



**CONSORTIUM FOR CITIZENS
WITH DISABILITIES**

March 16, 2012

Dear Member of Congress,

On March 9, 2012, the U.S. Department of Education released data that indicates that of the tens of thousands of school-aged children who are secluded or restrained at school, 70 percent are students with disabilities.¹ This data, along with reports from the Government Accountability Office (GAO) and the National Disability Rights Network (NDRN), confirm that restraint and seclusion practices are dangerous and often used by schools in non-emergencies. For this reason, we strongly support the Keeping All Students Safe Act, S.2020 and H.R. 1381 and urge Congress to adopt these bills immediately.

The undersigned organizations have serious concerns about a recent report from the American Association of School Administrators (AASA) that promotes the use of restraint and seclusion as tools to protect students and school personnel. This report argues that no federal law be enacted and asks to protect the status quo. With no source cited, the AASA simply asserts that 99 percent of school personnel use seclusion and restraint safely and only when needed. This assertion is not supported by any facts.²

In 2009, the GAO reported that hundreds of students had been restrained and secluded, leading to death, injury, and psychological trauma. At least 20 of the GAO's stories involved children who died from restraint. Other children suffered injuries, including broken bones and bloody noses, or post-traumatic stress syndrome. Children were duct-taped to chairs and desks or locked alone in seclusion rooms.³ In 2009, NDRN catalogued the use of abusive restraint and seclusion upon students with disabilities in 2/3 of states. Again this year, NDRN reported on the dangers - including an attempted suicide in a seclusion room by a student who was not being watched by staff.⁴ The House of Representatives reported that seclusion has led to a variety of injuries and deaths, including suicide, electrocution, and self-injuries, and that restraint has also led to injury and death.⁵ The Council of Parent Attorneys and Advocates and other organizations have also documented the harm that restraint and seclusion cause.⁶ A child hung himself in a seclusion room in Georgia while his teacher sat outside, looking in occasionally, in accord with the types of school policies the AASA suggests relying upon instead of federal legislation.⁷ This month, the Office for Civil Rights for the U.S. Department of Education released

¹ U.S. Dept. of Educ., Office for Civil Rights, Civil Rights Data Collection, Revealing New Truths About Our Nation's Schools (March 2012), <http://1.usa.gov/crdcsum>.

² Even if this contention was correct, it would translate into a risk that over 30,000 public school staff (1%) could be using restraint/seclusion inappropriately and wrongfully.

³ United States Government Accountability Office, Seclusions and Restraints, Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers (2009), <http://1.usa.gov/gaors7>.

⁴ National Disability Rights Network, School Is Not Supposed to Hurt (2009), <http://bit.ly/ndrn2009>; School is Not Supposed to Hurt (2012), <http://bit.ly/xL8b89>.

⁵ H.R. Rep. No. 111-417, Preventing Harmful Restraint and Seclusion in Schools Act 11-13 (2009).

⁶ Council of Parent Attorneys & Advocates, Unsafe in the Schoolhouse (J. Butler 2009), <http://bit.ly/UnsafScho>.

⁷ Alan Judd, Death Highlights Lack of Regulation at Psycho-educational Schools, Atlanta Journal Constitution, July 27, 2009, <http://bit.ly/atljcons>.

data that tends to show disproportionate use of restraint and seclusion upon students with disabilities and those from racial and ethnic minority groups.⁸

Contrary to the AASA's assertions, the Keeping All Students Safe Act will provide vital national minimum standards that protect all school children nationwide. The bills will strengthen protections in every state. The bills will ban physical restraint except in emergency situations when there is an immediate threat of physical danger and less restrictive alternatives will not work. They will protect children from dangerous seclusion. Only 14 states limit the use of restraints to physical safety emergencies, and only 11 states either ban seclusion entirely or restrict it to physical safety emergencies.⁹

Under the two bills, schools will no longer be able to use these dangerous techniques to punish children, coerce compliance, for non-dangerous behavioral infractions, or in place of positive behavioral support or proper educational programming. Few states limit dangerous restraints, including those that impair breathing (15 states), mechanical restraints (15 states), and chemical restraints (10 states). The bills would ban those. The bills will require same-day parental notification. Only 12 states mandate this today. Other states delay far longer, and 27 states have no legal requirement to tell parents a child was restrained/secluded.¹⁰ Many parents never learn what happened to their child.

The AASA report relies on a "survey" of some portion of its members for a variety of claims. To the extent the AASA suggests its survey is nationally representative, it is misleading. The report contains no information about the survey or its methodology. The report does not state whether the survey included a few districts or a large number, whether suggestive questions were used or how terms were defined, whether the response rate was low, how the districts surveyed were chosen, or what the basis for the opinions offered was (e.g., did administrators provide impressions or actually check records). There is no reporting of demographics or even a mention of who responded to the survey. Furthermore, the report does not define the population in the survey or state how the sample was selected. It does not identify how the answers were gathered (email, telephone interviews, internet, etc.). Finally, it does not state whether any data analysis was conducted, and if so, what that analysis was. All of this could skew the outcome and results tremendously. Indeed, responses from relatively few districts, districts selected inappropriately, or other issues could account for what might seem to be relatively high percentages.

Consequently, the conclusions presented in the AASA's report are misleading due to the lack of reliability and validity. The report significantly deviates from accepted standards of research practice in regards to data collection and reporting. It appears to be a scientifically-inaccurate document that obscures the very real dangers and harm of restraint and seclusion use.

Among the issues, AASA's report appears to provide misleading information about are staff training and injury from restraint/seclusion. AASA provides no support for its claim that staff are well trained. The survey does not distinguish between staff who receive a few hours of instruction and those who complete rigorous training and certification programs. In fact, poorly trained or untrained staff were involved in several deaths and injuries reported by the GAO and others. Only 7 states mandate training in medical distress and first-aid, and only 18 states, in safe and

⁸ OCR, *supra* n.1, at 5.

⁹ J. Butler, *How Safe is the Schoolhouse, An Analysis of State Seclusion and Restraint Laws & Policies* (Autism National Committee 2012), <http://bit.ly/RSSstatelaw>.

¹⁰ *Id.*

appropriate restraint/seclusion use (often without further definition of what this means).¹¹ The Congressional bills will require training in evidence-based techniques and the dangers of seclusion and restraint, and provide needed funds for training personnel. Experience has shown that reducing the use of restraint/seclusion has cut the rate of injury for students and school staff.¹² One study found that reducing the use of restraint and seclusion in adolescent inpatient facilities decreased the number of injuries to adolescents and staff, and reduced sick time, workers' compensation, and replacement costs "substantially".¹³

Hospitals, prisons, mental health facilities, group homes, and psychiatric institutions are subject to federal statutes and regulations that define and restrict seclusion and restraint. America's schools educate over 55 million children, but schools remain the only institution without federal statutes and regulations addressing seclusion and restraint. These children deserve the same protections.

The AASA's report and its survey are flawed and misleading. Existing laws and policies alone have not protected students from death, injury, and abuse. We strongly support the Keeping All Students Safe bills in the House and Senate, and urge their swift passage.

Sincerely,
ACCSES

Association of University Centers on Disabilities
Autism National Committee
Bazelon Center for Mental Health Law
Council of Parent Attorneys and Advocates
Disability Rights Education and Defense Fund
Easter Seals
Epilepsy Foundation
National Alliance on Mental Illness
National Association of Councils on Developmental Disabilities
National Center for Learning Disabilities
National Council on Independent Living
National Disability Rights Network
National Down Syndrome Congress
National Down Syndrome Society
Mental Health America
The Advocacy Institute
The Arc
Tourette Syndrome Association, Inc.

The Consortium for Citizens with Disabilities is a coalition of nearly 100 national consumer, advocacy, provider and professional organizations headquartered in Washington, D.C. Since 1973, the 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. For additional information, please contact:

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¹¹ *Id.*

¹² H.R. Rep. No. 111-417, Preventing Harmful Restraint and Seclusion in Schools Act 11 (2009).

¹³ J. LeBel & R. Goldstein, The Economic Cost of Using Restraint and the Value Added By Restraint Reduction or Elimination, *Psychiatric Services*, Sept. 2005, <http://bit.ly/EconRestr>.