



Letter for the Record

Alliance to Prevent Restraint, Aversive Interventions, and Seclusion

Before the Education & Labor Committee U.S. House of Representatives

Subcommittee Early Childhood, Elementary, and Secondary Education Hearing:
Serving All Students: Promoting a Healthier, More Supportive School Environment

February 16, 2022

Alliance to Prevent Restraint, Aversive Interventions, and Seclusion (APRAIS)

The Alliance to Prevent Restraint, Aversive Interventions, and Seclusion (APRAIS) is a coalition of organizations and advocates who dedicate their time and resources to ending restraint and seclusion in U.S. schools. Our vision is to realize a world where all children grow up free from the use of restraint, seclusion, and aversive interventions to respond to or control their behavior, and from the fear that these forms of behavior management will be used on themselves, their siblings or their friends. APRAIS' primary legislative focus is enactment of the *Keeping All Student Safe Act* ([H.R. 3474/S. 1858](#)).

Restraint and Seclusion in America's Schools

While progress has been made over the years to reduce and regulate the use of restraint and seclusion, data collected through the U.S. Department of Education's [Civil Rights Data Collection \(CRDC\)](#) and several studies conducted by the Government Accountability Office still shows these practices used disproportionately against students with disabilities and students of color and students at the intersection of disability and race. Additionally, CRDC data on restraint and seclusion is grossly underreported and does not capture restraint and seclusion of students placed in non-public schools by their public school districts. Not only does the data we

do have raise serious concerns about how schools are serving children, the continued disproportionately constitutes discrimination based on disability and thus a violation of several federal civil rights statutes, most notably the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973 (504). Additionally, the continued use of restraint and seclusion almost exclusively on students with disabilities constitutes a denial of free appropriate public education (FAPE) under the Individuals with Disabilities Education Act (IDEA).

The Council of Parent Attorneys and Advocates reported in [The Crisis of Trauma and Abuse in Our Nation's Schools \(2020\)](#):

Current [state] statutes, regulations, and cases do not provide a bright line regarding when seclusion and restraint may or may not be used in schools. The danger to students with disabilities posed by restraint and seclusion is indeed a crisis with no management plan. Claims for violations of the Fourth, Eighth and Fourteenth Amendments to the U.S. Constitution, as well as IDEA, and discrimination and tort claims brought by families of students who have been harmed by restraint and seclusion in schools typically meet with insurmountable roadblocks in court. Parents and children are all too often left without an end in sight or relief for the harm they have suffered.

While the civil rights implications are stark, the human cost to students and their families is incalculable. A range of injuries results from restraint and seclusion, including physical, psychological, social, and emotional harms.¹ Physical harms include students [losing their lives](#) including death from sudden respiratory arrest or fatal cardiac arrhythmia, strangulation, or crushing and serious bodily injury such as muscle injuries, blunt trauma to the head, lacerations, broken bones and abrasions.² Psychological harms include lifelong trauma and fear.³

In the absence of federal minimum standards for restraint and seclusion in schools, we continue to see the use of these practices deployed against students with disabilities in inappropriate ways and far beyond their intent. [Disability Rights North Carolina \(DRNC\)](#), the federally designated protection and advocacy agency (P&A) for the State of North Carolina, recently reported in a survey conducted by the National Disability Rights Network (NDRN) last year that a janitor in a school initiated a physical restraint, helped another staff carry the student to another room by his wrists and ankles, and then restrained him again. DRNC also

¹ U.S. Gov't Accountability Office, GAO-09-719T, Seclusions and Restraints: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers 5 (2009) [hereinafter GAO Report], <http://www.gao.gov/new.items/d09719t.pdf>.

² Human Rights Watch & ACLU, Impairing Education: Corporal Punishment of Students with Disabilities in US Public Schools, at 2 (August 10, 2009), <https://www.hrw.org/report/2009/08/10/impairing-education/corporal-punishment-students-disabilities-us-public-schools>

³ See Nat'l Disability Rights Network, School is Not Supposed to Hurt: The U.S. Department of Education Must Do More To Protect School Children from Restraint and Seclusion, at 22 (March 2012), https://www.ndrn.org/wp-content/uploads/2019/03/School_is_Not_Supposed_to_Hurt_3_v7.pdf

reported schools listing a Rifton chair as an assistive technology device in the Individualized Education Program (IEP) to "help the student stay in one place and attend to instruction." Additional examples from DRNC include a school restraining a child in a storage area off the main classroom, in a homemade restraint chair, to prevent him from drumming on classroom furniture, singing repetitively to himself, and otherwise "annoying" staff without engaging in behavior that was in any way dangerous to himself or others.

In a 2020 [report](#) issued by [Disability Right Texas \(DRTX\)](#), the federally designated protection and advocacy agency for the State of Texas, DRTX outlined J.H.'s story:

DRTx recently represented a client placed at a separate behavior campus by his district. Diagnosed with Emotional Disturbance, J.H.'s disability often contributed to his behaviors, and his IEP included a Behavior Intervention Plan (BIP) to help him regulate in times of distress. Despite his placement at the behavior campus to receive specialized services to better meet his needs, J.H. was consistently restrained for behaviors that were a manifestation of his disability. In one instance, paraprofessionals restrained J.H. due to simple non-compliance with instruction from the teacher, resulting in staff taunting him and implementing multiple restraints in the classroom and a separate padded "calm room" for nearly forty minutes. J.H. expressed pain and calmness multiple times during the restraint, yet staff continued. J.H.'s behaviors during the incident were neither imminent nor life threatening- a clear violation of regulation. Unfortunately, J.H.'s story is not unique, and the prolonged incident indicates the larger issue of a culture of the need for staff to control students' behaviors by using restraint for punishment, discipline, coercion, and retaliation versus implementing behavior plans designed to help students develop long term, appropriate adaptive coping mechanisms. As long as that school culture exists, schools will continue to have issues with inappropriate restraint.

The above are just a handful of examples of inappropriate and dangerous uses of restraint and seclusion that happen all too frequently in schools across our nation to students with disabilities.

Keeping All Student Safe Act (H.R. 3474/S. 1858)

Congress has yet to pass comprehensive legislation to address the inappropriate use of restraint and seclusion in schools, despite legislation existing for over a decade--most notably the Keeping All Students Safe Act (KASSA). Broadly, KASSA would make it illegal for any school receiving federal funds to seclude a child or use dangerous restraint practices thereby establishing minimum safety standards for schools across the nation. The legislative trajectory of KASSA since its first introduction in 2009 and subsequent introductions has been well documented. APRAIS' position remains that in the absence of minimum federal standards on restraint and seclusion, the misperception that this issue can be addressed at the state or local level will persist. State and local level laws are inconsistent and slow in occurring--even some of the strongest state level bills are inadequate as measured by the continued disproportionate impact of restraint and seclusion on students with disabilities and students of color.

In May 2021, the Keeping All Students Safe Act ([H.R. 3474/S. 1858](#)) was reintroduced in the 117th Congress by U.S. Senator, Patty Murray (D-Wash.), Chair of the Senate Committee on Health, Education, Labor and Pensions (HELP), Senator Chris Murphy (D-Conn.), and U.S. Representatives Don Beyer (D-Va.), Robert C. “Bobby” Scott (D-Va.), Chair of the House Education and Labor Committee, and Donald McEachin (D-Va.). Most notably, this version of the bill would do the following:

- Prohibit seclusion, mechanical restraints, chemical restraints, physical restraint that restricts breathing or is life threatening, and any form of aversive behavioral intervention;
- Prohibit the restraining of any child, except when necessary, to protect students or staff from imminent danger of serious physical injury;
- Require certification of staff conducting physical restraint that meets the minimum standards;
- Prohibit physical restraint as a planned intervention;
- Require parental notification and follow-up meetings if a physical restraint occurs and notification to the appropriate P&A agency when physical injury or death of a student occurs;
- Provide a private right of action to families whose child is illegally restrained, which also includes immunity for teachers; and
- Provide states and districts with funds to train school personnel in evidence-base practices to support students and promote a safe school environment.

KASSA has broad support among the disability rights, education and civil rights community. In the House, this bill has 100 cosponsors. It is imperative that Congress move this piece of legislation so that schools, districts, and states have a set of federal standards for restraint and seclusion so that all students can attend school without fear.

School Climate Bills

In addition to advocating for the passage and enactment of KASSA, APRAIS also advocates for federal policies that will improve school climate. APRAIS advocates for the elimination of corporal punishment in all schools. Congress should pass the Protecting Our Students in Schools Act ([H.R. 3836/S. 2029](#)) to prohibit schools receiving federal funding from using corporal punishment. No child in America should be subjected to physical abuse at the hands of teachers, administrators, and other staff in the school building. Corporal punishment, along with many other punitive and exclusionary discipline practices, are antithetical to the purpose of schools which is to cultivate the next generation of productive citizens and leaders. This mission cannot be accomplished if students are traumatized in school.

APRAIS also supports eliminating federal funding for law enforcement in schools including School Resource Officers (SRO). Current data on police in schools indicates that their presence negatively impacts students with disabilities and students of color. A 2018 study shows that in

schools and districts that contract with law enforcement, the number of drug and weapon offenses as well as use of exclusionary disciplinary actions (e.g., suspension, expulsion, seclusion and restraint) increases for students with disabilities. Additionally, students with disabilities and students of color are arrested and/or referred to law enforcement at a far higher rate than students without disabilities and white students. [Disability Rights New Jersey \(DRNJ\)](#), the federally designated protection and advocacy agency for the State of New Jersey, recently reported to NDRN directly via email three troubling situations involving police in schools:

- Case 1: A 15-year-old African American male with emotional regulation impairment and specific learning disability and a Behavior Intervention Plan (BIP) in the IEP. Student was bullied in the cafeteria and punched another student. This started a fight between four boys. Two officers who were patrolling the cafeteria intervened and restrained our client. They did not follow the BIP or New Jersey restraint laws. Client was handcuffed and brought to the police station. Charges were pressed and he was suspended from school. Parents had to pick him up at the station. By the time he got there, he was sitting in a holding cell for over three hours. No one from the special education child study team was notified.
- Case 2: 12-year-old African American male with a disability. The student was disruptive in class and teacher inappropriately restrained him. Teacher pushed a call button in the classroom and the first person to arrive was the armed School Resource Officer (SRO). The class was cleared, and student was left alone with the officer. He held the student's hands behind his back. Student started to break down and yell "please don't arrest me!". The school psychologist/caseworker made it down to the classroom and SRO "released" the student. Officer and caseworker walked the student to the office. Student said he was not restrained but the officer walked very close to him, touching his shoulder. Officer continued to hover close to the student until mom picked him up, increasing student's trauma response. Student refused to go to school for the next four days.
- Case 3: 15-year-old African American girl— attending summer program at school. She was giving her teacher a hard time in the hallway and refusing to take her hood off. Law enforcement officer intervened and when he was talking to her, had his hand on his taser. It scared her. She went home and told her mom. Her mom called the Child Study Team and they linked her with a guidance counselor who would check-in with her each day during the program and be the liaison between the teachers and client. Arriving at school a few days later, student started an argument with the officer who intimidated her before. Instead of diffusing the situation, or calling the guidance counselor to intervene, he placed her in a transport hold and took her to the office where he locked her in the assistant principal's office to "cool down." She ended up getting suspended from summer programs – but during finals so she did not finish the classes to count the credits.

The above are just a handful of examples of the troubling interactions that occur between students and police in schools. Again, schools should be places of learning where all students feel safe and secure. Continued federal funding for police in schools runs contrary to promoting a healthier and more supportive school environment. In order to address this issue, Congress should pass the *Counseling Not Criminalization Act* ([H.R. 4011/S. 2125](#)) to stop funding programs at the U.S. Department of Justice that support law enforcement in schools, targeting resources to expand trained school teams who support the social/emotional/behavioral needs of students.

The federal government is obligated to protect the civil rights of all students, including students with disabilities. Data has shown time and again that the traumatic practices of restraint and seclusion are used disproportionately against students with disabilities, students of color, and students at the intersection of race and disability. As Congress looks towards strategies to support healthier and more supportive school environments, it is imperative that they address the issue of restraint and seclusion by passing the Keeping All Students Safe Act—a bill that will protect students and support schools.

Sincerely,

Alliance Against Seclusion and Restraint
Bazelon Center for Mental Health Law
Center for Learner Equity
Center for Public Representation
Council of Parent Attorneys and Advocates
Crisis Prevention Institute
Lives in the Balance
National Autism Association (NAA)
National Council on Independent Living
National Disability Rights Network (NDRN)
National Down Syndrome Congress
National Parents Union
NJ Family Voices
Parent Advocacy Consortium
PWSA | USA - Prader-Willi Syndrome Association
SPAN Parent Advocacy Network
TASH
The Arc of the United States
The Respectability Law Center