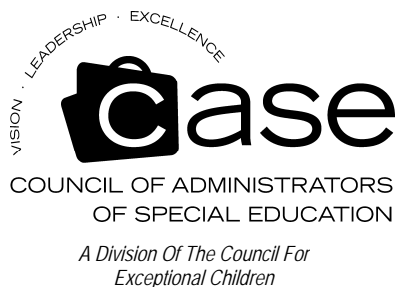


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CASE Response to House and Senate Legislation on Physical Restraint and Seclusion in the Schools

Introduction

In December, 2009, two significant pieces of national legislation, one in the House and one in the Senate, were proposed related specifically to the use of physical restraint and seclusion in schools. The impetus for these bills stemmed from a GAO report completed in Spring, 2009 and subsequent Congressional hearings to address the articulated areas of concern regarding the inappropriate use of seclusion and restraint. The two proposed bills, H.R. 4247, *Preventing Harmful Restraint and Seclusion in Schools Act*, introduced by Chairman Miller (D-CA) and Representative McMorris-Rodgers (R-WA), and the companion bill, S. 2860, introduced by Senator Dodd (D-CT), can be reviewed in their entirety at <http://thomas.loc.gov>.

We recognize that the House passed the bill on March 3, 2010, so time is of the essence in communicating with your Senators on S.2860. We believe the intent of these proposals will be to include language in the reauthorizations of the ESEA and the IDEA. We encourage you as CASE members to write to your congressional representatives quickly to support the following recommendations to enhance the proposed legislation and allow school administrators the flexibility needed to ensure safe school environments for all students.

Background

The Council of Administrators of Special Education (CASE), in cooperation with other organizations, continues to work collaboratively to support efforts that protect and address the needs of all students through positive, effective approaches in schools. We applaud the efforts of Chairman Miller and Senator Dodd to address the concerns raised regarding misuse or inappropriate use of physical restraint and seclusion in schools. Over the past year, CASE has continued to focus on ways to emphasize the importance of well-defined research-based trainings for school staff on appropriate use and implementation of positive behavioral strategies and on the appropriate use of seclusion and restraint. CASE leadership has provided written testimony and recommendations to legislators and other organizational leaders as it relates to important next steps, both legislative and in terms of best practice. As an organization, CASE continues to value the importance of quality and consistency in professional development and training on appropriate behavioral strategies for students, articulated expectations, and commitment of funding and accountability for school systems to ensure schools reflect a positive, safe learning environment for all students. We also appreciate the recognition in the proposed legislation of the fact that there are times when a student's behavioral needs are so intense additional supports are necessary. Therefore, considerations need to be allowed to permit trained school personnel to use the appropriate physical interventions in emergency situations to avoid harm or injury to a student or others when there is immediate danger to the student or others.

CASE commends the House and Senate Committees for:

- Placing the focus of the bills on the prevention of the *inappropriate use* of physical restraint and seclusion in schools rather than placing a ban on the use of physical restraint and seclusion;
- Recognizing school personnel have a right to work in a safe environment and children have a right to be treated with dignity;
- Making the language of the bills applicable to all students and not just students with disabilities;
- Stating the use of physical restraint or seclusion as a planned intervention shall not be written into a student's *education* plan or individualized *education* program;

CASE commends the House and Senate Committees for (continued):

- Recommending the use of safe, effective, evidence-based strategies to support children who display challenging behaviors, effective implementation of school-wide positive behavior supports, and evidence-based techniques training for school personnel on techniques shown to be effective in the prevention and safe use of seclusion and restraint and skills training related to positive behavior supports, conflict prevention, de-escalation, and conflict management.

Recommendations:

Based upon the extensive review by CASE leadership and recommendations from our members, please consider the following recommendations:

- Provide further clarification/definition of imminent danger.
- Include the term “inappropriate” before physical restraint in the first two lines (purpose) of the final legislation similar to the language in the first two lines of the Senate bill.
- Insert use of “inappropriately used” in front of seclusion/restraint throughout the document.
- Link training to positive behavior supports for schools and also to the appropriate use of seclusion and restraint.
- Include “when in imminent danger” as appropriate in the introduction to recognize there are extreme situations where it may be necessary to use restraint or seclusion when the student’s behavior poses a significant danger to the student or others.
- Allow school personnel to include appropriately administered physical restraint as part of an individual behavioral intervention plan for any student used only when required in an emergency situation where anyone’s personal safety is threatened. CASE recommends the “*potential* use of physical interventions” could be a part of a student’s behavior intervention plan for emergency situations where personal safety is concerned and could also be stated as a part of a school wide behavior plan for all students in an emergency situation when a student’s behavior poses a threat of imminent danger to the student or others.
- Require debriefing sessions with staff and communication with parents to occur as soon as possible after an incident of physical restraint or seclusion but within 3 school days to allow for weekends, weather closings, school breaks, etc. The debriefing and documented communication with parents should include a review of the events leading to the use of the physical restraint, identifying additional preventive strategies to avoid future use of physical restraint, and assessment of the need to develop or revise the behavior plan. Flexibility on “advance” parental communication and notification of the meeting is needed, especially if the debriefing is held immediately after the incident. Staff follow-up would allow for subsequent reporting to parents.
- Allow some flexibility for school personnel when written notification to parents within 24 hours of the incident may not be feasible due to weekends, lack of a parental address, or unforeseen circumstances. Otherwise, immediate notification is expected.
- State law rather than federally established procedures should be followed in the enforcement of this act and in any investigations of child abuse and in allowing access to any educational records, personnel, or students involved in the investigation. States have existing agencies at the state and local levels who have established policies and procedures for investigating allegations of child abuse, developing action plans, monitoring implementation, and enforcement. These agencies should be responsible for the enforcement of this Act.

CASE will continue to work diligently to support efforts that ensure that the combination of quality, effective, positive behavioral training for staff coupled with evidenced-based strategies that address a wide range of students’ behavioral needs continue to be an important component in schools and programs across the country.

CASE also underscores the importance of legislation that provides a sufficient appropriation for funding the necessary resources required to provide the appropriate staffing levels and high quality training to implement the effective practices to ensure safe learning environments for ALL students.