S. 2860

To protect students from inappropriate seclusion and physical restraint, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 9, 2009

Mr. DODD introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To protect students from inappropriate seclusion and physical restraint, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Preventing Harmful Restraint and Seclusion in Schools Act”.

SEC. 2. FINDINGS.

Congress finds the following:

(1) Seclusion and physical restraint have resulted in physical injury, psychological trauma, and death to children in public and private schools. Na-
tional research shows children have been subjected to inappropriate seclusion and physical restraint in schools as a means of discipline, to force compliance, or as a substitute for appropriate educational support.

(2) Despite the widely recognized risks of seclusion and physical restraint, a substantial disparity exists between States and localities with regard to the protection and oversight of the rights of children to a safe learning environment.

(3) Children are protected from inappropriate physical restraint and seclusion in other settings, such as hospitals, health facilities, and non-medical community-based facilities. Similar protections are needed in schools, yet such protections must acknowledge the differences of the school environment.

(4) Research confirms that—

(A) seclusion and physical restraint are not therapeutic; and

(B) these practices are not effective means to calm or teach children and may have an opposite effect while simultaneously decreasing a child’s ability to learn.

(5) Children are subjected to seclusion and physical restraint at higher rates than adults, and
are at greater risk of injury. Physical restraint that restricts air flow to the lungs, as well as seclusion in the absence of continuous face-to-face monitoring, have resulted in the deaths of children in schools.

(6) Behavioral interventions for children must promote the right of all children to be treated with dignity. All children have the right to be free from physical or mental abuse, aversive behavioral interventions that compromise health and safety, and any physical restraint or seclusion imposed for purposes of discipline or convenience.

(7) Safe, effective, evidence-based strategies are available to support children who display challenging behaviors in school settings. Staff training focused on the dangers of seclusion and physical restraint, as well as training in evidence-based positive behavioral interventions and supports, de-escalation techniques, and seclusion and physical restraint prevention, can reduce injury, trauma, and death.

(8) School personnel have the right to work in a safe environment and should be provided training and support to prevent injury and trauma to themselves and others.

(9) The effective implementation of school-wide positive behavior supports is linked to greater aca-
demic achievement, significantly fewer disciplinary
problems, increased instruction time, and staff per-
ception of a safer teaching environment.

(10) Perspectives of relevant community and
advocacy organizations, including those run by indi-
viduals with disabilities, are important when devel-
oping and implementing strategies, policies, and pro-
cedures to prevent or reduce seclusion and physical
restraint in schools.

SEC. 3. PURPOSES.

The purposes of this Act are to—

(1) prevent and reduce the use of seclusion and
physical restraint;

(2) ensure the safety of all students and per-
sonnel in schools and promote a positive school cul-
ture and climate;

(3) protect students from—

(A) physical or mental abuse;

(B) aversive behavioral interventions that
compromise health and safety; and

(C) any physical restraint or seclusion im-
posed for purposes of discipline or convenience;

(4) ensure that seclusion and physical restraint
are imposed in school only when a student’s behavior
poses an imminent danger of physical injury to the
student, school personnel, or others; and

(5) assist States, local educational agencies,
and schools in—

(A) establishing policies and procedures to
keep all students and school personnel safe, in-
cluding students with the most complex and in-
tensive behavioral needs;

(B) providing school personnel with the
necessary tools, training, and support to ensure
the safety of all students and promoting a posi-
tive school culture and climate;

(C) collecting and analyzing data on seclu-
sion and physical restraint in schools as a
means to reduce such incidents; and

(D) identifying and implementing effective
evidence-based models to prevent and reduce se-
clusion and physical restraint in schools.

SEC. 4. DEFINITIONS.

In this Act:

(1) ESEA DEFINITIONS.—The terms “edu-
cational service agency”, “elementary school”, “local
educational agency”, “parent”, “secondary school”,
and “State” have the meanings given such terms in

(2) Public Health Service Act Definitions.—The terms “mechanical restraint”, “physical escort”, “physical restraint”, “seclusion”, and “time out” have the meanings given such terms in section 595(d) of the Public Health Service Act (42 U.S.C. 290jj(d)), except that the meanings of such terms shall be applied by substituting “student” or “student’s” for “resident” or “resident’s”, respectively.

(3) Applicable Program.—The term “applicable program” has the meaning given the term in section 400(c) of the General Education Provisions Act (20 U.S.C. 1221(c)).

(4) Chemical Restraint.—The term “chemical restraint” means a drug or medication used on a student to control behavior or restrict freedom of movement that is not—

(A) prescribed by a licensed physician for standard treatment of the student’s medical or psychiatric condition; and

(B) administered for that purpose.

(5) Positive Behavior Supports.—The term “positive behavior supports” means a systematic ap-
proach to embed evidence-based practices and data-driven decisionmaking to improve school climate and culture, including a range of systemic and individualized strategies to reinforce desired behaviors and diminish reoccurrence of problem behaviors, in order to achieve improved academic and social outcomes and increase learning for all students, including those with the most complex and intensive behavioral needs.

(6) PROTECTION AND ADVOCACY SYSTEM.—The term “protection and advocacy system” means a protection and advocacy system established under section 143 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15043).

(7) SCHOOL.—The term “school” means an entity that—

(A) is—

(i) a public or private day or residential elementary school or secondary school; or

(ii) an early childhood, elementary school, or secondary school program that is under the jurisdiction of a school, edu-
cational service agency, or other edu-
cational institution or program; and
(B) receives, or serves students who re-
ceive, support in any form from any program
supported in whole or in part, directly or indi-
rectly, with funds appropriated to the Depart-
ment of Education.

(8) SCHOOL PERSONNEL.—The term “school
personnel” means school personnel and school re-
source officers, as such terms are defined in section
4151 of the Elementary and Secondary Education

(9) SECRETARY.—The term “Secretary” means
the Secretary of Education.

(10) STATE-APPROVED TRAINING PROGRAM.—
The term “State-approved training program” means
a training program approved by a State that, at a
minimum, provides—
(A) evidence-based techniques shown to be
effective in the prevention, and safe use, of se-
closure and physical restraint;
(B) evidence-based skills training that is
related to positive behavior supports, conflict
prevention, de-escalation, and conflict manage-
ment;
(C) first aid and cardiopulmonary resuscitation; and

(D) certification for school personnel in the techniques and skills described in subparagraphs (A) through (C), which shall be required to be renewed on a periodic basis.

(11) STATE EDUCATIONAL AGENCY.—The term “State educational agency” means a State educational agency, as defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801), that receives support in any form from an applicable program.

(12) STUDENT.—The term “student” means a student—

(A) who is enrolled in a school; and

(B) in the case of a student enrolled in a private school, who receives support in any form from any applicable program or any program supported in whole, in part, directly, or indirectly with funds appropriated to the Department of Education or under the Head Start Act (42 U.S.C. 9831 et seq.).

SEC. 5. MINIMUM STANDARDS; RULE OF CONSTRUCTION.

(a) MINIMUM STANDARDS.—Not later than 180 days after the date of enactment of this Act, the Secretary shall
prescribe regulations to protect each student from physical or mental abuse, aversive behavioral interventions that compromise student health and safety, or any physical restraint or seclusion imposed for purposes of discipline or convenience or in a manner otherwise inconsistent with this Act. Such regulations shall, at a minimum, include regulations for the following standards:

(1) School personnel shall be prohibited from imposing on any student the following:

(A) Mechanical restraint.
(B) Chemical restraint.
(C) Physical restraint that restricts air flow to the lungs.
(D) Aversive behavioral intervention that compromises health and safety.

(2) School personnel shall be prohibited from imposing physical restraint or seclusion on a student unless—

(A) the student’s behavior poses an imminent danger of physical injury to the student, school personnel, or others; and
(B) less restrictive interventions would be ineffective in stopping such imminent danger of physical injury.
(3) In the event physical restraint or seclusion is imposed upon a student, such physical restraint or seclusion shall—

(A) end upon the cessation of the conditions described in paragraph (2);

(B) be imposed by school personnel who—

(i) continuously monitor the student face-to-face; or

(ii) if school personnel safety is significantly compromised by such face-to-face monitoring, are in continuous direct visual contact with the student; and

(C) be imposed by—

(i) school personnel trained and certified by a State-approved training program that is approved by the Secretary; or

(ii) other school personnel in the case of a rare and clearly unavoidable emergency circumstance when school personnel trained and certified as described in clause (i) are not immediately available due to the unforeseeable nature of the emergency circumstance.

(4) Each State and local educational agency shall ensure that a sufficient number of school per-
sonnel are trained and certified by a State-approved training program to meet the needs of the specific student population in each school in the State or served by the local educational agency, respectively.

(5) The use of physical restraint or seclusion as a planned intervention shall not be written into a student’s education plan, individual safety plan, behavioral plan, or individualized education program (as defined in section 614(d) of the Individuals with Disabilities Education Act (20 U.S.C. 1414(d))).

(6) Within 72 hours after the imposition of physical restraint or seclusion upon a student, all school personnel involved in the physical restraint or seclusion and appropriate supervisory and administrative staff shall participate in a debriefing session, which shall include—

(A) documentation of antecedents to the physical restraint or seclusion; and

(B) prevention planning.

(7) Each school shall establish procedures to be followed after each incident involving the imposition of physical restraint or seclusion upon a student, in-
(A) procedures to provide to the parent of
the student, with respect to each such inci-
dent—

(i) a documented, reasonable attempt
to provide immediate verbal or electronic
communication on the same day as each
such incident;

(ii) within 24 hours of each such inci-
dent, written notification; and

(iii) advance notice of the debriefing
session described in paragraph (6) that will
be held regarding such incident and an op-
portunity to attend the debriefing session;

and

(B) in a case where serious bodily injury
(as defined in section 1365(h) of title 18,
United States Code) or death of a student of
the school occurs from the use of seclusion or
physical restraint, procedures to notify, in writ-
ing, the State protection and advocacy system
within 24 hours after such incident occurs.

(b) RULE OF CONSTRUCTION.—Nothing in this sec-
tion shall be construed to authorize the Secretary to pro-
mulgate regulations prohibiting the use of—

(1) time out; and
(2) devices implemented by a trained school personnel, or utilized by a student, for the specific and approved therapeutic or safety purposes for which such devices were designed, and, if applicable, prescribed, including—

(A) restraints for medical immobilization;

(B) adaptive devices or mechanical supports used to achieve proper body position, balance, or alignment to allow greater freedom of mobility than would be possible without the use of such a mechanical support; or

(C) vehicle safety restraints when used as intended during the transport of a student in a moving vehicle.

SEC. 6. STATE PLAN AND DATA COLLECTION REQUIREMENTS AND ENFORCEMENT.

(a) State Plan.—Not later than 2 years after the date of enactment of this Act, and each year thereafter, each State educational agency shall submit to the Secretary a State plan that provides—

(1) assurances to the Secretary that the State has in effect—

(A) State policies and procedures that meet the minimum standards required by the
regulations prescribed by the Secretary pursuant to section 5(a); and

(B) a State mechanism to effectively monitor and enforce the minimum standards;

(2) a description of the State policies and procedures described in paragraph (1)(A); and

(3) a description of the plans to ensure school personnel and parents are aware of the State policies and procedures.

(b) Reporting.—

(1) Reporting requirements.—Not later than 2 years after the date the Secretary promulgates regulations pursuant to section 5(a), and each year thereafter, each State educational agency shall (in compliance with the requirements of section 444 of the General Education Provisions Act (commonly known as the “Family Educational Rights and Privacy Act of 1974”) (20 U.S.C. 1232g)) prepare and submit to the Secretary, and make available to the public, a report with respect to each local educational agency, and each school not under the jurisdiction of a local educational agency, located in the same State as such State educational agency, that includes the information described in paragraph (2).

(2) Information requirements.—
(A) **General Information Requirements.**—The report described in paragraph (1) shall include information on—

(i) the total number of incidents in the preceding full academic year in which physical restraint was imposed upon a student; and

(ii) the total number of incidents in the preceding full academic year in which seclusion was imposed upon a student.

(B) **Disaggregation.**—

(i) **General Disaggregation Requirements.**—The information described in subparagraph (A) shall be disaggregated by—

(I) the total number of incidents in which physical restraint or seclusion was imposed upon a student—

(aa) that resulted in injury;

(bb) that resulted in death;

and

(cc) in which the school personnel imposing physical restraint or seclusion were not
trained and certified as described in section 5(a)(3)(C)(i); and

(II) the demographic characteristics of all students upon whom physical restraint or seclusion was imposed, including—

(aa) the categories described in section 1111(h)(1)(C)(i) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311(h)(1)(C)(i));

(bb) age; and

(cc) disability status, which has the meaning given the term “individual with a disability” in paragraph (20) (except for subparagraph (A) of section 7 of the Rehabilitation Act of 1973) (29 U.S.C. 705(20)).

(ii) UNDUPlicated COUNT; EXcepTion.—The disaggregation required under clause (i) shall—

(I) be carried out in a manner to ensure an unduplicated count of the—
(aa) total number of incidents in the preceding full-academic year in which physical restraint was imposed upon a student; and

(bb) total number of incidents in the preceding full-academic year in which seclusion was imposed upon a student; and

(II) not be required in a case in which the number of students in a category would reveal personally identifiable information about an individual student.

(c) Enforcement.—

(1) In general.—

(A) Use of remedies.—If a State educational agency fails to comply with subsection (a) or (b)(2), the Secretary shall—

(i) withhold from the State educational agency, in whole or in part, further payments under an applicable program in accordance with section 455 of the General Education Provisions Act (20 U.S.C. 1234d);
(ii) require the State educational agency to submit and implement, not later than 1 year after the State’s failure to comply, a corrective plan of action, which may include redirection of funds received under an applicable program after the date of enactment of this Act; or

(iii) issue a complaint to compel compliance of the State educational agency through a cease and desist order, in the same manner the Secretary is authorized to take such action under section 456 of the General Education Provisions Act (20 U.S.C. 1234e).

(B) CESSATION OF WITHHOLDING OF FUNDS.—Whenever the Secretary determines (whether by certification or other appropriate evidence) that a State educational agency that is subject to the withholding of payments under subparagraph (A)(i) has cured the failure providing the basis for the withholding of payments, the Secretary shall cease the withholding of payments with respect to the State educational agency under such subparagraph.
(2) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to limit the Secretary’s authority under the General Education Provisions Act (20 U.S.C. 1221 et seq.).

SEC. 7. GRANT AUTHORITY.

(a) IN GENERAL.—From the amount appropriated under section 12, the Secretary may award grants to State educational agencies to assist the State educational agencies in—

(1) establishing, implementing, and enforcing the policies and procedures to meet the minimum standards required by regulations prescribed by the Secretary pursuant to section 5(a); and

(2) improving school climate and culture by implementing school-wide positive behavior support approaches.

(b) DURATION OF GRANT.—A grant under this section shall be awarded to a State educational agency for a 3-year period.

(e) APPLICATION.—Each State educational agency desiring a grant under this section shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may require, including information on how the State educational agency will target resources to schools and local
(d) Authority To Make Subgrants.—

(1) In general.—A State educational agency receiving a grant under this section may carry out the activities described in subsections (e) and (f), as required under the grant, by awarding subgrants, on a competitive basis, to local educational agencies.

(2) Application.—A local educational agency desiring to receive a subgrant under paragraph (1) shall submit an application to the applicable State educational agency at such time, in such manner, and containing such information as the State educational agency may require.

(e) Required Activities.—A State educational agency receiving a grant under this section shall use such grant funds to carry out all of the following:

(1) Researching, developing, implementing, and evaluating strategies, policies, and procedures to reduce or eliminate seclusion and physical restraint in schools, consistent with the minimum standards required by regulations prescribed by the Secretary pursuant to section 5(a).
(2) Providing professional development, training, and certification for school personnel to meet such standards.

(3) Carrying out the reporting requirements under section 6(b) and analyzing the information included in a report prepared under such section to identify student, school personnel, and school needs related to use of physical restraint and seclusion.

(f) AUTHORIZED ACTIVITIES.—A State educational agency receiving a grant under this section may use such grant funds for one or more of the following:

(1) Developing and implementing high-quality professional development and training programs to implement evidence-based systematic approaches to school-wide positive behavior supports, including improving coaching, facilitation, and training capacity for administrators, teachers, specialized instructional support personnel, and other staff.

(2) Providing technical assistance to develop and implement evidence-based systematic approaches to school-wide positive behavior supports, including technical assistance for data-driven decisionmaking related to behavioral supports and interventions in the classroom.
(3) Researching, evaluating, and disseminating high-quality evidence-based programs and activities that implement school-wide positive behavior supports with fidelity.

(g) EVALUATION AND REPORT.—Each State educational agency receiving a grant under this section shall, at the end of the grant period—

(1) evaluate the State’s progress toward the reduction and elimination of seclusion and physical restraint in the schools located in the State, consistent with the minimum standards required by regulations prescribed by the Secretary pursuant to section 5(a); and

(2) submit to the Secretary a report on such progress.

SEC. 8. NATIONAL ASSESSMENT.

(a) NATIONAL ASSESSMENT.—The Secretary shall carry out a national assessment to determine the effectiveness of this Act, which shall include—

(1) collecting and analyzing data related to seclusion, physical restraint, and aversive behavioral interventions in schools;

(2) analyzing the effectiveness of Federal, State, and local efforts to reduce the number of seclusion and physical restraint incidents in schools;
(3) identifying the types of programs and services that have demonstrated the greatest effectiveness in preventing and reducing the number of physical restraint and seclusion incidents in schools; and

(4) identifying personnel training models with demonstrated success in reducing the number of seclusion and physical restraint incidents in schools, including models that emphasize positive behavior supports and de-escalation techniques over physical intervention.

(b) REPORT.—The Secretary shall submit to the Committee on Education and Labor of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate—

(1) an interim report that summarizes the preliminary findings of the assessment described in subsection (a) not later than 3 years after the date of enactment of this Act; and

(2) a final report of the findings of the assessment not later than 5 years after the date of the enactment of this Act.

SEC. 9. PROTECTION AND ADVOCACY SYSTEMS.

Protection and advocacy systems shall have the authority provided under section 143 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42
SEC. 10. HEAD START PROGRAMS.

(a) REGULATIONS.—The Secretary of Health and Human Services, in consultation with the Secretary of Education, shall promulgate regulations with respect to Head Start agencies administering Head Start programs under the Head Start Act (42 U.S.C. 9801 et seq.) that establish requirements consistent with—

(1) the requirements established by regulations promulgated pursuant to section 5(a); and

(2) the reporting and enforcement requirements described in subsections (b) and (c) of section 6.

(b) GRANT AUTHORITY.—From the amount appropriated under section 12, the Secretary of Education may allocate funds to the Secretary of Health and Human Services to assist the Head Start agencies in establishing, implementing, and enforcing policies and procedures to meet the requirements established by regulations promulgated pursuant to subsection (a).

SEC. 11. LIMITATION OF AUTHORITY.

Nothing in this Act shall be construed to restrict or limit, or allow the Secretary to restrict or limit, any other rights or remedies otherwise available to students or the families of students under Federal or State law.
SEC. 12. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this Act such sums as may be necessary for fiscal year 2011 and each of the 4 succeeding fiscal years.