports and other preventive measures so that students' behavioral needs are met and that incidences of seclusion and restraint are used only when absolutely necessary to protect the safety of students, staff, and other school personnel.

Unfortunately, the use of restraint and seclusion is widespread. Data from the U.S. Department of Education Civil Rights Data Collection show that most students restrained and secluded were students with disabilities, who comprised 12 percent of all students enrolled yet represented 71 percent of all students restrained and 66 percent of all students secluded. Our nation's children deserve better. Restraint and seclusion are dangerous practices that continue to cause children trauma, injury and death, especially when utilized by staff without proper training.

We need more than the current patchwork of state laws to ensure that every child is afforded protection. Such legislation will strengthen protections in every state and support the safety of all students and school personnel. NASP is encouraged by the policies proposed in the *Keeping All Students Safe Act* (KASSA) and we look forward to working with you and your colleagues in Congress to move restraint and seclusion legislation forward. As you continue efforts to advance legislation designed to reduce the need for seclusion and restraint in our schools, we urge you to take the following comments into consideration.

Importance of Multitiered Systems of Support

NASP supports the use of multitiered problem-solving strategies to address the academic, behavioral, social, and emotional needs of students, and we appreciate the encouraged use of positive behavioral interventions and supports in the *Keeping All Students Safe Act*. Problem-solving models provide needed supports to all students in inclusive environments when problems are first identified, and allows for early support before behavioral problems escalate to the point of requiring the need for seclusion or restraint. Services that are provided through a multitiered model range from universal, system-wide preventive services provided to all students to intensive and individualized supports for those students who have more substantial needs. A significant body of research over the last decade has evaluated the

effectiveness of multitiered problem-solving models, with results indicating improved academic performance. Furthermore, research findings from individual case studies have indicated improved behavior, social-emotional learning, and academic outcomes.

Allowable Use of Physical Restraint

NASP recognizes that despite best efforts of school personnel to provide appropriate behavioral supports for students, there may be instances in which the use of seclusion and restraint is warranted to ensure the safety of students and/or staff. NASP supports that seclusion and restraint should only be used when absolutely necessary and only by school personnel who have received appropriate training in de-escalation techniques and in proper seclusion and restraint methods.

NASP recognizes that the use of physical restraint should not be used as a disciplinary tactic, should not interfere with the student's ability to communicate, and should only be used when a range of preventive behavioral techniques have been unsuccessful. However, we are concerned with KASSA's proposal that physical restraint may only be used if the student's behavior poses an immediate danger of "serious physical injury" to self or others. Previous iterations of KASSA used the term "serious bodily injury." This term means being inflicted with an injury or illness that involves: (a) substantial risk of death, (b) extreme physical pain, (c) protracted and obvious disfigurement, or (d) protracted loss or impairment of the function of a bodily member, organ, or mental faculty. Many states have defined the term "serious physical injury" in the same way that "serious bodily injury" is defined, which causes us some concern.

We believe that this standard is too high and goes beyond reasonable expectations necessary to maintain a safe learning environment. There are several instances when the meaning of "serious bodily injury" has been analyzed in case law. For example, in the *Pavono Mountain School District*, 109 LRP 26432 (SEA PA 2008) a student broke another student's nose. The judge ruled that this student's behavior was injurious, frightening, and intimidating; however, a broken nose did not fit within the definition of serious bodily injury. In *Tehachapi Unified Sch. Dist.*, 106 LRP 22450 (SEA CA 2006) a student's behavior resulted in a mild concussion to one student and a broken nose to another, neither of which was determined to meet the definition of serious bodily injury. We ask you to remove the definition of serious physical injury as the minimum standard for allowable use of seclusion and restraint and adopt the term "physical injury" or another stringent, but lesser standard.

According to case law, including the aforementioned cases, determination of serious bodily injury is based on the type of follow-up care that is required by the injured party *after* the injury occurs. The language in KASSA would require that that this determination be made in the moments preceding a potential injury. Often, a decision to use seclusion and restraint is made in a moment of crisis, when a student's behavior has escalated beyond the point of control, with the intent of keeping students and staff safe. It would be nearly impossible for school staff to predict if the student's behavior would result in serious physical injury when making a decision to use physical restraint and may prevent the necessary use of appropriate restraint when it is warranted to ensure the safety of students and staff. Based on this same case law, injuries that school personnel and parents would typically consider very serious, such as a concussion or a broken bone, would likely be deemed to not meet the definition of "serious physical injury." NASP believes that the term of "serious physical injury" is too stringent and that using this definition as the minimum standard for allowable use of physical restraint has the potential to create unclear expectations for educators' response to student conduct, unsafe learning conditions for all students, and potentially unnecessary and expensive lawsuits. The law should require that school staff exercise reasonable professional judgment in determining that any individual's physical safety is significantly at risk, and, therefore seclusion or restraint is required.

Mandatory Debriefing Session

NASP supports the requirement of parental notification, either verbally or electronically, when seclusion or restraint is used with a student. We also support a review of the antecedents leading up to the use of seclusion or restraint, the use of functional behavioral assessment, the implementation of evidence-based behavioral interventions, and the identification of additional strategies to be provided in the future. However, requiring a separate debriefing session

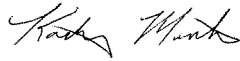
within 5 school days for each instance when seclusion or restraint is used places an unnecessary burden on school personnel. There may be instances, although rare, in which seclusion or restraint are necessary more than once in a given school day, or over the course of a few school days. This is especially true for students with the most severe behavioral concerns. Requiring a separate meeting to document each specific instance of seclusion or restraint would disrupt instruction and place a tremendous burden on staff and administrators. We are in full support of a mandatory meeting and all of the proposed components contained in KASSA, but ask that schools have the option of holding one meeting to discuss multiple incidents of seclusion and/or restraint if the events occur within short period of time.

In addition, NASP believes it is inaccurate to assume that when a child receives behavioral interventions in school, including seclusion and restraint, that it is because the student has a disability. Requiring school personnel to prove they are not negligent in identifying a student's disability would lead to a host of unintended consequences, including unnecessary referrals to special education and unnecessary litigation. We ask that you consider deleting this requirement as it relates to the debriefing session.

We appreciate your dedication and your hard work in ensuring that schools are safe environments for all students. NASP welcomes the opportunity to work with you and other Committee members in assisting with revisions of this legislation.

Thank you for your consideration of these comments. For additional information please contact Kelly Vaillancourt Strobach, PhD, NASP Director of Policy and Advocacy. (kvallancourt@naspweb.org).

Sincerely,



Kathleen Minke, PhD, NCSP
Executive Director



February 25, 2019

The Honorable Gregorio Kilili Camacho Sablan
United States House of Representatives
Washington, DC 20515

The Honorable Rick Allen
United States House of Representatives
Washington, DC 20515

Dear Chairman Sablan and Ranking Member Allen:

The National Center for Special Education in Charter Schools (NCSECS) is dedicated to ensuring that students with disabilities have equal access to charter schools and that charter schools are designed and operated to enable all students to succeed. NCSECS is a leader and partner with state charter authorizers, charter networks, and charter schools across the United States. Today, we write to thank you for your leadership that ensures the 116th Congress will discuss the critical need for legislation that prohibits seclusion and limits the use of restraint in schools. NCSECS, through its Equity Coalition, has developed a [Statement on Discipline](#) for charter schools to embrace as they seek to provide inclusive, safe and positive learning environments for all students.

Restraint and seclusion are dangerous practices that cause students trauma and have resulted in injury and even death. Though the use of restraint and seclusion is widespread, data shows that most students restrained and secluded were students with disabilities – who comprised 12 percent of all students enrolled yet represented 71 percent of all students restrained and 66 percent of all students secluded.¹ *All of our nation's students deserve better.*

NCSECS urges you to review and seriously consider legislation pending re-introduction, the *Keeping All Students Safe Act* which would prohibit seclusion and limit restraint to emergency situations only. The bill also promotes a shift toward preventing problematic behavior through use of de-escalation techniques, conflict management, and evidence-based positive behavioral interventions and supports. This improved focus will help school personnel understand the needs of their students and safely address the source of their behaviors – a better result for everyone in our nation's schools.

Thank you for your leadership. We hope to work with you to develop legislation consistent with the *Keeping All Students Safe Act*.

Sincerely,

Lauren Morando Rhim, Ph.D.
Executive Director

cc: The Honorable Bobby Scott
The Honorable Virginia Foxx

NCSECS.ORG

NATIONAL CENTER FOR SPECIAL EDUCATION IN CHARTER SCHOOLS

¹ Civil Rights Data Collection 2015-2016, (updated 2018) U.S. Department of Education at: <https://www2.ed.gov/about/offices/list/ocr/docs/school-climate-and-safety.pdf>

Last, I would like to submit both the letter and written testimony from National Disability Rights Network [NDRN]. NDRN has been advocating in States to reduce inappropriate use of these practices and is a leader in the field.
[The information follows:]



**Testimony from the National Disability Rights Network
Classrooms in Crisis: Examining the Inappropriate Use of Restraint and
Seclusion**

February 27, 2019

Chairman Sablan and Ranking Member Allen:

The National Disability Rights Network (NDRN) is pleased to submit testimony for the hearing entitled, "Classrooms in Crisis: Examining the Inappropriate Use of Seclusion and Restraint."

In January 2009, NDRN alarmed by what appeared to be a wide spread trend, uncovered by the nationwide network of Protection and Advocacy (P&A) agencies, of shocking, horrifying and sometimes deadly restraints and seclusions published the groundbreaking report, "[School is Not Supposed to Hurt](#)."¹ The report detailed instances of inappropriate uses of restraints and seclusion across the country. The report detailed students being placed in physical restraints which traumatized, hurt or resulted in death, and of students forced into seclusion rooms with no monitoring and often with horrifying outcomes. NDRN has since then published two follow up reports, [School is Not Supposed to Hurt: An Update on Progress to Prevent Restraint and Seclusion](#)² and [School is Not Supposed to Hurt: The U.S. Department Must Do More to Protect School Children From Restraint and Seclusion](#)³

NDRN is the non-profit membership organization for the federally mandated P&A agencies for individuals with disabilities. The P&As were established by Congress to protect the rights of people with disabilities and their families. P&As are in all 50 states, the District of Columbia, Puerto Rico, and the U.S. Territories, and there is a P&A affiliated with the Native American Consortium in the Four Corners region of the Southwest. Collectively, the 57 P&As are the largest provider of legally based advocacy services to people with disabilities in the United States.

P&As provide critical legal advocacy to students with disabilities. Indeed, in 2016, P&As worked on nearly 14,000 individual cases and hundreds of systemic cases, enforcing the educational rights of students with disabilities. A critical area of focus for the education work of P&As is the use of restraint or seclusion of students in schools.

¹ <http://www.ndrn.org/images/Documents/Resources/Publications/Reports/SR-Report2009.pdf>

² <http://www.ndrn.org/images/Documents/Resources/Publications/Reports/School-is-Not-Supposed-to-Hurt-NDRN.pdf>

³

http://www.ndrn.org/images/Documents/Resources/Publications/Reports/School_is_Not_Supposed_to_Hurt_3_v7.pdf

Following the release of NDRN's first report, then Chairman George Miller called upon the Government Accountability Office (GAO) to perform its own investigation into this sanctioned abuse and neglect of students in schools. Following that GAO investigation, which confirmed the findings of the NDRN report that this was a nationwide problem, this committee held the first hearing on this topic at the federal level, bring in compelling witnesses that demonstrated the horror being perpetrated on our children and families through the use of restraint and seclusion. This hearing was followed by the introduction of legislation to create federal standards. While this legislation passed the House, it unfortunately, did not pass the Senate and become law.

In 2012, the U.S. Department of Education published Restraint and Seclusion: Resource Document.⁴ The document highlights fifteen principles to provide protection from restraint and seclusion. NDRN whole heartedly supported these principles when they were released, and believes they form the foundation of strong, needed federal legislation. They are:

1. Every effort should be made to prevent the need for the use of restraint and for the use of seclusion.
2. Schools should never use mechanical restraints to restrict a child's freedom of movement, and schools should never use a drug or medication to control behavior or restrict freedom of movement (except as authorized by a licensed physician or other qualified health professional).
3. Physical restraint or seclusion should not be used except in situations where the child's behavior poses imminent danger of serious physical harm to self or others and other interventions are ineffective and should be discontinued as soon as imminent danger of serious physical harm to self or others has dissipated.
4. Policies restricting the use of restraint and seclusion should apply to all children, not just children with disabilities.
5. Any behavioral intervention must be consistent with the child's rights to be treated with dignity and to be free from abuse.
6. Restraint or seclusion should never be used as punishment or discipline (e.g., placing in seclusion for out-of-seat behavior), as a means of coercion or retaliation, or as a convenience.
7. Restraint or seclusion should never be used in a manner that restricts a child's breathing or harms the child.

⁴ <https://www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf>

8. The use of restraint or seclusion, particularly when there is repeated use for an individual child, multiple uses within the same classroom, or multiple uses by the same individual, should trigger a review and, if appropriate, revision of strategies currently in place to address dangerous behavior;⁵ if positive behavioral strategies are not in place, staff should consider developing them.
9. Behavioral strategies to address dangerous behavior that results in the use of restraint or seclusion should address the underlying cause or purpose of the dangerous behavior.
10. Teachers and other personnel should be trained regularly on the appropriate use of effective alternatives to physical restraint and seclusion, such as positive behavioral interventions and supports and, only for cases involving imminent danger of serious physical harm, on the safe use of physical restraint and seclusion.
11. Every instance in which restraint or seclusion is used should be carefully and continuously and visually monitored to ensure the appropriateness of its use and safety of the child, other children, teachers, and other personnel.
12. Parents should be informed of the policies on restraint and seclusion at their child's school or other educational setting, as well as applicable Federal, State, or local laws.
13. Parents should be notified as soon as possible following each instance in which restraint or seclusion is used with their child.
14. Policies regarding the use of restraint and seclusion should be reviewed regularly and updated as appropriate.
15. Policies regarding the use of restraint and seclusion should provide that each incident involving the use of restraint or seclusion should be documented in writing and provide for the collection of specific data that would enable teachers, staff, and other personnel to understand and implement the preceding principles.⁶

However, today, ten years after the first hearing in the Education and Labor Committee on the topic of restraint and seclusion in schools, and seven years after the U.S. Department of Education published a clear road map for protections against restraint and seclusion there is still no federal law. While some states have enacted laws which significantly limit the use of restraints and seclusions, there exists no consistency in protections between states and across the country. Through the continued vigilance and work of P&As across the country, we know that these practices still occur in our schools every day, doing untold harm to students. Since 2009, at least eleven P&As have published reports on restraint and seclusion. The reports that have been produced come from P&As located in: Alabama, Alaska, Arkansas, California, Connecticut, District of Columbia, Kentucky, Maine, Massachusetts, New York, and Ohio.

⁵ As used in this document, the phrase "dangerous behavior" refers to behavior that poses imminent danger of serious physical harm to self or others.

⁶ <https://www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf>

As mentioned earlier, examples of harmful and sometimes deadly restraints and seclusion are still occurring throughout our country. For example:

- In 2016 Kentucky Protection and Advocacy published an investigative report titled, *The Near Death of Brennan Long*.⁷ The report discusses the case of a 16 year old student who was restrained by an aide. As a result of the restraint, the student had two broken femurs, required blood transfusions, and nearly died.
- In response to a complaint brought by Disability Rights California, the U.S. Department of Education Office for Civil Rights (OCR) concluded that the Oakland Unified School District discriminated against a student with a disability by placing the student in a non-public school where staff "repeatedly subjected the Student to inappropriate prone restraint over an 11-month period."⁸
- In December of 2018 a thirteen year old student with autism died after being held down in a prone restraint for approximately an hour. Disability Rights California is currently investigating.

NDRN urges the House Subcommittee on Early Childhood, Elementary and Secondary Education to engage in a meaningful and data-driven dialogue regarding the use of seclusion and restraint in our nation's schools – which have been demonstrated to result in emotional and physical trauma, serious injury, and even death.

To that end, we ask you to work to develop legislation that will prohibit seclusion, limit physical restraint to true emergencies, and support preventing problematic behavior through the use of de-escalation techniques, conflict management, and evidence-based positive behavioral interventions and supports. This improved focus on prevention and training will greatly benefit students and school personnel alike.

NDRN and the P&A Network stand ready to help you as you craft strong legislation to protect students against abuse in schools through harmful and, at times, deadly restraints and seclusion.

Should you have any questions, please do not hesitate to contact Amanda Lowe, Senior Public Policy Analyst at Amanda.lowe@ndrn.org.

⁷ <http://www.columbiamagazine.com/images/handbills/201611-BLongreportPressReleaseAttach.pdf>

⁸ [us-department-of-education-finds-school-restraint-and-seclusion-is-discriminatory](#)



February 27, 2019

Chairman Sablan and Ranking Member Allen:

The National Disability Rights Network (NDRN) is pleased that the Early Childhood, Elementary and Secondary Education Subcommittee of the Education and Labor Committee is holding the hearing, entitled, "Classrooms in Crisis: Examining the Inappropriate Use of Seclusion and Restraint."

In January 2009, NDRN alarmed by what appeared to be a wide spread trend, uncovered by the nationwide network of Protection and Advocacy (P&A) agencies, of shocking, horrifying and sometimes deadly restraints and seclusions published the groundbreaking report, "[School is Not Supposed to Hurt](#)."¹ The report detailed instances of inappropriate uses of restraints and seclusion across the country. The report detailed students being placed in physical restraints which traumatized, hurt or resulted in death, and of students forced into seclusion rooms with no monitoring and often with horrifying outcomes. NDRN has since then published two follow up reports, [School is Not Supposed to Hurt: An Update on Progress to Prevent Restraint and Seclusion](#),² and [School is Not Supposed to Hurt: The U.S. Department Must Do More to Protect School Children From Restraint and Seclusion](#).³

NDRN is the non-profit membership organization for the federally mandated P&A agencies for individuals with disabilities. The P&As were established by Congress to protect the rights of people with disabilities and their families. P&As are in all 50 states, the District of Columbia, Puerto Rico, and the U.S. Territories, and there is a P&A affiliated with the Native American Consortium in the Four Corners region of the Southwest. Collectively, the 57 P&As are the largest provider of legally based advocacy services to people with disabilities in the United States.

P&As provide critical legal advocacy to students with disabilities. Indeed, in 2016, P&As worked on nearly 14,000 individual cases and hundreds of systemic cases, enforcing the educational rights of students with disabilities. A critical area of focus for

¹ <http://www.ndrn.org/images/Documents/Resources/Publications/Reports/SR-Report2009.pdf>

² <http://www.ndrn.org/images/Documents/Resources/Publications/Reports/School-is-Not-Supposed-to-Hurt-NDRN.pdf>

³

http://www.ndrn.org/images/Documents/Resources/Publications/Reports/School_is_Not_Supposed_to_Hurt_3_v7.pdf

the education work of P&As is the use of restraint or seclusion of students in schools.

Following the release of NDRN's first report, then Chairman George Miller called upon the Government Accountability Office (GAO) to perform its own investigation into this sanctioned abuse and neglect of students in schools. Following that GAO investigation, which confirmed the findings of the NDRN report that this was a nationwide problem, this committee held the first hearing on this topic at the federal level, bring in compelling witnesses that demonstrated the horror being perpetrated on our children and families through the use of restraint and seclusion. This hearing was followed by the introduction of legislation to create federal standards. While this legislation passed the House, it unfortunately, did not pass the Senate and become law.

In 2012, the U.S. Department of Education published Restraint and Seclusion: Resource Document.⁴ The document highlights fifteen principles to provide protection from restraint and seclusion. NDRN whole heartedly supported these principles when they were released, and believes they form the foundation of strong, needed federal legislation

However, today, ten years after the first hearing in the Education and Labor Committee on the topic of restraint and seclusion in schools, and seven years after the U.S. Department of Education published a clear road map for protections against restraint and seclusion there is still no federal law. While some states have enacted laws which significantly limit the use of restraints and seclusions, there exists no consistency in protections between states and across the country. Through the continued vigilance and work of P&As across the country, we know that these practices still occur in our schools every day, doing untold harm to students. Since 2009, at least eleven P&As have published reports on restraint and seclusion. The reports that have been produced come from P&As located in: Alabama, Alaska, Arkansas, California, Connecticut, District of Columbia, Kentucky, Maine, Massachusetts, New York, and Ohio.

As mentioned earlier, examples of the inappropriate use of restraint and seclusion are still occurring throughout our country. For example:

- In 2016 Kentucky Protection and Advocacy published an investigative report titled, The Near Death of Brennan Long.⁵ The report discusses the case of a 16 year old student who was restrained by an aide. As a result of the restraint, the student had two broken femurs, required blood transfusions, and nearly died.
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⁵ <http://www.columbiamagazine.com/images/handbills/201611-BLongreportPressReleaseAttach.pdf>

Oakland Unified School District discriminated against a student with a disability by placing the student in a non-public school where staff "repeatedly subjected the Student to inappropriate prone restraint over an 11-month period."⁶

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NDRN urges the House Subcommittee on Early Childhood, Elementary and Secondary Education to engage in a meaningful and data-driven dialogue regarding the use of seclusion and restraint in our nation's schools – which have been demonstrated to result in emotional and physical trauma, serious injury, and even death.

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NDRN and the P&A Network stand ready to help you as you craft strong legislation to protect students against abuse in schools through harmful and at times deadly restraints and seclusion.

Should you have any questions, please do not hesitate to contact Amanda Lowe, Senior Public Policy Analyst at Amanda.lowe@ndrn.org.

Sincerely,



Curt Decker
Executive Director

cc: Members of the Early Childhood, Elementary and Secondary Education Subcommittee of the Education and Labor Committee

⁶ us-department-of-education-finds-school-restraint-and-seclusion-is-discriminatory

Thank you, again, to all the witnesses for being here today. Today's hearing highlighted the Federal Government's important role in setting a minimum standard to protect students and school staff. Specifically, we heard how every day seclusion and restraint practices undermine school climate and put children and adults at risk. We also heard how important it is for schools to implement positive protective approaches to challenging behaviors so that crisis situations where seclusion and restraint are necessary do not occur in the first place.

Mrs. Smith, your son, Dillon, his picture right there reminds me of before I became a high school teacher I worked in a daycare and I had a little boy much like Dillon. I just think about how many times I had to rock him and how it came to the point where my face was the intervention. And I think we really have to think about the steps we can take before it gets to the point where a child is being restrained, where they only trust one adult in the building, and that is the only person who can de-escalate that situation for them.

So I am grateful for you and what you have done and I pray that your son is well and that he encounters educators throughout his life who will understand his struggles and will hear him when he is trying to speak, and will greet him with a smile.

This is the worst committee for me. I know that the patchwork State standards have failed to address the need for reducing seclusion and restraint, and I trust that my colleagues and I will work hard to close those gaps and make sure that students who are screaming out for help are met with that help and that support.

Congress has the authority and the responsibility to set a minimum floor that strengthens the safety and climate of our schools. And investing in the proactive strategies that are significantly restricting the use of restraints, eliminating the use of seclusion practices, and empowering teachers and faculty with proactive evidence based classroom management methods, we can ensure that every student learns and grows in a safe and healthy school.

I look forward to working with my colleagues on both sides of the aisle to provide our students with the best possible learning environment.

And once again, I thank you all for being here, to all of the witnesses for your testimony, and your insight on this issue.

There is no further business. Without objection, the committee stands adjourned.

[Questions submitted for the record and their responses follow:]



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Ms. Jacqueline Nowicki
Director of Education, Workforce and Income Security
GAO
441 G Street NW, Room 5T47
Washington, D.C. 20548

Dear Ms. Nowicki:

We would like to thank you for testifying at the February 27, 2019, Subcommittee on Early Childhood, Elementary Education, and Secondary Education hearing entitled "*Classrooms in Crisis: Examining Inappropriate Use of Seclusion and Restraint Practices.*"

Please find enclosed additional questions submitted by Committee members following the hearing. Please provide a written response no later Thursday, March 21, 2019, for inclusion in the official hearing record. Your response should be sent to Kimberly Knackstedt of the Committee staff. She can be contacted at 202-225-3725 should you have any questions.

We appreciate your time and continued contribution to the work of the Committee.

Sincerely,


ROBERT C. "BOBBY" SCOTT
Chairman


GREGORIO KILILI CAMACHO SABLAN
Chairman

Enclosure

Committee on Education and Labor
Subcommittee on Early Childhood, Elementary, and Secondary Education Hearing
Classrooms in Crisis: Examining Inappropriate Use of Seclusion and Restraint Practices
February 27, 2019, 10:00am

Rep. Gregorio Kilili Camacho Sablan (MP)

1. Ms. Nowicki, despite the data showing seclusion and restraint is only used on approximately 122,000 students nationwide, we still have students dying each year. Additionally, there are long term negative psychological and physical trauma associated with the use of seclusion and restraint for both students and teachers. Although the number of students may be low, the number of instances per student is incredibly high. Can you provide an estimate of the range of how many instances of seclusion and restraint per student may be occurring?
2. Ms. Nowicki, we heard from your testimony that there are cases the Office of Civil Rights (O-C-R) investigates regarding seclusion and restraint as it may have been used in violation of the Americans with Disabilities Act (A-D-A) or Section 504 of the Rehabilitation Act. These laws provide protections for students with disabilities from seclusion and restraint. Are there protections for students without disabilities from inappropriate use of seclusion and restraint that the OCR could investigate? Has the OCR ever investigated such a case?



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Mrs. Renee Smith
3 Wildflower Drive
Coventry, RI 02816

Dear Mrs. Smith:

We would like to thank you for testifying at the February 27, 2019, Subcommittee on Early Childhood, Elementary Education, and Secondary Education hearing entitled "*Classrooms in Crisis: Examining Inappropriate Use of Seclusion and Restraint Practices.*"

Please find enclosed additional questions submitted by Committee members following the hearing. Please provide a written response no later Thursday, March 21, 2019, for inclusion in the official hearing record. Your response should be sent to Kimberly Knackstedt of the Committee staff. She can be contacted at 202-225-3725 should you have any questions.

We appreciate your time and continued contribution to the work of the Committee.

Sincerely,


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Enclosure

Committee on Education and Labor
Subcommittee on Early Childhood, Elementary, and Secondary Education Hearing
Classrooms in Crisis: Examining Inappropriate Use of Seclusion and Restraint Practices
February 27, 2019, 10:00am

Rep. Gregorio Kilili Camacho Sablan (MP)

1. Mrs. Smith, I am very sorry to hear about the trauma your son went through, but it sounds as though he is now thriving in his new environment. One piece you briefly mentioned is the impact on you and the rest of your family. How did the frequent calls to the school impact you and your job? Did you worry about his safety constantly? How has your life changed now that he is in a more positive school climate? How has your relationship with the school changed?

Rep. Frederica S. Wilson (FL-24)

1. Mrs. Smith, in your testimony you mentioned that you were frequently called to the school to beat the ambulance after 911 was called. This was after a restraint incident occurred and after seclusion was already happening. You also mentioned there were very few positive interventions in your son's behavior plan, although you knew those interventions were most effective for him. After the first restraint and seclusion incident occurred, would it have been helpful to have a meeting with the school to discuss the incident, discuss a new behavior plan, establish positive interventions, and set forth a plan to prevent these incidents from occurring in the future? Can you describe what happens at his new school when a restraint incident occurs?



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Mr. George Sugai, Ph.D.
Professor and Carole J. Neag Endowed Chair
Neag School of Education, University of Connecticut
Department of Educational Psychology
249 Glenbrook Road, Unit 3064
Storrs, Connecticut 06269

Dear Professor Sugai:

We would like to thank you for testifying at the February 27, 2019, Subcommittee on Early Childhood, Elementary Education, and Secondary Education hearing entitled "*Classrooms in Crisis: Examining Inappropriate Use of Seclusion and Restraint Practices.*"

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Enclosure

Committee on Education and Labor
Subcommittee on Early Childhood, Elementary, and Secondary Education Hearing
Classrooms in Crisis: Examining Inappropriate Use of Seclusion and Restraint Practices
February 27, 2019, 10:00am

Rep. Gregorio Kilili Camacho Sablan (MP)

1. Dr. Sugai, thank you for your testimony today. Can you take a moment to describe the landscape of seclusion and restraint policies in our country today?
 - a. You spoke to the need for a baseline or minimum standard. Why is that so critical with where states are at today?
2. Dr. Sugai, your testimony was very enlightening. I was especially interested in your points about how restraint and seclusion are not constructive treatments, interventions, or therapies. Will you provide more detail on how seclusion and restraint do not reduce behaviors? Does the evidence suggest that seclusion and restraint may actually increase challenging behaviors?
3. Dr. Sugai, we've spent a lot of time today talking about seclusion and restraint and what to do in the moment. However, your testimony spoke to the fact that challenging behavior does not just occur – it is part of a cycle. Knowing this, what is the best way to prevent seclusion and restraint? How do we support teachers in understanding this cycle and intervening earlier?

Rep. Frederica S. Wilson (FL-24)

1. Dr. Sugai, we often hear primarily about seclusion and restraint being used on students with disabilities. However, these practices are used on all students. In some states, there are no protections for students without disabilities. It is important that all teachers and all staff have the necessary training and support to identify and address challenging behavior in a proactive manner. Why is implementing PBIS school-wide a best practice, rather than classroom by classroom? What are the benefits of a singular model with support from school leaders?

Rep. Andy Levin (MI-09)

1. Dr. Sugai, seclusion and restraint, as you've stated, should only be used in an emergency as a last resort and never as a planned intervention. Can you provide more information on what are the challenges with using seclusion and restraint as a planned intervention and how that could possibly lead to increased use of the practices?



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DANIEL MELISSER, PENNSYLVANIA
WILLIAM R. TIMMONS, IV, SOUTH CAROLINA
DUSTY JOHNSON, SOUTH DAKOTA

Ms. Allison Sutton, M.Ed.
Special Education Teacher
Wichita Public Schools (USD 259)
777 N Silver Springs Blvd, #1512
Wichita, KS 67212

Dear Ms. Sutton:

We would like to thank you for testifying at the February 27, 2019, Subcommittee on Early Childhood, Elementary Education, and Secondary Education hearing entitled "*Classrooms in Crisis: Examining Inappropriate Use of Seclusion and Restraint Practices.*"

Please find enclosed additional questions submitted by Committee members following the hearing. Please provide a written response no later Thursday, March 21, 2019, for inclusion in the official hearing record. Your response should be sent to Kimberly Knackstedt of the Committee staff. She can be contacted at 202-225-3725 should you have any questions.

We appreciate your time and continued contribution to the work of the Committee.

Sincerely,


ROBERT C. "BOBBY" SCOTT
Chairman


GREGORIO KILILI CAMACHO SABLAN
Chairman

Enclosure

Committee on Education and Labor
Subcommittee on Early Childhood, Elementary, and Secondary Education Hearing
Classrooms in Crisis: Examining Inappropriate Use of Seclusion and Restraint Practices
February 27, 2019, 10:00am

Rep. Andy Levin (MI-09)

1. Ms. Sutton, your testimony describes some of the positive interventions you use in your classroom now that have dramatically reduced the use of restraint. You also mentioned that isn't necessarily school-wide. What impact would school-wide PBIS have on your students, in particular, consistent expectations and positive reinforcement from all teachers?



U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.
Washington, DC 20548

March 21, 2019

The Honorable Robert C. "Bobby" Scott
Chairman
Committee on Education and Labor
House of Representatives

The Honorable Gregorio Kilili Camacho Sablan
Chairman
Subcommittee on Early Childhood, Elementary and Secondary Education
Committee on Education and Labor
House of Representatives

Dear Chairman Scott and Chairman Sablan:

Thank you for your March 7, 2019 letter transmitting questions for the record based on my February 27, 2019 testimony on restraint and seclusion in K-12 public schools before the Committee on Education and Labor, Subcommittee on Early Childhood, Elementary and Secondary Education. The enclosure contains responses to these questions. If you have further questions, please feel free to contact me at 617-788-0580 or nowickij@gao.gov.

Sincerely yours,

A handwritten signature in cursive script that reads "Jacqueline M. Nowicki".

Jacqueline M. Nowicki
Director, Education, Workforce, and Income Security

Enclosure

Enclosure

Committee on Education and Labor
 Subcommittee on Early Childhood, Elementary, and Secondary Education Hearing
Classrooms in Crisis: Examining Inappropriate Use of Seclusion and Restraint Practices
 February 27, 2019, 10:00am

1. **Ms. Nowicki, despite the data showing seclusion and restraint is only used on approximately 122,000 students nationwide, we still have students dying each year. Additionally, there are long term negative psychological and physical trauma associated with the use of seclusion and restraint for both students and teachers. Although the number of students may be low, the number of instances per student is incredibly high. Can you provide an estimate of the range of how many instances of seclusion and restraint per student may be occurring?**

As part of our ongoing work on restraint and seclusion, we are reviewing the reliability of the Department of Education's (Education) restraint and seclusion data, including whether it may be used to accurately calculate estimates of restraint and seclusion instances per student. Education's national estimates of the instances of restraint and seclusion are publicly available for school year 2013-14 at <https://ocrdata.ed.gov/StateNationalEstimations>. Education's website indicates that national estimates for school year 2015-16 are forthcoming.

2. **Ms. Nowicki, we heard from your testimony that there are cases the Office of Civil Rights (O-C-R) investigates regarding seclusion and restraint as it may have been used in violation of the Americans with Disabilities Act (A-D-A) or Section 504 of the Rehabilitation Act. These laws provide protections for students with disabilities from seclusion and restraint. Are there protections for students without disabilities from inappropriate use of seclusion and restraint that the OCR could investigate? Has the OCR ever investigated such a case?**

In addition to enforcing laws dealing with discrimination on the basis of disability, such as Section 504 of the Rehabilitation Act or Title II of the Americans with Disabilities Act, Education and the Department of Justice (Justice) are responsible for enforcing other federal civil rights laws that may protect students from the discriminatory use of restraint and seclusion. Specifically, Education's Office for Civil Rights (OCR) is responsible for enforcing:

- Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color or national origin by recipients of Federal financial assistance. 42 U.S.C. §§ 2000d-2000d-7, and
- Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in educational programs and activities operated by recipients of Federal financial assistance. 20 U.S.C. §§ 1681-1688.

Justice's Civil Rights Division is also responsible for enforcing a number of civil rights laws, such as Title IV of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, national origin, sex, and religion in public schools and institutions of higher learning.

While we have not conducted a comprehensive review of Education OCR's investigations of complaints regarding discrimination based on race or sex in the use of restraint or seclusion, in our March 2018 report on school discipline we referred to a 2017 Department of Justice Civil Rights Division investigation of disciplinary practices, including the use of exclusionary discipline, restraint, and seclusion, under the jurisdiction of Title IV of the Civil Rights Act and Title II of the Americans with Disabilities Act.

Answers to Questions for the Record

Renee Smith

Committee on Education and Labor

Subcommittee on Early Childhood, Elementary, and Secondary Education Hearing

Classrooms in Crisis: Examining Inappropriate Use of Seclusion and Restraint Practices

February 27, 2019, 10:00am

Question:

Mrs. Smith, I am very sorry to hear about the trauma your son went through, but it sounds as though he is now thriving in his new environment. One piece you briefly mentioned is the impact on you and the rest of your family. How did the frequent calls to the school impact you and your job? Did you worry about his safety constantly? How has your life changed now that he is in a more positive school climate? How has your relationship with the school changed?

Answer:

The frequent calls to pick up our son affect both myself and my husband greatly. I had difficulty concentrating at work as I was always expecting to receive a call from the school during an important meeting or conference call. Being asked to leave work occasional because your child may be ill is acceptable, but frequently leaving after only being the office for a few hours become a great risk. I was able to continue my work from home after picking him up, however, not with the same focus as earlier in the day. I was also constantly stressed about my son's safety and what he would be going through while in school. I checked him daily for injuries and tried as best as I could to get details from him about his day, however, he usually refused to discuss the events of the day.

My husband worked nights at the time and was being contacted if I did not immediately respond, so he was losing important sleep that could affect his work performance. He works in the medical field, which requires a great amount of concentration and responsibility, so he was frequently putting himself and others at risk when sleep deprived due to these phone calls.

Our life has changes drastically since Dillon has transferred to his new school. My anxiety is controlled and my husband and I both feel more secure going to work. Dillon has blossomed in school and now earns grades at or above grade level in every subject. He enjoys school and talks about it regularly. We have a wonderful relationship with the new school. We frequently share information and contact each other when there is a concern, or we need to bounce ideas off of each other in order to assist Dillon. The new school environment feels very much like a team effort, working together to support Dillon.

Question:

Mrs. Smith, in your testimony you mentioned that you were frequently called to the school to beat the ambulance after 911 was called. This was after a restraint incident occurred and after seclusion was already happening. You also mentioned there were very few positive interventions in your son's behavior plan, although you knew those interventions were most

effective for him. After the first restraint and seclusion incident occurred, would it have been helpful to have a meeting with the school to discuss the incident, discuss a new behavior plan, establish positive interventions, and set forth a plan to prevent these incidents from occurring in the future? Can you describe what happens at his new school when a restraint incident occurs?

Answer:

We did have frequent meetings with the old school regarding Dillon's behavior, as we had an IEP meeting at least every 2-3 weeks. In these meetings, we discussed mainly how to provide frequent breaks and how to react to his behavior while secluded or restrained. There was rarely, if any, discussion about positive reinforcement. The new school has more of a defined procedure, due to the stronger relationships they maintain with families. In case of a restraint, the school will contact the parent via a phone call to inform about the restraint, why it happened, and how the situation overall was resolved, to this point. The new school was very open with me saying that they have never and will never call 9-1-1, unless specifically requested by the child's parent. In addition, a meeting is called to discuss the details of the incident with the family and determine a solution to avoid having to resort to restraint.

11 March 2019

Chairpersons Robert C. "Bobby" Scott and Gregorio Kilili Camacho Sablan
Committee on Education and Labor
U.S. House of Representatives
Washington, DC

Dear Chairpersons Scott and Sablan,

I thank you for the opportunity to testify at the February 27, 2019, Subcommittee on Early Childhood, Elementary Education, and Secondary Education hearing entitled "*Classrooms in Crisis: Examining Inappropriate Use of Seclusion and Restraint Practices.*"

As I indicated in my testimony, I am in favor of the Keeping All Students Safe Act, specifically, "To prohibit and prevent seclusion and to prevent and reduce the use of physical restraint in schools, and for other purposes."

I also appreciate the opportunity to respond to additional questions submitted by Committee members, and I have provided specific written responses below.

I would like to acknowledge the excellent testimony provided by the other witnesses, especially, Renee Smith on behalf of her son, Dylan, and Ms. Sutton who fluently represented and exemplified the education field. In addition, I appreciated how efficiently and effectively Representative Jahana Hayes facilitated the hearing and provided an eloquent closing statement.

If I can be of further assistance, do not hesitate to contact me (George.sugai@uconn.edu, 860.428.3768).

Sincerely,
George Sugai, Ph.D.
Professor and Carole J. Neag Endowed Chair
Neag School of Education
University of Connecticut

13 March 2019

George Sugai

My responses in *italics* to additional questions from members of the Committee on Education and Labor

For Representative Gregorio Kilili Camacho Sablan:

1. Dr. Sugai, thank you for your testimony today. Can you take a moment to describe the landscape of seclusion and restraint policies in our country today? You spoke to the need for a baseline or minimum standard. Why is that so critical with where states are at today?
 - a. *In 2013, Jen Freeman and I published a paper in Exceptional Children, the lead professional special education research journal advocating for children with disabilities and their families and professionals who support them. In that paper one of our main conclusions was that "although states are responding with more specific and comprehensive policies, our findings reveal great variation in specificity, priority, and coverage of such policies. Our findings suggest that federal technical assistance and guidance are justified to assist states in establishing best practice policies. Such federal guidance can assist states in the adoption, use, restrictions, monitoring, and evaluation of restraint and seclusion procedures" (p. 9).*
 - b. *I have attached a copy of this paper for your reference.*
 - c. *This main finding from our survey is consistent with other research and studies conducted since 2013. While state efforts toward prohibiting and limiting the use of seclusion and restraint are encouraging, variability in policies, procedures, and implementation suggests that federal guidance is needed to serve as a minimum standard or criteria.*
 - d. *More specifically, these federal standards or criteria would emphasize empirically-supported, theoretical-defendable, and high-fidelity implementation of practices and systems for children, youth, and educators, and would address*
 - i. *Terminology and definitions (e.g., time out, restraint, seclusion, exclusion, crisis, emergency, debriefing, and punishment)*
 - ii. *Procedural guidance (e.g., time limits, acceptable and unacceptable procedures)*
 - iii. *State level reporting (e.g., timing, confidentiality and privacy, improvement-based data decision making, accountability)*
 - iv. *Prevention practices and systems (e.g., multi-tiered systems of support, like PBIS; effective and positive classroom behavior management, school-wide positive climate)*

- v. *Professional preparation and on-going training (e.g., all educators, leadership and implementation teams, specialists, school and district leadership, school resource officers)*
 - vi. *Leadership responsibilities and policy development and enforcement (i.e., school, district, state)*
2. Dr. Sugai, your testimony was very enlightening. I was especially interested in your points about how restraint and seclusion are not constructive treatments, interventions, or therapies. Will you provide more detail on how seclusion and restraint do not reduce behaviors? Does the evidence suggest that seclusion and restraint may actually increase challenging behaviors?
- a. *One of the reasons why seclusion and restraint are used repeatedly is the sense of "success" and "control" experienced with a reduction of dangerous and harmful behavior immediately after a crisis and emergency. This experience fosters a mis-assumption or mis-rule that seclusion and restraint are effective responses to future problem behavior.*
 - b. *Unfortunately, the empirical results indicate that these immediate decreases of crisis and emergency level behaviors are situationally temporary, that is, they have little impact on reducing future occurrences of the behaviors that lead to crisis and emergency level problem behaviors. Furthermore, problem behavior is more likely to occur because the actual triggers and maintainers of the problem behaviors have not been addressed and more appropriate replacement behaviors have not been systematically taught, emphasized, practiced, and recognized.*
 - c. *Students learn that*
 - i. *Adults are required to "control" their behavior and self-management behaviors are not needed*
 - ii. *Problem behavior works to gain attention, avoid requests, and/or escape difficult situations or conditions*
 - iii. *Using force to control behavior is perceived as acceptable because adults use force*
 - iv. *Escalating the intensity of their problem behavior eventually results in adult intervention*
 - d. *Apparent from the above, student behavior does not occur in a vacuum. It occurs in a social, interactive context in which a relatively minor incident or request escalates when the student does not respond or comply, and the adult expects and demands compliance. In turn, non-compliant behaviors escalate, requiring more forceful demands for compliance, which in the end results in more intense student behaviors that can become harmful, destructive, and dangerous. At the end of this chain is when restraint and seclusion are applied as a last resort. Seclusion and restraint should not be used to force compliance, administer an aversive consequence, or enforce rule violations. Missing in this response is the*

lack of implementation of preventive strategies and practices at the beginning of the interaction and earlier in the escalation.

3. Dr. Sugai, we've spent a lot of time today talking about seclusion and restraint and what to do in the moment. However, your testimony spoke to the fact that challenging behavior does not just occur – it is part of a cycle. Knowing this, what is the best way to prevent seclusion and restraint? How do we support teachers in understanding this cycle and intervening earlier?
 - a. *Yes, seclusion and restraint are often the unfortunate by-product of escalated chains of student and educator interactions. To follow up with my response to your earlier question, yes, prevention-based behavior, classroom, and school-wide practices must become part of every student-educator interaction every day.*
 - b. *School-wide prevention means all students and educators develop and agree to three to five common values (e.g., respect, safety, responsibility) that are exemplified by observable behaviors and contextualized to specific school settings (e.g., being responsible and safe is walking to the left in the hallways, being respectful of others is raising your hand if you need assistance). All educators focus on watching for and formally acknowledging these behaviors in typical school routines (e.g., entering the classroom, riding the bus, attending sporting events and dances). If done well, the school climate or culture is reported by students, family members, and educators as being positive, caring, respectful, safe, and responsible.*
 - c. *Classroom prevention means the school-wide values and expected behaviors are applied to typical classroom settings (e.g., science lab, reading circle) and routines (e.g., working in cooperative groups, handling homework assignments, interacting with substitute teachers).*
 - d. *Individual student prevention means (a) considering individual learning differences and histories, (b) explicitly and deliberately teaching missing individualized social skills (e.g., asking for assistance, expressing frustration, requesting attention, problem solving), (c) anticipating situations where escalating problem behavior are likely by removing the triggers of problem behavior and adding prompts for more acceptable behaviors (e.g., redirecting, defusing, disengaging).*
 - e. *All educators and school leaders should have the right and opportunity to learn, use, and be supported for these prevention-based practices so as to prevent the development, use, and escalation of problem behavior and to establish positive, preventive, and effective classroom and school-wide climates.*

For Representative Frederica S. Wilson:

4. Dr. Sugai, we often hear primarily about seclusion and restraint being used on students with disabilities. However, these practices are used on all students. In some states, there are no protections for students without disabilities. It is important that all teachers and all staff have the necessary training and support to identify and address challenging behaviors in a proactive manner. Why is practices PBIS school-wide a best practice, rather than classroom by classroom? What are the benefits of a singular model with support from school leaders?
 - a. *In our work with classrooms, schools, districts, and states, we've learned one-dimensional behavior management systems are inefficient and inadequate in supporting the social, emotional, academic, and behavioral needs of all students, but especially students with challenging behaviors and/or disabilities. Examples of one-dimensional systems that are necessary but insufficient include school-wide discipline codes of conduct, classroom-wide social skills curricula, general school-wide rules (e.g., use an inside voice, hands and feet to self, dispose of your trash appropriately) that are applied independently and out of typical classroom and school routines and places. These practices are necessary because common purpose, language, and routine are needed to maintain an effective classroom and school, and fortunately, a majority of students respond if these expectations are taught and promoted positively and consistently.*
 - b. *However, because of learning history, disability, or other risk factor, some students require additional academic, social, emotional, and behavioral supports to ensure their success at school. These supports should be positive, educative, individualized, and preventive rather than harsher or more restrictive or exclusionary.*
 - c. *25 years ago, when the Office of Special Education Programs in the U.S. Department of Education awarded us the Technical Assistance Center on Positive Behavioral Interventions and Supports, we adopted the public health prevention approach to classrooms and schools, that has been termed "multi-tiered support systems" or "continuum of systems of support" (i.e., PBIS for our Center). The PBIS framework is not a single approach but an organizational scaffolding to organize how we consider student behavior (i.e., general, low risk, high risk), align interventions or practices (i.e., universal, targeted, intensive), and provide implementation supports (i.e., school-wide and classroom, small group, and individual).*
 - d. *Within this continuum of support or PBIS framework, school and district teams identify interventions that are empirically supported, culturally adaptable, and aligned with student behavior.*
 - e. *We have found that when a majority of staff (>80%) agree to implement, administration plays an active and participatory role, team is given authority and opportunity to lead and coordinate implementation, and specialized behavior*

support can be established, student outcomes are enhanced, classroom and school climate are more positive, and few students and educators engage in escalating chains of behavior.

- f. One of the elements of this framework is to establish a highly competent and fluent expert team that develops, practices, and implements crisis and emergency procedures should student or adult behavior escalate where harm or damage is possible.*

For Representative Andy Levin:

- 5. Dr. Sugai, seclusion and restraint, as you've stated, should only be used in an emergency as a last resort and never as a planned intervention. Can you provide more information on what are the challenges with using seclusion and restraint as a planned intervention and how that could possibly lead to increased use of the practice?
 - a. The use of ineffective or not recommended practices, like seclusion and restraint, can be associated with a number of influences*
 - i. Mis-alignment between intervention and problem behavior being addressed*
 - ii. Mis-alignment of the intensity of problem behavior with the implementation intensity, dose, setting, and/or duration*
 - iii. Inaccurate and/or incomplete implementation of evidence-based and appropriate practices*
 - iv. Multiple practices that simultaneously compete for time, funding, personnel, etc.*
 - v. Policy statements that lack implementation guidance*
 - vi. Lack of or insufficient priority, modeling, and participation by administrators*
 - b. Because of the potential negative effects I mentioned above and the lack of evidence that seclusion and restraint is an effective intervention, we strongly encourage schools to focus on the following to avoid the trap of using seclusion and restraint inappropriately as a planned intervention:*
 - i. Screen for students who have the risk factors and/or history of problem behavior and develop specialized constructive or educative treatment plans that arrange the environment so prosocial behaviors are promoted and antisocial behaviors are inhibited or prevented*
 - ii. Establish a school team and administrator who will invest in school-wide and classroom systems that provide a continuum of support for all students*

- iii. Establish a specialized team that is prepared and practiced in responding to crisis and emergency situations*
- iv. Collect data regularly on the implementation preparedness and fidelity of the above features*

Recent Changes in State Policies and Legislation Regarding Restraint or Seclusion

JENNIFER FREEMAN

GEORGE SUGAI
 University of Connecticut

ABSTRACT: *In this article, we describe and evaluate the extent to which recent changes to state-level policy are related to seclusion and restraint in schools and detail what components of comprehensive restraint and seclusion policy are indicated. We examined state policy documents and coded them for the presence of specific characteristics related to prevention of problem behavior, intervention, and reporting. Results indicate a clear consensus that restraint and seclusion procedures should be used only as a last resort in the case of emergency and not as a punitive measure. Additional policy trends include recommendations for the use of positive behavior supports and the use of de-escalation strategies. Some debate exists about the use of time limits and limitations on specific techniques, such as prone restraints.*

The enactment of the Individuals with Disabilities Education Act (IDEA) brought a requirement to serve students with disabilities in the least restrictive environment. One implication of this requirement is the increased inclusion of students with significant behavioral issues in general education settings, rather than in self-contained programs or psychiatric hospitals. The use of restraint and seclusion procedures to manage significant behavioral issues has moved with these students into the school setting (Ryan & Peterson, 2004). Significant safety issues and abuse cases have prompted a concerted effort by advocacy groups to regulate the use of these procedures in the school setting. With only limited federal guidance, states have been asked to update or develop legislation or

policy regulating the use of seclusion and restraint in the school setting (Council of Parent Attorneys and Advocates, 2009; Duncan, 2009; National Disability Rights Network, 2009).

Significant safety issues and abuse cases have prompted a concerted effort by advocacy groups to regulate the use of restraints and seclusion in the school setting.

The purpose of this article is (a) to evaluate the extent to which state-level policies have recently changed in regulating the use of seclusion or restraint procedures, and (b) to detail what components of comprehensive restraint and seclusion policy are indicated. We describe common trends in state policy changes and the extent

to which those trends match recently proposed federal legislation.

BACKGROUND INFORMATION

Many personnel have used physical restraint with children in clinical settings since the 1950s, and in law-enforcement and psychiatric institutions with adults before then. Whereas the use of seclusion or restraint by most psychiatric and law enforcement agencies is strictly regulated, most school districts do not provide such regulations (Ryan & Peterson, 2004). In 1998, an investigation by the *Hartford Courant* (Weiss, 1998) revealed 142 deaths related to the use of restraint over a 10-year period; 33% of these deaths were caused by asphyxia. In May of 2009, a Government Accountability Office (GAO) report indicated the difficulty in obtaining an accurate count of deaths related to seclusion or restraint because of a lack of systematic data reporting. The GAO committee, however, received descriptions of hundreds of deaths between 1990 and 2009 related to restraint. The GAO report indicated that many personnel used seclusion and restraint as disciplinary tactics, rather than as emergency safety measures and that personnel used these practices disproportionately on children with disabilities.

Also in 2009, the Council of Parent Attorneys and Advocates (COPPA) released a report titled *Unsafe in the Schoolhouse: Abuse of Children with Disabilities*. This report provided a summary of survey results in which 185 incidents of abuse were reported as involving the use of restraint, seclusion, or aversive techniques. Results indicated that 64.4% of reported abuse cases involved restraint, 58.3% involved seclusion, and 30% involved aversive procedures. The majority of these incidents (68%) involved students with autism or Asperger's syndrome, and 27% involved students with attention deficit disorder.

Amid growing concerns, in part triggered by the results of these reports, Ryan, Robbins, Peterson, and Rozalski (2009) and the U.S. Department of Education conducted a review of state regulations and policy and found that 19 states had no statewide regulations in place. In addition, U.S. Secretary of Education Arne Duncan (2009) sent a letter to chief state school officers asking for

a review and update of legislation and policies related to restraint and seclusion.

At the time of this writing, federal legislation has been introduced but not passed in both the U.S. House of Representatives and the U.S. Senate. This legislation would provide important guidance for states. Proposed legislation would limit the use of physical restraint to emergency situations only and eliminate the use of seclusion and mechanical or chemical restraint. Requirements for (a) staff training, (b) continuous face-to-face monitoring of the restrained student, (c) parental notification, and (d) debriefing are included in the proposed legislation. In addition, funding would be available to increase states' capacity to collect and analyze data, as well as implement schoolwide positive behavior supports.

A 2010 update to the *School Is not Supposed to Hurt* report documented limited changes to state policy documents and slow responses by states (National Disability Rights Network, 2010). In this article, we provide a description of recent changes to state policy documents as a result of the growing pressure to regulate restraint and seclusion procedures in schools, and we document trends in state policy in relation to available research and proposed federal legislation.

RESEARCH QUESTIONS

We address two specific research questions:

1. To what extent have states made changes to legislation or policy related to seclusion or restraint in the school setting, in response to the request from the U.S. Department of Education?
2. What elements of comprehensive restraint and seclusion policy are present in related state-level policy or legislation?

METHODS

SAMPLE

To determine the extent to which states have made changes and to characterize the components of state restraint and seclusion policies, we collected and reviewed the policy or legislative docu-

ments from all 50 states and Washington, D.C. We did not include U.S. territories.

SEARCH PROCEDURES

Search procedures began with a review of the *Summary of Seclusion and Restraint Statutes, Regulations, Policies and Guidance, by State and Territory: Information as Reported to the Regional Comprehensive Centers and Gathered from Other Sources* (U.S. Department of Education, 2010, which was compiled in 2010 and updated in 2011 by the U.S. Department of Education and verified by the states. The document contains links to current policy or legislative documents, as well as notes about any current revisions to state statutes that were in process. For the purposes of this research, we reviewed policies and legislative documents that were included in the U.S. Department of Education Summary. Whenever possible, we discussed policies and procedures for restraint and seclusion separately.

CODING PROCEDURES

Initially, we separated states into three categories: (a) with relevant legislation, (b) with relevant policy or guidance documents, and (c) with no school-based guidance or legislation. Next, we compared current policy documents with results from the review by Ryan et al. (2009). For states with policy or legislative documents enacted after Secretary Duncan's 2009 letter to chief state school officers, which contained updates based on this comparison, we coded them as changed or updated. Moreover, we recorded the existence of a comprehensive technical assistance document for the state, as well as the presence of legislative or policy language allowing the use of aversive techniques.

To describe the extent to which state documents included elements of comprehensive restraint and seclusion policy, we coded each state document for the presence of specific characteristics related to prevention, intervention, and reporting.

We coded specific elements as "L" if legislation addressed the element, "P" if policy addressed the element, and zero if the element was not present. We coded preventative elements for (a) recommendations for schoolwide positive be-

havioral interventions and supports (SW-PBIS), (b) a behavior plan based on functional behavior assessment (FBA), and (c) staff training in de-escalation techniques.

Intervention characteristics included specific guidance regarding (a) time limits, (b) limitations on specific practices or settings, (c) application of the policy to all students, and (d) relief from seclusion or restraint for toilet and food as needed.

Reporting characteristics included procedures for (a) reporting to parents, (b) reporting to the state, (c) team debrief, and (d) student debrief. Table 1 lists and defines key terms.

RESULTS

RESEARCH QUESTION 1

Since the 2010 U.S. Department of Education review, 30 states have updated or added legislation or policy statements (Figure 1).

RESEARCH QUESTION 2

Currently, 33 states have legislative or regulatory documents related to seclusion and restraint in schools, and 15 states have policy or guidance documents (Figure 1). Across these legislative or policy documents, we found four general trends. First, preventative techniques were suggested (Figure 2): (a) de-escalation training, (b) FBA, and (c) SW-PBIS.

Second, limitations were placed on specific procedures (Figure 3): (a) time duration, (b) prone restraints, and (c) restraint or seclusion for the purposes of punishment.

Third, reporting requirements to parents and state were defined (Figure 4). Finally, requirements for debriefing with staff and students were indicated (Figure 5).

For a list of specific states included in each of these categories, readers may contact the lead author. In general and across states, concern about student safety has increased, and schools are expected to reduce or eliminate the use of seclusion and restraint procedures, except as a last resort, emergency procedure.

TABLE 1
Definition of Key Terms

<i>Term</i>	<i>Definition</i>
Legislation or Regulation	A proposed or enacted group of laws and the supporting regulations describing the implementation of the law.
Policy or Guidance	Statements or documents that set out the state views and expectations related to school district responsibilities and duties
Seclusion	The isolation of a student in a room, enclosure, or space that is (a) locked; or (b) unlocked and the student is prevented from leaving. (http://thomas.loc.gov/cgi-bin/query/F?c112:1:/temp/-c112SkXQxk:e897:)
Physical Restraint	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. (http://thomas.loc.gov/cgi-bin/query/F?c112:1:/temp/-c112SkXQxk:e897:)
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, 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. (http://thomas.loc.gov/cgi-bin/query/F?c112:1:/temp/-c112SkXQxk:e897:)
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. (http://thomas.loc.gov/cgi-bin/query/F?c112:1:/temp/-c112SkXQxk:e897:)
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. (http://thomas.loc.gov/cgi-bin/query/F?c112:1:/temp/-c112SkXQxk:e897:)
Time Out From Reinforcement	Temporarily removing a child's access to a reinforcing environment or setting for a specific time duration contingent on inappropriate behavior. The child is not prevented from leaving or secluded.
Comprehensive Technical Assistance Document	A document describing in detail the expectations and procedures related the use of seclusion and restraint in public schools. Comprehensive documents include: <ul style="list-style-type: none"> • Operational definitions of terms, • Descriptions of preventative techniques, • Description of required training elements, • Clear description of situations that warrant the use of restraint or seclusion (i.e., emergency situations) • Description of specific procedures which are allowed or prohibited including timelines • Description of reporting requirements and oversight procedures • Description of follow up procedures (i.e., team or student debrief)

continues

TABLE 1. Continued.

Term	Definition
Schoolwide Positive Behavior Interventions and Supports (SW-PBIS)	"A decision making framework that guides selection, integration, and implementation of the best evidence-based academic and behavioral practices for improving important academic and behavior outcomes for all students." (http://www.pbis.org)
Prone Restraint	A method of physical restraint where the student's is secured in a face down position
Aversive Techniques	Techniques intended to cause pain or discomfort to students and when used as punishment for inappropriate behavior
Emergency	A serious, unexpected, and dangerous situation requiring immediate action in order to protect the safety of students and staff
De-escalation Training	Training provided to staff that includes strategies intended to calm a situation or prevent a crisis from developing further.
Functional Behavior Assessment (FBA)	A systematic process of assessment designed to identify the underlying function or purpose for a behavior. This information is then used to develop a specific and focused intervention plan.
Debrief	A structured conversation held after a crisis event occurs during which the event is reviewed for compliance to policy and/or information is collected which may be used to plan for preventing future crisis situations.

TRENDS IN STATE POLICY

Technical Assistance. Eight states provide districts comprehensive technical assistance documents (Figure 1). In addition to clearly stating the regulations or policies of the state, these documents explicitly define and give examples of the appropriate procedures related to prevention of emergency situations, use of specific seclusion and restraint, and specific reporting and debriefing. These technical assistance documents are typically written in practitioner-friendly language. Five states (Florida, Georgia, Maryland, Nebraska, and Oregon) use a question-and-answer format to clarify expectations. Kansas' documents include worksheets to guide teachers and teams through decisionmaking processes.

Schoolwide Positive Behavior Support. The prevention of problem behaviors is an emphasis in most states, and 31 states have a requirement or a recommendation that school districts implement SW-PBIS as a framework to prevent problem behaviors and reduce the need for restraint or seclusion. Although three additional states do not include recommendations for SW-PBIS in seclusion and restraint policy, statewide efforts are in place to implement SW-PBIS generally. This

trend aligns with the proposed federal support for expanding the implementation of SW-PBIS.

The prevention of problem behaviors is an emphasis in most states, and 31 states have a requirement or a recommendation that school districts implement SW-PBIS.

Time Limits. Twenty-one states have attempted to define a specific limit for time duration when using seclusion or restraint. The general consensus across state policy documents is that restraint or seclusion procedures should be terminated as soon as the student is able to be safe or the emergency has passed. When specified, duration time limits range from "just minutes" to 24 hr; most states, however, limit the use of either seclusion or restraint from 30 min to 1 hr with a requirement for administrative approval for continuation of the procedures. Six states (Alabama, Arkansas, Hawaii, Michigan, Tennessee, and Wisconsin) differentiate time limits by student age, with shorter limits for younger students. New Hampshire specifically declined to define a duration time limit because of the tendency for a defined maximum in policy to

FIGURE 1
Current Legislation or Policy Status

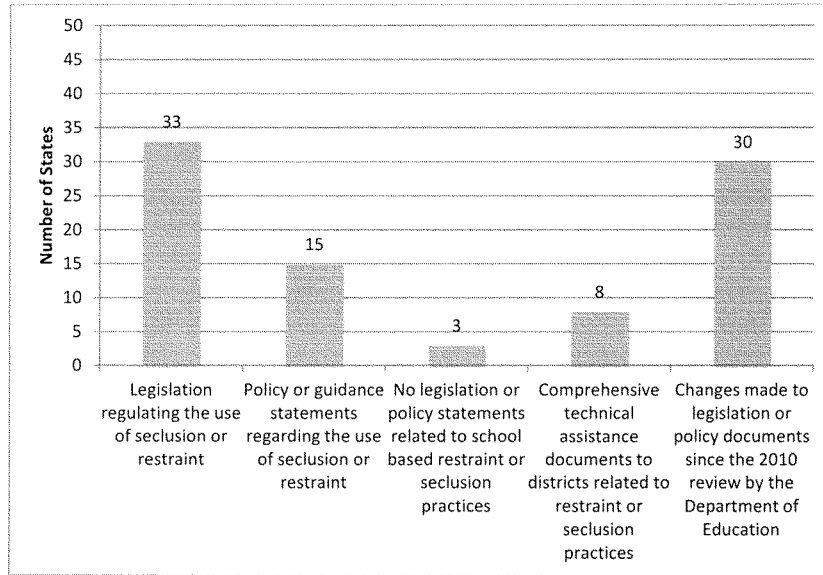
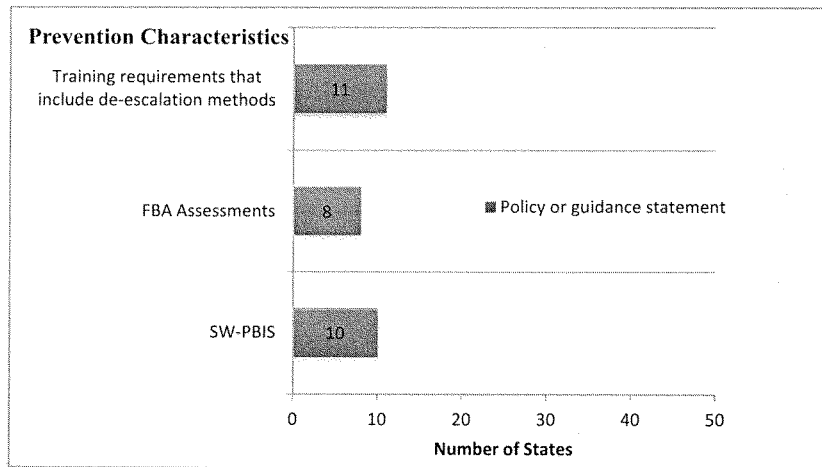


FIGURE 2
Prevention Characteristic



Note. FBA = functional behavior assessment; SW-PBIS = schoolwide positive behavioral interventions and supports.

FIGURE 3
Intervention Characteristics

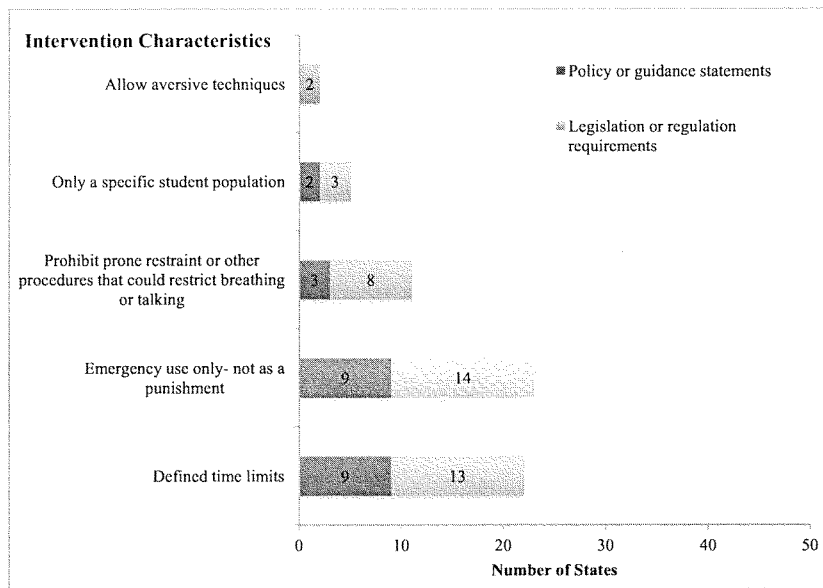


FIGURE 4
Reporting Requirements

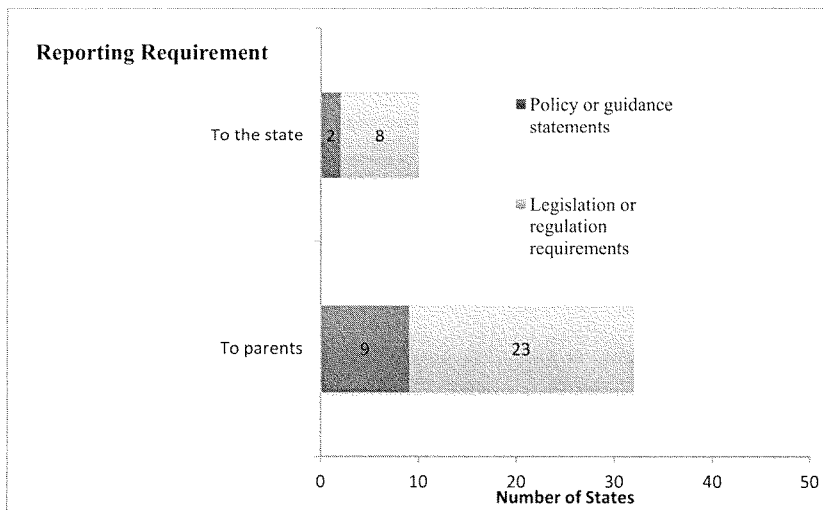
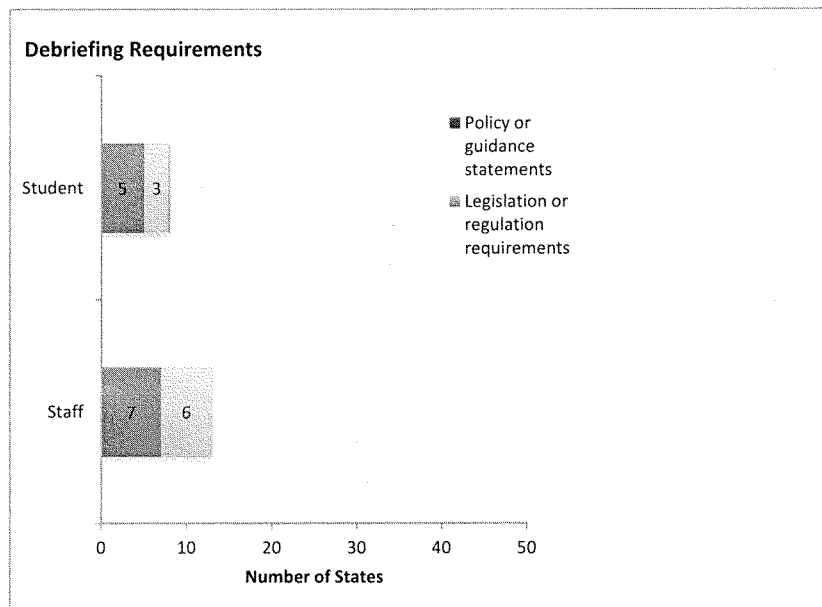


FIGURE 5
Debriefing Requirements



become the standard minimum in practice. In addition to defining time limits, Michigan requires a change of staff if seclusion exceeds the stated time limit, and Illinois limits repeated restraints within a 3-hr time period.

Prone Restraints. Prone restraints have come under intensive scrutiny as a result of the GAO report. Currently, 11 states have legislation or policy in place that prohibits or severely limits the use of prone restraints in schools, and eight states have banned the procedure completely. Only Illinois and Massachusetts allow its use when school employees have been specifically trained. Vermont allows the use of prone restraints only when student size makes other restraint procedures unsafe. Proposed federal legislation does not limit specific procedures—as long as the procedures do not limit the student’s ability to communicate or compromise the students health—but does address safety concerns by requiring continuous face-to-face monitoring.

Reporting Procedures. Thirty-two states have outlined procedures for requiring parental noti-

cation, in most cases verbally, by the end of the school day and in writing within 1–3 days. In addition, 10 states require districts to report the use of restraint and seclusion procedures to the state. The timelines for reports ranged from within 3 days to annually. Pennsylvania policy, for example, requires annual reporting through a web-based system. Although Nebraska does not currently have a requirement for reporting to the state, their technical assistance document suggests school districts be prepared to do so in the near future. Proposed federal legislation would make grant money available to expand states’ capacity to collect and analyze data about the use of seclusion or restraint procedures.

DISCUSSION

The purpose of this article is to describe the features and changes that states have made to seclusion and restraint legislation and policies as of the spring of 2011 when this review was conducted. In general, most states have established or revised

their legislative and policy documents to ensure greater alignment with federal expectations and specificity and accountability at the local levels. Issues and procedures related to aversive procedures, prone restraint in particular, have been delineated. In addition, an emphasis on prevention and a differentiation between intervention and crisis/emergency situations have increased. Finally, states have enhanced procedures for reporting and debriefing.

More specifically, since the U.S. Department of Education review in 2010 30 states have updated or added regulations or policies in response to the 2009 request from Arne Duncan, the U.S. Secretary of Education. Twenty-three out of 30 current state policy documents indicate that these procedures should be used only as a last resort in the case of emergency and not as a punitive measure. In addition, we found that 31 states made recommendations for the use of SW-PBIS or equivalent and requirements for training that includes the use of de-escalation strategies. Discussion and debate seem to exist among states about the use of specific duration time limits and limitations on specific techniques, such as prone restraints. Although variable in duration length, 22 states have specified implementation time limits. Eleven states with recent policy updates have prohibited or restricted the use of prone restraints in response to safety concerns.

The findings and summaries related to this study should be considered in the context of a few limitations. First, this review was based on a search and examination of state websites and, as such, may not represent all policies and procedures related to restraint and seclusion that might be maintained elsewhere (e.g., state archives and registrar). Second, new or pending legislation or policy additions or changes may not have been posted and available at the state level because of time constraints associated with vetting requirements, posting technologies, posting requirements, and so forth. Third, the search methodology only included examination of web-based written documents and information. Actual implementation, enforcement, and evaluation of state-level legislation and policy for use of restraint and seclusion were not examined or evaluated. Fourth, because the federal and state governments generally are addressing restraint

and seclusion together, the findings from our review do not differentiate or highlight policies and procedures for restraint and seclusion, separately. Finally, because of the intentional descriptive nature of this project, inter-scorer agreement checks were not conducted, and, as such, the interpretive nature of the findings should be considered when reviewing our findings and implications.

RECOMMENDATIONS

Given the preceding limitations, we consider our findings as underestimates of actual state efforts. Nonetheless, we believe these state policy trends provide insight into how states are interpreting, addressing, and evaluating concerns about restraint and seclusion, as well as suggestions and requirements related to these issues. Although states are responding with more specific and comprehensive policies, our findings reveal great variation in specificity, priority, and coverage of such policies. Our findings suggest that federal technical assistance and guidance are justified to assist states in establishing best practice policies. Such federal guidance can assist states in the adoption, use, restrictions, monitoring, and evaluation of restraint and seclusion procedures. As such, we present several recommendations related to policy development or revision, procedural implementation, accounting and reporting, personnel preparation, and data-based decisionmaking and evaluation.

Federal Guidance. State policies vary in content, and at the time of this review a number of states did not have policies or legislation regulating the use of seclusion or restraint. At a minimum, federal legislation is needed requiring states to enact comprehensive legislation regulating the use of seclusion and restraint so that students across the United States are protected (Council of Parent Attorneys and Advocates, 2009; National Disability Rights Network, 2009). Moreover, technical assistance from the federal government should include specific examples and comprehensive recommendations related to preventative strategies and specific procedural guidelines related to seclusion or restraint, reporting, and debriefing.

When restraint and seclusion are being considered together generally under the same policy umbrella, we recommend that each be defined, de-

scribed, and addressed separately with respect to use, restrictions, and safeguards. Relatedly, a clear distinction should be made between planned constructive treatment and intervention and crisis and emergency procedures. More specifically, terms, such as *time out*, *restraint*, *seclusion*, *exclusion*, *crisis*, *emergency*, *debriefing*, and *punishment*, must be clearly defined. For example, although *time out* and *seclusion* are sometimes used interchangeably, *time out* is a documented behavioral intervention (e.g., planned brief removal of a student from a reinforcing activity after certain specified misbehavior that is associated with a decreased likelihood of that misbehavior occurring in the future). *Time out* is not a crisis or emergency response.

Time Limits. Specifically, guidance related to the duration and specific restraint procedures, such as prone restraints and seclusion is needed. Some authors suggest that the (a) duration of seclusion or restraint procedures should be brief; for example, 5–15 min (Fabiano et al., 2004; Kapalka & Bryk, 2007; Hobbs, Forehand, & Murray, 1978), and (b) contingent release from seclusion (e.g., student needs to be quiet for last minute or specified time period) may not lead to better outcomes (Donaldson & Vollmer, 2011; Erford, 1999). The research supporting these suggestions, however, needs to be extended and replicated before related policy is developed. In addition, as indicated previously, time limit considerations for restraint should be addressed separately from seclusion, and in the context of resolving crisis and emergency conditions.

State-Level Reporting. Additional information is needed about the prevalence and nature of restraint and seclusion in schools (Council of Parent Attorneys and Advocates, 2009; Duncan, 2009; Government Accountability Office, 2009; National Disability Rights Network, 2009). Although state-level policy documents indicate that recent changes have been made at the policy level, little evidence exists that use and quality of seclusion and restraint procedures have improved, especially for children and youth with disabilities. State-level reporting procedures should be in place such that a database is developed to answer questions related to (a) what conditions restraint or seclusion procedures were used, (b) what specific procedure were implemented, (c) how long the procedures were used, (d) who was involved

in the situations, (e) what happened immediately and later after restraint and seclusion were terminated, (f) how debriefing was conducted (e.g., by whom, when, where) and what were the outcomes, and (g) what preventive strategies were put in place. This information should be used at the student, school, district, and state levels to monitor the use of seclusion and restraint procedures and guide decisionmaking related to staff training, policy revisions or decisions, accountability, and research. The existence of state-level reporting would enable researchers and policy makers to better understand the extent to which state-level policy changes are affecting practices in schools and improving the quality of student support.

Prevention Strategies. By necessity, regulating the use of restraint and seclusion is important to ensure no harm and safety. Many states are advocating for preventive strategies; their priority and specificity in policy, however, are not well developed. Staff training in preventative and de-escalation strategies has been shown to significantly reduce the number of seclusion and restraint episodes (Busch & Shore, 2000; Couvillon, Peterson, Ryan, Scheuermann, & Stegall, 2010; Fischer, 1994; Ryan, Peterson, Tetreault, & Hagen, 2007; Williams, 2010). State policies should increase their emphasis on professional development, implementation fidelity, and evaluation relative to these documented de-escalation practices.

Statewide efforts to scale up the implementation of schoolwide behavior systems like SW-PBIS, should be supported and encouraged at the federal level (Council of Parent Attorneys and Advocates, 2009; Duncan, 2009; National Disability Rights Network, 2009). SW-PBIS is a framework that supports the development of safe school environments by (a) clearly defining, teaching and reinforcing appropriate behaviors; (b) using school data to guide intervention selection and progress decision making; (c) carefully monitoring implementation integrity; (d) giving priority to evidence-based practices; and (e) establishing organizational structures that give staff efficient implementation capacity (Center on Positive Behavioral Interventions and Supports, 2010). A substantial evidence base supports the value of SW-PBIS in reducing discipline-related problem behavior, supporting academic achievement, improving school climate and safety, and reducing

reports of bullying incidents and peer rejection (Bradshaw, Koth, Bevans, Ialongo, & Leaf, 2008; Bradshaw, Koth, Thornton, & Leaf, 2009; Bradshaw, Mitchell, & Leaf, 2010; Bradshaw, Reinke, Brown, Bevans, & Leaf, 2008; Horner et al., 2009; Horner, Sugai, & Anderson, 2010)

In the context of policy, preventive, school-wide systems, like SW-PBIS, have been indicated as an effective way to reduce the number of problem behaviors in schools and potentially reduce the need for aversive techniques, such as seclusion and restraint (CEC, 2010; Couvillon et al., 2010; GAO, 2009; Peterson, Albrecht, & Johns, 2009; Ryan et al., 2009; U.S. Department of Education, 2010).

Clear Limitations. The use of seclusion and restraint in schools should be limited to emergency use and not be considered a therapeutic treatment option except in very rare instances where the need for these procedures is clearly defined and limited in a student's individualized education program (Council of Parent Attorneys and Advocates, 2009; National Disability Rights Network, 2009).

Finally, we found the research to be limited with respect to providing strong evidence-based recommendations relative to the use of restraint and seclusion, prevention strategies, alternative responses to restraint and seclusion procedures and strategies. As such, research must be conducted to enable statements about what works, under which conditions, for how long, where, and why. The use and outcomes of restraint and seclusion procedures are sufficiently volatile and potentially harmful that a significant increase in research is needed to inform our practice and policy decisions at the individual student and staff, classroom, school, district, and state levels.

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We acknowledge the assistance and support in the preparation of this article from Renee Bradley, Office of Special Education Program (OSEP), U.S. Department of Education.

The development of this article was supported in part by Grant H326S03002 from the Office of Special Education Programs, U.S. Department of Education for OSEP Center on Positive Behavioral Interventions and Supports (www.pbis.org). Opinions expressed herein are the authors' and do not necessarily reflect the position of the U.S. Department of Education, and such endorsements should not be inferred.

Manuscript received November 2011; accepted May 2012.

[Ms. Sutton's response to questions submitted or the record follows:]

The entire climate of a school would change if there was school-wide PBIS. Teachers would have a weight lifted as expectations would be clear. As a special education teacher having school-wide PBIS would be such a gift. This would allow my students to actively generalize skills across settings and people. Often times only certain people are aware of the structures in place which therefore decreases the opportunity for various people to work with every student. School-wide PBIS would give all students, not just special education students, consistency and structure throughout their entire school day. Through enabling school-wide PBIS schools would highlight the positives therefore eliminating the desire for negative attention seeking behaviors. In implementing PBIS schools would open themselves up to building positive relationships with families. School wide PBIS has potential to impact all students, all school personnel, families and the futures of the students we are teaching.

[Whereupon, at 11:35 a.m., the subcommittee was adjourned.]

