



Luann L. Purcell, Ed.D., Executive Director
E-mail: lpurcell@casecec.org
Office: 478-333-6892
FAX: 478-333-2453

Osigan Office Centre
101 Katelyn Circle Suite
Warner Robins, GA 31088
Website: www.casecec.org

A Division Of The Council For
Exceptional Children

March 21, 2012

The Honorable Tom Harkin, Chairman
Senate Committee on Health, Education, Labor and Pensions
428 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Harkin:

The Council of Administrators of Special Education, Inc. (CASE) is the largest division of the Council for Exceptional Children, providing leadership and support to approximately 5,000 members by influencing policies and practices to improve the quality of 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. 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.

We support your efforts to address the concerns raised regarding misuse or inappropriate use of physical restraint and seclusion in schools and we support many important provisions in S2020, Keeping all Students Safe Act. CASE supports the following components of the bill: 1) 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 training programs for school personnel; 2) the use of restraint and seclusion as a planned intervention shall not be written into an a student's Individualized Education Program; 3) the prevention of the inappropriate use of both physical restraint and seclusion in schools and a complete ban on the use of "locked" seclusion; and 4) timely notification of parents following an incident and the requirement for debriefing sessions with staff and communication with parents to occur as soon as possible after an incident of physical restraint or seclusion. However, there are provisions in S2020 which continue to cause concern for our members.

Comments and Recommendations:

Based on review by CASE leadership and input from our members, please consider the following concerns, comments, and recommendations of the proposed legislative language to allow school administrators the flexibility needed to ensure safe school environments for all students.

- Recommends that **"or researched based/evidence based programs"** be added to the approved intervention training programs **along with "state approved"** crisis intervention training programs. Many districts across the country have implemented and are using nationally recognized programs such as "Mandt" with documented positive results which are not officially "state approved". The requirement for **"state approved" only training programs** be used incurs additional costs to states at a time when education budgets are strained to the maximum to meet current federal mandates.
- *Under paragraph (3) and (4) of subsection (h) of section 1365 of title 18, United States Code, "serious bodily injury" means injury which involves (A) 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; and (4) the term "bodily injury" means (A) a cut, abrasion, bruise, burn, or disfigurement; (B) physical pain; (C) illness; (D) impairment of the function of a bodily member, organ, or mental faculty; or (E) any injury to the body, no matter how temporary. **The use of the term "serious bodily injury" carries a standard of injury that would prevent the use of appropriate physical restraint or seclusion when a student poses an imminent danger of cutting, burning, or disfiguring them self, therefore, CASE recommends the use of "bodily injury" as the appropriate standard.***



Council of
Administrators
of Special Education

The voice and vision of special education

- Supports the prevention of the inappropriate use of both physical restraint and seclusion in schools and a complete ban on the use of “locked” seclusion. Regulations or guidelines and procedures should apply to all students, not just students with disabilities. However, CASE does support the use of “**unlocked seclusion**” to be used only rarely and only in emergency circumstances to prevent injury or harm, in proper unlocked spaces with clearly defined parameters and continuous observation by an adult for the entire period of the seclusion. **The limited use of “unlocked seclusion” is absolutely necessary to provide safe support to students in emergency situations and reduces the likelihood of students with disabilities being moved to more restrictive environments.**
- Supports 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* (IEP). **However, 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.
- **Section 4 Debriefing:** CASE agrees with the value of a requirement for debriefing. The addition of a new requirement for the participation of **all** school personnel in the proximity of the student immediately before and during the restraint incident is excessively restrictive because it has the potential to deprive students of high quality instructional time by removing school personnel from classrooms for extended periods of time. School districts will further diminish valuable resources to provide substitutes for staff to attend the meeting disrupting the provision of Free Appropriate Public Education (FAPE) to other students. CASE suggests that *(II) after the imposition of physical restraint upon a student, procedures to ensure that --(aa) all school personnel directly involved in the restraint [in the proximity of the student immediately before and during the time of the restraint], the parent, the student, appropriate supervisory and administrative staff, and appropriate IEP team members, participate in a debriefing session, and (bb) other school personnel in the proximity of the student immediately before and during the time of the restraint may participate or provide written input as appropriate to the debriefing session.* **However, CASE strongly recommends the details of debriefing meetings should be left to state/local policies.**
- **Deletion of Section 4(3)(B)(ii)(V)** in the debriefing section. It is burdensome to establish a statutory presumption that because physical restraint is used, a disability is suspected and a special education referral is required or documentation must be provided for declining such a referral.
- **Section 5 (b) Denial of a Free Appropriate Public Education:** This language is excessively restrictive. Failure to meet FAPE has always been determined via legal due process wherein extenuating circumstances can be carefully considered by an impartial hearing officer. To have an arbitrary ruling on a failure to provide FAPE interferes with students’ IEPs as already determined by teams, undermines the legal right to due process, and makes assumptions without the consideration of all facts. It is unfairly punitive to the educational service provider and is a significant departure from the previous legislation and existing Individuals with Disabilities Education Act (IDEA) case law which has consistently held that procedural violations of IDEA do not automatically constitute a denial of FAPE. **CASE recommends the removal of this language.**

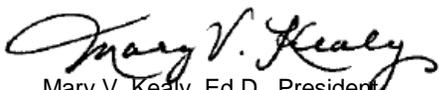
CASE supports the many positive provisions in the legislation. However, we urge consideration of our concerns, comments and recommendations which directly affect the implementation of this law. We look forward to continuing to work with you on this important issue to ensure safe learning environments for *all* students.

For additional information from the Council of Administrators of Special Education, please contact:

Dr. Mary Kealy, President, at: Mary.Kealy@lcps.org; 571-252-1022

Dr. Luann Purcell, Executive Director, at: lpurcell@casecec.org; 1-800-585-1753

Sincerely,



Mary V. Kealy, Ed.D., President
Council of Administrators of Special Education



Luann L. Purcell, Ed.D., Executive Director
Council of Administrators of Special Education



Council of
Administrators
of Special Education

The voice and vision of special education