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# Policy Brief: Keeping All Students Safe Act of 2014

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## POLICY BRIEF

# Keeping All Students Safe Act of 2014

Nancy Bergerson, BUS; NH LEND Program Trainee 2013-14

### Executive Summary

*Senator Harkin (D-IA), Senator Murphy (D-CT), Senator Baldwin (D-WI), and Senator Hirono (D-HI) introduced the Keeping All Students Safe Act (S.2036) in the Senate on Feb. 24, 2014. Rep. Miller (D-CA) introduced H.R. 1893 on May 9, 2013. The Act would produce limitations for the use of restraints in public and private schools. Currently, 19 states have no policies in place to address this issue. The law would require better training, monitoring and enforcement of these standards, as well as the collection of related data which would be available to the public. We are asking you to co-sponsor the Keeping All Students Safe Act.*

### The Need to Federally Regulate Seclusion and Restraint:

It has been shown that seclusion and restraint fail as behavioral interventions. The March 2012 U.S. Department of Education Office of Civil Rights report states 70 percent of the total number of children restrained or secluded at school yearly have disabilities.<sup>1</sup> In testimony given before the Committee on Education and Labor in the House of Representatives, evidence was presented accounting for abuses and death of special needs students due to insufficient personnel training on restraint procedures, as well as the absence of monitoring and regulations.<sup>2</sup>

### History

Though policies have been developed by individual states and territories, the Keeping All Students Safe Act is the first attempt to pass a federal law focused upon the use of seclusion and restraint in the nation's schools. The bill addresses the abuse of children with developmental disabilities whose behaviors may not clearly communicate their needs. Past documentation of abuses, some of which resulted in criminal convictions, illustrate the need for such legislation.<sup>3</sup>

### Deficiencies Associated with Current State Policies

- Currently, 32 states have laws regulating seclusion and restraint in schools for children with disabilities. Nineteen states have laws regulating this for all children. Even in these states, loopholes exist which weaken requirements and/or limitations.<sup>4</sup>
- Mechanical restraints which immobilize children using duct tape, nylon ties, rope and bungee cords are prohibited in 19 states for children with disabilities. Fifteen states prohibit this for all children.<sup>5</sup>
- Only 1 state bans seclusion entirely. Four states prohibit this for children with disabilities.<sup>6</sup>
- Many states lack laws limiting restraint to emergency situations in which physical harm may occur. Eighteen states currently limit this for children with disabilities. Fourteen states prohibit this practice for all children.<sup>7</sup>

1 Civil Rights Data Collection (CRDC). (n.d.). Retrieved April 18, 2014, from <https://autisticadvocacy.org/2012/07/asan-calls-for-swift-passage-of-keeping-all-students-safe-act/>

2 GAO-09-719T: Seclusions and restraints-selected cases of death and abuse at public and private schools and treatment centers: Testimony before the Committee on Education and Labor, House of Representatives, 111th Cong. 3 (2009) (testimony of Gregory D. Kutz).

3 Abuse, restraints & seclusion in school - Wrightslaw.com. (2013, May 9). Retrieved April 24, 2014, from <http://www.wrightslaw.com/info/restraint.legadv.htm>

4 Butler, J. (2014, January 20). How safe is the schoolhouse? An analysis of state seclusion and restraint laws and policies. Retrieved April 22, 2014, from <http://www.autcom.org/pdf/HowSafeSchoolhouse.pdf>

5 Ibid.

6 Ibid.

7 Ibid.

- In 2009, investigations of 10 deaths were presented before the U.S. Government Accountability Office by Gregory D. Kutz, Managing Director, Forensic Audits and Special Investigations. His testimony states that the deaths resulted from improper application of seclusion and restraint. Cases in the report all resulted in criminal charges and convictions. The report, however, provides only a small sampling of the misuse of this practice.<sup>8</sup>

## Support of Keeping All Students Safe Act

Over 180 national, state and local organizations across many disciplines support the Keeping All Students Safe Act, including the American Academy of Child and Adolescent Psychiatry, the Association on Higher Education and Disability (AHEAD), the Teacher Education Division of the Council on Exceptional Children, the Arc of the United States, Parents and Teachers Against Violence in Education, Inc., and the National Association of Councils on Developmental Disabilities.<sup>9</sup>

## Response to Opposition to the Keeping All Students Safe Act

- Rep. Steve King (R-IA) fears the bill could set a precedent allowing a federal takeover of schools.<sup>10</sup> However, Congress passed the Children's Health Act of 2000, limiting seclusion and restraint practices among mental health facilities receiving Medicaid funding. Do the children in our nation's schools deserve any less protection from the risk of poorly executed seclusion and restraint procedures in the classroom?<sup>11</sup>
- Rep. Mark Souder (R-IN) and Rep. Louie Gohmert (R-TX) fear the federal bill sends a message to states and local school boards that managing risk among their student populations is beyond their capability.<sup>12</sup> However, inconsistency among state laws has led to increased litigation involving schools and educators as a result of improper application of seclusion and restraint practices.<sup>13</sup>
- The American Association of School Administrators states 'serious bodily injury' as defined by IDEA is too restrictive, citing 'substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ, or mental faculty' places parents at risk for civil action for damages and/or costs associated with potential injury caused by their child.<sup>14</sup>

## The Keeping All Students Safe Act Ensures:

- Consistent standards would be applied to schools in all states and territories.
- Restraint would be employed only in physically threatening situations.
- Children placed in seclusion would require continuous monitoring.
- Seclusion and restraint would be employed only when other methods of controlling behavior fail.
- Parents would be notified of restraint or seclusion on the same day in which it occurred.
- Appropriate training on seclusion and restraint methods would be required for school personnel.
- Data collection would be required and made available publicly.

## About the New Hampshire Leadership Education in Neurodevelopmental and Related Disabilities Program Partnership

The University of Maine Center for Community Inclusion and Disability Studies is a partner with the University of New Hampshire Institute on Disability, and the Geisel School of Medicine at Dartmouth, in the New Hampshire Leadership Education in Neurodevelopmental and Related Disabilities (NH LEND) Program. The NH LEND Program provides graduate-level interdisciplinary training for students and professionals from diverse disciplines, including developmental pediatrics, early childhood education, social work, psychology, occupational therapy, health management and policy, and speech language pathology. This partnership is made possible through the NH LEND Program and is supported by a grant (#T73 MC00024) from the Maternal and Child Health Bureau, Health Resources and Services Administration, U.S. Department of Health and Human Services; and administered by the Association of University Centers on Disabilities.

8 Seclusions and restraints: Selected cases of death and abuse at public and private schools and treatment centers. (2009, May 19). Retrieved April 21, 2014, from <http://www.gao.gov/new.items/d09719t.pdf>

9 [keepstudentsafe.com](http://keepstudentsafe.com). (2013, April 23). Retrieved April 21, 2014, from <http://keepstudentsafe.com/>.

10 Ridgeway, J., & Casella, J. (2010, March 7). House republicans explain why they oppose ban on child abuse in schools - Solitary watch. Retrieved April 23, 2014, from <http://solitarywatch.com/2010/03/07/house-republicans-explain-why-they-oppose-ban-on-child-abuse-in-schools/>

11 Vaillancourt, K., & Klotz, M. B. (n.d.). Seclusion and restraint - Federal updates and advocacy opportunities. Retrieved May 3, 2014, from <http://www.nasponline.org/publications/cq/41/2/advocacy-in-action.aspx>

12 Dangerous use of seclusion and restraints in schools remains widespread and difficult to remedy: A review of ten cases. (2014, February 12). Retrieved May 3, 2014, from <http://www.help.senate.gov/imo/media/doc/Seclusion%20and%20Restraints%20Final%20Report.pdf>

13 Pudelski, S. (2012, March). Keeping schools safe: How seclusion and restraint protects students and school personnel. Retrieved April 24, 2014, from [http://www.aasa.org/uploadedFiles/Resources/Tool\\_Kits/AASA-Keeping-Schools-Safe.pdf](http://www.aasa.org/uploadedFiles/Resources/Tool_Kits/AASA-Keeping-Schools-Safe.pdf)

14 IDEA - Reauthorized Statute. "Definition for serious bodily injury. Section 1365(h)(3) of Title 18, U.S. Code. [615(k)(7)(D)]