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September 13, 2011

The Honorable Tom Harkin, Chairman
Mr. Michael Gamel-McCormick, Education and Disability Policy Advisor
Senate Committee on Health, Education, Labor and Pensions
428 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Harkin and Mr. Gamel-McCormick:

The Council of Administrators of Special Education, Inc. (CASE) is a division of the Council for Exceptional Children (CEC), the largest professional organization representing teachers, administrators, parents, and others concerned with the education of children with disabilities. CASE is a non-profit professional organization which provides leadership and support to approximately 5,000 members by influencing policies and practices to improve the quality of education.

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. 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 Senator Harkin's efforts to address the concerns raised regarding misuse or inappropriate use of physical restraint and seclusion in schools and support the inclusion of this language in the reauthorization of ESEA.

Comments and Recommendations:

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

- Supports 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.
- Recommends that **“or researched based/evidence based programs”** be added to the approved intervention training programs **along with “state approved”** crisis intervention training programs. 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. Many districts across the country have implemented and are using nationally recognized programs such as “Mandt” with documented positive results.
- The use of the language **“serious physical injury”** is unclear. The term “physical injury” is included in the definitions, but not used in the legislation. **“Serious physical injury”** is used five times in Section 4, under (b)(1)&(3) and (d)(2)&(3) and has not been included in the definitions section.



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- Supports the prevention of the inappropriate use of both physical restraint and seclusion in schools **rather than a complete ban on the use of “unlocked” seclusion.** Regulations or guidelines and procedures should apply to all students, not just students with disabilities. Seclusion should 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 both visually and aurally for the entire period of the seclusion. ***The limited use of seclusion is absolutely necessary to provide safe support to students in emergency situations. Also, without the ability to use seclusion in limited situations, there is a greater 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) as written in Section 4(f). **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.**
- Supports timely notification of parents following an incident, however, **recommends flexibility for school personnel when written notification to parents within 24 hours of the incident may not be feasible due to weekends, school holidays, lack of a parental address, or unforeseen circumstances.** Otherwise, immediate notification is expected.
- Supports 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. 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. **However, CASE recommends the details of debriefing meetings should be left to state/local policies.**
- **Deletion of Section 4(g)(3)(iii)(V)** in the debriefing session. 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.
- State law **rather than federally established procedures (Section 4(g)(5))** 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. Any further reporting requirements would be redundant and burdensome.

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.

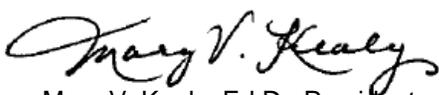
CASE also underscores the importance of legislation that provides a sufficient appropriation for funding the necessary resources required to provide the appropriate staffing levels and high quality training to implement the effective practices to ensure safe learning environments for ALL students.

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

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Sincerely,



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



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Council of Administrators of Special Education



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