

112TH CONGRESS
1ST SESSION

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To protect all school children against harmful and life-threatening seclusion and restraint practices.

IN THE SENATE OF THE UNITED STATES

DECEMBER 16, 2011

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

A BILL

To protect all school children against harmful and life-threatening seclusion and restraint practices.

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.**

4 This Act may be cited as the “Keeping All Students
5 Safe Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) **APPLICABLE PROGRAM.**—The term “appli-
9 cable program” has the meaning given the term in

1 section 400(c)(1) of the General Education Provi-
2 sions Act (20 U.S.C. 1221(c)(1)).

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

7 (A) prescribed by a licensed physician, or
8 other qualified health professional acting under
9 the scope of the professional’s authority under
10 State law, for the standard treatment of a stu-
11 dent’s medical or psychiatric condition; and

12 (B) administered as prescribed by the li-
13 censed physician or other qualified health pro-
14 fessional acting under the scope of the profes-
15 sional’s authority under State law.

16 (3) ESEA DEFINITIONS.—The terms—

17 (A) “Department”, “educational service
18 agency”, “elementary school”, “local edu-
19 cational agency”, “parent”, “secondary school”,
20 “State”, and “State educational agency” have
21 the meanings given such terms in section 9101
22 of the Elementary and Secondary Education
23 Act of 1965 (20 U.S.C. 7801); and

1 (B) “school resource officer” and “school
2 personnel” have the meanings given such terms
3 in section 4151 of such Act (20 U.S.C. 7161).

4 (4) FEDERAL FINANCIAL ASSISTANCE.—The
5 term “Federal financial assistance” means any
6 grant, loan, contract (other than a procurement con-
7 tract or a contract of insurance or guaranty), or any
8 other arrangement by which the Department pro-
9 vides or otherwise makes available assistance in the
10 form of—

11 (A) funds;

12 (B) services of Federal personnel; or

13 (C) real and personal property or any in-
14 terest in or use of such property, including—

15 (i) transfers or leases of such property
16 for less than fair market value or for re-
17 duced consideration; and

18 (ii) proceeds from a subsequent trans-
19 fer or lease of such property if the Federal
20 share of its fair market value is not re-
21 turned to the Federal Government.

22 (5) FREE APPROPRIATE PUBLIC EDUCATION.—
23 For those students eligible for special education and
24 related services under the Individuals with Disabil-
25 ities Education Act (20 U.S.C. 1400 et seq.), the

1 term “free appropriate public education” has the
 2 meaning given the term in section 602 of such Act
 3 (20 U.S.C. 1401).

4 (6) MECHANICAL RESTRAINT.—The term “me-
 5 chanical restraint”—

6 (A) has the meaning given the term in sec-
 7 tion 595(d)(1) of the Public Health Service Act
 8 (42 U.S.C. 290jj(d)(1)), except that the mean-
 9 ing shall be applied by substituting “student’s”
 10 for “resident’s”; and

11 (B) does not mean devices used by trained
 12 school personnel, or used by a student, for the
 13 specific and approved therapeutic or safety pur-
 14 poses for which such devices were designed and,
 15 if applicable, prescribed, including—

16 (i) restraints for medical immobiliza-
 17 tion;

18 (ii) adaptive devices or mechanical
 19 supports used to allow greater freedom of
 20 mobility than would be possible without the
 21 use of such devices or mechanical supports;
 22 or

23 (iii) vehicle safety restraints when
 24 used as intended during the transport of a
 25 student in a moving vehicle.

1 (7) PHYSICAL ESCORT.—The term “physical es-
2 cort” means the temporary touching or holding of
3 the hand, wrist, arm, shoulder, waist, hip, or back
4 for the purpose of inducing a student to move to a
5 safe location.

6 (8) PHYSICAL RESTRAINT.—The term “physical
7 restraint” means a personal restriction that immo-
8 bilizes or reduces the ability of an individual to move
9 the individual’s arms, legs, body, or head freely.
10 Such term does not include a physical escort, me-
11 chanical restraint, or chemical restraint.

12 (9) POSITIVE BEHAVIORAL INTERVENTIONS
13 AND SUPPORTS.—The term “positive behavioral
14 interventions and supports”—

15 (A) means a school-wide systematic ap-
16 proach to embed evidence-based practices and
17 data-driven decisionmaking to improve school
18 climate and culture in order to achieve im-
19 proved academic and social outcomes, and in-
20 crease learning for all students, including those
21 with the most complex and intensive behavioral
22 needs; and

23 (B) encompasses a range of systemic and
24 individualized positive strategies to reinforce de-
25 sired behaviors, diminish reoccurrence of chal-

1 lenging behaviors, and teach appropriate behav-
2 iors to students.

3 (10) PROTECTION AND ADVOCACY SYSTEM.—

4 The term “protection and advocacy system” means
5 a protection and advocacy system established under
6 subtitle C of title I of the Developmental Disabilities
7 Assistance and Bill of Rights Act of 2000 (42
8 U.S.C. 15041 et seq.).

9 (11) SECLUSION.—The term “seclusion” means
10 the isolation of a student in a room, enclosure, or
11 space that is—

12 (A) locked; or

13 (B) unlocked and the student is prevented
14 from leaving.

15 (12) SECRETARY.—The term “Secretary”
16 means the Secretary of Education, and, where ap-
17 propriate, the Secretary of the Interior and the Sec-
18 retary of Defense.

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

22 (14) STATE-APPROVED CRISIS INTERVENTION
23 TRAINING PROGRAM.—The term “State-approved
24 crisis intervention training program” means a train-
25 ing program approved by a State that, at a min-

1 imum, provides training in evidence-based practices
2 shown to be effective—

3 (A) in the prevention of the use of physical
4 restraint;

5 (B) in keeping both school personnel and
6 students safe in imposing physical restraint in
7 a manner consistent with this Act;

8 (C) in the use of data-based decision-
9 making and evidence-based positive behavioral
10 interventions and supports, safe physical escort,
11 conflict prevention, behavioral antecedents,
12 functional behavioral assessments, de-escalation
13 of challenging behaviors, and conflict manage-
14 ment;

15 (D) in first aid, including the signs of
16 medical distress, and cardiopulmonary resus-
17 citation; and

18 (E) certification for school personnel in the
19 practices and skills described in subparagraphs
20 (A) through (D), which shall be required to be
21 renewed on a periodic basis.

22 (15) STUDENT.—The term “student” means a
23 student who—

24 (A) is enrolled in a public school;

1 (B) is enrolled in a private school and is
2 receiving a free appropriate public education at
3 the school under subparagraph (B) or (C) of
4 section 612(a)(10) of the Individuals with Dis-
5 abilities Education Act (20 U.S.C.
6 1412(a)(10)(B), (C));

7 (C) is enrolled in a Head Start or Early
8 Head Start program supported under the Head
9 Start Act (42 U.S.C. 9831); or

10 (D) receives services under section 619 or
11 part C of the Individuals with Disabilities Edu-
12 cation Act (20 U.S.C. 1419, 1431 et seq.).

13 **SEC. 3. PURPOSE.**

14 The purposes of this Act are—

15 (1) to promote the development of effective
16 intervention and prevention practices that do not use
17 restraints and seclusion;

18 (2) to protect all students from physical or
19 mental abuse, aversive behavioral interventions that
20 compromise health and safety, and any restraint im-
21 posed for purposes of coercion, discipline or conven-
22 ience, or as a substitute for appropriate educational
23 or positive behavioral interventions and supports;

24 (3) to ensure that staff are safe from the harm
25 that can occur from inexpertly using restraints; and

1 (4) to ensure the safety of all students and
2 school personnel and promote positive school culture
3 and climate.

4 **SEC. 4. MINIMUM STANDARDS; RULE OF CONSTRUCTION.**

5 Each State and local educational agency receiving
6 Federal financial assistance shall have in place policies
7 that are consistent with the following:

8 (1) PROHIBITION OF CERTAIN ACTION.—School
9 personnel, contractors, and resource officers are pro-
10 hibited from imposing on any student—

11 (A) seclusion;

12 (B) mechanical restraint;

13 (C) chemical restraint;

14 (D) aversive behavioral interventions that
15 compromise health and safety;

16 (E) physical restraint that is life-threat-
17 ening, including physical restraint that restricts
18 breathing; and

19 (F) physical restraint if contraindicated
20 based on the student’s disability, health care
21 needs, or medical or psychiatric condition, as
22 documented in a health care directive or med-
23 ical management plan, a behavior intervention
24 plan, an individualized education program or an
25 individualized family service plan (as defined in

1 section 602 of the Individuals with Disabilities
2 Education Act (20 U.S.C. 1401)), or plan de-
3 veloped pursuant to section 504 of the Rehabili-
4 tation Act of 1973 (29 U.S.C. 794), or other
5 relevant record made available to the State or
6 local educational agency.

7 (2) PHYSICAL RESTRAINT.—

8 (A) IN GENERAL.—Physical restraint may
9 only be implemented if—

10 (i) the student’s behavior poses an im-
11 mediate danger of serious bodily injury to
12 self or others;

13 (ii) the physical restraint does not
14 interfere with the student’s ability to com-
15 municate in the student’s primary lan-
16 guage or mode of communication; and

17 (iii) less restrictive interventions have
18 been ineffective in stopping the immediate
19 danger of serious bodily injury to the stu-
20 dent or others, except in a case of a rare
21 and clearly unavoidable emergency cir-
22 cumstance posing immediate danger of se-
23 rious bodily injury.

24 (B) LEAST AMOUNT OF FORCE NEC-
25 ESSARY.—When implementing a physical re-

1 strait, staff shall use only the amount of force
2 necessary to protect the student or others from
3 the threatened injury.

4 (C) END OF PHYSICAL RESTRAINT.—The
5 use of physical restraint shall end when—

6 (i) a medical condition occurs putting
7 the student at risk of harm;

8 (ii) the student’s behavior no longer
9 poses an immediate danger of serious bod-
10 ily injury to the student or others; or

11 (iii) less restrictive interventions
12 would be effective in stopping such imme-
13 diate danger of serious bodily injury.

14 (D) QUALIFICATIONS OF INDIVIDUALS EN-
15 GAGING IN PHYSICAL RESTRAINT.—School per-
16 sonnel imposing physical restraint in accordance
17 with this subsection shall—

18 (i) be trained and certified by a State-
19 approved crisis intervention training pro-
20 gram, except in the case of rare and clearly
21 unavoidable emergency circumstances when
22 school personnel trained and certified are
23 not immediately available due to the un-
24 foreseeable nature of the emergency cir-
25 cumstance;

1 (ii) engage in continuous face-to-face
2 monitoring of the student; and

3 (iii) be trained in State and school
4 policies and procedures regarding restraint
5 and seclusion.

6 (E) PROHIBITION ON USE OF PHYSICAL
7 RESTRAINT AS PLANNED INTERVENTION.—The
8 use of physical restraints as a planned interven-
9 tion shall not be written into a student’s edu-
10 cation plan, individual safety plan, plan devel-
11 oped pursuant to section 504 of the Rehabilita-
12 tion Act of 1973 (29 U.S.C. 794), individual-
13 ized education program or individualized family
14 service plan (as defined in section 602 of the
15 Individuals with Disabilities Education Act (20
16 U.S.C. 1401)), or any other planning document
17 for an individual student.

18 (3) OTHER POLICIES.—

19 (A) IN GENERAL.—The State or local edu-
20 cational agency, and each school and edu-
21 cational program served by the State or local
22 educational agency shall—

23 (i) establish policies and procedures
24 that ensure school personnel and parents,
25 including private school personnel and par-

1 ents, are aware of the State, local edu-
2 cational agency, and school's policies and
3 procedures regarding seclusion and re-
4 straint;

5 (ii) establish policies and procedures
6 to keep all students, including students
7 with the most complex and intensive be-
8 havioral needs, and school personnel safe;

9 (iii) establish policies and procedures
10 for planning for the appropriate use of re-
11 straint in crisis situations in accordance
12 with this Act by a team of professionals
13 trained in accordance with a State-ap-
14 proved crisis intervention training pro-
15 gram; and

16 (iv) establish policies and procedures
17 to be followed after each incident involving
18 the imposition of physical restraint upon a
19 student, including—

20 (I) procedures to provide to the
21 parent of the student, with respect to
22 each such incident—

23 (aa) a verbal or electronic
24 communication on the same day
25 as each such incident; and

1 (bb) within 24 hours of each
2 such incident, written notifica-
3 tion; and

4 (II) after the imposition of phys-
5 ical restraint upon a student, proce-
6 dures to ensure that all school per-
7 sonnel in the proximity of the student
8 immediately before and during the
9 time of the restraint, the parent, the
10 student, appropriate supervisory and
11 administrative staff, and appropriate
12 IEP team members, participate in a
13 debriefing session.

14 (B) DEBRIEFING SESSION.—

15 (i) IN GENERAL.—The debriefing ses-
16 sion described in subparagraph (A)(iv)(II)
17 shall occur as soon as practicable, but not
18 later than 5 school days following the im-
19 position of physical restraint unless it is
20 delayed by written mutual agreement of
21 the parent and school. Parents shall retain
22 their full legal rights for children under the
23 age of majority concerning participation in
24 the debriefing or other matters.

1 (ii) CONTENT OF SESSION.—The de-
2 briefing session described in subparagraph
3 (A)(iv)(II) shall include—

4 (I) identification of antecedents
5 to the physical restraint;

6 (II) consideration of relevant in-
7 formation in the student’s records,
8 and such information from teachers,
9 other professionals, the parent, and
10 student;

11 (III) planning to prevent and re-
12 duce reoccurrence of the use of phys-
13 ical restraint, including consideration
14 of the results of any functional behav-
15 ioral assessments, whether positive be-
16 havior plans were implemented with
17 fidelity, recommendations of appro-
18 priate positive behavioral interventions
19 and supports to assist personnel re-
20 sponsible for the student’s educational
21 plan, the individualized education pro-
22 gram for the student, if applicable,
23 and plans providing for reasonable ac-
24 commodations under section 504 of

1 the Rehabilitation Act of 1973 (29
2 U.S.C. 794);

3 (IV) a plan to have a functional
4 behavioral assessment conducted, re-
5 viewed, or revised by qualified profes-
6 sionals, the parent, and the student;
7 and

8 (V) for any student not identified
9 as eligible to receive accommodations
10 under section 504 of the Rehabilita-
11 tion Act of 1973 (29 U.S.C. 794) or
12 services under the Individuals with
13 Disabilities Education Act (20 U.S.C.
14 1400 et seq.), evidence of such a re-
15 ferral or documentation of the basis
16 for declining to refer the student.

17 (iii) COMMUNICATION BY THE STU-
18 DENT.—When a student attends a debrief-
19 ing session described in subparagraph
20 (A)(iv)(II), information communicated by
21 the student may not be used against the
22 student in any disciplinary, criminal, or
23 civil investigation or proceeding.

24 (4) NOTIFICATION IN WRITING ON DEATH OR
25 BODILY INJURY.—In a case in which serious bodily

1 injury or death of a student occurs in conjunction
2 with the use of physical restraint or any intervention
3 used to control behavior, there are procedures to no-
4 tify, in writing, within 24 hours after such injury or
5 death occurs—

6 (A) the State educational agency and local
7 educational agency;

8 (B) local law enforcement; and

9 (C) a protection and advocacy system, in
10 the case of a student who is eligible for services
11 from the protection and advocacy system.

12 (5) PROHIBITION AGAINST RETALIATION.—The
13 State or local educational agency, each school and
14 educational program served by the State or local
15 educational agency, and school personnel of such
16 school or program shall not retaliate against any
17 person for having—

18 (A) reported a violation of this section or
19 Federal or State regulations or policies promul-
20 gated to carry out this section; or

21 (B) provided information regarding a viola-
22 tion of this section or Federal or State regula-
23 tions or policies promulgated to carry out this
24 section.

1 **SEC. 5. INTERACTION.**

2 (a) **RULE OF CONSTRUCTION.**—Nothing in this Act
3 shall be construed to restrict or limit, or allow the Sec-
4 retary to restrict or limit, any other rights or remedies
5 otherwise available to students or parents under Federal
6 or State law (including regulations) or to restrict or limit
7 stronger restrictions on the use of restraint, seclusion, or
8 aversives in Federal or State law (including regulations)
9 or in State policies.

10 (b) **DENIAL OF A FREE APPROPRIATE PUBLIC EDU-**
11 **CATION.**—Failure to meet the minimum standards of this
12 Act as applied to an individual child eligible for accom-
13 modations developed pursuant to section 504 of the Reha-
14 bilitation Act of 1973 (29 U.S.C. 794) or for education
15 or related services under the Individuals with Disabilities
16 Education Act (20 U.S.C. 1400 et seq.) shall constitute
17 a denial of a free appropriate public education.

18 **SEC. 6. REPORT REQUIREMENTS.**

19 (a) **IN GENERAL.**—Each State educational agency
20 shall (in compliance with the requirements of section 444
21 of the General Education Provisions Act (commonly
22 known as the “Family Educational Rights and Privacy
23 Act of 1974”) (20 U.S.C. 1232g)) prepare and submit to
24 the Secretary, and make available to the public, a report
25 with respect to each local educational agency, and each
26 school not under the jurisdiction of a local educational

1 agency, located in the same State as such State edu-
2 cational agency that includes the following information:

3 (1) The total number of incidents in which
4 physical restraint was imposed upon a student in the
5 preceding full academic year.

6 (2) The information described in paragraph (1)
7 shall be disaggregated—

8 (A) by the total number of incidents in
9 which physical restraint was imposed upon a
10 student—

11 (i) that resulted in injury to students
12 or school personnel, or both;

13 (ii) that resulted in death; and

14 (iii) in which the school personnel im-
15 posing physical restraint were not trained
16 and certified as described in section
17 4(2)(D)(i); and

18 (B) by the demographic characteristics of
19 all students upon whom physical restraint was
20 imposed, including—

21 (i) the subcategories identified in sec-
22 tion 1111(h)(1)(C)(i) of the Elementary
23 and Secondary Education Act of 1965 (20
24 U.S.C. 6311(h)(1)(C)(i));

25 (ii) age; and

1 (iii) disability category.

2 (b) UNDUPLICATED COUNT; EXCEPTION.—The
3 disaggregation required under subsection (a) shall—

4 (1) be carried out in a manner to ensure an
5 unduplicated count of the total number of incidents
6 in the preceding full academic year in which physical
7 restraint was imposed upon a student; and

8 (2) not be required in a case in which the num-
9 ber of students in a category would reveal personally
10 identifiable information about an individual student.

11 **SEC. 7. GRANT AUTHORITY.**

12 (a) IN GENERAL.—From the amount appropriated
13 under section 9, the Secretary may award grants to State
14 educational agencies to assist in—

15 (1) establishing, implementing, and enforcing
16 the policies and procedures to meet the minimum
17 standards described in this Act;

18 (2) improving State and local capacity to collect
19 and analyze data related to physical restraint; and

20 (3) improving school climate and culture by im-
21 plementing school-wide positive behavioral interven-
22 tions and supports.

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

1 (c) APPLICATION.—Each State educational agency
2 desiring a grant under this section shall submit an appli-
3 cation to the Secretary at such time, in such manner, and
4 accompanied by such information as the Secretary may
5 require, including information on how the State edu-
6 cational agency will target resources to schools and local
7 educational agencies in need of assistance related to pre-
8 venting and reducing physical restraint.

9 (d) AUTHORITY TO MAKE SUBGRANTS.—

10 (1) IN GENERAL.—A State educational agency
11 receiving a grant under this section may use such
12 grant funds to award subgrants, on a competitive
13 basis, to local educational agencies.

14 (2) APPLICATION.—A local educational agency
15 desiring to receive a subgrant under this section
16 shall submit an application to the applicable State
17 educational agency at such time, in such manner,
18 and containing such information as the State edu-
19 cational agency may require.

20 (e) PRIVATE SCHOOL PARTICIPATION.—

21 (1) IN GENERAL.—A State educational agency
22 receiving grant funds under this section shall, after
23 timely and meaningful consultation with appropriate
24 private school officials, ensure that private school

1 personnel can participate, on an equitable basis, in
2 activities supported by grant or subgrant funds.

3 (2) PUBLIC CONTROL OF FUNDS.—The control
4 of funds provided under this section, and title to ma-
5 terials, equipment, and property with such funds,
6 shall be in a public agency and a public agency shall
7 administer such funds, materials, equipment, and
8 property.

9 (f) REQUIRED ACTIVITIES.—A State educational
10 agency receiving a grant, or a local educational agency re-
11 ceiving a subgrant, under this section shall use such grant
12 or subgrant funds to carry out the following:

13 (1) Researching, developing, implementing, and
14 evaluating evidence-based strategies, policies, and
15 procedures to reduce and prevent physical restraint
16 in schools, consistent with the minimum standards
17 described in this Act.

18 (2) Providing professional development, train-
19 ing, and certification for school personnel to meet
20 such standards.

21 (g) ADDITIONAL AUTHORIZED ACTIVITIES.—In addi-
22 tion to the required activities described in subsection (f),
23 a State educational agency receiving a grant, or a local
24 educational agency receiving a subgrant, under this sec-

1 tion may use such grant or subgrant funds for 1 or more
2 of the following:

3 (1) Developing and implementing a high-quality
4 professional development and training program to
5 implement evidence-based systematic approaches to
6 school-wide positive behavioral interventions and
7 supports, including improving coaching, facilitation,
8 and training capacity for administrators, teachers,
9 specialized instructional support personnel, and
10 other staff.

11 (2) Providing technical assistance to develop
12 and implement evidence-based systematic approaches
13 to school-wide positive behavioral interventions and
14 supports, including technical assistance for data-
15 driven decisionmaking related to positive behavioral
16 interventions and supports in the classroom.

17 (3) Researching, evaluating, and disseminating
18 high-quality evidence-based programs and activities
19 that implement school-wide positive behavioral inter-
20 ventions and supports with fidelity.

21 (4) Supporting other local positive behavioral
22 interventions and supports implementation activities
23 consistent with this subsection.

1 (h) EVALUATION AND REPORT.—Each State edu-
2 cational agency receiving a grant under this section shall,
3 at the end of the 3-year grant period for such grant—

4 (1) evaluate the State’s progress toward the
5 prevention and reduction of physical restraint in the
6 schools located in the State, consistent with the min-
7 imum standards; and

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

10 **SEC. 8. ENFORCEMENT.**

11 (a) USE OF REMEDIES.—If a State educational agen-
12 cy fails to comply with the requirements under this Act,
13 the Secretary shall—

14 (1) withhold, in whole or in part, further pay-
15 ments under an applicable program in accordance
16 with section 455 of the General Education Provi-
17 sions Act (20 U.S.C. 1234d);

18 (2) require a State or local educational agency
19 to submit, and implement, within 1 year of such fail-
20 ure to comply, a corrective plan of action, which may
21 include redirection of funds received under an appli-
22 cable program;

23 (3) issue a complaint to compel compliance of
24 the State or local educational agency through a
25 cease and desist order, in the same manner the Sec-

1 retary is authorized to take such action under sec-
2 tion 456 of the General Education Provisions Act
3 (20 U.S.C. 1234e); or

4 (4) refer the State to the Department of Jus-
5 tice or Department of Education Office of Civil
6 Rights for an investigation.

7 (b) CESSATION OF WITHHOLDING OF FUNDS.—
8 Whenever the Secretary determines (whether by certifi-
9 cation or other appropriate evidence) that a State or local
10 educational agency that is subject to the withholding of
11 payments under subsection (a)(1) has cured the failure
12 providing the basis for the withholding of payments, the
13 Secretary shall cease the withholding of payments with re-
14 spect to the State educational agency under such sub-
15 section.

16 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

17 There are authorized to be appropriated such sums
18 as may be necessary to carry out this Act for fiscal year
19 2012 and each of the 4 succeeding fiscal years.

○