

111TH CONGRESS
2^D SESSION

S. 3895

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

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 29, 2010

Mr. DODD (for himself and Mr. BURR) 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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Keeping All Students Safe Act”.

6 (b) **TABLE OF CONTENTS.**—The table of contents for
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings.
- Sec. 3. Purposes.

TITLE I—PREVENTION OF SECLUSION AND PHYSICAL
RESTRAINT IN SCHOOLS

- Sec. 101. Definitions.
- Sec. 102. Minimum standards; rule of construction.
- Sec. 103. State plan and data collection requirements and enforcement.
- Sec. 104. Grant authority.
- Sec. 105. National evaluation.
- Sec. 106. Head Start programs.
- Sec. 107. Rule of authority.
- Sec. 108. Limitation of authority.
- Sec. 109. Authorization of appropriations.

TITLE II—AMENDMENTS TO EDUCATION LAWS

- Sec. 201. Elementary and Secondary Education Act of 1965.
- Sec. 202. Higher Education Act of 1965.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) Seclusion and physical restraint have re-
 4 sulted in serious bodily injury, psychological trauma,
 5 and death to children in schools. National research
 6 shows children have been subjected to inappropriate
 7 seclusion and physical restraint in schools as a
 8 means of discipline, to force compliance, or as a sub-
 9 stitute for appropriate educational support.

10 (2) Despite the widely recognized risks of seclu-
 11 sion and physical restraint, a substantial disparity
 12 exists between States and localities with regard to
 13 the protection and oversight of the rights of children
 14 to a safe learning environment.

15 (3) Children are protected from inappropriate
 16 physical restraint and seclusion in other settings,
 17 such as hospitals, health facilities, and non-medical
 18 community-based facilities. Similar protections are

1 needed in schools, yet such protections must ac-
2 knowledge the differences of the school environment.

3 (4) Research confirms that—

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

6 (B) these practices are not effective means
7 to calm or teach children and may have an op-
8 posite effect while simultaneously decreasing a
9 child's ability to learn.

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

16 (6) Behavioral interventions for children must
17 promote the right of all children to be treated with
18 dignity. All children have the right to be free from
19 abuse, any aversive behavioral intervention that com-
20 promises health and safety, and any physical re-
21 straint or seclusion imposed for purposes of dis-
22 cipline or convenience.

23 (7) Safe and effective evidence-based strategies
24 are available to support children who display chal-
25 lenging behaviors in school settings. Staff training

1 focused on the dangers of seclusion and physical re-
2 straint, as well as training in evidence-based positive
3 behavioral interventions and supports, de-escalation
4 techniques, and seclusion and physical restraint pre-
5 vention can reduce injury, trauma, and death.

6 (8) School personnel have the right to work in
7 a safe environment and should be provided training
8 and support to prevent injury and trauma to them-
9 selves and others.

10 (9) The effective implementation of school-wide
11 positive behavioral interventions and supports is
12 linked to greater academic achievement, significantly
13 fewer disciplinary problems, increased instruction
14 time, and staff perception of a safer teaching envi-
15 ronment.

16 (10) Perspectives of parents and relevant com-
17 munity and advocacy organizations, including those
18 run by individuals with disabilities, are important
19 when developing and implementing strategies, poli-
20 cies, and procedures to prevent or reduce seclusion
21 and physical restraint in schools.

22 **SEC. 3. PURPOSES.**

23 The purposes of this Act are to—

24 (1) prevent and reduce the use of seclusion and
25 physical restraint in schools;

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

4 (3) protect students from—

5 (A) abuse;

6 (B) any aversive behavioral intervention
7 that compromises health and safety; and

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

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

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

16 (A) establishing policies and procedures to
17 keep all students, including students with the
18 most complex and intensive behavioral needs,
19 and school personnel safe;

20 (B) providing school personnel with the
21 necessary tools, training, and support to ensure
22 the safety of all students and all school per-
23 sonnel;

24 (C) collecting and analyzing data on seclu-
25 sion and physical restraint in schools;

1 (D) implementing systemic approaches to
 2 school-wide positive behavioral interventions
 3 and supports; and

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

7 **TITLE I—PREVENTION OF SE-**
 8 **CLUSION AND PHYSICAL RE-**
 9 **STRAINT IN SCHOOLS**

10 **SEC. 101. DEFINITIONS.**

11 In this Act:

12 (1) ESEA DEFINITIONS.—The terms “edu-
 13 cational service agency”, “elementary school”, “local
 14 educational agency”, “parent”, “secondary school”,
 15 and “State” have the meanings given such terms in
 16 section 9101 of the Elementary and Secondary Edu-
 17 cation Act of 1965 (20 U.S.C. 7801).

18 (2) APPLICABLE PROGRAM.—The term “appli-
 19 cable program” has the meaning given the term in
 20 section 400(c) of the General Education Provisions
 21 Act (20 U.S.C. 1221(c)).

22 (3) CHEMICAL RESTRAINT.—The term “chem-
 23 ical restraint” means a drug or medication used on
 24 a student to control behavior or restrict freedom of
 25 movement that is not—

1 (A) prescribed by a licensed physician or
2 other qualified health professional acting under
3 the scope of the professional’s authority under
4 State law for standard treatment of the stu-
5 dent’s medical or psychiatric condition; or

6 (B) administered as prescribed by the li-
7 censed physician or other qualified health pro-
8 fessional acting under the scope of the profes-
9 sional’s authority under State law.

10 (4) FREE APPROPRIATE PUBLIC EDUCATION.—
11 The term “free appropriate public education” has
12 the meaning given the term in section 602 of the In-
13 dividuals with Disabilities Education Act (20 U.S.C.
14 1401).

15 (5) MECHANICAL RESTRAINT.—The term “me-
16 chanical restraint” means the use of devices as a
17 means of restricting a student’s freedom of move-
18 ment.

19 (6) POSITIVE BEHAVIORAL INTERVENTIONS
20 AND SUPPORTS.—The term “positive behavioral
21 interventions and supports” means a systematic ap-
22 proach to embed evidence-based practices and data-
23 driven decisionmaking to improve school climate and
24 culture, including a range of systemic and individ-
25 ualized strategies to reinforce desired behaviors and

1 diminish reoccurrence of problem behaviors, in order
2 to achieve improved academic and social outcomes
3 and increase learning for all students, including
4 those with the most complex and intensive behav-
5 ioral needs.

6 (7) PROTECTION AND ADVOCACY SYSTEM.—

7 (A) IN GENERAL.—The term “protection
8 and advocacy system” means a protection and
9 advocacy system authorized under a covered
10 provision.

11 (B) COVERED PROVISION.—In this para-
12 graph, the term “covered provision” means sub-
13 title C of title I of the Developmental Disabil-
14 ities Assistance and Bill of Rights Act of 2000
15 (42 U.S.C. 15041 et seq.).

16 (8) PHYSICAL ESCORT.—The term “physical es-
17 cort” means the temporary touching or holding of
18 the hand, wrist, arm, shoulder, or back for the pur-
19 pose of inducing a student who is acting out to walk
20 to a safe location.

21 (9) PHYSICAL RESTRAINT.—The term “physical
22 restraint” means a personal restriction that immo-
23 bilizes or reduces the ability of an individual to move
24 the individual’s arms, legs, body, or head freely.
25 Such term does not include a physical escort.

1 (10) SCHOOL.—The term “school” means an
2 entity that—

3 (A)(i) is—

4 (I) a public day or residential elemen-
5 tary school or secondary school; or

6 (II) an early childhood program that
7 is under the jurisdiction of a public school,
8 educational service agency, or other public
9 educational institution or program; and re-
10 ceives, or serves students who receive, sup-
11 port in any form from any program sup-
12 ported in whole or in part with funds ap-
13 propriated to the Department of Edu-
14 cation;

15 (B) is a private day or residential elemen-
16 tary school or secondary school that receives or
17 serves a student who has been placed or re-
18 ferred to such school by, or whose education at
19 such school is paid for by, a State or local edu-
20 cational agency under paragraph (B) or (C) of
21 section 612(a)(10) of the Individuals with Dis-
22 abilities Education Act (20 U.S.C.
23 1412(a)(10)(B), (C)), in order to provide the
24 student with a free appropriate public edu-
25 cation; or

1 (C) is a school funded or operated by the
2 Department of the Interior.

3 (11) SCHOOL PERSONNEL.—The term “school
4 personnel” means school personnel and school re-
5 source officers, as such terms are defined in section
6 4151 of the Elementary and Secondary Education
7 Act of 1965 (20 U.S.C. 7161), who are employed in
8 a school.

9 (12) SECLUSION.—The term “seclusion” means
10 a behavior control technique involving the involun-
11 tary confinement of a student alone in a room, or
12 other area, from which the student is physically pre-
13 vented from leaving. Such term does not include a
14 time out.

15 (13) SECRETARY.—The term “Secretary”
16 means the Secretary of Education.

17 (14) SERIOUS BODILY INJURY.—The term “se-
18 rious bodily injury” has the meaning given the term
19 in section 1365(h) of title 18, United States Code.

20 (15) STATE-APPROVED TRAINING PROGRAM.—
21 The term “State-approved training program” means
22 a training program approved by a State that, at a
23 minimum, provides—

1 (A) training in evidence-based techniques
2 shown to be effective in the prevention of seclu-
3 sion and physical restraint;

4 (B) training in evidence-based techniques
5 shown to be effective in keeping both school
6 personnel and students safe when imposing
7 physical restraint or seclusion;

8 (C) evidence-based skills training that is
9 related to positive behavioral interventions and
10 supports, conflict prevention, functional behav-
11 ior assessments, de-escalation, and conflict
12 management;

13 (D) training in first aid and cardiopulmo-
14 nary resuscitation;

15 (E) information describing State policies
16 and procedures that meet the minimum stand-
17 ards established by regulations promulgated
18 pursuant to section 102(a); and

19 (F) certification for school personnel in the
20 techniques and skills described in subpara-
21 graphs (A) through (D), which shall be required
22 to be renewed on a periodic basis.

23 (16) STATE EDUCATIONAL AGENCY.—The term
24 “State educational agency” means a State edu-
25 cational agency, as defined in section 9101 of the

1 Elementary and Secondary Education Act of 1965
2 (20 U.S.C. 7801), that receives support in any form
3 from an applicable program.

4 (17) STUDENT.—The term “student” means a
5 student—

6 (A) who is enrolled in a school described in
7 subparagraph (A) or (C) of paragraph (10); or

8 (B) who is enrolled in a private school de-
9 scribed in paragraph (10)(B) and who is receiv-
10 ing a free appropriate public education at the
11 school, under subparagraph (B) or (C) of sec-
12 tion 612(a)(10) of the Individuals with Disabil-
13 ities Education Act (20 U.S.C. 1412(a)(10)(B),
14 (C)).

15 (18) TIME OUT.—The term “time out” means
16 a behavior management technique that is part of an
17 approved treatment program and may involve the
18 separation of the student from the group, in a non-
19 locked setting, for the purpose of calming. Time out
20 is not seclusion.

21 **SEC. 102. MINIMUM STANDARDS; RULE OF CONSTRUCTION.**

22 (a) MINIMUM STANDARDS.—Not later than 1 year
23 after the date of enactment of this Act, in order to protect
24 each student from any aversive behavioral intervention
25 that compromises student health and safety or any phys-

1 ical restraint or seclusion imposed for purposes of dis-
2 cipline or convenience or in a manner otherwise incon-
3 sistent with this Act, the Secretary shall promulgate regu-
4 lations establishing the following minimum standards:

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

7 (A) Mechanical restraint.

8 (B) Chemical restraint.

9 (C) Physical restraint or physical escort
10 that restricts breathing.

11 (D) Aversive behavioral intervention that
12 compromises health and safety.

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

16 (A) the student's behavior poses an immi-
17 nent danger of serious bodily injury to the stu-
18 dent, school personnel, or others; and

19 (B) less restrictive interventions would be
20 ineffective in stopping such imminent danger of
21 serious bodily injury.

22 (3) In the event physical restraint or seclusion
23 is imposed upon a student, such physical restraint or
24 seclusion shall—

1 (A) end upon the cessation of the condi-
2 tions described in paragraph (2);

3 (B) be imposed by school personnel who—

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

6 (ii) if school personnel safety would be
7 significantly compromised by such face-to-
8 face monitoring, are in continuous direct
9 visual contact with the student; and

10 (C) be imposed by—

11 (i) school personnel trained and cer-
12 tified by a State-approved training pro-
13 gram; or

14 (ii) other school personnel in the case
15 of a rare and clearly unavoidable emer-
16 gency circumstance when school personnel
17 trained and certified as described in clause
18 (i) are not immediately available due to the
19 unforeseeable nature of the emergency cir-
20 cumstance.

21 (4) Each State, in consultation with local edu-
22 cational agencies and private schools, shall ensure
23 that a sufficient number of school personnel are
24 trained and certified by a State-approved training

1 program to meet the needs of the specific student
2 population in each school.

3 (5) The use of physical restraint or seclusion
4 shall not be written into a student's education plan,
5 individual safety plan, behavioral plan, or individual-
6 ized education program (as defined in section 614(d)
7 of the Individuals with Disabilities Education Act
8 (20 U.S.C. 1414(d))) unless all of the following con-
9 ditions apply:

10 (A) The use of physical restraint and se-
11 clusion complies with the minimum standards
12 of this section and any other applicable State
13 law (including regulations) regarding physical
14 restraint or seclusion, to the extent State law
15 (including regulations) provide additional pro-
16 tection for students.

17 (B) The student has a documented history
18 showing a series of behaviors in the preceding
19 2 years that has created an imminent danger of
20 serious bodily injury in school.

21 (C) A comprehensive, data-driven func-
22 tional behavior assessment has been conducted,
23 and a behavioral intervention plan implemented,
24 by a qualified team of professionals.

1 (6) After the imposition of physical restraint or
2 seclusion upon a student, all school personnel in-
3 volved in the physical restraint or seclusion and ap-
4 propriate supervisory and administrative staff shall
5 participate in a debriefing session. The debriefing
6 session shall occur not later than 5 school days fol-
7 lowing the imposition of physical restraint or seclu-
8 sion, unless the debriefing session is delayed, at the
9 request of a student's parent so that the parent can
10 also attend. The debriefing session shall include—

11 (A) documentation of circumstances lead-
12 ing to use of physical restraint or seclusion;

13 (B) planning to prevent and reduce reoc-
14 currence of the use of physical restraint or se-
15 clusion; and

16 (C) a plan to have a qualified team of pro-
17 fessionals conduct, review, or revise a functional
18 behavioral assessment.

19 (7) Each local educational agency shall estab-
20 lish procedures to be followed after each incident in
21 a school involving the imposition of physical re-
22 straint or seclusion upon a student, including—

23 (A) procedures to provide to the parent of
24 the student, with respect to each such inci-
25 dent—

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

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

7 (iii) advance notice of the debriefing
8 session described in paragraph (6) that will
9 be held regarding such incident and an op-
10 portunity to attend the debriefing session
11 or request that the debriefing session be
12 rescheduled so that the parent may attend;
13 and

14 (B) in a case in which serious bodily injury
15 or death of a student of the school occurs from
16 the use of seclusion or physical restraint, proce-
17 dures to notify, in writing, within 24 hours
18 after such injury or death occurs—

19 (i) the State educational agency and
20 local educational agency;

21 (ii) a protection and advocacy system,
22 in the case of a student who is eligible for
23 protection and advocacy services through
24 that system; and

1 (iii) if appropriate, law enforcement
2 officials.

3 (b) SECRETARY OF THE INTERIOR.—The Secretary
4 of the Interior shall ensure that schools operated or fund-
5 ed by the Department of the Interior comply with the reg-
6 ulations promulgated by the Secretary under subsection
7 (a).

8 (c) RULE OF CONSTRUCTION REGARDING CERTAIN
9 PRACTICES.—Nothing in this section shall be construed
10 to authorize the Secretary to promulgate regulations pro-
11 hibiting the use of—

12 (1) time out;

13 (2) devices implemented by a trained school
14 personnel, or utilized by a student, for the specific
15 and approved therapeutic or safety purposes for
16 which such devices were designed, and, if applicable,
17 prescribed, including—

18 (A) restraints for medical immobilization;

19 (B) adaptive devices or mechanical sup-
20 ports used to achieve proper body position, bal-
21 ance, or alignment to allow greater freedom of
22 mobility than would be possible without the use
23 of such a mechanical support; or

1 (C) vehicle safety restraints when used as
 2 intended during the transport of a student in a
 3 moving vehicle; and

4 (3) handcuffs by school resource officers (as
 5 such term is defined in section 4151 of the Elemen-
 6 tary and Secondary Education Act of 1965 (20
 7 U.S.C. 7161))—

8 (A)(i) in the case where a student’s behav-
 9 ior poses an imminent danger of serious bodily
 10 injury to the student, school personnel, or oth-
 11 ers; or

12 (ii) in the lawful exercise of law enforce-
 13 ment duties; and

14 (B) if less restrictive interventions would
 15 be ineffective.

16 (d) INTERACTION WITH MINIMUM STANDARDS AND
 17 STATE LAW (INCLUDING REGULATIONS).—

18 (1) IN GENERAL.—Any education plan, indi-
 19 vidual safety plan, behavioral plan, or individualized
 20 education program (as defined in section 614(d) of
 21 the Individuals with Disabilities Education Act (20
 22 U.S.C. 1414(d))) for a student in a State shall con-
 23 form to the minimum standards described in sub-
 24 section (a) and with State law (including regula-
 25 tions) regarding physical restraint or seclusion, to

1 the extent State law (including regulations) provide
2 additional protection for students.

3 (2) INDIVIDUALIZED EDUCATION PROGRAMS.—

4 With respect to a student attending a school served
5 by a State educational agency, the requirements
6 under subsection (a)(5) shall be treated, for all pur-
7 poses under the Individuals with Disabilities Edu-
8 cation Act (20 U.S.C. 1400 et seq.), as if such re-
9 quirements were included in section 614(d) of such
10 Act (20 U.S.C. 1414(d)), notwithstanding any other
11 provision of law.

12 **SEC. 103. STATE PLAN AND DATA COLLECTION REQUIRE-**
13 **MENTS AND ENFORCEMENT.**

14 (a) STATE PLAN.—

15 (1) SUBMISSION OF PLANS.—Not later than 2
16 years after the Secretary promulgates regulations
17 pursuant to section 102(a), and every 3 years there-
18 after, each State educational agency shall submit to
19 the Secretary, and make available to the general
20 public, a State plan that provides—

21 (A) assurances to the Secretary that the
22 State has in effect—

23 (i) State policies and procedures that
24 meet the minimum standards, including
25 the standards with respect to State-ap-

1 proved training programs, established by
2 the regulations prescribed by the Secretary
3 pursuant to section 102(a); and

4 (ii) a State mechanism to effectively
5 monitor and enforce the minimum stand-
6 ards;

7 (B) a description of the State policies and
8 procedures described in subparagraph (A)(i);
9 and

10 (C) a description of the plans to ensure
11 school personnel and parents, including private
12 school personnel and parents, are aware of the
13 State policies and procedures.

14 (2) UPDATED PLANS.—Each State educational
15 agency shall submit a new State plan to the Sec-
16 retary each time the State educational agency up-
17 dates or makes a material change in the State plan.

18 (b) REPORTING.—

19 (1) REPORTING REQUIREMENTS.—Not later
20 than 2 years after the date the Secretary promul-
21 gates regulations pursuant to section 102(a), and
22 each year thereafter, each State educational agency
23 shall (in compliance with the requirements of section
24 444 of the General Education Provisions Act (com-
25 monly known as the “Family Educational Rights

1 and Privacy Act of 1974”) (20 U.S.C. 1232g)) pre-
2 pare and submit to the Secretary, and make avail-
3 able to the public, a report with respect to each local
4 educational agency, and each school not under the
5 jurisdiction of a local educational agency, located in
6 the same State as such State educational agency
7 that includes the information described in paragraph
8 (2).

9 (2) INFORMATION REQUIREMENTS.—

10 (A) GENERAL INFORMATION REQUIRE-
11 MENTS.—The report described in paragraph (1)
12 shall include information on—

13 (i) the total number of incidents in
14 the preceding full academic year in which
15 physical restraint was imposed upon a stu-
16 dent; and

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

20 (B) DISAGGREGATION.—

21 (i) GENERAL DISAGGREGATION RE-
22 QUIREMENTS.—The information described
23 in subparagraph (A) shall be disaggregated
24 by—

1 (I) the total number of incidents
2 in which physical restraint or seclu-
3 sion was imposed upon a student—

4 (aa) that resulted in serious
5 bodily injury to a student;

6 (bb) that resulted in serious
7 bodily injury to school personnel;

8 (cc) that resulted in the
9 death of a student;

10 (dd) in which the school per-
11 sonnel imposing physical re-
12 straint or seclusion were not
13 trained and certified as described
14 in section 102(a)(3)(C)(i); and

15 (ee) in a way that did not
16 meet the minimum standards es-
17 tablished by the regulations pre-
18 scribed by the Secretary pursu-
19 ant to section 102(a); and

20 (II) the demographic characteris-
21 tics of all students upon whom phys-
22 ical restraint or seclusion was im-
23 posed, including—

24 (aa) the categories described
25 in section 1111(h)(1)(C)(i) of the

1 Elementary and Secondary Edu-
2 cation Act of 1965 (20 U.S.C.
3 6311(h)(1)(C)(i));

4 (bb) age; and

5 (cc) disability status, which
6 has the meaning given the term
7 “individual with a disability” in
8 paragraph (20) (except for sub-
9 paragraph (A)) of section 7 of
10 the Rehabilitation Act of 1973
11 (29 U.S.C. 705(20)).

12 (ii) UNDUPLICATED COUNT; EXCEP-
13 TION.—The disaggregation required under
14 clause (i) shall—

15 (I) be carried out in a manner to
16 ensure an unduplicated count of the—

17 (aa) total number of inci-
18 dents in the preceding full-aca-
19 demic year in which physical re-
20 straint was imposed upon a stu-
21 dent; and

22 (bb) total number of inci-
23 dents in the preceding full-aca-
24 demic year in which seclusion
25 was imposed upon a student; and

1 (II) not be required in a case in
2 which the number of students in a
3 category would reveal personally iden-
4 tifiable information about an indi-
5 vidual student.

6 (c) ENFORCEMENT.—

7 (1) IN GENERAL.—

8 (A) USE OF REMEDIES.—If a State edu-
9 cational agency fails to comply with subsection
10 (a) or (b), the Secretary shall—

11 (i) require the State educational agen-
12 cy to submit and implement, not later than
13 1 year after the State’s failure to comply,
14 a corrective plan of action, which may in-
15 clude redirection of funds received under
16 an applicable program after the date of en-
17 actment of this Act;

18 (ii) withhold from the State edu-
19 cational agency, in whole or in part, fur-
20 ther payments under an applicable pro-
21 gram in accordance with section 455 of the
22 General Education Provisions Act (20
23 U.S.C. 1234d); or

24 (iii) issue a complaint to compel com-
25 pliance of the State educational agency

1 through a cease and desist order, in the
2 same manner the Secretary is authorized
3 to take such action under section 456 of
4 the General Education Provisions Act (20
5 U.S.C. 1234e).

6 (B) CESSATION OF WITHHOLDING OF
7 FUNDS.—Whenever the Secretary determines
8 (whether by certification or other appropriate
9 evidence) that a State educational agency that
10 is subject to the withholding of payments under
11 subparagraph (A)(ii) has cured the failure pro-
12 viding the basis for the withholding of pay-
13 ments, the Secretary shall cease the withholding
14 of payments with respect to the State edu-
15 cational agency under such subparagraph.

16 (2) RULE OF CONSTRUCTION.—Nothing in this
17 subsection shall be construed to limit the Secretary's
18 authority under the General Education Provisions
19 Act (20 U.S.C. 1221 et seq.).

20 **SEC. 104. GRANT AUTHORITY.**

21 (a) IN GENERAL.—From the amount appropriated
22 under section 109, the Secretary may award grants to
23 State educational agencies to assist the State educational
24 agencies in—

1 (1) establishing, implementing, and enforcing
2 the policies and procedures to meet the minimum
3 standards required by regulations prescribed by the
4 Secretary pursuant to section 102(a);

5 (2) improving State and local capacity to collect
6 and analyze data related to physical restraint and
7 seclusion; and

8 (3) improving school climate and culture by im-
9 plementing school-wide positive behavioral interven-
10 tions and supports.

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

14 (c) APPLICATION.—Each State educational agency
15 desiring a grant under this section shall submit an appli-
16 cation to the Secretary at such time, in such manner, and
17 accompanied by such information as the Secretary may
18 require, including information on how the State edu-
19 cational agency will target resources to schools and local
20 educational agencies in need of assistance related to pre-
21 venting and reducing physical restraint and seclusion.

22 (d) AUTHORITY TO MAKE SUBGRANTS.—

23 (1) IN GENERAL.—A State educational agency
24 receiving a grant under this section may carry out
25 the activities described in subsections (f) and (g), as

1 required under the grant, by awarding subgrants, on
2 a competitive basis, to local educational agencies.

3 (2) APPLICATION.—A local educational agency
4 desiring to receive a subgrant under paragraph (1)
5 shall submit an application to the applicable State
6 educational agency at such time, in such manner,
7 and containing such information as the State edu-
8 cational agency may require.

9 (e) PRIVATE SCHOOL PARTICIPATION.—

10 (1) IN GENERAL.—A local educational agency
11 receiving a subgrant under this section shall, after
12 timely and meaningful consultation with appropriate
13 private school officials in the school district served
14 by the local educational agency, ensure that private
15 school personnel can participate, on an equitable
16 basis, in activities supported by subgrant funds.

17 (2) PUBLIC CONTROL OF FUNDS.—The control
18 of funds provided under this section, and title to ma-
19 terials, equipment, and property purchased with
20 such funds, shall be in a public agency, and a public
21 agency shall administer such funds, materials, equip-
22 ment, and property.

23 (f) REQUIRED ACTIVITIES.—A State educational
24 agency receiving a grant under this section shall use such
25 grant funds to carry out all of the following:

1 (1) Researching, developing, implementing, and
2 evaluating strategies, policies, and procedures to pre-
3 vent and reduce seclusion and physical restraint in
4 schools consistent with the minimum standards re-
5 quired by regulations prescribed by the Secretary
6 pursuant to section 102(a).

7 (2) Providing professional development, train-
8 ing, and certification for school personnel to meet
9 such standards.

10 (3) Carrying out the reporting requirements
11 under section 103(b) and analyzing the information
12 included in a report prepared under such section to
13 identify student, school personnel, and school needs
14 related to use of physical restraint and seclusion.

15 (4) Developing and implementing high-quality
16 professional development and training programs to
17 implement evidence-based systematic approaches to
18 school-wide positive behavioral interventions and
19 supports, including improving coaching, facilitation,
20 and training capacity for administrators, teachers,
21 specialized instructional support personnel, para-
22 professionals, and other staff.

23 (5) Providing technical assistance to develop
24 and implement evidence-based systematic approaches
25 to school-wide positive behavioral interventions and

1 supports, including technical assistance for data-
2 driven decisionmaking related to behavioral supports
3 and interventions in the classroom.

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

7 (1) Researching, evaluating, and disseminating
8 high-quality evidence-based programs and activities
9 that implement school-wide positive behavioral inter-
10 ventions and supports with fidelity.

11 (2) Supporting other local positive behavioral
12 intervention and support implementation activities
13 consistent with this subsection, including functional
14 behavioral assessments.

15 (h) EVALUATION AND REPORT.—Each State edu-
16 cational agency receiving a grant under this section shall,
17 at the end of the grant period—

18 (1) evaluate the State’s progress toward the re-
19 duction and elimination of seclusion and physical re-
20 straint in the schools located in the State, consistent
21 with the minimum standards required by regulations
22 prescribed by the Secretary pursuant to section
23 102(a); and

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

1 (i) DEPARTMENT OF THE INTERIOR.—From the
2 amount appropriated under section 109, the Secretary of
3 Education may allocate funds to the Secretary of the Inte-
4 rior for activities under this section with respect to schools
5 operated or funded by the Department of the Interior,
6 under such terms as the Secretary of Education may pre-
7 scribe.

8 **SEC. 105. NATIONAL EVALUATION.**

9 (a) NATIONAL EVALUATION.—The Secretary shall
10 carry out a national evaluation to determine the effective-
11 ness of this Act, which shall include—

12 (1) analyzing data related to seclusion and
13 physical restraint in schools;

14 (2) analyzing the effectiveness of Federal,
15 State, and local efforts to reduce the number of se-
16 clusion and physical restraint incidents in schools;

17 (3) identifying the types of programs and serv-
18 ices that have demonstrated the greatest effective-
19 ness in preventing and reducing the number of phys-
20 ical restraint and seclusion incidents in schools; and

21 (4) identifying personnel training models with
22 demonstrated success in preventing and reducing the
23 number of seclusion and physical restraint incidents
24 in schools, including models that emphasize positive

1 behavioral interventions and supports and de-escalation techniques over physical intervention.

2
3 (b) REPORT.—The Secretary shall submit to the
4 Committee on Education and Labor of the House of Representatives and the Committee on Health, Education,
5 Labor, and Pensions of the Senate—

6
7 (1) an interim report that summarizes the preliminary findings of the evaluation described in subsection (a) not later than 3 years after the date of
8 enactment of this Act; and

9
10 (2) a final report of the findings of the evaluation not later than 5 years after the date of the enactment of this Act.

11
12 **SEC. 106. HEAD START PROGRAMS.**

13
14 (a) REGULATIONS.—The Secretary of Health and Human Services, in consultation with the Secretary of
15 Education, shall promulgate regulations with respect to
16 Head Start agencies administering Head Start programs
17 under the Head Start Act (42 U.S.C. 9801 et seq.) that
18 establish requirements consistent with—

19
20 (1) the requirements established by regulations promulgated pursuant to section 102(a); and

21
22 (2) the reporting and enforcement requirements described in subsections (b) and (c) of section 103.

1 (b) GRANT AUTHORITY.—From the amount appro-
2 priated under section 109, the Secretary of Education may
3 allocate funds to the Secretary of Health and Human
4 Services to assist the Head Start agencies in establishing,
5 implementing, and enforcing policies and procedures to
6 meet the requirements established by regulations promul-
7 gated pursuant to subsection (a).

8 **SEC. 107. RULE OF AUTHORITY.**

9 (a) IN GENERAL.—Nothing in this Act shall be con-
10 strued to restrict or limit, or allow the Secretary to restrict
11 or limit, any other rights or remedies otherwise available
12 to students or the families of students under Federal or
13 State law (including regulations).

14 (b) APPLICABILITY.—

15 (1) PRIVATE SCHOOLS.—Nothing in this Act
16 shall be construed to affect any private school that
17 does not receive, or does not serve, any student who
18 receives a free appropriate public education at such
19 school under subparagraph (B) or (C) of section
20 612(a)(10) of the Individuals with Disabilities Edu-
21 cation Act (20 U.S.C. 1412(a)(10)(B), (C)).

22 (2) HOME SCHOOLS.—Nothing in this Act shall
23 be construed to affect a home school, whether or not
24 a home school is treated as a private school or home
25 school under State law (including regulations), nor

1 shall a parent who is schooling a child at home be
2 considered or classified as school personnel for pur-
3 poses of this Act.

4 (c) PROTECTION AND ADVOCACY SYSTEMS.—Noth-
5 ing in this Act shall be construed to limit or expand the
6 rights or authority of a protection and advocacy system,
7 provided under a covered provision as defined in section
8 101(7), to investigate, monitor, and enforce protections
9 for students who are eligible for protection and advocacy
10 services under such covered provision.

11 **SEC. 108. LIMITATION OF AUTHORITY.**

12 Nothing in this Act shall be construed to restrict or
13 limit, or allow the Secretary to restrict or limit, any other
14 rights or remedies otherwise available to students or par-
15 ents under Federal or State law (including regulations).

16 **SEC. 109. AUTHORIZATION OF APPROPRIATIONS.**

17 There are authorized to be appropriated to carry out
18 this Act such sums as may be necessary for fiscal year
19 2011 and each of the 4 succeeding fiscal years.

1 **TITLE II—AMENDMENTS TO**
2 **EDUCATION LAWS**

3 **SEC. 201. ELEMENTARY AND SECONDARY EDUCATION ACT**
4 **OF 1965.**

5 (a) STATE PLANS AND STATE REPORTS.—Section
6 1111 of the Elementary and Secondary Education Act of
7 1965 (20 U.S.C. 6311) is amended—

8 (1) in subsection (b)—

9 (A) in paragraph (13), by striking “and”
10 after the semicolon;

11 (B) in paragraph (14), by striking the pe-
12 riod at the end and inserting “; and”; and

13 (C) by adding at the end the following:

14 “(15) the State educational agency will—

15 “(A) assist local educational agencies in
16 implementing positive behavioral interventions
17 and supports in schools in the local educational
18 agency on a whole-school basis;

19 “(B) provide technical assistance and
20 training to local educational agencies to im-
21 prove positive behavioral interventions and sup-
22 ports and to coordinate such interventions and
23 supports with similar activities under the Indi-
24 viduals with Disabilities Education Act; and

1 “(C) evaluate the effects of providing posi-
2 tive behavioral interventions and supports.”;
3 and

4 (2) in subsection (h)(1)(C)—

5 (A) in clause (vii), by striking “and” after
6 the semicolon;

7 (B) in clause (viii), by striking the period
8 at the end and inserting “; and”; and

9 (C) by adding at the end the following:

10 “(ix) the number of local educational
11 agencies that implement positive behavioral
12 interventions and supports.”.

13 (b) LOCAL EDUCATIONAL AGENCY PLANS.—Section
14 1112(b)(1) of the Elementary and Secondary Education
15 Act of 1965 (20 U.S.C. 6312(b)(1)) is amended—

16 (1) in subparagraph (P), by striking “and”
17 after the semicolon;

18 (2) in subparagraph (Q), by striking the period
19 at the end and inserting “; and”; and

20 (3) by adding at the end the following:

21 “(R) a description of the actions the local
22 educational agency will take to provide positive
23 behavioral interventions and supports and to co-
24 ordinate such interventions and supports with

1 similar activities under the Individuals with
2 Disabilities Education Act.”.

3 (c) SCHOOL-WIDE PROGRAMS.—Section
4 1114(b)(1)(B)(iii)(I) of the Elementary and Secondary
5 Education Act of 1965 (20 U.S.C. 6314(b)(1)(B)(iii)(I))
6 is amended—

7 (1) by redesignating items (bb) and (cc) as
8 items (cc) and (dd), respectively; and

9 (2) by inserting after item (aa) the following:

10 “(bb) implementation of school-
11 wide positive behavioral interventions
12 and supports, including through co-
13 ordination of such interventions and
14 supports with similar activities under
15 the Individuals with Disabilities Edu-
16 cation Act;”.

17 (d) ASSESSMENTS AND SCHOOL IMPROVEMENT.—
18 Section 1116 of the Elementary and Secondary Education
19 Act of 1965 (20 U.S.C. 6316) is amended—

20 (1) in subsection (b)(3)(A)—

21 (A) in clause (ix), by striking “and” after
22 the semicolon;

23 (B) in clause (x), by striking the period at
24 the end and inserting “; and”; and

25 (C) by adding at the end the following:

1 “(xi) adopt policies or practices to im-
2 plement or improve positive behavioral
3 interventions and supports and enhance co-
4 ordination of such interventions and sup-
5 ports with similar activities under the Indi-
6 viduals with Disabilities Education Act.”;
7 and

8 (2) in subsection (c)(7)(A)—

9 (A) in clause (vii), by striking “and” after
10 the semicolon;

11 (B) in clause (viii), by striking the period
12 at the end and inserting “; and”; and

13 (C) by adding at the end the following:

14 “(ix) improve or expand positive be-
15 havioral interventions and supports and
16 enhance coordination of such interventions
17 and supports with similar activities under
18 the Individuals with Disabilities Education
19 Act.”.

20 (e) SCHOOL SUPPORT AND RECOGNITION.—Section
21 1117(a) of the Elementary and Secondary Education Act
22 of 1965 (20 U.S.C. 6317(a)) is amended—

23 (1) by striking paragraph (3) and inserting the
24 following:

1 “(3) REGIONAL AND SPECIALTY CENTERS.—

2 Such a statewide system shall, to the extent prac-
3 ticable, work with and receive support and assistance
4 from—

5 “(A)(i) regional educational laboratories
6 established under part D of the Education
7 Sciences Reform Act of 2002;

8 “(ii) comprehensive centers established
9 under the Educational Technical Assistance Act
10 of 2002;

11 “(iii) comprehensive regional technical as-
12 sistance centers and regional educational lab-
13 oratories under section 941(h) of the Edu-
14 cational Research, Development, Dissemination,
15 and Improvement Act of 1994 (as such section
16 existed on the day before the date of enactment
17 of the Education Sciences Reform Act of 2002);
18 and

19 “(iv) technical assistance centers on
20 school-wide positive behavioral interventions
21 and supports funded under section 665(b) of
22 the Individuals with Disabilities Education Act;
23 or

24 “(B) other providers of technical assist-
25 ance.”; and

1 (2) in paragraph (5)(B)—

2 (A) in clause (i), by inserting before the
3 semicolon “, including by improving or expand-
4 ing the use of positive behavioral interventions
5 and supports and coordinating such interven-
6 tions and supports with similar activities under
7 the Individuals with Disabilities Education
8 Act”;

9 (B) in clause (iii), by striking “and” after
10 the semicolon;

11 (C) in clause (iv), by striking the period at
12 the end and inserting “; and”; and

13 (D) by adding at the end the following:

14 “(v)(I) review and analyze the school’s
15 efforts to address behavioral or disciplinary
16 problems; and

17 “(II) assist the school in developing or
18 improving school-wide positive behavioral
19 interventions and supports and coordi-
20 nating such interventions and supports
21 with similar activities under the Individ-
22 uals with Disabilities Education Act.”.

23 (f) PARENTAL INVOLVEMENT.—Section 1118(e) of
24 the Elementary and Secondary Education Act of 1965 (20
25 U.S.C. 6318(e)) is amended—

1 (1) by redesignating paragraphs (6) through
2 (14) as paragraphs (7) through (15), respectively;
3 and

4 (2) by inserting after paragraph (5) the fol-
5 lowing:

6 “(6) shall provide information about the
7 school’s use of positive behavioral interventions and
8 supports;”.

9 (g) DEFINITIONS.—Section 9101 of the Elementary
10 and Secondary Education Act of 1965 (20 U.S.C. 7801)
11 is amended—

12 (1) by redesignating paragraphs (33) through
13 (43) as paragraphs (34) through (44), respectively;
14 and

15 (2) by inserting after paragraph (32) the fol-
16 lowing:

17 “(33) POSITIVE BEHAVIORAL INTERVENTIONS
18 AND SUPPORTS.—The term ‘positive behavioral
19 interventions and supports’ has the meaning given
20 the term in section 101 of the Keeping All Students
21 Safe Act.”.

22 **SEC. 202. HIGHER EDUCATION ACT OF 1965.**

23 (a) DEFINITIONS.—Section 200 of the Higher Edu-
24 cation Act of 1965 (20 U.S.C. 1021) is amended—

1 (1) by redesignating paragraphs (18) through
2 (23) as paragraphs (19) through (24), respectively;
3 (2) by inserting after paragraph (17) the fol-
4 lowing:

5 “(18) POSITIVE BEHAVIORAL INTERVENTIONS
6 AND SUPPORTS.—The term ‘positive behavioral
7 interventions and supports’ has the meaning given
8 the term in section 101 of the Keeping All Students
9 Safe Act.”; and

10 (3) in paragraph (22)(B) (as redesignated by
11 paragraph (1)), by striking “(including” and all that
12 follows through “supports)” and inserting “(includ-
13 ing positive behavioral interventions and supports
14 and other approaches that improve the school-wide
15 climate for learning)”.

16 (b) PARTNERSHIP GRANTS.—Section 202 of the
17 Higher Education Act of 1965 (20 U.S.C. 1022a) is
18 amended—

19 (1) in subsection (b)(6)—

20 (A) by redesignating subparagraphs (G)
21 through (K) as subparagraphs (H) through (L),
22 respectively; and

23 (B) by inserting after subparagraph (F)
24 the following:

1 “(G) how the partnership will prepare gen-
 2 eral education and special education teachers to
 3 implement positive behavioral interventions and
 4 supports;”;

5 (2) in subsection (d)(1)(B)(ii)—

6 (A) in subclause (V), by striking “and”
 7 after the semicolon at the end;

8 (B) in subclause (VI), by striking the semi-
 9 colon and inserting a period;

10 (C) by redesignating subclause (VI) as
 11 subclause (VII); and

12 (D) by inserting after subclause (V) the
 13 following:

14 “(VI) can effectively implement
 15 positive behavioral interventions and
 16 supports; and”; and

17 (3) in subsection (f)(1)(B)(iv), by inserting
 18 “(including through the implementation of school-
 19 wide positive behavioral interventions and supports
 20 and other approaches that improve the school-wide
 21 climate)” before the semicolon.

22 (c) ACCOUNTABILITY FOR PROGRAMS THAT PRE-
 23 PARE TEACHERS.—Section 205 of the Higher Education
 24 Act of 1965 (20 U.S.C. 1022d) is amended—

1 (1) by striking subparagraph (G) of subsection
2 (a)(1) and inserting the following:

3 “(G) TEACHER TRAINING.—A description
4 of the activities that prepare general education
5 and special education teachers to—

6 “(i) teach students with disabilities ef-
7 fectively, including training related to par-
8 ticipation as a member of individualized
9 education program teams, as defined in
10 section 614(d)(1)(B) of the Individuals
11 with Disabilities Education Act;

12 “(ii) effectively implement positive be-
13 havioral interventions and supports; and

14 “(iii) effectively teach students who
15 are limited English proficient.”;

16 (2) in subsection (b)(1), by adding at the end
17 the following:

18 “(M) The extent to which teacher prepara-
19 tion programs prepare teachers, including gen-
20 eral education and special education teachers,
21 to effectively implement positive behavioral
22 interventions and supports.”; and

23 (3) in subsection (d)(1), by striking “through
24 (L)” and inserting “through (M)”.

1 (d) TEACHER DEVELOPMENT.—Section 206(b) of
2 the Higher Education Act of 1965 (20 U.S.C. 1022e(b))
3 is amended—

4 (1) in paragraph (4), by striking “and” after
5 the semicolon;

6 (2) by redesignating paragraph (5) as para-
7 graph (6); and

8 (3) by inserting after paragraph (4) the fol-
9 lowing:

10 “(5) prospective teachers receive training on
11 how to implement effectively positive behavioral
12 interventions and supports; and”.

○