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EXAMINING THE ABUSIVE AND DEADLY USE OF SECLUSION AND RESTRAINT IN SCHOOLS

HEARING

BEFORE THE

COMMITTEE ON
EDUCATION AND LABOR

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

HEARING HELD IN WASHINGTON, DC, MAY 19, 2009

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EXAMINING THE ABUSIVE AND DEADLY USE OF SECLUSION AND RESTRAINT IN SCHOOLS

Tuesday, May 19, 2009
U.S. House of Representatives
Committee on Education and Labor
Washington, DC

The committee met, pursuant to call, at 10:09 a.m., in room 2175, Rayburn House Office Building, Hon. George Miller [chairman of the committee] presiding.

Present: Representatives Miller, Kildee, Payne, Andrews, Scott, Woolsey, McCarthy, Tierney, Kucinich, Wu, Grijalva, Sestak, Altmire, Hare, Courtney, Shea-Porter, Fudge, Polis, Tonko, McKeon, Petri, Ehlers, and Biggert.

Staff present: Paulette Acevedo, Legislative Fellow, Education; Ali Al Falahi, Staff Assistant; Jody Calemine, General Counsel; Nina DeJong, Investigative Associate; Adrienne Dunbar, Education Policy Advisor; Carlos Fenwick, Policy Advisor, Subcommittee on Health, Employment, Labor and Pensions; Patrick Findlay, Investigative Counsel; Denise Forte, Director of Education Policy; Ruth Friedman, Senior Education Policy Advisor (Early Childhood); David Hartzler, Systems Administrator; Ryan Holden, Senior Investigator, Oversight; Jessica Kahanek, Press Assistant; Sharon Lewis, Senior Disability Policy Advisor; Stephanie Moore, General Counsel; Alex Nock, Deputy Staff Director; Joe Novotny, Chief Clerk; Lisa Pugh, Legislative Fellow, Education; Rachel Racusen, Communications Director; Melissa Salmanowitz, Press Secretary; Dray Thorne, Senior Systems Administrator; Margaret Young, Staff Assistant, Education; Michael Zola, Chief Investigative Counsel, Oversight; Mark Zuckerman, Staff Director; Stephanie Arras, Minority Legislative Assistant; James Bergeron, Minority Deputy Director of Education and Human Services Policy; Andrew Blasko, Minority Speech Writer and Communications Advisor; Robert Borden, Minority General Counsel; Cameron Coursen, Minority Assistant Communications Director; Susan Ross, Minority Director of Education and Human Services Policy; Linda Stevens, Minority Chief Clerk/Assistant to the General Counsel; and Sally Stroup, Minority Staff Director.

Chairman MILLER [presiding]. The hearing will come to order. Today's hearing is the first ever congressional hearing investigation of the abusive and deadly misuse of seclusion and restraint in our schools.

Unfortunately, the issue of abuse and seclusion and restraint of children is not new to this committee. Last year we held hearings to examine allegations of abuse and death of teens in residential treatment programs, which led us to pass H.R. 911 earlier this year.

This bill establishes basic health and safety standards in those programs and was passed with overwhelming bipartisan support. That is because when we are talking about keeping our children safe, it is not a partisan issue; it is a moral obligation.

Sadly, we are here again to talk about seclusion and restraint, but this time, we are looking at children in our nation's public and private schools.

In January, I asked the Government Accountability Office to investigate whether allegations of deadly and abusive seclusion and restraint in our schools are founded and widespread. Simply put, the answer is yes.

What they found is alarming, eye-opening and is going to send shock waves to every corner of this country, as it should. The GAO will tell us very shortly that hundreds of students in this country have been victims of abuse in school.

In some cases, this abuse has been fatal. It is still not limited—though it is not limited to students with disabilities, it is happening more often to these vulnerable children. We will hear today from two parents—Ann Gaydos and Toni Price—whose lives have been devastated by teachers and classroom aides who went too far.

I thank them for traveling here today and for having the courage to speak publicly about the trauma that they have experienced. Federal law restricts the use of seclusion and restraints to emergency circumstances for children in hospitals, in community-based residential treatment facilities, and other facilities supported by federal dollars. Yet, these rules do not apply to public or private school.

This means an untrained medical professional is forbidden from inappropriately restraining—to restraining a patient, and if they do, there are laws specifically targeted to address such behavior. But untrained classroom staff are abusing students in schools without any accountability because of a lack of federal oversight.

Our children are bearing physical and emotional burden of the system designed to fail them. Such regulation and oversight varies greatly. Many states have no laws specifically governing the appropriate use of seclusion and restraint in schools, and parents are often are unaware of the use of these abuses until their child comes home with bruises or tragically can't come home at all.

School is a place for students to learn, grow, and thrive, and families in communities trust teachers and school administrators to keep children safe. Yet some educators are misusing behavioral interventions that were only intended to be used in emergencies as a last resort for discipline or convenience in non-emergency situations.

Last year alone, in my home state of California, California districts reported more than 14,300 cases of seclusion and restraint and other emergency interventions. We don't know how many of these cases were in real emergencies.

Recent news reports document appalling stories of teachers tying children to their chairs, taping their mouths shut, using handcuffs, denying them food, fracturing bones, locking them in small dark spaces and sitting on them until they turn blue.

One might start to wonder what could possibly cause a teacher in a classroom to abuse a child in this way. Well we know that what these children—well, we know what these children did. They fidgeted in their chairs; they were unwilling to follow directions; in some cases, they left the room or avoided a difficult task.

These behaviors are often manifestations of a child's disability. Yet, the teachers who are often not appropriately trained to physically intervene are restraining children anyway. The vast majority of teachers and staff working in schools are caring professionals who on a daily basis are making a difference in the lives of the children they teach. But teachers and staff who are abusing children must be held accountable for their actions.

At a minimum, we should ensure that our teachers are supported appropriately through training and classroom management resources. I know educators are struggling with managing student behavior on many levels, and school violence is a difficult issue that must be addressed. Teachers and staff need to feel safe themselves, which is exactly why we must support ways to reduce problem behaviors in schools.

Approaches such as schoolwide positive behavior support can help establish a social culture and a positive environment that uses data-driven decision making to foster appropriate behavior and improve academic achievement.

Best practices have been shown to reduce office discipline referrals and problematic behavior. Children should not be abused in our classrooms under the guise of discipline or punishment. This must stop now.

Families should never be left wondering whether their child is safe in the care of—in their school. And teachers should not feel compelled to use emergency interventions to manage behavior on a regular basis.

Congress must step in and fill the void that has resulted in scars that may never heal for those children and their families who have been the victims of this abuse. I feel that the next step will be to enact a federal policy that ensures the tragic stories we will hear today will not occur again.

And I want to thank you very much to all of the witnesses for agreeing to appear today, and now I would like to recognize the senior Republican member of our committee, Mr. McKeon, the gentleman from California, for his opening statement.

[The statement of Mr. Miller follows:]

Prepared Statement of Hon. George Miller, Chairman, Committee on Education and Labor

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Unfortunately, the issue of abuse and seclusion and restraint of children is not new to this committee.

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Simply put, the answer is yes.

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In some cases, this abuse has been fatal.

Though it is not limited to students with disabilities, it is happening more often to these vulnerable children.

We will hear today from two parents, Ann Gaydos and Toni Price, whose lives have been devastated by teachers and classroom aides who went too far.

I thank them for traveling here today and for having the courage to speak publicly about the trauma they have experienced.

Federal law restricts the use of seclusion and restraint to emergency circumstances for children in hospitals, community-based residential treatment facilities, and other facilities supported by federal dollars.

Yet these rules do not apply to public or private schools.

This means an untrained medical professional is forbidden to inappropriately restrain a patient; and if they do, there are laws specifically targeted to address such behavior.

But untrained classroom staffs are abusing students in schools without any accountability because of a lack of federal oversight. Our children are bearing the physical and emotional burden of a system designed to fail them.

State regulation and oversight varies greatly; many states have no laws specifically governing the appropriate use of seclusion and restraint in schools.

And, parents are often unaware of the use of these abuses—until their child comes home with bruises or, tragically, can't come home at all.

School is a place for students to learn, grow and thrive. Families and communities trust teachers and school administrators to keep children safe.

Yet some educators are misusing behavioral interventions—interventions that were intended only to be used in emergencies as a last resort—for discipline or convenience in non-emergency situations.

Last year alone, in my home state of California, districts reported more than 14,300 cases of seclusion, restraint and other "emergency" interventions. We don't know how many of these cases were real emergencies.

Recent news reports document appalling stories of teachers tying children to chairs, taping their mouths shut, using handcuffs, denying them food, fracturing bones, locking them in small dark spaces, and sitting on them until they turn blue.

Well, we know what these children did: they fidgeted in their chairs or they were unwilling to follow directions. In some cases, they left the room or avoided a difficult task.

These behaviors are often a manifestation of the child's disability, yet the teachers, who are too often not appropriately trained to physically intervene, are restraining children anyway.

The vast majority of teachers and staff working in the schools are caring professionals who on a daily basis are making a difference in the lives of the children they teach.

But the teachers and staff who are abusing children must be held accountable for their actions.

It is wholly unacceptable for the egregious abuse of a child to be considered less criminal because it happened in a classroom.

It should be the opposite.

At a minimum, we should ensure our teachers are supported appropriately through training and classroom management resources.

I know educators are struggling with managing student behavior on many levels. Bullying and school violence are difficult issues that must be addressed.

Teachers and staff need to feel safe themselves, which is exactly why we must support ways to reduce problem behaviors in schools.

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Congress must step in and fill the void that has resulted in scars that may never heal for these children and their families who have been victims of this abuse. I hope the next step will be to enact a federal policy to ensure the tragic stories we will hear today will never occur again.

Thank you.

Mr. MCKEON. Thank you, Chairman Miller, and good morning. I want to begin by thanking our witnesses, especially Ms. Price and Ms. Gaydos for being here to share their stories and experiences with us today.

Today, we are going to hear testimony about the improper use of seclusion and restraints in our nation's public schools. All students, but especially those with disabilities, have the right to attend a school that is a safe and rich-learning environment.

Even in cases where students with disabilities have serious discipline problems and may be a threat to themselves, it is important that teachers and classroom aides use interventions and supports that are both physically and emotionally safe for the child.

While it is important that special education and general education teachers have the tools and skills that they need to maintain an orderly learning environment and protect themselves and their students in the classroom, there should never be justification for secluding a student in a room without proper adult supervision or restraining a student so that he or she cannot breathe. This is child abuse plain and simple and has no role in our nation's schools.

With that said, we do know that certain techniques can be used to restore order in the classroom and protect students without harm. But it isn't black and white, and the safety and well being of these children must always be of the highest priority. Once you reject the extreme procedures and techniques that we will hear about today, there is a gray area schools must grapple with.

Perhaps the greatest lesson from these tragic stories is the need for greater training and understanding among teachers and classroom aides to prevent these stories from being repeated.

This is not a pleasant topic for any of us but especially for the parents who have lost so much.

Thank you, Chairman Miller, and I yield back.

[The statement of Mr. McKeon follows:]

Prepared Statement of Hon. Howard P. "Buck" McKeon, Senior Republican Member, Committee on Education and Labor

Thank you, Chairman Miller and good morning.

I want to begin by thanking our witnesses, especially Ms. Gaydos and Ms. Price, for being here to share their stories and experiences with us.

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This is not a pleasant topic for any of us, but especially for the parents who have lost so much.

Thank you, Chairman Miller. I yield back.

Chairman MILLER. Thank you.

I would like now to briefly introduce our panel of witnesses. Mr. Greg Kutz is a current managing director of the Government Accountability Office, Forensic Audits and Special Investigations Unit.

Since joining the unit in 1991, he has investigated various high-level cases of fraud and abuse. He recently provided Congress with an objective high-quality review of abuse and death of children in teen residential facilities.

Ms. Ann Gaydos is the mother of Paige. While enrolled in a special public school classroom in California, then 7-year-old Paige was restrained and secluded repeatedly by her teacher. Paige is now 15 and is here with her mom today.

Ms. Toni Price of Killeen, Texas will tell us about her 14-year-old foster son, Cedric. Cedric, who we will learn, was a happy, loving child, tragically lost his life while being physically restrained by his special education teacher.

And I want to thank both of you for taking the time to come and to share your stories with the committee. I know it is not easy, and I appreciate your courage in doing so.

Dr. Reece Peterson is the professor of Special Education at the University of Nebraska Lincoln. In his work spanning over three decades, Dr. Peterson has conducted extensive national research on interventions for students with emotional and behavioral disorders, student discipline in schools, school violence prevention.

He has also recently conducted research and policy analysis on the use of restraint and seclusion procedures in school.

Representative Hare? Did you want to introduce Ms. Hanselman?

Mr. HARE. Thank you, Mr. Chairman. Chairman Miller and members of the committee, it is my pleasure to introduce Beth Hanselman, assistant superintendent of Special Education and Support Services at the Illinois State Board of Education.

Ms. Hanselman attended Illinois State University for her undergraduate work and the University of Illinois Springfield for her graduate studies. For the last 3 years, Ms. Hanselman has served as assistant superintendent of Special Education and Support Services. In this capacity, she is responsible for the supervision of edu-

cation for more than 320,000 students with disabilities in the state of Illinois.

Under Ms. Hanselman's leadership, in Illinois school settings maximize academic achievement of all students including those with emotional behavioral problems and other disabilities.

Currently, PBIS is implemented in over 1,000 schools in Illinois, and Ms. Hanselman is working with the Department of Education to expand PBIS to all of the 4,100 schools in the state.

Ms. Hanselman? Thank you for appearing before the committee to highlight Illinois' success in preventing and reducing the use of restraint and seclusion, and I look forward to hearing your testimony.

Thank you, Mr. Chairman.

Chairman MILLER. Thank you very much, and welcome to the committee. We are going to begin with Mr. Kutz. In front of you see there is three lights that will go on when you begin speaking. A green light, and then when you are 4 minutes into your testimony, an orange light will go up. You should think about wrapping up if you can.

We want you to complete your testimony in the way you are most comfortable, but we also, as you can see, have a lot of members here, and we want to allow for questions. But again, we want you to do it in the way you are most comfortable.

Let me just add for the record that Mary Kealy, assistant superintendent of Pupil Services in Loudoun County public schools was originally scheduled to testify today but will not attend the hearing. Her written statement will be included in the record.

Mr. Kutz? Welcome to the committee. Thank you for your work on this issue, and we look forward to your testimony.

STATEMENT OF GREG KUTZ, MANAGING DIRECTOR, FORENSIC AUDITS AND SPECIAL INVESTIGATIONS, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Mr. KUTZ. Mr. Chairman and members of the committee, thank you for the opportunity to discuss seclusion and restraint of children. There are allegations of the abusive use of seclusion and restraint in public and private schools. My testimony today addresses these allegations.

My testimony has two parts: first, I will provide you with a brief background and second, I will discuss the results of our investigation.

First, there are no federal laws restricting the use of seclusion and restraint in public and private schools. At the state level, laws and regulations vary widely. For example, 19 states have no laws or regulations that restrict the use of seclusion and restraint.

At the other end of the spectrum, eight states specifically prohibit the use of restraint that restricts breathing. Although no national data is available, for California and Texas alone, it was reported that there were 33,000 instances of seclusion, restraint, or other interventions during the 2008 school year.

Moving onto the results of our investigation, we identified hundreds of allegations of the abusive use of seclusion and restraint in public and private schools. At least 20 of these cases resulted in death. Most of the allegations related to children with disability.

Some of the more troubling allegations that we identified include: a 3-year-old boy being strapped to a chair and secluded in a timeout room; a 5-year-old boy having his elbow fractured from a basket hold restraint; a teenage boy repeatedly being locked in a four-by-six timeout room and then being forced to stay there after defecating; a 13-year-old boy hanging himself in a seclusion room with a cord that teachers provided to him to hold up his pants; and a 17-year-old girl choking to death in her own vomit after being held in a facedown restraint.

We took an in-depth look at 10 of these cases involving 18 children between the ages of 4 and 15. The purpose of our work was to validate the facts and circumstances for each of these cases. This included interviewing numerous people along with reviewing police reports, autopsies, court records and other evidence.

The facts and circumstances we found for these cases were similar to those for the hundreds of allegations. Let me briefly describe three of these cases: First, the monitors show a picture of Christina Kilmer at the age of 8. Christina was born with cerebral palsy and later diagnosed with autism.

At the age of 4, her mother noticed that she was coming home from her preschool classes in West Virginia with bruises on her arms, chest, and legs. It turns out that she was being restrained in something that looked like an electric chair.

This chair had a high back and leather straps across the arms, chest, and legs. The teacher had restrained her in this chair because she was being uncooperative. Christina wet her pants while being restrained in this chair. According to her mother, Christina would act in an uncooperative way when she needed to use the restroom.

Second, the monitors show a picture of Jonathan Carey at the age of 13 with his father. Jonathan was intellectually disabled and autistic. At the age of 11, a private school in New York secluded him in his room for extended periods of time. He was also denied 40 percent of his regular meals for behavioral problems. His father removed him from this school after finding him lying naked in his own urine.

Although hard to believe, things got worse for Jonathan when he was transferred to a state school for children with disabilities. While on a field trip, Jonathan became disruptive in the school van and was restrained by an aide. Jonathan died after this aide sat on top of him until he stopped breathing.

Third, the monitors show a picture of Christopher Smith at the age of 8. Christopher was diagnosed with attention deficit hyperactivity disorder. When he was 9 years old, he was secluded 75 times in the timeout room you see shown on both monitors. Although this room was unlocked, a staff person would hold the door shut so that Christopher could not leave.

You might wonder what this boy did to be secluded in this room 75 different times. I have in my hand copies of the 75 logs that document these incidents. The monitors show excerpts from these logs. As you can see, Christopher was being punished for making noises, waving his hands, chewing on his shirt, and fidgeting.

Key themes from our 10 cases include first, as I mentioned, most of these children had disabilities. Second, prone or other restraints

that restrict breathing can be deadly. Third, staff were not properly trained, and fourth, those found responsible for the abusive use of seclusion and restraint continue to be licensed and work with children.

For example, one teacher was found to have physically abused a boy by restraining him until he died. This teacher was placed in the Texas state registry of individuals that have abused and neglected children. Today, she teaches at a public high school in Northern Virginia, just a short drive from where we sit.

In conclusion, there is no way to determine how widespread the abusive use of seclusion and restraint is in our nation. However, many of the 18 children from our case study including four preschoolers were clearly abused and tortured. This disturbing evidence makes this issue worthy of the attention of this committee and parents across the nation.

Mr. Chairman, this ends my statement, and I will look forward to your questions.

[The statement of Mr. Kutz may be accessed at the following Internet address:]

http://www.gao.gov/new.items/d09719t.pdf

Chairman MILLER. Thank you very much.

Ms. Gaydos? Welcome again to the committee and thank you for being here.

Ms. GAYDOS. Can you hear me?

Chairman MILLER. Yes.

STATEMENT OF ANN GAYDOS, PARENT OF VICTIM

Ms. GAYDOS. Chairman Miller, other distinguished members, my name is Ann Gaydos, and this is my daughter, Paige. I am here today to discuss what happened to Paige in the hope that no other child has to suffer as she did.

From infancy, Paige was an intense and voracious learner. She was an early reader and could identify and draw any state in the U.S. before she was 2. She developed strong interest in astronomy and geology.

In early 2001, Paige, age 7, was tentatively diagnosed with bipolar disorder, a diagnosis since discarded, and Asperger syndrome. We were devastated but vowed she would receive an appropriate education. We researched the options, and Paige started school that March in a mixed grade classroom, kindergarten through third grade.

At no time was the use of restraints on Paige ever discussed. Paige was then very small, barely 40 pounds. Within a week she came home bruised and told me, "Mommy, my teacher hurt me, and I couldn't breathe." Concerned, my husband went in to speak with the teacher who said she had restrained Paige for refusing to stop wiggling a loose tooth while in timeout.

She claims she could not have caused the bruise. We were shocked that we had not known of this use of force and that such force could be used for something so trivial. Paige was also restrained for refusing to complete work.

In June, my husband ran into a former aide from Paige's classroom who warned us that that the teacher had forced Paige facedown on the floor and sat on her. We immediately called a meeting with the teacher and principal in which we agreed that Paige would no longer be restrained, and I offered to come to the school should any crisis develop.

The restraints did stop for a while, although Paige continued to be subjected to lengthy timeouts, some over 3 hours in length. The new school year seemed more promising until November 2001 when Paige was hurt on 2 successive days including being roughly jerked off a chair, which caused her to hit her nose on the desk.

After we forced the issue, the principal eventually suggested an IEP meeting. My husband and I looked for an alternative placement, but nothing suitable was available. At the IEP we insisted that Paige could not be restrained, hurt, or bruised by this teacher absent an emergency situation.

It was agreed that we be called immediately to collect Paige if she was having problems. For a short time, this meeting helped to change the classroom from one that was aggressively punitive to one that was much more therapeutic and humane.

While attending summer school in July of 2002 with the same teacher, I was called to fetch Paige. As we were driving home, Paige burst into tears and told me, "Mommy, I have been hurt all day." She had a severe abrasion on her upper right arm and a large bump on her head.

I called the principal, told her Paige would not be returning and stressed how upset I was that nobody had told me anything about what had happened. We would later learn that something in the teacher's demeanor that day had terrified Paige when she arrived at the school, and she had fled the school grounds.

She was returned to the school safely, but the situation continued to escalate for several hours until her teacher took her into an empty classroom. There she grabbed Paige's wrist and her left hand, forced them up between Paige's shoulder blades, grabbed Paige's left ankle and her right hand, lifted her up off the ground and drove her head first into the ground. No documentation of any of these incidents was ever filed.

At an appointment the next day, Paige's neuro psychologist reported the incident to child protective services, or CPS. CPS has no jurisdiction over public school teachers and referred the matter to the police, but the case was not ultimately prosecuted.

I then complained to the administration and wrote to the school board. Only one board member ever responded, and his advice was to sue the district. Unable to trust the district with Paige, we placed her in a private school for special needs children, the Children's Health Council, or CHC.

At CHC we met another child that had suffered great trauma at the same school. This little boy, then 6 years old, was kept in seclusion timeout for the entire school day—6 hours—for 19 successive school days.

He was denied food, water, bathroom access and education during this entire time. He too came home with unexplained injuries, and his mother had also complained to the district, CPS, and the

police about these incidents. We were horrified and again wrote to the school board.

On receiving no response to our repeated complaints, we filed a lawsuit through which we learned of many similar complaints about the same teacher. Ultimately, the jurors were unanimous in their verdict and found the teacher, principal, and district liable for damages. A lawsuit was the last way in the world that this should have been addressed.

I wish the story had a fairy tale ending, but the teacher was simply returned to the same classroom after hurting Paige. Shortly thereafter, CPS was again called after she threatened a child with a pair of scissors. She finally left that school; however, she went to work for another school district in California, where we learned there were further complaints of abuse.

There was no central database established or requirements for schools to check for police or CPS reports so this district had no warning. To this day, the teacher still holds a valid California teaching license.

Paige is now 15 but has never fully recovered from these experiences. She has lost her former enthusiasm for learning and has never since been the stellar student she once was. She is still frightened of school, although she no longer hides under her desk as she used to do at her old school, and when she first started at CHC. These events obscured an accurate diagnosis for years and delayed the opportunity to get the appropriate services and supports for Paige.

I love my daughter with all my heart, and I believe she will achieve great things in her life, but I am enormously saddened by the tremendous loss of innocence, trust, and potential that she has suffered. I hope you can help children like her.

Again, thank you for the opportunity to testify today, and I will answer any questions you may have.

[The statement of Ms. Gaydos follows:]

Prepared Statement of Ann Gaydos, Parent of Victim

Chairman Miller, other distinguished members of the House Education and Labor Committee, thank you for the opportunity to testify this morning on the issue of restraint and seclusion in schools. I am here today to discuss the story of what happened to my daughter Paige in the hope that my telling this story will eventually lead to a world where no other child has to suffer the same trauma she did.

Paige is our oldest child, and from a very young age had an intense interest in learning everything she could. At the age of eighteen months, she enjoyed working on jigsaw puzzles and could read off any car license plate. By two, she could recognize and draw any state in the United States. As she got older, she became interested in science, especially astronomy and geology. Paige was a self-confident, happy, energetic little girl who would start a project and remain enthusiastically focused on it until it was complete. As I said, Paige loved to learn and was like a sponge soaking up all the information she could get on a topic.

In the beginning of 2001, when she was seven years old, we became concerned about Paige's unusual intensity, and emotional and sensory sensitivities. Loud noises caused her acute pain and she quickly became overwhelmed and sometimes withdrawn in group situations. She did not always understand how to communicate appropriately. As a result, we had her evaluated. While she remained a cheerful, bubbly, hyper-focused little girl, she was tentatively diagnosed with bipolar disorder, a diagnosis that was later discarded, and with Asperger's Syndrome.

This came as an enormous shock to my husband and me, but we vowed to ensure that Paige would continue her education in an environment that allowed her to thrive. At the time we lived in California in a well respected school district and felt that our local schools could provide her an excellent education and some help with

the complexities of social interaction. We contacted our school district to discuss where to send Paige, and eventually went to observe a classroom and talk to a teacher about having Paige attend that school.

Although Paige's diagnoses at the time had been discussed, the school conducted only a cursory Individualized Education Plan (IEP) and at no time was a behavioral plan for Paige ever devised. After observing the room and placing our trust in a teacher who claimed she could educate and help Paige, Paige started school that March in a mixed grade classroom—kindergarten through third grade.

Paige was then very small—barely 40 pounds. Within a week at her new school, she came home bruised and told me, "Mommy, my teacher hurt me and I couldn't breathe." Concerned about this occurrence, my husband went in the next day to speak to the teacher. The teacher stated that she could not have caused the bruise, but informed him that she had restrained Paige for refusing to stop wiggling a loose tooth while in time out by holding her. She explained that children were supposed to be bored in the time out cubicle and weren't allowed to play with anything, not even a loose tooth.

We were shocked that we had not been informed by the school of this use of force that had injured our daughter, and that such force could so easily be used for something as small as playing with a loose tooth in time out. At no time before Paige had stated was there a discussion about using restraints on her, but following the meeting we still felt inclined to trust and believe this teacher who had said she could help our daughter.

In June of 2001 my husband ran into a former aide from Paige's classroom who warned him that the teacher had lied to him about the tooth-wiggling incident and the resulting restraint. The aide said the teacher had not just held Paige, but had forced Paige face-down on the floor and sat on her. She told us that she had been concerned that the teacher was abusing children in the classroom and she had tried to raise her concerns with the teacher's actions first with her superiors, and then school district officials. However, no action was ever taken by the school or the school district on her concerns. In fact, the aide's attempt to expose a pattern of abuse by this teacher ultimately caused her to resign after the school declined to take any action against the teacher.

Following these revelations, we immediately asked for, and had, a meeting with the teacher and the principal to discuss what had happened to my daughter. However, the principal continued to unconditionally support the teacher. While my husband and I debated taking Paige out of the school, we did reach an agreement that Paige would no longer be restrained and I offered to come to the school to help should any crisis develop. With this agreement, we decided to allow Paige to remain at the school. However, while the restraints stopped for a little while, Paige continued to be subjected to lengthy time outs, in some cases over three hours.

The beginning of the new school year started out fine until November of 2001. At that time, Paige was hurt on two successive days after interactions with her teacher. The second injury was fairly serious—a severe bruise to the bridge of Paige's nose that lasted a week. Paige said that she had been roughly jerked off a chair for refusing to stand up, which caused her to hit her nose on the desk.

Given that we had an agreement to be contacted if a crisis should develop we were worried, and tried to contact the principal. However, we were not able to speak with the principal until a week after the event. At this time it was finally suggested that we should have an IEP meeting, but given the schedule it couldn't be until about a month later. My husband and I looked for an alternative placement for our daughter, but nothing suitable was then available.

At this IEP meeting, held in December of 2001, my husband and I were quite vociferous in insisting that Paige could not be restrained and that our daughter should not again be hurt or bruised by the teacher absent an emergency situation. We also expressed concern about the excessive time she was spending in time out and shared our belief that our daughter, like many anxious children, needed a supportive and soothing environment. Again, the teacher agreed to our suggestion that we be called immediately to collect Paige if she was having problems. For a short time, the IEP meeting helped to change the classroom environment from one that was aggressively punitive to one that was much more therapeutic and humane.

There followed a relatively good period of several months, punctuated by one incident. The teacher called me to collect Paige in April of 2002. She explained that Paige had refused to eat and so she had snatched Paige's burrito and smeared some of it in her hair. At trial, as Paige testified, we heard for the very first time that Paige felt she herself had been responsible for the incident. She said she blamed herself that so much food was smeared on her because she had "struggled." When asked why she had struggled, she said it was because she couldn't breathe as the

teacher had tried to shove the burrito into her mouth and covered her nose and mouth.

That summer we decided to have Paige do summer school. Because of how our school system handles summer school, Paige had the same teacher for summer school that she had for the regular school year. In July of 2002, I was called to fetch Paige from school. The principal was very evasive, but eventually told me Paige had tried to run away from school. When I collected Paige, she seemed completely overwhelmed. She was in the school office with the teacher, the behaviorist, and the program therapist. They were all behaving strangely and nobody would look me in the face. Nobody mentioned that Paige had been restrained or hurt.

As we were driving home, Paige burst into tears and told me, "Mommy, I've been hurt all day." She showed me a severe abrasion on her upper right arm. However, she did not volunteer any information about the blow to her head until that evening. At that time, my husband noticed that she had a large bump on the upper right hand side of her head. I still did not know the full extent of this event, but I called the principal and said that Paige would not be returning to summer school and told her how upset I was that nobody told me anything about what had happened. During this call, the principal informed me Paige had been given an ice pack to the head, but nothing more about the incident.

Paige's version of this culminating incident has never wavered and is entirely consistent with the nature and location of her injuries. Paige arrived at school that morning and saw the teacher on the way from the bus into the school. Something in the teacher's demeanor that day absolutely frightened Paige and she decided it was safer to try and walk home than go to school that day. As she started to walk home, an aide stopped her and was able to bring Paige to the classroom without the use of a restraint. However, even though we had an agreement to contact me or my husband, we did not get a call from the school and the situation continued to escalate even though Paige was not a threat to harm herself or others.

As the situation began to escalate, Paige was becoming increasingly agitated, her teacher took her into an empty classroom and grabbed Paige's wrists in her left hand and forced them up between Paige's shoulder blades. The teacher then grabbed Paige's left ankle in her right hand, lifted her off the ground, and drove her head-first into the ground at a slight angle to the vertical, causing her to land on the upper right side of her body so that she struck her head and shoulder. Not being informed of the trauma to her head when I picked her up could have had some serious long-term health consequences. We should have been watching Paige for possible signs of a concussion that afternoon and any possible subdural hemorrhage.

As fate would have it, the following day Paige had an appointment with her neuropsychologist at Stanford. Paige's neuropsychologist noticed the abrasion on Paige's arm and the palpable bump on her head and questioned her about where it had occurred. She then called me in and told me she felt Paige had been abused and that she had to report the incident to Child Protective Services (CPS).

Unfortunately, CPS had no jurisdiction over public school teachers and referred the matter to the police who came to our house that evening. They photographed Paige's arm, but the case was not ultimately prosecuted. We were given many reasons for this decision, which included the police's confidence that the situation would be handled internally by the school administration and board.

However, the faith of the police in the school administration or school board was misplaced in Paige's situation. We complained to the administration and wrote to the school board. Only one board member ever responded, and his advice was to sue the district. Nobody from the district ever called to ask how Paige was doing or suggested helping her in any way. We also could get no explanation out of anybody as to what had really happened to her.

No documentation or emergency intervention reports were ever filed for any of the incidents, despite the fact that this school district had been censured for absence of documentation following a complaint to the state about the same teacher four years previously.

Given our desire for Paige to receive a quality education and the distrust we had for that to occur at her old school, we decided to place Paige in a private school for special needs children, the Children's Health Council (CHC). However, because the school district failed to meet their requirement to pay for Paige's education at CHC, Paige missed eight months of school until that matter was resolved.

Once Paige began at CHC we met another child that had suffered great trauma at the hands of Paige's old teacher. This student had been in Paige's old classroom one year before Paige had started at the school and ultimately ended up at CHC because of the abuse he had received. This little boy was kept in a seclusion time out for the entire school day (8:30 a.m. to 2:35 p.m.) for 19 successive school days.

He was also denied food, water, and bathroom access during this time. In addition, he came home with unexplained injuries which lead to his mother withdrawing the boy and sending him to CHC. We also learned that the mother had complained to CPS and the police about these incidents and a police report had been filed in this case.

We were horrified that this was at least the second instance of a CPS and police report being filed about the same teacher, and we as parents of a potential student of this teacher had not been informed of this before sending Paige to that school! On learning about this similar situation, we again wrote letters to the school board and the school superintendent. Finally, after again receiving no response to these letters, and being told that CPS and the police could not help, we decided to take the advice of the school board member that had said we should sue the school district, which we did in 2003. It was through this lawsuit that we learned of many other complaints against the teacher which we as parents (along with the many other families that had sent their children to this school) had not been informed about before sending our children to the school.

The trial had the absurdity of a Monty Python sketch about it as the story they tried to portray kept changing, and the school district attacked everyone other than the real perpetrators. One of the arguments that the district attempted to make was that our motive was to enrich ourselves through this lawsuit. Let me assure you that nothing could be further from the truth. We had offered to settle the lawsuit prior to trial for the costs of our legal fees, but we made it absolutely clear that we would not accept a confidentiality clause. After having met the other child at CHC that had been abused by the same teacher and learning of other stories through the lawsuit, we could not allow this to be swept under the rug through the use of a confidentiality clause.

Ultimately the jurors were unanimous in their verdict and found the teacher, principal, and district liable for damages. These damages are in a trust fund for Paige which she can access when she turns 18. Having to get the school district to recognize the problems with this teacher through a lawsuit was the last way in the world that this should have been addressed. It would have been much easier, and safer for many children, if the school district had taken seriously the allegations of abuse and neglect against this teacher at an earlier time, or if the school board had chosen to address the problem later.

We wish this was like the fairy tale stories we used to read to Paige as a little girl where you say, "and everyone lived happily ever after." Unfortunately, this is not the case. After we had withdrawn Paige from her old school, the teacher returned to the classroom as though nothing had happened. Shortly thereafter, a program therapist had occasion to call Child Protective Services after the teacher threatened a child with a pair of scissors. As was mentioned earlier, CPS has no jurisdiction over public school teachers and suggested to the therapist that she should call the police or speak to the administration. She spoke to the administration and the teacher finally left the school.

However, while she may have left that school, she went to work for another school district in California shortly thereafter. Since there was no central database established or requirement for schools to check for police or CPS reports, the school district did not know about these past incidents. To this day, the teacher still holds a valid California teaching license.

Paige is now 15, and has never fully recovered from these experiences. While still very intelligent, Paige has lost the enthusiasm she used to have for learning. She has since never achieved academically at the stellar level she did before these experiences. She is still afraid of schools, but she no longer hides beneath the desk as she used to do at her old school and at CHC when she first started there. We also believe that the events that occurred in this classroom kept her from being properly diagnosed for years delaying the ability to get her the proper services and supports.

We love our daughter with all our heart, and believe she will achieve great things in her life, but we are saddened by the tremendous loss of innocence and potential that she suffered at the hands of that teacher and the entire school administration that ignored these events. We tremble when we hear the stories from other parents about the long-term consequences that their children suffered from the same school system.

If we could go back and change history for our daughter we would. We unfortunately cannot do that, but hope that my being here to convey Paige's story along with the other witnesses testifying today will eventually lead to a world where the things that happened to Paige will no longer happen again.

Again, thank you for the opportunity to testify today.

Chairman MILLER. Thank you.

Ms. Price? Welcome. Thank you for being here.

Ms. PRICE. Thank you. Thank you, Chairman Miller.

Chairman MILLER. Ms. Price? If we can just have you pull the microphone a little bit closer to you.

STATEMENT OF TONI PRICE, PARENT OF VICTIM

Ms. PRICE. Thank you, Chairman Miller and the committee for holding this hearing today and inviting me to share my story.

My name is Toni Price. I am a foster mother, and Cedric was my foster son. By the time Cedric came to my home at the age of 12, he had been through a lot in his short life. His parents neglected him and his siblings and abused them both physically and emotionally. They were underfed and food was withheld from them.

Cedric, the oldest, used to rummage for food for himself and his siblings. He had scavenged through trash cans, and he was caught stealing food from a grocery store. He never knew when he would have his next meal.

Cedric became very sensitive about food. Starting at the age of 9, Cedric went to many foster homes but struggled. After a number of unsuccessful placements, Cedric was sent to a boot camp facility north of Killeen where he experienced more abuse.

He had a permanent scar on his face from being beaten with a shovel by a boot camp supervisor. It was after that facility that he came to live with my family and me at the age of 12. Despite his experience, Cedric came in with me with a smile, and he was very jovial, had truly a loving smile.

He liked to bike, go bowling and feed the ducks in the pond near our house. When he had extra energy, he loved to run to the end of the driveway and back. He got along well with the other children in the house, particularly my son, because he always wanted a big brother. They played a lot of basketball.

I remember at church, Cedric wanted to be in a play, but there was no more part for him. He got the biggest smile on his face and said, "I know a part," and went and stood on the stage. The director said okay, you can play an angel. I knew he was sensitive about food, so I told him he could have anything in the kitchen, just let me know.

Cedric had behavior problems, but they were never physical, and he was never aggressive. We were able to find solutions to his behavior that worked. Once he stole a bag of chips from the kitchen, I made him pay me back, and it worked, because he learned his lesson about stealing.

But it was a consequence that didn't bring any of the previous abuse up to the surface. His therapist asked him once to describe a place. His answer was in a cave with solid rock walls, a steel door, and lots of food.

Even though he was well fed at my home, food was a trigger for Cedric from the trauma of his childhood. Cedric enrolled in the public middle school. His first year in school—in seventh grade—he had no problems. I didn't get any phone calls, and he did well in school.

His eighth grade year with a different teacher, he would always say to me, "I don't think she likes me." I would reassure him that

she did. I got frequent calls from his teacher that year about verbal aggression, though I never got calls about physical aggression.

I could ask the teacher to put Cedric on the phone, and said, Cedric, you know you need to do your work. He would say, "Yes, ma'am." Sometimes Cedric would get in trouble at school for stealing food. But what I learned later was that in his classroom, he was being withheld food as a punishment for acting out.

The morning of his death, Cedric was put on what the teacher called delayed lunch. Because he stopped working about 11 o'clock, this was apparently a common punishment for him. At one o'clock, Cedric got in more trouble when he still hadn't eaten lunch.

He was caught trying to steal candy. At 2:30, he still hadn't been allowed to eat his lunch and got up to leave the classroom. After Cedric attempted to leave the classroom, he refused to sit back down in his chair, so the teacher forced him into his chair and restrained him.

She is roughly six feet tall, weighs over 230 pounds. Cedric was short. He was a little—he was a little boy. Cedric struggled as he was being held in a chair so the teacher put him face down and sat on him.

He struggled and said repeatedly, "I can't breathe." "If you can talk, If you can speak, you can breathe," she snapped at him. Shortly after that, he stopped speaking, and he stopped struggling, and he stopped moving. The teacher continued to restrain him. Finally, the teacher and aides put Cedric back into his chair and wiped the drool from his mouth and sat him up, but he slumped over and slipped out of the chair.

Precious moments passed before a nurse was called. I received a call at work that Cedric was not breathing and that an ambulance had been called. I rushed to the school not completely clear of what was going on and what was happening. When I got to the school, my son was laying on the floor with a paramedic beside him.

I kneeled down and said, "Cedric, get up, you are not going to be in trouble," but Cedric didn't move. Instead, the paramedic stood me up. My son was dead. I didn't know the school was practicing restraint techniques on Cedric. I didn't know they were withholding food as a punishment.

In fact, when I initially enrolled him at the school, I told administration he had been withheld food as a child and it was traumatic. When the teacher was having trouble with Cedric, I told her about the techniques we used helping him at home. I tried to help her because Cedric was not a bad kid.

He would come home. He had come so far and had so much success in the seventh grade. I knew that he could be successful. The school never held meetings with me to address behavior problems aside from calling his teacher. I didn't know the extent of Cedric was getting—I didn't know the extent that Cedric was getting in trouble and what they were doing to him.

This teacher took a child's life, but she also caused a lot of damage to the classmates, many of whom were victims of trauma already. His classmates and parents were forbidden to talk to me. But for many of the children witnessing the abuse of Cedric was so traumatic for them that they spoke and, in turn, their parents spoke to me.

After I read the autopsy report, I was taken about how much a school can get away with. Cedric's death was ruled a homicide. The school policy allows—floor holds when a child is endangering himself and others. But Cedric wasn't endangering himself or anyone that day.

No problems were found with the teacher's conduct. No legal action was taken, and as a foster mother, I didn't have the right to press charges. Eventually a judge found the teacher's actions to be reckless and Cedric's death not an accident. But she never received a criminal record or any kind of sentence.

She was placed on a Texas registry for being abusive to children. I have been told that this teacher now teaches at a public high school in northern Virginia. Her Virginia license shows her accreditation to be kindergarten through 12th, special education.

If that teacher was just doing her job, then something is very wrong with the system. If I treated Cedric that way, I would be in jail. I want to make sure this doesn't happen to anyone else's child. It was awful the way Cedric died. He was a good kid. This should never happen. The morning Cedric died, he was boarding the bus. He turned around and got a beaming smile on his face and said to me, "Mom, you know I love you."

Thank you.

[The statement of Ms. Price follows:]

Prepared Statement of Toni Price, Parent of Victim

Thank you, Chairman Miller and the Committee, for holding this hearing today and inviting me to share my story with you.

My name is Toni Price. I am a foster mother, and Cedric was my foster son.

By the time Cedric came to my home at the age of 12, he'd been through a lot in his short life. His parents neglected him and his siblings and abused them both physically and emotionally. They were underfed and food was withheld from them. Cedric, the oldest, used to go rummaging for food for himself and his siblings. He'd scavenge through trash cans. Cedric began stealing food, and was caught stealing from a grocery store. Never knowing when he'd have his next meal, food was something Cedric became very sensitive about.

At 9 years old, his parents lost parental rights to Cedric and his siblings. His aunt and grandmother had also lost their rights to guardianship. Cedric went to many foster homes but struggled. After a number of unsuccessful placements, Cedric was sent to a "boot camp" facility north of Killeen. Unfortunately, at this boot camp, he experienced more abuse. He had a prominent scar on his face from being beaten with a shovel by a boot camp supervisor. It was after that facility that he came to live with my family and me at the age of 12.

Despite his experiences, Cedric came to me with a smile. He was very jovial, and truly loved to smile. He liked to bike, go bowling, and feed the ducks in a pond near our house. When he had extra energy, he loved to run to the end of our driveway and back. He got along well with the other children in the house, particularly my son, because he'd always wanted a big brother. They played a lot of basketball together. I remember at church Cedric wanted to be in a play, but there were no parts for him. He got this big smile on his face and said: "I know a part!" and went and stood on the stage. The director said "okay, you can be an angel." I knew he was sensitive about food, so I said he could have anything in the kitchen, he just had to tell me.

Cedric had behavioral problems, but they were never physical and he was never aggressive. We were able to find solutions to his misbehaving that worked. Once he stole a bag of chips from the kitchen. I made him pay me back. It was a consequence that worked. He didn't like parting with his allowance, and learned his lesson about stealing. But it was a consequence that didn't bring any of his previous abuse up to the surface. His therapist asked him once to describe a safe place. His answer was in a cave with solid rock walls, a steel door, and lots of food. Even though he was well fed at my home, food was a trigger for Cedric from the trauma of his childhood.

Cedric enrolled in a public middle school. He was placed in a class for students with behavioral problems. His first year in the school, in seventh grade, he had no problems. I didn't get phone calls, and he did well in school.

His eighth grade year, with a different teacher, he had a number of problems. He did not get along with the teacher, and would always say to me "I don't think this teacher likes me." I'd reassure him that she did. I got frequent calls from his teacher that year about verbal aggression, though I never got calls about physical aggression. I would ask the teacher to put Cedric on the phone and say: "Cedric, you know you have to do your work." He'd say: "yes ma'am." Sometimes Cedric would get in trouble at school for stealing food. But what I learned later was that in his classroom he was being withheld food as punishment for acting out.

The morning of his death, Cedric was put on what the teacher called a "delayed lunch" because he stopped working around 11am. This was, apparently, a common punishment for him. At 1pm Cedric got in more trouble when, still not having lunch, he was caught trying to steal candy. After 2:30, he still hadn't been allowed to eat his lunch, and got up to leave the classroom. After Cedric attempted to leave the classroom, he refused to sit back down in his chair so his teacher forced him into his chair and restrained him. She is roughly six feet tall and weighs over two hundred thirty pounds. Cedric was short—he was a little boy.

Cedric struggled as he was being held in his chair, so the teacher put him in a face down, or in a prone restraint, and sat on him. He struggled and said repeatedly: "I can't breathe." "If you can speak, you can breathe," she snapped at him. Shortly after that, he stopped speaking and he stopped struggling. He stopped moving at all. The teacher continued to restrain him. Finally the teacher and aide put Cedric back in his chair. The aide wiped drool off his mouth and they sat him up. But he slumped over and slipped out of his chair. Precious minutes passed by before a nurse was called.

I received a call at work that Cedric was not breathing and that an ambulance had been called. I rushed up to the school, not completely clear what was going on or what had happened. When I got to the school, my son was lying on the floor with a paramedic beside him. I knelt down and said: "Cedric, get up. You're not going to be in any trouble." But Cedric didn't move, and instead, the paramedic stood me up. My son was dead.

I didn't know the school was practicing restraint techniques on Cedric. I didn't know they were withholding food as a form of punishment. In fact, when I initially enrolled him at the school, I told administrators he'd been withheld food as a child and it was traumatic. When this teacher was having trouble with Cedric, I told her about my techniques with handling him at home. I tried to help her because Cedric was not a bad kid. He had come so far, and had such success in the seventh grade. I knew that he could be successful in the eighth.

The school never held meetings with me to address any behavioral problems. Aside from calls from his teacher, I didn't know the extent to which Cedric was getting in trouble and what they were doing to him. After his death, nobody from the school came for calling hours. The superintendent and the principal of the school wrote a letter of condolence. Nobody offered any help because I was just a foster mother. Days later, the teacher called, and my husband answered the phone. But instead of a heartfelt apology, she explained that she was just doing her job. She showed no sympathy, no compassion, no guilt.

This teacher took a child's life. But she also caused a lot of damage to his classmates, many of who were victims of trauma already. Those kids who witnessed it already had behavioral problems. His classmates and their parents were forbidden to talk to me. But for many of the children, witnessing the abuse of Cedric was so traumatic for them that they spoke, and in turn, their parents spoke to me.

After I read the autopsy report, I was taken aback at how much a school can get away with. Cedric's death was ruled a homicide. The school policy allows for "therapeutic floor holds" when a child is endangering himself or others. Here Cedric was not endangering himself or others. This floor hold should not have been done.

The teacher's previous treatment was reviewed and no problems were found with her conduct. No legal action was taken against this teacher, and as a foster mother, I didn't have the right to press charges.

Eventually a judge found this teacher's actions to be reckless, and Cedric's death not an accident. But she never received a criminal record or any kind of sentence. She was placed on a Texas registry for being abusive to children. But that registry only applies to Texas, and I have been told that this teacher now teaches at a public high school in Northern Virginia. Her Virginia teaching license shows her credentials to be K-12 special education. If that teacher was just doing her job, then something is very wrong with the system.

If I'd treated Cedric that way at home, I'd be in jail.

I want to make sure this doesn't happen to anyone else's child. It is awful the way Cedric died. He was a good kid. This should have never happened. The morning Cedric died, as he was boarding the bus, he turned around and got a beaming smile on his face, and said to me "you know I love you, ma."

He was a good kid.

Chairman MILLER. Thank you, Ms. Price.

Dr. Peterson?

STATEMENT OF REECE L. PETERSON, PH.D, PROFESSOR OF SPECIAL EDUCATION, UNIVERSITY OF NEBRASKA

Mr. PETERSON. My name is Reece Peterson. My role is that of a researcher who along with other colleagues from around the country are attempting to understand the use of restraint and seclusion in school settings.

I have been a researcher and teacher educator for more than 30 years. My purpose is to share with you what we know, or maybe more accurately what we don't know, about the use of restraint and seclusion in school settings. There is virtually no research about the number of situations which occur in schools where student behavior poses danger of physical injury to themselves or to other students or to staff.

Similarly, there is no information about how these situations are addressed, whether physical restraint is used, where an adult physically holds the student and prevents them from moving, or whether seclusion is used or procedures are used where a student is placed in a special environment and prevented from leaving when they are alone.

I believe there is agreement among knowledgeable professional educators that physical restraint and seclusion procedures should be used only rarely in school settings and then to prevent injuries—only when there is immediate danger of physical injury to someone and thus, that is an emergency situation.

While some have suggested that both restraint and seclusion can be used to change student behavior, there is virtually no evidence to support the effectiveness for that purpose. Seclusion should be distinguished here from timeout from positive reinforcement, which does have evidence of potential value in changing behavior but which need not entail seclusion.

There is controversy regarding whether these procedures should also be employed when students may be causing serious damage to the school environment. Most would say that those should not be used—those procedures should not be used in such situations because of the risks for injury from those procedures may be larger than the risks without such strategies.

Nevertheless, there are some isolated studies and anecdotal evidence that these procedures are being used for a variety of other situations that are not emergencies. In one study, my colleagues and I found the use of these procedures occurred for student noncompliance leaving the learning environment and other student behavior similar to what we have heard here today that did not apparently entail danger of physical injury to anyone.

Similar instances of nonemergency use have occurred in many of the numerous news media reports that we have all seen. According

to anecdotal reports, these procedures have also been implemented inappropriately in other respects.

Restraints have been conducted by people not trained to do so without recognition of the physiological symptoms of distress, such as restricted breathing or were conducted well past the time when the student has regained control.

Seclusion has been employed in environments which are not safe, without close monitoring of the student and for extended or inappropriate lengths of time. All of these situations defy commonly accepted professional guidelines for the use of these procedures.

Since reports of these—since these reports are often the result of parent complaints or media reports, we do not know how many times these procedures are inappropriately employed with students. Yet there does appear to be a substantial number of these situations, and they appear to be scattered across the United States.

However, we must also acknowledge that there may also be many situations across the United States where these procedures are being used much more appropriately, and there may be little or no adverse effects because of their use in those situations where there are true emergencies.

States are varied substantially in their supervision of these procedures in the schools. As has been alluded to earlier, in a recent study that my colleagues and I engaged in, we found that there were 21 states which had policies regarding restraint, 10 more with guidelines or technical assistance documents in place, 14 states reported no policies or guidelines at all in that case.

For seclusion, there was about 17 states which had policies and seven more with guidelines we could identify and imagine these are changing continually. Most of the time both types of policies and guidelines were included in special education policies for these states, but all of these policies varied widely in their terminology, definitions and content.

It is important to note that the use of these procedures is not strictly an issue related to students with disability and while most of the instances of their use of procedures have been with students with disabilities, some have not. School staff members who engage in restraints or seclusion may not be special education staff. We currently don't know.

There is concern about—from knowledgeable professionals regarding the death and injuries resulting from these procedures—concern that reasonable guidelines for their use are apparently not being followed and concern for violations of human rights.

There are several recommendations that could be made having to do with some things already addressed such as prevention and the creation of positive supports, adequate staffing of school programs, appropriate and specific training, developing a common framework as to when these procedures could and should be used, and more consistent emergency and safety planning with parents regarding those students who we can predict might have serious behavioral episodes.

And then common debriefing and reporting to some outside agency, the state Department of Education or other agencies, I think, would be helpful. There is a more comprehensive set of rec-

ommendations, which is currently being developed by the Council for Children with Behavioral Disorders, which is a division of the Council for Exceptional Children, and those reports address many of these issues and are available, and I would like to see some of those kinds of recommendations be implemented to address these very serious problems that we have heard about.

Thank you very much.

[The statement of Mr. Peterson follows:]

Prepared Statement of Reece L. Peterson, University of Nebraska-Lincoln

Chairman Miller, Ranking member McKeon and Distinguished Committee members, my role is that of a researcher who along with other colleagues from around the country are attempting to understand the use of restraint and seclusion procedures in school settings. I have been a researcher and teacher educator in special education for more than 30 years. My purpose is to share with you what we know, or perhaps more accurately what we don't know about the use of restraint and seclusion in schools.

Research on Restraint and Seclusion

There is virtually no research about the number of situations which occur in schools where student behavior poses danger of physical injury to themselves, other students or staff. Similarly, there is no information about these situations are addressed—whether physical restraint (where an adult physically hold the student and prevents the student from moving) or seclusion procedures (where a student is placed in a special environment by themselves and prevented from leaving)—whether these were employed.

Purpose and Use of Restraint and Seclusion

I believe that there is agreement among knowledgeable professional educators that physical restraint and seclusion procedures should only be used rarely in school settings to prevent injuries—when there is immediate danger of physical injury to someone—in "emergency situations." While some have suggested that both restraint and seclusion can be used to change student behavior, there is virtually no evidence to support their effectiveness for that purpose. (Seclusion should be distinguished from "time out from positive reinforcement" which does have evidence of potential value in changing behavior but which need not entail seclusion.) There is controversy regarding whether these procedures should also be employed when students may be causing serious damage to the school environment. Most would say that they should not be used in such situations because of the risks for injury from these procedures may be larger than the risks without such strategies.

Nevertheless there are some isolated studies and anecdotal evidence that these procedures are being used in a variety of other situations. In one study my colleagues and I found that the use of these procedures occurred for "student non-compliance," "leaving the learning environment," and other student behaviors which did not apparently entail danger of physical injury to anyone.[1] Similar instances of non-emergency use have occurred in many of the numerous news media reports.

According to anecdotal reports, these procedures have also been implemented inappropriately in other respects. Restraints have been conducted by people not trained to do so, without recognition of the physiological symptoms of distress such as restricted breathing, or they were conducted well past the time when the student has regained control. Seclusion has been employed in environments which are unsafe, without close monitoring of the student, and for extended (and inappropriate) lengths of time, etc. All of these situations defy commonly accepted professional guidelines for the use of these procedures.

How Many?

Since these reports are often the result of parent complaints or media reports, we do not know how many times these procedures are inappropriately employed with students. Yet there does appear to be a substantial number of these situations, and they appear to be scattered across the United States. It should be acknowledged that there may also be many situations across the US where these procedures are

[1] Ryan, J. B., Peterson, R. L. Tetreault, G. & van der Hagen, E. (2007). Reducing the use of seclusion and restraint in a day school program. In M. A. Nunno, L. Bullard, & D. M. Day eds. For our own good: Examining the Safety of High-Risk Interventions for Children and Young People. (pp. 201-216) Washington, DC: Child Welfare League of America.

being used much more appropriately, and there may be little or no adverse affects because of their use in those situations.

State Policies

States have varied substantially in their supervision of these procedures in the schools. In recent studies my colleagues and I conducted we found that there are 21 states which have policies & 10 more with guidelines in place which address the use of physical restraint. Fourteen states reported no policies or guidelines.[2] For seclusion, there are about 17 states which have policies & 7 more with guidelines we could identify.[3] Most of the time both types of policies and guidelines were included in special education policies for those states, but all of these policies varied widely in their terminology, definitions, content.

Disability

It is important to note that the use of these procedures is not strictly an issue related to students with disabilities. While most of the instances of use of these procedures have apparently been for students with disabilities, some have not. School staff members who engage in restraint or seclusion may not be special education staff—we currently do not know. Nor do we know their level of training on these topics.

Recommendations

There is concern among knowledgeable professionals regarding the deaths and injuries resulting from these procedures, concern that reasonable guidelines for their use are apparently not being followed, and concern for violation of human rights. Here are just a few key recommendations:

- Schools should focus on the prevention of behavior problems. To do that implementation of "Positive Behavior Supports," and conflict de-escalation procedures may lessen the need for the use of restraint and seclusion procedures. Preventing the occurrence of dangerous student behavior should be a top priority.
- Adequate staffing in programs serving students where serious behavior issues could be reasonably predicted.
- Appropriate and specific training for staff members on these topics, tailored to the specific setting, students and behaviors.
- A common framework across states and schools which specifies the situations where these procedures could be appropriate, and where they are inappropriate and how they should be used.
- More consistent emergency or safety planning which involves parents and students when difficult behaviors can be anticipated. Improved communication with parents would be helpful.
- Common debriefing and reporting procedures to some outside of district agency, such as State Departments of Education, which is directed to provide oversight and watch for excessive use of these procedures, and investigate and take corrective action where guidelines are not followed.

Currently a more comprehensive set of recommendations is being developed by the Council for Children with Behavior Disorders, a Division of the Council for Exceptional Children which address many of these issues. (See attachment #1 and related documents). Implementation of recommendations like these would be very helpful.

ATTACHMENT NO. 1

CCBD Position Summary on Physical Restraint & Seclusion Procedures in School Settings

MAY 2009

This document is a summary of policy recommendations from two longer and more detailed documents available from the Council for Children with Behavioral Disorders (CCBD) regarding the use of physical restraint and seclusion procedures in schools.

Declaration of Principles:

- CCBD supports the following principles as related to the use of restraint or seclusion procedures:

[2] Ryan, J.B., Robbins, K., Peterson, R.L. & Rozalski, M. (in press). Review of State Policies Concerning the Use of Physical Restraint Procedures in Schools. Education and Treatment of Children.

[3] Ryan, J. B., Peterson, R. L., & Rozalski, M. E. (2007). State policies concerning the use of seclusion timeout in schools. Education and Treatment of Children, 30(3), 215-239.

• Behavioral interventions for children must promote the right of all children to be treated with dignity.

• All children should receive necessary educational and mental health supports and programming in a safe and least-restrictive environment.

• Positive and appropriate educational interventions, as well as mental health supports, should be provided routinely to all children who need them.

• Behavioral interventions should emphasize prevention and creating positive behavioral supports.

• Schools should have adequate staffing levels to effectively provide positive supports to student and should be staffed with appropriately trained personnel.

• All staff in schools should have mandatory conflict de-escalation training, and conflict de-escalation techniques should be employed by all school staff to avoid and defuse crisis and conflict situations.

• All children whose pattern of behavior impedes their learning or the learning of others should receive appropriate educational assessment, including Functional Behavioral Assessments followed by Behavioral Intervention Plans which incorporate appropriate positive behavioral interventions, including instruction in appropriate behavior and strategies to de-escalate their own behavior.

Recommendations:

• CCBD believes that physical restraint or seclusion procedures should be used in school settings only when the physical safety of the student or others is in immediate danger.

• Mechanical or chemical restraints should never be used in school settings when their purpose is simply to manage or address student behavior (other than their use by law endorsement or when students in travel restraints in vehicles). Their use for other instructional related purposes should be supervised by qualified and trained individuals and in accord with professional standards for their use.

• Neither restraints nor seclusion should be used as a punishment to force compliance or as a substitute for appropriate educational support.

• CCBD calls for any school which employs physical restraint or seclusion procedures to have a written positive behavior support plan specific to that program, preestablished emergency procedures, specific procedures and training related to the use of restraint and seclusion, and data to support the implementation of the principles of positive behavior supports in that environment as well as data regarding the specific uses of restraint and seclusion.

• All seclusion environments should be safe and humane and should be inspected at least annually, not only by fire or safety inspectors but for programmatic implementation of guidelines and data related to its use.

• Any student in seclusion must be continuously observed by an adult both visually and aurally for the entire period of the seclusion. Occasional checks are not acceptable.

• CCBD calls for federal, state, and provincial legislation or regulation which would require the implementation of:

• Recognition that restraint and seclusion procedures are emergency, not treatment, procedures.

• Requirement that preventive measures such as conflict de-escalation procedures be in place in schools where restraints or seclusion will be employed.

• Requirements that individualized safety plans are created for students whose behavior could reasonably be predicted to pose a danger. Those safety plans for students with disabilities must be created by the student's IEP team and included as a part of the IEP. These plans can also be created for students without disabilities.

• Requirements that comprehensive debriefings occur after each use of restraint or seclusion and that reports of the incident are created.

• Requirement that data on restraints and seclusion are reported to an outside agency such as the state or provincial department of education.

• CCBD does not believe that "guidelines" or "technical assistance documents" are generally adequate to regulate the use of these procedures since abuses continue to occur in states or provinces where guidelines are in place and these guidelines have few mechanisms for providing oversight or correction of abuses.

• CCBD calls for additional research regarding the use of physical restraint and seclusion with students across all settings.

White Papers* from which these recommendations are drawn:

Council for Children with Behavior Disorders (May, 2009). CCBD Position on the Use of Physical Restraint Procedures in School Settings. Reston, VA: Author.

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*Available from: Susan Fread Albrecht, Ed.D., NCSP; Assistant Professor, Department of Special Education; CCBD Advocacy and Governmental Relations Chair; Teachers College, Ball State University, Muncie, IN 47306; 765-285-5707; 765-285-4280 (fax); sfalbrecht@bsu.edu

Council for Children with Behavior Disorders (May, 2009). CCBD Position on the Use of Seclusion Procedures in School Settings. Reston, VA: Author.

Chairman MILLER. Thank you.

Ms. Hanselman?

Ms. HANSELMAN. Thank you.

Chairman MILLER. We need you move closer to the mic. Thank you.

STATEMENT OF ELIZABETH HANSELMAN, ASSISTANT SUPERINTENDENT FOR SPECIAL EDUCATION AND SUPPORT SERVICES, ILLINOIS STATE BOARD OF EDUCATION

Ms. HANSELMAN. Sorry. Good morning, Mr. Chairman and members of the committee. Thank you for the opportunity to speak to you on this important topic today.

In 2001, Illinois enacted legislation to specifically address the issues of seclusion, known as isolated timeout in Illinois, and physical restraint in public schools.

The state Board of Education in collaboration with stakeholders around the state developed rules governing the use of isolated timeout and physical restraint. We relied upon information from research and evidence-based practices, and our rules became effective in January of 2002.

These rules apply to all students in Illinois, not only those with disabilities. They limit the employment of isolated timeout and physical restraint to be used only to preserve the safety of self or others and to prohibit the use of seclusion or restraint for the purpose of punishment or exclusion.

Illinois rules impose time limits, require continual visual monitoring of and communication with the student, can only be used when a student poses a physical risk to self or others. There is no medical contraindication to its use, and staff applying the restraint have been trained in the safe application in accordance with the rules within the past 2 years.

Further instructions include prohibiting the use of chemical or mechanical restraint and requiring that students who communicate via sign language or with augmentative devices be allowed to have their hands free of restraint.

The need for seclusion and restraint is in part the result of insufficient knowledge, skills and systems of prevention and behavior support. The majority of behaviors, which result in the use of seclusion and restraint can be prevented by early identification and intensive intervention implemented within a schoolwide system of behavioral support.

For the past 10 years, the state Board of Education in Illinois has invested in the implementation of schoolwide positive and behavior intervention support, PBIS.

PBIS is a systems approach to establishing the social culture needed for schools to achieve social and academic gain while minimizing problem behaviors for all students. Key to the implementation of PBIS is the recognition that we must teach and acknowledge behavioral and social skills just as we teach academic skills.

Schoolwide positive behavior interventions and support emphasizes the implementation of evidence-based practices, school, dis-

trict and state systems that support the implementation of these practices and ongoing collection of data for decision-making purposes.

Doctors Robert Horner and George Sugai of the National PBIS Center note that these elements are operationalized by five guiding principles.

First, invest in prevention to establish a foundation intervention that is empirically validated to be effective, efficient, and sustainable; teach and acknowledge appropriate behavior before relying on negative consequences; use regular universal screening to identify students who need more intense support and provide that support as early as possible and with the intensity needed to meet the needs of the student; establish a continuum of behavioral and academic interventions for use when students are identified as needing more intense support; and finally, use progress monitoring to assess (A) the fidelity with which the support is provided, and (B) the impact of that support on student academic and social outcomes.

Over 1,000 schools in Illinois now implement PBIS as part of our statewide network under the direction of Dr. Lucille Eber and Ms. Barbara Sims. This includes alternative schools, residential schools, and juvenile correction centers.

Data collection over these past 10 years show significant reductions in office disciplinary referrals, suspensions, and expulsions resulting in increased time for academic instruction and learning. Schools that implement PBIS with fidelity show improved academic outcomes as measured by our state assessment.

Illinois schools implemented PBIS show greater capacity to support students with the most complex needs. These schools have a reduction in the number of instances which require intensive interventions including seclusion and restraint and increased effectiveness of individual behavior support plans.

Illinois data shows that schoolwide PBIS can have a positive impact in all programs including reduction in the use of restraints in separate facilities for students with emotional disorders by more than 50 percent in the first year of implementing the program; show a reduction in the occurrence of critical incidents by more than 60 percent following implementation in youth correction centers.

Based on our experience in Illinois, we urge the adoption of national voluntary standards and model policies on the use of seclusion and restraint. This can only be effective when coupled with the strong commitment and investment in the training and ongoing support of staff in the use of evidence-based prevention strategies as supported by the Positive Behavior for Effective Schools Act.

Thank you for your support and attention to this important topic.

[The statement of Ms. Hanselman follows:]

Prepared Statement of Elizabeth Hanselman, Assistant Superintendent for Special Education and Support Services, Illinois State Board of Education

Mr. Chairman and Members of the Committee: Thank you for the opportunity to speak to you on this important topic.

In 2001, Illinois enacted legislation (P.A. 91-600) to specifically address the issues of seclusion (known as "isolated time out" in IL) and physical restraint in public schools. The Illinois State Board of Education, in collaboration with stakeholders

around the State, developed rules governing the use of isolated time out and physical restraint. We relied upon information from research and evidence-based practices. We also reviewed information from other State agencies and a couple of other states with existing rules. Illinois' rules became effective in January of 2002. Those rules:

• Apply to all students in Illinois, not only those with disabilities
• Limit the employment of isolated time out and physical restraint to be used only to preserve the safety of self or others, and
• Prohibit the use of seclusion or restraint for the purpose of punishment or exclusion

In the case of isolated time out, Illinois rules

• Impose time limits, and
• Require continuing visual monitoring of and communication with the student

In the case of physical restraint, Illinois rules only allow the use of physical restraint when

• The student poses a physical risk to self or others
• There is no medical contraindication to its use, and
• Staff applying the restraint have been trained in safe application in accordance with the rules, within the past 2 years, as indicated by written evidence

Further restrictions on the use of physical restraint include

• Time limits
• Prohibiting the use of chemical or mechanical restraints, and
• Requiring that students who communicate via sign language or augmentative devices be allowed to have their hands free of restraint

Our rules further require

• Specific documentation of each incident of seclusion or restraint
• Written notification to parents or guardians within 24 hours, and
• Review of, or development of, the student's individual behavioral intervention plan

Seclusion and restraint procedures should only be implemented as safety measures. The need for seclusion and restraint is in part the result of insufficient knowledge, skills and systems of prevention and behavior support. The majority of behaviors which result in the use of seclusion or restraint can be prevented by early identification and intensive interventions—implemented within a school-wide system of behavioral support.

For the past ten years, the Illinois State Board of Education has invested in the implementation of School-wide Positive Behavior and Intervention Supports (PBIS). PBIS is a systems approach to establishing the social culture needed for schools to achieve social and academic gains while minimizing problem behavior for all students. PBIS is not a curriculum, but rather a framework for decision making that guides the implementation of evidence-based academic and behavioral practices. Key to the implementation of PBIS is the recognition that we must teach and acknowledge behavioral and social skills, just as we teach academic skills. School-wide PBIS emphasizes:

• The implementation of evidence-based practices,
• School, district and state systems that support the implementation of these practices, and
• Ongoing collection and use of data for decision-making.

Drs. Robert Horner and George Sugai of the National PBIS Center note that these elements are operationalized by five guiding principles:

• Invest first in prevention to establish a foundation intervention that is empirically validated to be effective, efficient and sustainable.
• Teach and acknowledge appropriate behavior before relying on negative consequences.
• Use regular "universal screening" to identify students who need more intense support and provide that support as early as possible, and with the intensity needed to meet the student's need.
• Establish a continuum of behavioral and academic interventions for use when students are identified as needing more intense support.
• Use progress monitoring to assess (a) the fidelity with which support is provided and (b) the impact of support on student academic and social outcomes. Use data for continuous improvement of support.

Over 1,000 schools in Illinois now implement PBIS as part of a statewide network under the direction of Dr. Lucille Eber. This includes elementary schools, middle schools, high schools, alternative schools, residential schools and even juvenile correction centers. Data collection over these past 10 years shows significant reductions in office disciplinary referrals, suspensions and expulsions—resulting in increased time for academic instruction and learning. Staff and students alike at schools that

implement PBIS experience improved measures of school safety. And, in Illinois, schools that implement PBIS with fidelity show improved academic outcomes as measured by our Illinois Standards Achievement Test.

Illinois schools which have achieved full implementation of PBIS also show greater capacity to support students with the most complex emotional/behavioral needs. Data indicates that these schools have a reduction in the number of instances which require intensive interventions (including seclusion and restraint), increased effectiveness of individual behavior support plans, and improvement in the maintenance of behavior support gains achieved through these individual support plans.

Illinois data shows that implementation of school-wide PBIS can have a positive impact in all programs, including:

- Reduction of the use of restraint in a separate facility for students with emotional disorders by more than 50% in the first year of implementing PBIS
- Reduction in the occurrence of critical incidents by more than 60% following implementation in a youth correctional center

Illinois is now working with the National Scaling Up effort to build the statewide infrastructure to support the expansion of integrated evidence-based practices—which includes PBIS—to every one of the more than 4,100 schools in our state.

Illinois is committed to supporting not only the academic, but also the social and emotional development of all students. To that end, Illinois became the first state to establish Social and Emotional Learning Standards in 2004. We continue to support training and technical assistance to schools in the effective implementation of those standards.

Based on our experience in Illinois, we urge the adoption of a national model policy on the use of seclusion and restraint. This can only be effective when coupled with a strong commitment and investment in the training and ongoing support of staff in the use of evidence-based prevention strategies.

Section 1.285 Requirements for the Use of Isolated Time Out and Physical Restraint

Isolated time out and physical restraint as defined in this Section shall be used only as means of maintaining discipline in schools (that is, as means of maintaining a safe and orderly environment for learning) and only to the extent that they are necessary to preserve the safety of students and others. Neither isolated time out nor physical restraint shall be used in administering discipline to individual students, i.e., as a form of punishment. Nothing in this Section or in Section 1.280 of this Part shall be construed as regulating the restriction of students' movement when that restriction is for a purpose other than the maintenance of an orderly environment (e.g., the appropriate use of safety belts in vehicles).

a) "Isolated time out" means the confinement of a student in a time-out room or some other enclosure, whether within or outside the classroom, from which the student's egress is restricted. The use of isolated time out shall be subject to the following requirements.

1) Any enclosure used for isolated time out shall:

A) have the same ceiling height as the surrounding room or rooms and be large enough to accommodate not only the student being isolated but also any other individual who is required to accompany that student;

B) be constructed of materials that cannot be used by students to harm themselves or others, be free of electrical outlets, exposed wiring, and other objects that could be used by students to harm themselves or others, and be designed so that students cannot climb up the walls (including walls far

enough apart so as not to offer the student being isolated sufficient leverage for climbing); and

C) be designed to permit continuous visual monitoring of and communication with the student.

2) If an enclosure used for isolated time out is fitted with a door, either a steel door or a wooden door of solid-core construction shall be used. If the door includes a viewing panel, the panel shall be unbreakable.

3) An adult who is responsible for supervising the student shall remain within two feet of the enclosure.

4) The adult responsible for supervising the student must be able to see the student at all times. If a locking mechanism is used on the enclosure, the mechanism shall be constructed so that it will engage only when a key, handle, knob, or other similar device is being held in position by a person, unless the mechanism is an electrically or electronically controlled one that is automatically released when the building's fire alarm system is triggered. Upon release of the locking mechanism by the supervising adult, the door must be able to be opened readily.

b) "Physical restraint" means holding a student or otherwise restricting his or her movements. "Physical restraint" as permitted pursuant to this Section includes only the use of specific, planned techniques (e.g., the "basket hold" and "team control").

c) The requirements set forth in subsections (d) through (h) of this Section shall not apply to the actions described in this subsection (c) because, pursuant to Section 10-20.33 of the School Code [105 ILCS 5/10-20.33], "RESTRAINT" DOES NOT INCLUDE MOMENTARY PERIODS OF PHYSICAL RESTRICTION BY DIRECT PERSON-TO-PERSON CONTACT, WITHOUT THE AID OF MATERIAL OR MECHANICAL DEVICES, ACCOMPLISHED WITH LIMITED FORCE AND DESIGNED TO:

1) PREVENT A STUDENT FROM COMPLETING AN ACT THAT WOULD RESULT IN POTENTIAL PHYSICAL HARM TO HIMSELF, HERSELF, OR ANOTHER OR DAMAGE TO PROPERTY; OR

2) REMOVE A DISRUPTIVE STUDENT WHO IS UNWILLING TO LEAVE THE AREA VOLUNTARILY.

d) The use of physical restraint shall be subject to the following requirements.

1) Pursuant to Section 10-20.33 of the School Code, physical restraint may only be employed when:

A) THE STUDENT POSES A PHYSICAL RISK TO HIMSELF, HERSELF, OR OTHERS,

B) THERE IS NO MEDICAL CONTRAINDICATION TO ITS USE, AND

C) THE STAFF APPLYING THE RESTRAINT HAVE BEEN TRAINED IN ITS SAFE APPLICATION as specified in subsection (h)(2) of this Section.

2) Students shall not be subjected to physical restraint for using profanity or other verbal displays of disrespect for themselves or others. A verbal threat shall not be considered as constituting a physical danger

unless a student also demonstrates a means of or intent to carry out the threat.

3) Except as permitted by the administrative rules of another State agency operating or licensing a facility in which elementary or secondary educational services are provided (e.g., the Illinois Department of Corrections or the Illinois Department of Human Services), mechanical or chemical restraint (i.e., the use of any device other than personal physical force to restrict the limbs, head, or body) shall not be employed.

4) Medically prescribed restraint procedures employed for the treatment of a physical disorder or for the immobilization of a person in connection with a medical or surgical procedure shall not be used as means of physical restraint for purposes of maintaining discipline.

5) Any application of physical restraint shall take into consideration the safety and security of the student. Further, physical restraint shall not rely upon pain as an intentional method of control.

6) In determining whether a student who is being physically restrained should be removed from the area where such restraint was initiated, the supervising adult(s) shall consider the potential for injury to the student, the student's need for privacy, and the educational and emotional well-being of other students in the vicinity.

7) If physical restraint is imposed upon a student whose primary mode of communication is sign language or an augmentative mode, the student shall be permitted to have his or her hands free of restraint for brief

periods, unless the supervising adult determines that such freedom appears likely to result in harm to the student or others.

e) Time Limits

1) A student shall not be kept in isolated time out for more than 30 minutes after he or she ceases presenting the specific behavior for which isolated time out was imposed or any other behavior for which it would be an appropriate intervention.

2) A student shall be released from physical restraint immediately upon a determination by the staff member administering the restraint that the student is no longer in imminent danger of causing physical harm to himself, herself, or others.

f) Documentation and Evaluation

1) A written record of each episode of isolated time out or physical restraint shall be maintained in the student's temporary record. The official designated pursuant to Section 1.280(c)(3) of this Part shall also maintain a copy of each such record. Each such record shall include:

A) the student's name;

B) the date of the incident;

C) the beginning and ending times of the incident;

D) a description of any relevant events leading up to the incident;

E) a description of any interventions used prior to the implementation of isolated time out or physical restraint;

F) a description of the incident and/or student behavior that resulted in isolated time out or physical restraint;

G) a log of the student's behavior in isolated time out or during physical restraint, including a description of the restraint technique(s) used and any other interaction between the student and staff;

H) a description of any injuries (whether to students, staff, or others) or property damage;

I) a description of any planned approach to dealing with the student's behavior in the future;

J) a list of the school personnel who participated in the implementation, monitoring, and supervision of isolated time out or physical restraint;

K) the date on which parental notification took place as required by subsection (g) of this Section.

2) The school official designated pursuant to Section 1.280(c)(3) of this Part shall be notified of the incident as soon as possible, but no later than the end of the school day on which it occurred.

3) The record described in subsection (f)(1) of this Section shall be completed by the beginning of the school day following the

episode of isolated time out or physical restraint.

4) The requirements of this subsection (f)(4) shall apply whenever an episode of isolated time out exceeds 30 minutes, an episode of physical restraint exceeds 15 minutes, or repeated episodes have occurred during any three-hour period.

A) A certified staff person knowledgeable about the use of isolated time out or trained in the use of physical restraint, as applicable, shall evaluate the situation.

B) The evaluation shall consider the appropriateness of continuing the procedure in use, including the student's potential need for medication, nourishment, or use of a restroom, and the need for alternate strategies (e.g., assessment by a mental health crisis team, assistance from police, or transportation by ambulance).

C) The results of the evaluation shall be committed to writing and copies of this documentation shall be placed into the student's temporary student record and provided to the official designated pursuant to Section 1.280(c)(3) of this Part.

5) When a student has first experienced three instances of isolated time out or physical restraint, the school personnel who initiated, monitored, and supervised the incidents shall initiate a review of the effectiveness of the procedure(s) used and prepare an individual behavior plan for the student that provides either for continued

use of these interventions or for the use of other, specified interventions. The plan shall be placed into the student's temporary student record. The review shall also consider the student's potential need for an alternative program or for special education.

A) The district or other entity serving the student shall invite the student's parent(s) or guardian(s) to participate in this review and shall provide ten days' notice of its date, time, and location.

B) The notification shall inform the parent(s) or guardian(s) that the student's potential need for special education or an alternative program will be considered and that the results of the review will be entered into the temporary student record.

g) Notification to Parents

1) A district whose policies on the maintenance of discipline include the use of isolated time out or physical restraint shall notify parents to this effect as part of the information distributed annually or upon enrollment pursuant to Sections 10-20.14 and 14-8.05(c) of the School Code [105 ILCS 5/10-20.14 and 14-8.05(c)].

2) Within 24 hours after any use of isolated time out or physical restraint, the school district or other entity serving the student shall send written notice of the incident to the student's parent(s), unless the parent has provided the district or other entity with a written waiver of this requirement for notification. Such notification shall

include the student's name, the date of the incident, a description of the intervention used, and the name of a contact person with a telephone number to be called for further information.

h) Requirements for Training

1) Isolated Time Out

Each district, cooperative, or joint agreement whose policy permits the use of isolated time out shall provide orientation to its staff members covering at least the written procedure established pursuant to Section 1.280(c)(2) of this Part.

2) Physical Restraint

A) Physical restraint as defined in this Section shall be applied only by individuals who have received systematic training that includes all the elements described in subsection (h)(2)(B) of this Section and who have received a certificate of completion or other written evidence of participation. An individual who applies physical restraint shall use only techniques in which he or she has received such training within the preceding two years, as indicated by written evidence of participation.

B) Training with respect to physical restraint may be provided either by the employer or by an external entity and shall include, but need not be limited to:

i) appropriate procedures for preventing the need for physical restraint, including the de-escalation of problematic behavior, relationship-building, and the use of alternatives to restraint;

ii) a description and identification of dangerous behaviors on the part of students that may indicate the need for physical restraint and methods for evaluating the risk of harm in individual situations in order to determine whether the use of restraint is warranted;

iii) the simulated experience of administering and receiving a variety of physical restraint techniques, ranging from minimal physical involvement to very controlling interventions;

iv) instruction regarding the effects of physical restraint on the person restrained, including instruction on monitoring physical signs of distress and obtaining medical assistance;

v) instruction regarding documentation and reporting requirements and investigation of injuries and complaints; and

vi) demonstration by participants of proficiency in administering physical restraint.

C) An individual may provide training to others in a particular method of physical restraint only if he or she

has received written evidence of completing training in that technique that meets the requirements of subsection (h)(2)(B) of this Section within the preceding one-year period.

(Source: Added at 26 Ill. Reg. 1157, effective January 16, 2002)

Chairman MILLER. Thank you very much, and thank you to all of you for your testimony this morning and your participation.

Ms. Gaydos and Ms. Price, thank you very, very much again for being here. It is hard for us to imagine the sadness and the loss that you have suffered at this system that is currently in place, and we hope that we will be able to demonstrate to you that we can change that.

And, Paige, thank you very much for being here with us this morning. It is a pleasure to have you here.

Mr. Kutz? If I listened to Ms. Hanselman's testimony, and I look at the GAO report, it would just seem on its face—and if you just take the Texas and California—and since we don't know anything about them, we only know the number apparently, but there would appear that when you have a protocol in place that Illinois is trying to put in place and has in place in a number of schools, that there—it would be safe to assume that there are, in fact, thousands of cases of restraint and seclusion that turn out to be unnecessary and that can be prevented.

Is that a fair assumption?

Mr. KUTZ [continuing]. Hundreds, and it would seem likely that there are thousands. I mean, the numbers keep rising as we speak from what comes in. But certainly we know there is hundreds, and given that just those two states have 33,000 instances, not necessarily improper, it is likely it is a bigger number.

Chairman MILLER. Ms. Hanselman? I don't know what you had in place before this in terms of reporting or not, but you have talked about the number of incidents that you believe have been avoided by the use of the positive system.

Ms. HANSELMAN. Yes. We have seen with all of our schools that have implemented PBIS a significant reduction in the number of referrals and utilizations of restraints or seclusion as a result of positive behavior intervention.

Chairman MILLER. Mr. Kutz? In the report, you highlight the deaths that have taken place—Ms. Price's here—from a face down restraint and restraints that block the airway. And if this is a reoccurring problem with the use of this restraint—in some cases, it is argued that there is training that takes place but, again, from your report, it is hard to determine whether or not that training is adequate in terms of the protection for the safety of the children.

Mr. KUTZ. Yes, that is correct. I mean, the face down restraint or the prone restraint was responsible for at least three of the four deaths here and possibly the fourth. There are some accounts that the fourth child was face down when they were sat on on the school van.

And you may recall from our work on our residential programs for troubled youth, there were many deaths there that were the result of prone or face down restraint. So it is certainly where you block the breathing—even if you are sitting up, anything that blocks or restricts the breathing is—is at high risk, and that is, I think, pretty well——

Chairman MILLER. I would think that that would—I mean, the cumulative evidence that we have here would suggest that perhaps that is not a restraint that you want to continue to use on young children. I mean, given what we learned in the residential facili-

ties, what we are now seeing in schools this is a high risk restraint, especially in the hands of people who aren't—have any awareness or training.

I don't want to give training—as that is a green light for this, but even with the training, this is a very high-risk restraint.

Mr. KUTZ. It would seem to be the highest-risk restraint from what we can see.

Chairman MILLER. You know, it is very hard to figure out how you use this and what is happening to this child, most of whom are 15 and younger, but a number of them are very young, under 11 years old.

You know, we have been discussing a lot and listening about waterboarding, where you drip water over cloth on a person's face, they are upside down, I guess, and you create the perception that they are drowning. And you start to think of here, you are losing your breath, you are losing your ability to breathe.

Ms. Price talked about Cedric trying to tell people that he couldn't breathe, so you are creating that same psychological impact on that child that they are going to suffocate. And, in fact, in some cases, they were suffocated. They died.

And even if you "use it successfully," the fear, the humiliation that that child has experienced is to me almost incomprehensible that we would think that this is some kind of proper therapy to use on very young children.

I just—you don't need to respond—I just taken by your report that this would be so readily turned to and again documented in the GAO report that in many instances, this wasn't about a child being a danger to themselves or to others, this was about trying to restore order, or the teacher didn't like the behavior or whatever the interaction was, the child's life ended up being threatened, but the child wasn't threatening anybody else's life or themselves prior to that.

And I just think when you think about the age appropriateness of the seclusions, 75 times locked away in a dark room—people locked away in dark rooms for hours, wetting themselves, defecating—you know, any understanding of how sensitive young children are about their peers and themselves and back and forth, I mean, this punishment is way, way out of bounds.

This behavior by people imposing this is way out of bounds of what I believe are the social norms in this society, and I don't understand that you know, we have this, sort of, patchwork state regulation where states have taken a look at this, and interesting, it appears that the states that have taken a look at this realize not only the jeopardy that they are in but the jeopardy that they are putting children in, and they tried to in one way or another have some system to check this.

But I think if they would just pause for a moment and think about what they are doing—if you look at the GAO report, a male from the age of 11 through 13 was being abused—a male 15, female 4 years old, four males under the age of 6, a male 8 years old, five students ages 6 and 7, a female 7 years old, a male 9 years old—these are very young children.

Mr. KUTZ. Yes, four of our 18 were actually 4 years old. So they were preschoolers.

Chairman MILLER. Yes. This is, you know, this is just unacceptable. It is just unacceptable that this would be a policy within a public institution with respect to the care of these children.

Everyone on this committee fully appreciates the difficulty that teachers engage in in a daily basis of trying to teach and create an atmosphere for learning in a classroom with a various mix of children that we have.

And we have processes and we have protections in place—clearly insufficient protections within a school, but none of that justifies this kind of behavior. And I have to tell you, I got to believe that in many instances, these teachers are victimized almost as much, because the fact that they don't have the kinds of resources necessary to deal with this.

Either they need additional training just in how they react and respond to students, but when they get into an incident where it requires something beyond that, seems to me they are kind of left to themselves here, and that is probably not a good situation.

But we will get into that more so.

Dr. Peterson? Just back to your testimony, and I think I am running out of time here. I am out of time. Just if I might, quickly, infringe on my colleague's time here, you started to talk about—what is the evidentiary base that any of this is makes sense?

Mr. PETERSON. Well, there is no evidentiary base that these are effective in changing behavior. There is a belief——

Chairman MILLER. I think your mic is not on. My hearing is superior. My wife tells me that all the time.

Mr. PETERSON. There is no basis that they change behavior, but I think many people believe that they may be necessary in these emergency situations to prevent injury. And it is a simple matter of teacher's obligation to defend the other kids in the class, and even the target students from their own behavior as well as themselves.

Chairman MILLER. My concern would be, I don't think the GAO report suggested this is only done in emergency situations.

Mr. PETERSON. Absolutely right.

Chairman MILLER. There is a huge gap between——

Mr. PETERSON. Yes, and I think we need to find a way to correct these abusive situations but to also provide the support you mentioned to teachers who are really struggling to do the right thing for kids.

Chairman MILLER. Mr. McKeon?

Mr. MCKEON. Thank you, Mr. Chairman.

These kinds of hearings are very hard to sit through, and no comparison to how hard it is for you to tell the stories that you have had to tell or to live through the experiences you have had to live through. But a lot of things come to my mind.

Mr. Kutz? You said 31 states have laws in place.

Mr. KUTZ. Correct——

Mr. MCKEON. Would one of those be Colorado?

Mr. KUTZ. If you give me a moment, I will let you know that. Thirty-one have something in place——

Mr. MCKEON. I would like to know, because Ms. Gaydos, your experience happened in Colorado?

Ms. GAYDOS. Actually, this was in California. We moved to Colorado after it happened.

Mr. MCKEON. Thank you. Does California have laws in place?

Mr. KUTZ. Colorado does, by the way.

Mr. MCKEON. California?

Ms. GAYDOS. It has some laws in place. There appears to be absolutely no way of enforcing them. We went to the district. We went to the board, the police, and CPS, and our only resource left was a lawsuit.

Mr. MCKEON. See this same thing came up in the other hearing that we had on the abuses that happened in these camps and these other schools, and apparently nothing could be done there either. What I am wondering is, what good will more laws be if there is no way to enforce the law or like, in your case Ms. Price, where apparently the teachers are untouchable.

And I remember when we had the incident of deaths in the camps or those other schools, and no enforcement took place. And when you rule a homicide, and yet nothing seems to happen—the teachers are still working—is this because of labor laws that protect people to extreme levels? Is it labor unions that protect people from extreme situations?

What is it that causes these kind of problems and the people seem to—their lives go on unaffected.

Ms. PRICE. I believe it is because——

Mr. MCKEON. Anybody.

Ms. PRICE. I believe this—because in my case, the teacher is put on a registry in Texas, but she was able to go to another state. I think that when a teacher does something and it is ruled a homicide, and there is nothing that has been done, that teacher should be put on a worldwide registry.

Mr. MCKEON. A colleague of mine here—you know, used to be on this committee, Mr. Porter—pursued for several years, and I think we got it signed into law finally that where FBI records could be shared in the case of child abuse in schools—a teacher that was, I think they had to be convicted of child abuse, but then, they went on a registry, and the FBI records could be shared from state to state or school district to school district, which I think is very important.

However, that was a conviction. What you are talking about is a claim or in the case of your foster child, the death was ruled a homicide, but there was no action taken so there wouldn't be any conviction on any person's record. So if you go to another state, you wouldn't even have to lie on your application. There is not a place on it that says, "Did you kill a child in your last job?"

Ms. PRICE. This is true, but if that teacher was on a worldwide kind of registry where she was involved in some child abuse, because that is the only thing that she was involved with was a child abuse, then maybe the school would look at it to see, okay, what kind of abuse was this, and dive into it deeper to see.

And then see, okay, this dealt with a homicide and maybe take actions that way.

Mr. MCKEON. We probably have laws that protect people's privacy and protect them from others which, you know, makes it difficult to——

Ms. PRICE. But if the teacher is teaching, and this registry has said worldwide where that those individuals are able to go into their records to see, because you are putting other children's lives in danger.

Mr. MCKEON. Yes. Problem is when you employ someone, you can't even ask them how old they are. You can't ask them about so many things that would help give somebody a clue as to what is going on.

I understand the registry you are talking about. It just seems to me that these cases are so extreme and yet, nothing can be done, and we are talking about maybe passing more laws. And I think it sounds like the states have laws where these abuses happened and nothing happened.

So I guess I don't know what good another law would do. I understand the importance of training the teachers or administrators who may be involved in these situations so that they can better cope and handle without abusing children like this, but this——

Ms. PRICE. I have a question.

Mr. MCKEON. Pardon?

Ms. PRICE. Do we have pedophiles that have to report wherever they move to and their employers are able to look into their files?

Mr. MCKEON. I don't know.

Ms. PRICE. Public record. Public record.

Mr. MCKEON. Pedophiles?

Ms. PRICE. Then, excuse my ignorance, but why are they able to look into a pedophile's file, but a teacher that has killed someone, she is safe.

Mr. MCKEON. Pardon your ignorance? Sounds to me like that is wisdom.

Chairman MILLER. Well, we don't know whether she was safe or whether they didn't check.

I don't know, is the Texas registry a public record, Mr. Kutz?

Mr. KUTZ. Yes. She was initially placed in the Texas registry. Then all of a sudden, it disappeared from the Texas registry. So we are not sure if Virginia checked or not, or if Texas dropped the ball. But we do know that the school district in this case, Loudoun County Public Schools here in Northern Virginia, was not aware that this teacher had this prior situation.

Chairman MILLER. But we don't know again whether anybody checked——

Mr. KUTZ. We don't know. I think that is—I referred the case to the Virginia Department of Education on Friday.

Chairman MILLER. Okay.

Mr. KUTZ. So they are aware of it. They are investigating it, and ultimately, the committee will probably be informed what happened.

Chairman MILLER. All right, thank you.

Mr. KUTZ. But something broke down in the system, clearly.

Chairman MILLER. Right. Clearly, something broke down in the system.

Mr. MCKEON. Well I don't know if there is a system for that.

Chairman MILLER. No, no, but if the Texas registry was a public record, the question would be, would you check where the person was last employed to see if there was anything on the public

record. That is all I am saying. I don't know that there is a system in place to do that. It just seemed that that would be—what is the point of the registry if nobody——

Ms. PRICE. Because usually on the application they do ask your last job employment.

Chairman MILLER. Right. I assume you would want to know where somebody came from if—Mr. Kildee?

Mr. KILDEE. Thank you very much, Mr. Chairman.

Mr. Kutz? Could you suggest how we, Congress or the federal government, could implement or impose a federal standard for governing or relating to seclusion or restraint?

Would, for example, the Illinois system be of some guidance to us?

Mr. KUTZ. Possibly, again we didn't get into that at this point. I certainly think that this is worth a look at the federal level, but I believe the other two witnesses have much more knowledge in that area than I do.

Mr. KILDEE. Well, very often, whenever we spend federal dollars for a program we feel is good for children, we put some standards in that program for the expenditure of those dollars. Is there anything we can do here? Is there a federal role that we should have to try to make sure these things don't happen that we have heard have happened?

What should the federal role be, or is there—I would think there should be a federal role. I mean, we are spending dollars hopefully to help kids to make sure they are not hurt.

Mr. KUTZ. Yes, I don't know. One example we talked about—Ms. Price was talking about is some sort of a registry people can go to to determine this teacher who was involved with Cedric's death was found by an administrative law judge to have been guilty of, you know, at least abuse of children, and there was a registry set up.

But we don't know if—that the states do that or whatever—if something national on that or there would be some ability to tap into that to do checks on people would be useful, for example. I am sure there is other things you can consider, but that is something that we came across that I am sure parents would be concerned about if—do we really know who the teachers are that are teaching our children in our country.

Mr. KILDEE. Dr. Peterson? Do you have any response to that?

Mr. PETERSON. Yes. I think the registry may be of value. That would be good, but I think a larger issue is the response of schools, and I do think there would be value to some common definitions, terminology, common expectations across the states for when these procedures could or should be used, if at all.

And that would help a lot whether it is a law or some kind of a federal guideline that would direct states or help states implement better policies, I think, would be very helpful. And I think we have to remember that we have many more kids in school with serious mental health issues, serious behavioral issues than we had 10 or 20 years ago, and as a result, we also need to provide better supports.

And I think the preventive things that were mentioned could be built in by requiring districts to show their preventive efforts—

their plans for how they are implementing positive behavioral supports rather than just relying on some of these issues.

So I do think there are some things like that that could be done at the federal level that would really assist states to become more uniform and move practice further ahead.

Mr. KILDEE. Well, if all of you could reflect more upon that, because, you know, most of us up here—like myself, I am the father of three children, grandfather of seven children, and I can just imagine how devastated I would be if something like this would happen to one of my children.

I think we should have that same feeling of devastation for any child in America, and if there is a role that the federal government can play that would, hopefully, eliminate this—certainly minimize but, hopefully, eliminate this, we certainly would like your input and your help to try to arrive at something like that.

Thank you very much, Mr. Chairman.

Mr. EHLERS. Thank you, Mr. Chairman. I apologize for missing the testimony, but I was in another meeting. But I am really—you know, so many things go on in this world that we don't know about, and this is one of them. And I am just shocked by what I have heard and the evidence that I heard during the brief time I have been here.

But I wanted to ask Mr. Kutz or Kutz?

Mr. KUTZ. Kutz is—yes.

Mr. EHLERS. Kutz, okay. In your testimony, you talked about—that there is no Web site or federal agency responsible for collecting comprehensive information on the issue of seclusion and restraint in public and private schools.

But in 2003, the Substance Abuse and Mental Health Services Administration began promoting the implementation and evaluation of best practice approaches to reducing and preventing the use of seclusion and restraint and mental health inpatient and residential settings.

SAMSA also awarded grants to eight states to implement interventions designed to reduce or eliminate the use of seclusion and restraint in designated mental health facilities. Did you look at those activities and see what parallels there might be—what we might learn from their experience that would make it feasible to do the same thing in the schools that the bill we passed some years ago does in mental health surroundings?

Have you had a chance to look at that at all or not?

Mr. KUTZ. Not in any depth, no. We are aware of that, but not in any depth. Again, we were looking at something that was more comprehensive, possibly, but it could have some relevance to a bigger picture going forward.

Mr. EHLERS. I am just curious what their experience was and whether they found this to be a successful approach or not, because, you know, these are terrible events, and my heart goes out to the parents here.

The question is not how can we punish schools, but how can we prevent these things from ever happening in the first place? And I think it would be useful to know if there are other situations that are quite similar such as the one I mentioned. Or there may be others that we can learn from and find out what works and what

doesn't work in those situations where we have already tried to address the problem.

Do you have any comment on that? Anyone wish to comment?

Mr. PETERSON. Well, I think the SAMSA initiative was one that was valuable. I am not clear with the specifics, but I think that there would be some value in doing something like that in the schools. It is my understanding that schools were not eligible for that competition and that initiative, but I think there would be value in doing that.

Mr. EHLERS. Does anyone on the panel know whether there is other programs that might be similar to that that we could look at and compare and see what is effective and what isn't?

Mr. PETERSON. No, I am not immediately aware. I know there are some individual situations where individuals have taken the leadership within schools and various settings to do that. I think the committee may be aware of some of these.

One of them is in the Centennial School in Pennsylvania, and a colleague of mine in the Kansas City area has assisted her district to try to reduce the use of these procedures. So I think they could be found. There are some good examples out there, and we need to identify those, and maybe share the wisdom that they have learned with others.

Mr. EHLERS. I am actually interested in going beyond just that part, but getting into the question about reporting and how schools would be able to check on a teacher to see whether or not there has been a problem. So I think both aspects are very important—the proper training, but also some sort of register.

And, Mr. Chairman? May I just suggest that would be a good thing for the staff to look at. I am just feeling a little antsy here as to how to begin addressing this, and I am just looking for various other instances where it is—the problem has been addressed that we could learn from.

I yield back.

Chairman MILLER. Thank you.

Mr. Payne?

Mr. PAYNE. Thank you very much, Mr. Chairman, for calling this very important hearing. And it is actually shocking to hear what happened in these 10 cases. My first career, for the first 10 or 12 years or so, I was a public school teacher, and I taught in—state public systems in New Jersey.

And, although, I was primarily in secondary school, I did have a stint for a bit in an elementary school for several years. But I just cannot fathom how abuse like this could happen. It seems like rather than things improving—because we always heard that time would take care of everything, things would get better in time; however, this seems to be going in an opposite direction.

We hear stories that, you know, we didn't hear about years ago, and being in the system, there weren't investigations; however, being in a school, we would know. Perhaps a question to both of the parents, Ms. Gaydos and Ms. Price, did you find any of the other teachers or school personnel or—was there anyone that just said, you know, I really would like to tell you the person's abusive or maybe you ought to report—I mean this is worse than police—silence of the blue.

You know, this is silence of the educators. What has been your experience?

Ms. GAYDOS. My experience with the school district was that there was a very, very strong code of silence. It was considered extremely disloyal to warn a parent. We were warned by an aide that this teacher was abusive. She was treated terribly. She held two meetings to discuss the abuse.

She was docked of her pay for the time spent in the first. After the second, she was put on administrative leave and threatened she would be fired if she spoke to parents. In deposition, an HR manager said the things she was most upset about for this aide was that she warned parents.

Now, this woman was trashed to us. Her credibility was trashed by the principal. This woman was the bravest person there. The perceptions she came to; the conclusions she came to completely agreed with those of our expert witnesses. She was head and shoulders above everybody else in that district, and that is how she was treated.

So there is a strong code of silence, and the district is going to protect itself. We feel very strongly that uniform complaints to the district should not be investigated by the prime culprit. It is the fox guarding the hen house.

The assistant superintendent would have investigated the uniform complaint. The only unsolicited call I ever got about this was a very unpleasant call from him trying to undercut our credibility and basically trying to intimidate us.

And they can do that, because they have enormous amounts of public money to pay for their legal defense. They can generally outspend and exhaust the plaintiffs. So they are not going to be much help. I agree with Toni about the importance of a central repository of information.

And one possibility would be to give Child Protective Services or equivalent jurisdiction over teachers so that they could keep some sort of central record.

If I had three complaints against me by three different people including two professionals, one of whom was in the classroom and witnessed an incident and that was the teacher going after the child with scissors, my children would be removed from my care.

This teacher was allowed to continue. So, that is all I have to say.

Mr. PAYNE. How about you, Ms. Price? Did you find any help anywhere?

Ms. PRICE. I found some help from some teachers that called me, and they told me they weren't allowed to talk with me. But they did call and even brought me some of the—where she had marked on his styrofoam tray the times that, you know, the food came in.

But they were told not to converse with me, but you have some teachers that will. And I think it is more of the administration trying to cover themselves—oop, I made a boo boo, type thing, you know, maybe I didn't check in depth on this individual enough and not wanting to be in that spotlight.

Mr. PAYNE. Just before the time expires, Mr. Kutz? When your people went around to ask the questions, were you welcomed, or did the Boards of Ed feel, well, maybe let's try to work on cor-

recting anything if it is wrong, or was it sort of the same kind of defensive, you know, et cetera, et cetera?

Mr. KUTZ. Well certainly the parents and attorneys and law enforcement were willing to cooperate. We got autopsy reports, court records, et cetera. We did not attempt to speak to the teachers. I think that was something that we felt necessarily appropriate, but we had sworn statements from pretty much all of them. So we knew what their positions were.

We didn't want to have federal agents show up for some of these people who hadn't been found guilty of anything and then, you know, raise questions about those folks. But overall, we got cooperation. The schools, I think, they weren't really interested in telling us too much, but they were hoping to move beyond the incidents that had occurred, because they were pretty egregious incidents.

Mr. PAYNE. Thank you.

Mrs. BIGGERT. Thank you, Mr. Chairman. Sorry I missed the testimony, but I have a couple of questions for the gentlelady from Illinois, Ms. Hanselman.

I was looking through the GAO report, and it talks about one incident that happened in Illinois with a youth of 8 was diagnosed with attention deficit hyperactivity disorder, and a substitute teacher restrained the child in a chair with masking tape and also taped his mouth shut because the boy would not remain seated.

And actually a lawsuit was brought, and the substitute was found guilty of the restraint and aggravated battery and sentenced to 2 years probation, community service and a psychological evaluation.

However, it also says that this substitute still possesses an Illinois substitute teaching certificate, which expires in June of 2009. That seems like that would probably have been the first thing that the state would have asked is to take away that certification. Are you aware of that case?

Ms. HANSELMAN. I was not aware of the case until this report, and I have not had an opportunity to investigate that, but it certainly is something that I will be following up with our department. Individuals in Illinois, for teacher certification, there are certain enumerated offenses that are an automatic revocation of their certificate.

I will have to review this to determine whether or not this case will warrant that type of action or not. But at this time, I could not comment.

Mrs. BIGGERT. Okay. Well, I understand you are one of the—Illinois is one of the first states in the country to enact legislation governing the use of seclusion and restraints.

Does the state require parental consent before using restraints on children with disabilities, for example?

Ms. HANSELMAN. If a child with a disability has gone through the IEP process, which they would have gone through, a behavior intervention plan would indicate what types of techniques will be utilized, and the focus would be on those positive interventions or supports that we provided and then the restraints and the issues would come as more severe once you have tried those other issues, but yes——

Mrs. BIGGERT. Could you just tell me a little bit about what you think about the PBIS program? It seems like it is what, been in existence 10 years, and do you think it is—are other states coming to you and asking you about it, and how many states have come, and how many really are using this program as well, if you know?

Ms. HANSELMAN. Illinois has really been recognized for our data on positive behavior interventions and supports. We have been asked to speak at many national conferences and regional conferences with regards to the success our schools have had.

And the implementation and the expanse of the program to a quarter of our schools just in this short period of time, I know, a thousand schools over 10 years is good for us, and we have made huge strides with regards to the coaching and the training and the supports that we provide to our teachers.

So we are providing technical assistance and information to other states.

Mrs. BIGGERT. Would you think that all the schools in our school districts should be in this program, or is this something that should be a choice here, because there are other programs aren't there that——

Ms. HANSELMAN. Certainly, one of the activities that we are working on in Illinois is to align all of our discretionary projects for all students so that we can ensure success for our students post-secondary, ensure safe, healthy learning environments, and to ensure that we have the most highly qualified and trained teacher staff. Those are the three goals of our agency.

In order to do that, one of the activities we are working with is with the scaling up initiative—this schoolwide scaling up of all of our evidence-based practices. PBIS and our reading first model have been the two models for which we were branching all of our discretionary projects, all of our technical assistance for both general ed and special education to ensure statewide coverage of all of our projects so we can ensure more qualified teachers in our schools.

Mrs. BIGGERT. Does the state of Illinois or the school districts require a background check on all new teachers coming into the state?

Ms. HANSELMAN. Yes.

Mrs. BIGGERT. Okay. I think that is all the questions I have, and I yield back. Thank you.

Ms. HANSELMAN. Thank you.

Chairman MILLER. Mr. Andrews?

Mr. ANDREWS. Thank you, Mr. Chairman.

Ms. Gaydos? Thank you for your testimony.

Paige? It is great to have you with us here this morning. Glad that you are here.

Ms. Price? Your words were moving, and I hope that they will save the life of some other child that was unable to be done for Cedric.

Mr. Kutz? I wanted to kind of walk through the facts of Cedric's case so we could get a better understanding of why something needs to be done here.

It is my understanding that Cedric was killed in March of 2002. Is that right, Ms. Price?

Ms. PRICE. Yes.

Mr. ANDREWS. And my understanding is that the individual who was responsible for this had her name placed in the Texas central registry, a listing of individuals found to have abused and neglected children. That is correct, Mr. Kutz, that this person's name is then placed in the Texas central registry of abuse of people?

Mr. KUTZ. That is correct. They were found by an administrative—it was appealed——

Mr. ANDREWS. What then happens is that this person's teaching certification expires, but there is no evidence that it was revoked because of this homicidal conduct. Is that correct?

Mr. KUTZ. She was supposed to have gone on the registry, but at some point, it came off the registry, and we don't know when.

Mr. ANDREWS. But I think, if I also read this correctly, that your conclusion was that there is no causal link between her teaching certificate expiring and her entry onto this registry.

Mr. KUTZ. In several of these cases, that is correct.

Mr. ANDREWS. There is no cause and effect here, necessarily. So problem number one is Texas. The Texas state government has actual knowledge that a person's involved in a homicide such that they put them on this registry but don't take affirmative action to revoke their teaching certificate. Right?

Mr. KUTZ. Yes. I think there are several cases——

Mr. ANDREWS. Okay. So the next thing that happens is that at some point this individual comes to northern Virginia, and I have a letter that I guess you wrote May 14th to the assistant superintendent of the Commonwealth of Virginia Department of Education putting that department on notice that this individual you discovered is now teaching in the Loudoun County public schools. Is that correct?

Mr. KUTZ. That is correct.

Mr. ANDREWS. And then what happens—we have a letter dated today written to Chairman Miller and Mr. McKeon in which it explains that one of the witnesses who was going to testify evidently is employed by that same system felt it would be inappropriate to comment on the case without knowing all the facts, which I completely understand.

That letter from Mary Kusler from the American Association of School Administrators reports that the individual in question here was immediately placed on administrative leave pending investigation by the Loudoun County schools. That letter will be in the record.

Now, here is the next problem. I assume that we don't know whether or not the Loudoun County district had knowledge of this individual's background. Is that correct?

Mr. KUTZ. We don't know conclusively, but we believe they did not.

Mr. ANDREWS. Okay. Now if your assumption is true, then another problem that becomes pretty obvious here is that there was no interstate reporting of what happened in Texas that would happen in Virginia. So someone can sort of jump from I realize that her name disappeared from the Texas registry, which is an interesting question in and of itself.

So I guess that is a third problem. Right? Problem number one is someone who is so thoroughly involved in Cedric's—I will use the phrase murder. I think it is an appropriate word—is on the registry and then her name evaporates, which means the registry is not terribly well kept.

Second thing that happens is that there is no suggestion that there is a cause and effect between the expiration of this person's teaching certificate and their presence on the registry within Texas. Correct?

And then the third problem is that we are assuming, although we do not yet know, that the first time any education authority in Virginia knew that one of their teaching employees had been involved in Cedric's death in Texas was when you notified them on the 14th of May as the basis of your investigation.

Mr. KUTZ. Certainly that is true of the Virginia Board of Education, yes.

Mr. ANDREWS. Certainly looks that way. Now, we don't know about what the Loudoun District did or did not know, because you did not ask them as part of your investigation, correct?

Mr. KUTZ. Correct.

Mr. ANDREWS. Yes, I mean, I know that one of the reactions to federal legislation in this area is, well, shouldn't we leave this to the states and do we really need a federal law, and aren't there enough laws on the books to prevent this?

Now, I would say emphatically no to all those questions. That state laws aren't working, and they are not working because there is proof positive in Cedric's case that there was no communication evidently between Texas and Virginia. It could have been Texas and New Jersey, Texas and California, Texas and anywhere.

Secondly, the state that was responsible for maintaining this registry, I would like to hear the explanation as to why this individual evaporated from the registry. I hope that you are going to be taking a look at that question.

And then third, you know, if people don't have notice when they are going to hire new teachers, they are going to—they are going to hire some people they should not be hiring. So I know it is sort of baked into the cake in our debates around here. The people say, well, let the states handle this problem.

I don't think the states have done a terribly good job handling this problem, and their of communication among each other is not just some abstract question of Jeffersonian philosophy. It is about someone who is responsible for the death of a little boy who is now back in a classroom.

And either the authorities in Virginia didn't know that, which is a huge problem, or they did know and ignored it, which is an even larger problem. But it seems to me it really does need to be addressed.

The other thing that comes to my mind here, Mr. Chairman, one criticism, I think, we may be hearing is well, this doesn't happen very often. As far as I am concerned, once is enough to do something about this. But beyond that, I think a lot of these cases don't get reported.

It is very hard to think of a person less powerful in the American legal and political system than a little boy who is in—been in foster

care his whole life, who has been abused everywhere he has gone, evidently, except, Ms. Price, for your love and devotion to him, who is treated as an animal. There is really no one less politically powerful than that person.

So if he or she speaks up and is believed by adults, it is very unlikely those adults are going to make much of an impact. So I would say to those who would imply that, well, these cases are isolated and infrequent that, again, one is enough. And two, there is a lot of people who probably are not reporting these claims, because at least they are trying, but no one is listening to them, because they are so voiceless.

And, you know, Ms. Gaydos? Your testimony was powerful in that respect too. Both you and Ms. Price are obviously very articulate, intelligent, forceful women. But what I am hearing is that your concerns were kind of blown off by school officials, because you were some annoying parent.

Well, there is something wrong with that, and I appreciate the testimony.

Mr. Kutz? We especially appreciate your tenacity, may it continue, because I think we want to find out what really happened just for the sake of Cedric's case, but for the sake of unfortunately thousands of Cedrics and Paiges who are out there today that are suffering the same sort of thing.

So thank you very much.

Chairman MILLER. Okay. Mr. Hare?

Mr. HARE. Thank you, Mr. Chairman.

Ms. Hanselman? In my second month in office, I had the opportunity to go to a school in my district that had PBIS, and the principal took me around.

I was incredibly impressed with the way the program was working and how the kids liked it, and you know, we were talking afterwards, and the principal said something to me, and I think that is kind of what we are hearing today too, you know, it is not easy to be punitive, but we are talking about being punitive.

You know, let's tie them up, lock them up, do something, but at this school, when I talked to the principal, he said, our truancy rates here have dropped significantly, behavioral problems have dropped significantly.

And so I introduced a bill last Congress, the Positive Behavior for Effective Schools Act, and, you know, we are going to be hopefully moving on that, but it just seems to me that you can be punitive with Paige or with, Ms. Price, with your son, or you could do something that would be positive to reinforce them.

And this bill does another thing too. One of the things about this PBIS—and I commend Illinois for doing this—is it also trains the teachers. And it works with them on these standards so that they have the opportunity when the plan is implemented that they understand what is involved here, and there is a lot of, you know, there is respect and being able to, you know—different things that are incorporated in it.

It is an incredible plan that we ought to have, quite frankly, nationwide in our schools. It may not be the sole solution to this, but after hearing what I have heard today, you know, I don't, you

know, the two witnesses with their children—this is just, you know, we can't put up with this.

As my friend from New Jersey said, one is too many, but listening to Mr. Kutz's numbers, they are not only appalling to me, but they are scary, because we know that there are other young kids that are getting this type of treatment.

So I wanted to ask you, what type of an investment are we talking about here on this PBIS, and from your perspective, what can we do to stimulate other states like Virginia, let's say, or another state to adopt this PBIS system, because I think it would be something that I would like to see us be able to do across the country.

It works. I mean, I have yet to see anybody that has had a PBIS where they have said, well, we have tried this and it was a miserable failure.

Ms. HANSELMAN. Well, certainly training is the key and providing the external supports to the teachers and to the schools so that they can utilize their data and drive the decision based off of how do we manage our behaviors within the school by positively interacting with the students so that they have more instructional time.

We have, as you said, seen huge increases in the academic outcomes of our students. We have seen reductions in the referrals. We have seen reductions in drop out suspension, all of those components.

As far as what do we need to do to invest, certainly providing the support and the dollars to the schools so that they do have the opportunity for that training for the release time for the teachers so that they can receive frequent training and ongoing technical assistance as they go through the system and the support.

Mr. HARE. Ms. Price and Ms. Gaydos? Maybe you could—you touched on this, but I am just interested in your opinion, you didn't get much support at all from, obviously, the principals or the other school teachers or things of that nature, but a teacher's aide had the courage to come forward and say something, and then they went after that person.

What do you think—what do you think they were thinking of? I mean, they had to—they worked with this person. I would assume they probably had heard that there had been other instances and things of that nature.

What was the problem?

Ms. GAYDOS. This teacher had worked at the district for 4 years, and there had been vociferous complaints about her. The little boy I mentioned to you was kept in timeout without bathroom access, that mother was threatening to sue the district. And I think they wanted to shut down all complaints.

They say it is difficult to get a special ed teacher. It is easier to get rid of the aides or the people who complain. Frankly, I don't completely understand their total lack of response. It seems to me, quite frankly, that they would much rather have sat by and let children be abused then admit that they had made mistake after mistake.

And they had had so many complaints, and they really got into a power struggle with the aide, and they just didn't have the integ-

rity to come forward and admit they had made a mistake and fix the problem.

Mr. HARE. Ms. Price? Were there other complaints about the teacher that killed your son?

Ms. PRICE. There were no complaints prior to the murder. But my take on why the people might have stood by and watched was because—it is just my personal opinion—because Cedric was a foster child, and the system looks at foster children in such a different way.

And because I have heard people say foster children are throw away children and those type of things that I believe the aides stood by, didn't say anything for fear of their jobs or whatever, or because maybe nothing would come of this, you know. So I don't know why——

Mr. HARE. I know my time is up, but I just want to say one thing, Dr. Kutz. But let me respond to that. If that is an attitude that people have about foster children, that is the most shameful attitude I think a person can have.

These are God's children we are talking about. It doesn't matter, and that would be a tremendous disrespect for these wonderful young kids.

Dr. Kutz? I just want to know, are you going to—and I would share with Mr. Andrews—is there anybody checking into this Texas thing on how this person got off the list? Are you going to look into that or is somebody looking into that so they can get back to the committee?

Because that genuinely, I know, concerns a lot of us—probably all of us here as how this person's name mysteriously disappeared from the registry.

Mr. KUTZ. We will try to get to the bottom and let the committee know.

Mr. HARE. Thank you so much.

Chairman MILLER. Mr. Courtney?

Mr. COURTNEY. Thank you, Mr. Chairman. You know we, as a nation, went through a long struggle in terms of dealing with child abuse within families and got to a point where now any incidents, if reported to healthcare providers or psychologists now, the law requires those individuals to report them to child protection agencies.

I am just astonished at the testimony of Ms. Gaydos about the fact that an incident which just clearly falls into that category somehow ran into a stone wall with the child protection system.

Mr. Kutz, you know, in your research in the law of different states, I mean, is there some, you know, statutory framework that excludes education from the scope of child protection agencies, or is this just custom, or is it just, you know, an agency that is deferring to other arms of government?

What is the legal explanation for why she ran into that sort of barrier?

Mr. KUTZ. I don't know all the—some states had a requirement that parents would be notified in advance of a seclusion or a restraint. Other states are required—there is a requirement to tell parents after it happened. Other states, there is no requirements at all. So it is all over the board, and I don't remember for that particular state what the requirements were.

Mr. COURTNEY. Well, again, child abuse is child abuse, whether it happens in a home, whether it happens in a medical setting. Again, if some healthcare provider was accused of this kind of conduct, I mean, again a child protection agency would be totally empowered to swoop in and do their job.

And it just seems that, you know, this really should not be some child protection agency free zone where complaints can't be fielded and investigated.

And, I guess, Ms. Gaydos, I mean, again, you described the fact that you tried and didn't get anywhere. I mean was there sort of a plausible explanation that they gave you?

Ms. GAYDOS. Well, we were told Child Protective Services just has no jurisdiction over public school teachers, and they referred the complaint either to the administration or to the police. The police came to our house. There were three CPS reports about three different children involving the same teacher and two police reports.

The police reports were actually taken in different cities within the same district. Ours was the second one. They said they would have prosecuted if they had known about the first one, but they didn't crosscheck. As far as I understand about Child Protective Services, they simply have no jurisdiction and no control whatsoever.

Mr. COURTNEY. Again, that just takes my breath away, because I mean a lot of police departments, frankly, are not equipped to handle this type of investigation. They defer to child protection agencies, because they have the interdisciplinary teams that know how to interview witnesses and, you know, do diagnostic investigation.

Again, it just seems like another area we have got to sort of figure this out that these types of legal barriers should just not exist in terms of giving parents and children a remedy.

Ms. GAYDOS.

I absolutely agree, and the cases that were reported were the tip of the iceberg, and when Mr. Kutz says he has 33,000 cases, I suspect there are far more, because those would be the documented cases. Our district did not do any documentation at all.

Mr. COURTNEY. So again, you indicated that you then proceeded with private counsel. I mean, was it a personal injury case? Is that—is that the avenue that he followed or she followed?

Ms. GAYDOS. Yes, it was kind of—we had a special education lawyer, and it was a very open-ended case, so——

Mr. COURTNEY. Which——

Ms. GAYDOS [continuing]. Court case, yes.

Mr. COURTNEY. Right. So you were pretty much on your own in terms of your own, sort of, financial resources having to underwrite that effort.

Ms. GAYDOS. Yes, and there were many parents before us who would have liked to have filed a lawsuit but didn't have the resources financially or in terms of time.

And as you are fighting the lawsuit, which is very stressful, at the same time, we are trying to pick up the pieces and clean up the mess these people have made of our children, and the district suggested nothing and offered us no help with that.

Mr. COURTNEY. Again, Mr. Kutz, looking at your case studies, again, it just seemed there was tremendous variation in terms of, you know, what the response was. I mean, there was one case where someone actually went to prison on a manslaughter conviction.

Mr. KUTZ. Actually, two people went to prison in that case—the driver of the van and the individual that suffocated the boy.

Mr. COURTNEY. So at some level, I mean, the criminal courts are brought in in the most extreme circumstances, I guess.

Mr. KUTZ. And it was not consistent. I mean, you had 10 cases here. I guess there were four where the individuals pled or were found guilty and included five individuals—one case, two individuals went to prison.

But the other convictions were really just probation, and you know, community service. And in the other cases, there were no charges filed. And sometimes, it seemed the more egregious cases never made it to the criminal side. I can't explain it.

Mr. COURTNEY. Again, in our work, I mean, we have just got to achieve a parody level in terms of just how you treat an injured minor child and not create some special categories that exempt it from just the normal processes.

Thank you, Mr. Chairman.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Kutz? In your investigation, did you get a total of the number of deaths that were caused by these restraints?

Mr. KUTZ. There were at least 20 of the hundreds of allegations I mentioned. So there could be more, but we were able to document at least 20.

Mr. SCOTT. Is there any requirement that death be reported anywhere so that you would have a sense of how many children are dying because of this?

Mr. KUTZ. No, none that we are aware of.

Mr. SCOTT. Is there any evidence that the restraints serve any useful purpose if there is no eminent threat to someone's safety? Is there any evidence that it serves any useful purpose?

Mr. KUTZ. I can't answer that, but what I can say is in many or most of our cases, there was no threat to individuals themselves or other people. As I mentioned, four of our 18 children were 4 years old. They weighed probably 40 pounds or so. So I can't imagine what kind of threat they would have posed to anybody.

Mr. SCOTT. Dr. Peterson? Is there any useful purpose to the restraints if there is no eminent threat to someone's safety?

Mr. PETERSON. No. There is no research evidence to support that.

Mr. SCOTT. Is there research evidence to suggest that there are other strategies that do have useful purposes?

Mr. PETERSON. Yes, I think so. Many of those have already been mentioned.

Mr. SCOTT. Ms. Hanselman? Well, are there any situations—what are the situations where restraints may be appropriate?

Mr. PETERSON. Well, I think it is worth mentioning that schools are in a bind here, because I happen to remember two situations that occurred in Iowa within a close proximity a few years ago where a youngster who died as a result of a prone restraint in one school but then within a month or two—and the parents sued—I

don't know the outcome—but within a month or so, another school did not restrain a youngster who then ran out, fell into a river and drowned.

And in this case, the school was sued for not restraining the youngster. So it is a delicate balance to try to find the right response to specific kids, specific situations and behavior, and I think it comes back to training.

Schools feel responsible for the kids that they serve and try to protect those kids as best they can, and I do not condone the abuses we have talked about.

Mr. SCOTT. We are using restraints to cover just about everything. Are there levels of restraint?

Mr. PETERSON. Yes. There are different types of restraint and different degrees of pressure and so on.

Mr. SCOTT. Well, I mean, restraint could be holding somebody by the arm, and it could be suffocating them to death. I mean, are we counting everything as restraint?

Mr. PETERSON. Well, those are generally lumped together, and yes, that is one of the things that I think is needed is a clear definition of restraint or—we don't want the situation where teachers can't touch kids at all, but some yet, would consider any touching to be inappropriate whatsoever.

So there is room there to define that.

Mr. SCOTT. Mr. Kutz? Do you know the outcome of the various lawsuits that have been filed in cases?

Mr. KUTZ. There is at least nine of these 10 cases where there were civil suits and there were settlements in most of those cases. As I mentioned, on the criminal side——

Mr. SCOTT. How much of a settlement are you talking about?

Mr. KUTZ. Financial settlements anywhere from 75,000 to about 1.3 million or more.

Mr. SCOTT. Enough to get a school system's attention.

Mr. KUTZ. Yes.

Mr. SCOTT. Ms. Hanselman? You mentioned the value of national standards and training, but I thought I heard you put in there the word voluntary. Why should national standards and training be voluntary rather than mandatory?

Ms. HANSELMAN. Well, our thoughts with regards to the voluntary standards are, we already have standards in Illinois. If you are looking at voluntary minimum standards, that these are the minimum standards, for which schools should impose and then have the flexibility for a state to go beyond those federal standards if they have that option or choose to do so.

Mr. SCOTT. So there should be mandatory minimum standards?

Ms. HANSELMAN. Yes.

Mr. SCOTT. Mr. Kutz? Would you—sound like something people might want?

Mr. KUTZ. I don't know what people want. I know that right now that the standards, regulations, and laws are all over the place across the country.

Mr. SCOTT. Would there be a value to national standards and training?

Mr. KUTZ. National and standard of training, yes, there could be some value to have standards for training, because, again, with

these prone restraints, for example, there were various types of prone restraints, and some of them that caused pressure on someone's breathing seems to me more deadly than the ones where there was no body on top of the person.

Although prone is still more dangerous from what we understand.

Mr. SCOTT. And, Dr. Peterson? Have you studied the idea of national minimum standards in training?

Mr. PETERSON. Well, we haven't studied it, but I think I would support that concept that was mentioned for minimum standards and possibly also training to go along with those standards.

Mr. SCOTT. Yes.

Mrs. MCCARTHY. Thank you, Mr. Chairman, and I appreciate this hearing.

I am sorry to say that as I was listening to the testimony, it threw me back to the 1970s when we had a horrible situation going through this country on our young children in mental institutions, and that covered just basically almost every sort of problem or special needs of a child.

That comes to my mind, and an in-depth study of children being chained to the walls naked, not being fed. We closed all those mental hospitals, because we found from the studies that it was better for the young people to try and stay in the home setting and open up our schools so they could be more inclusive.

With that comes, obviously, a lot more work, but to hear the testimony and see that still going on is, in my opinion, criminal. One of the other things too, and I know it might not even fit into this, Mr. Chairman, but we still in our schools—13 States to be exact—in this country still do corporal punishment by paddling and boarding.

We know that any kind of violence to a child only begets more violence. And even thinking back to my nursing days in the 1970s and 1980s where they all restrained patients, and patients died because they were restrained, and we are hearing the same situation here with our children.

We have found that we do not have to restrain our patients 90 percent of the time, because there is retraining. Now, sometimes that causes more staff. I did a lot of private duty in my life, and I would take care of a patient and the family would hire me mainly because they didn't want to see their loved one restrained.

I didn't have to restrain my patient at all. It was more of the matter of sitting there calmly, holding someone's hand, and trying to get them unagitated, and that is basically the training that needs to be done in our special needs schools.

Mr. Chairman, I don't know where we are going to go on this, but obviously, we have an awful lot to do. And one of the things that I guess I would like to ask both Mr. Peterson and Mr. Kutz—boarding and spanking. That is corporal punishment. Are we in that day when we still need to have those kind of things done to children?

Mr. PETERSON. Are you directing that to me? I personally do not believe that we should be continuing to use those practices in schools, and I think we have alternatives. But this has, as you

know, been a controversial area, and I would like to see those practices eliminated.

Mrs. MCCARTHY. I hope that as we start dealing with education in whatever our new leave no child behind bill is going to be—I am hoping that we can put safety issues in there so we don't have parents here in this kind of testimony, because I have to tell you, I mean, what was said with my colleague, for one child to die, is one child too much.

But the emotional scars onto children—the reason we put children now into settings of schools is because they have a better opportunity to learn as much as possible. The training, obviously, has to be a big part of that.

Teachers that are in these classes and when we see that we are going to have more and more children, especially those diagnosed with autism, depending on what level they are, our schools now, you know, I know a couple of schools in my district have whole classrooms now of children with autism.

And if we don't learn how to deal with these issues now, unfortunately, we are going to probably see a lot more injured children, and that is wrong. How do we figure out how to put a federal guidelines onto this? I would suggest training is going to be a very, very big part of it, but also the idea of somehow, some kind of data that follows these teachers.

That should be a federal law, as far as I am concerned, that if any teacher harms a child, they should definitely lose their license.

I yield back.

Ms. WOOLSEY. Thank you, Mr. Chairman, and thank you for this hearing.

This is the 21st century. We live in the United States of America. Why is it that our children continue to be abused? They are more than abused, they are murdered, they are maimed, and they are tortured. Now, we are talking about torture in a lot of ways around this country right now.

This is torture for these children. Do we need an anti-torture legislation for our schools, or do we need a commitment to the future of our nation and that means a commitment to all—every single child in the United States of America and really worldwide.

I am so frustrated by this, and I will be working with you on any way we can make this better, but I was wondering what the training memo would have had to say to Cedric's teacher, so I wrote it.

And I wasn't very kind: "Dear heavy teacher,"—I wanted to say fat, but I didn't see her, I just knew she was big—"Dear heavy teacher, do not throw any child—even a child acting out in obvious great need—do not throw that child on the ground, and certainly, do not sit on that child, because that child deserves more than that from you, the teacher, from the school, from this country, the United States of America. That child deserves to live and learn and needs extra care and help, not to be killed, tortured, or abused."

I am working with you on this, Mr. Chairman. I don't know what the answer is this morning. It is an embarrassment. This is the United States of America. This is the 21st century. These are our children, and we must protect them.

Thank you.

Chairman MILLER. Thank you.

Mr. Tierney?

Mr. TIERNEY. No, thank you.

Chairman MILLER. Thank you very much for your testimony. Clearly, the facts that have come to light today have startled the members of this committee, as I assume they will startle the public as they become aware of this.

This behavior that does, in some instances, look like torture of young children, certainly, the abuse of these children is so inconsistent with our beliefs about our public institutions that it is hard for people to come to grasp with.

But I think, clearly, we see through the good work of the GAO that this is not all that uncommon, and the tragedy of these deaths—well, we don't know the numbers yet, but we must look, you know, beyond that to children who are put in dark rooms for hours everyday, children who are repeatedly put into restraints on a regular basis or in seclusion on a regular basis.

That is, in fact, abusive to those children. We would also like to know the policy considerations of how that continues when—you know, if you put a child into seclusion 75 times, you might want to think that it is not working, and you might want to think about what else you should be doing or how should you deal with this, and at what point would you tell the parents and bring them into this?

We have a process for children with disabilities, the IEP process where parents and others are brought into to work out a plan for the for having that child in school so the child can benefit so the other students can continue to have opportunities to learn, and we can, in fact, educate the greatest number of our children.

But so much of this is inconsistent with the intent and the purpose of that law, and when we see the, you know, the significant number of these cases that engulf children with disabilities, I think we have to recheck those circuits also on whether or not that is, in fact, working.

Again, when you go through the various state regulations on some of this, some of them have consent, some of them don't have consent, some of them it is clear that it is written consent, some of them have training, some of them have training, but it is not regular training, it is not systematic.

And so what we really have is a system that has failed to protect our school children and certainly failed to protect so many of those children who bring to school their disabilities.

But we have made it a decision as a nation that those children are entitled to go to school; they are entitled to receive that education, and we are better for that as are those children and so many of them have been able to participate in a much wider range of activities both in employment and in general society as a result of that decision that we made as a nation.

But this treatment of many of those children stands that decision on its head. Because clearly we are not providing the kinds of protections—the members of this committee have asked—you know, where are we going, what are we going to do. We will sit down with the members of the committee.

We have some additional work, I think, for the GAO. We want to be on solid ground here. We want the cooperation of the states,

but it is clear that the current situation is unacceptable and cannot continue in the manner in which it has. So I want to thank you very much for your testimony.

Mr. Kutz? I want to thank you and your fellow workers for their investigation, for the information that you brought to light here.

Ms. Gaydos? Ms. Price? Thank you so much. I don't think I can thank you enough for having the courage to come forward and tell us the stories and what happened to your children and to your families.

And, Paige? Thank you very much for being here. It is very helpful for us to meet you, and I am looking forward to see what you are sketching. I hope if you are sketching me, Paige, we are going to have to discuss it. But thank you for being here.

Mr. Peterson and Ms. Hanselman? I think you have given us some serious consideration about the positive things that we can do, and for the state of Illinois for leading the way that you can develop an alternative policy that can save children's lives and certainly stop the abuse of these children on an all-too-regular basis.

So my thanks. I understand that we also have another family here—the Careys—and I want to thank them for joining us today, and again, we extend to you our same sympathies for the tragedy that you had to suffer in this system.

With that, the members of the committee will have the usual time to submit statements for the record, and the committee will stand adjourned.

[The statement of Mr. Tonko follows:]

Prepared Statement of Hon. Paul Tonko, a Representative in Congress From the State of New York

I thank Chairman Miller for holding this hearing and calling for the GAO to investigate the use of seclusion and restraint. The facts outlined in the report are disturbing. Children, often with developmental disabilities, are being secluded and restrained with alarming force and disregard for the child's wellbeing. The common themes outlined in cases of abuse that resulted in criminal investigations are startling as well. Children suffering from abuse in these cases were most often children with disabilities, some of the most vulnerable children in our society. Without the consent of their parents they were restrained or secluded in harsh ways when they did not pose a real threat. The restraints that were used were dangerous and resulted in the death of the child in many of these cases. The teachers and staff that employed these restraints were not properly trained on the use of seclusions and restraints. Half of the staff involved in these cases of abuse are still employed in the settings where the abuse occurred, working with other vulnerable children.

I want to draw the Committee's attention to one of the cases outlined in the report. In Mr. Kutz's testimony, he showed pictures of some of the victims of seclusion and restraint, including one of Jonathan Carey and his father, Michael. Jonathan and his family lived in my district, in Delmar, NY. Jonathan had been diagnosed as mentally retarded and autistic and he was also non-verbal. In 2003, the Carey's enrolled Jonathan at a private facility. In 2004, Jonathan started having difficulties and the staff at the facility decided to change his behavioral support plan without the knowledge or consent of Jonathan's parents, and this is where the abuse began. To modify Jonathan's behavior, his meals were restricted and he was secluded in his room for extended periods of time. He missed two weeks of classes and missed 40 percent of his meals. It wasn't until Michael Carey went to see Jonathan that he learned the extent of Jonathan's plight: he found his son disoriented and lying naked in his own urine with bruises described in reports as "too numerous to count." The Careys removed Jonathan from that facility and Jonathan was subsequently diagnosed with post traumatic stress disorder.

The Careys became champions of Jonathan's Law at the state level. The bill required parental notification within 24 hours of any incident that affects the health or safety of their child in a treatment facility. It also allows parents full access to

records involving investigations of abuse and increases the penalties for facilities that do not comply with state laws.

Jonathan did not live long enough to see the bill bearing his name signed into law. In 2005, he was transferred to a state run facility for treatment. In February 2007, while away on a field trip, Jonathan was fatally restrained and smothered. Jonathan's Law was signed by the governor in September of that same year.

I am pleased that the Committee is investigating the use of seclusion and restraint, both of with Jonathan suffered from during his time in both private and state run facilities. I would like to include for the record a letter from Jonathan's father, Michael Carey, which includes his recommendations for reform. The text of the letter appears below. Thank you Mr. Chairman.

MICHAEL CAREY,
OAKWOOD RD.,
Glenmont, NY, May 20, 2009.

Hon. PAUL TONKO, *Member of Congress,*
Cannon House Office Building, Washington, DC.

DEAR CONGRESSMAN TONKO: Thank you for personally meeting with me after the Committee hearing on Seclusion and Restraints. As you know, my son Jonathan was mentally retarded and autistic, and was only 13 years old when he was killed being improperly restrained by his caregiver. Prior to this incident, when Jonathan was 11 years old and he was residing at the Anderson School, a private residential school for children with autism, he was severely abused in repeated unauthorized restraints, and he was also secluded in his room for extended periods of time, while employees repeatedly held the door, causing him to miss eight full days of school over a two week period. There was no parental consent or consent from any Human Rights Committee for any of these measures used by the school, and Jonathan was removed from the school due to this abusive treatment.

Part of my son Jonathan's horrible story is presented as Case 3 in the GAO testimony before the Committee on Education and Labor, House of Representatives, dated Tuesday, May 19, 2009. The report is called "Seclusion and Restraints—Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers" (GAO-09-719T). Some of what happened to Jonathan can be found again as Case 3 on pages 11, 17, 18 & 19 of this important report.

As a father who has lost his son and is now a full time advocate for children and adults with disabilities, I strongly urge federal legislation in regard to both seclusion and restraints, which are proven to be extremely dangerous and even deadly. I strongly urge completely banning the use of face down prone restraints, and all forms of seclusion. Authorized restraints in extreme cases or emergencies which are safe, and very limited timeout with parental consent is appropriate, but there must be strict and enforceable guidelines. There must always be "Informed consent" from parents or legal guardians. Any type of safe restraint or timeout of any child or disabled adult must have proper parental approval, free from any manipulation or intimidation by schools, facilities, or anyone involved in the individual's care. All restraints or timeout methods should be thoroughly discussed in person, as well as in writing, clearly defining any possible physical, or emotional dangers. This would give parents the option to make knowledgeable decisions and be able to decide if certain restraints or even time out methods were unacceptable to them. Many parents will not authorize one or both these methods and rightfully so, they are the parents. All agreements or disagreements should be thoroughly documented with the required signatures of all parties involved, especially the parents or legal guardians. There must be safe nationwide standardized programs regarding the mandatory training of use of restraints (possibly 2-3 safe training methods). Anyone in all schools, residential facilities, group homes, or in home care services, must be thoroughly trained in safe restraint techniques, or they must never restrain an individual, unless it is a life threatening situation. All legal restraints should always be the very last resort used, because positive approaches are almost always the best and safest methods for all people involved. I am not personally knowledgeable about the PBIS Program mentioned in the Committee hearing, but positive approaches are the best. Individuals in the care of others need kindness, respect, and security, and love to prosper.

From the testimony presented at the hearing, it is critical that federal legislation be immediately drafted to standardize methods of restraints and training, to be signed into law as quickly as possible to protect extremely vulnerable children and adults with disabilities nationwide. These safeguards should also be included and enforced in all juvenile centers or juvenile boot camps. I also believe that a proper

and just criminal offense or punishment should be attached for offenders. I agree with some of the committee members that teachers involved in such abuse or crimes should lose their license to teach, and be unable to move to another state to teach again. Therefore, it seems that a nationwide abuse registry is also vital. The staggering numbers presented at the hearing, totaling 33, 000 reported cases of seclusion or restraints in California and Texas in 2008, speaks loud and clear for the dire need of immediate changes. Seclusion and restraints severely damaged our son Jonathan emotionally for the last two and a half years of his life, before he was later killed during a restraint at a state run facility near our home in upstate New York.

I understand that restraints are necessary during times of emergency, but they should never be done by an untrained individual. Again, there must be proper informed consent ahead of time, and restraints must always be the absolute last thing done only after all positive behavioral interventions have been used and failed. All restraints should always be documented and reported to the parents or legal guardians, with complete open access to those reports at all times. Thank you for all of your assistance, thank you for caring, and thank you for doing everything possible to enact safe nationwide standards of restraints and banning all seclusion, to protect countless children from abuse and death. Many other people must be spared from this type of physical abuse, emotional damage, and a horrible premature death. Jonathan's testimony, along with many others, many of whom cannot speak, speaks clearly for necessary vital changes.

MICHAEL CAREY,
The father of Jonathan Carey.

[Questions for the record submitted by Mr. Miller follows:]

[VIA FACSIMILE],
U.S. CONGRESS,
RAYBURN HOUSE OFFICE BUILDING,
Washington, DC, May 21, 2009.

Mr. GREG KUTZ, *Managing Director,*
Forensic Audits and Special Investigations, U.S. Government Accountability Office, Washington, DC.

DEAR MR. KUTZ: Thank you for testifying at the May 19, 2009Education and Labor full committee hearing on, "Examining the Abusive and Deadly Use of Seclusion and Restrain in Schools."

As Chairman of the Education and Labor Full Committee, I would like you to respond in writing to the following questions:

We are trying to better understand statewide data collection efforts. For 4 of the states that GAO identified as having statewide data collection activities—CA, TX, PA, RI—can you please answer the following questions:

1. What definitions of seclusion and/or restraint are used for the data collection process?
2. What are the specific reporting requirements for each of these 4 states, including how often LEAs report data, exactly what is included in the data provided to the states (ie, incidents, abusive incidents, demographics, info on individual students/teachers/buildings, other * * *)?
3. What, if anything, are these states doing with this data? Do patterns or information in the data trigger any action by the state?
4. Is the data publicly available? If not, who has access to the data?

Please send an electronic version of your written response to the questions to the Committee staff by close of business on Tuesday, June 2, 2009—the date on which the hearing record will close. If you have any questions, please do not hesitate to contact the Committee.

Sincerely,

GEORGE MILLER,
Chairman.

[Responses to questions submitted follow:]

Responses to Questions for the Record From Mr. Kutz

DEAR CHAIRMAN MILLER: As part of GAO testimony Seclusions and Restraints: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers (GAO-09-719T) before your committee on May 19, 2009, we reported that several states collect data on the use of seclusions and restraints. You subsequently

asked us to provide more detailed information for the hearing record on four states GAO identified as having statewide data collection activities: California, Pennsylvania, Rhode Island, and Texas.

Questions Submitted

1. What definitions of seclusion and/or restraint are used in these states for the data collection process?
2. What are the specific reporting requirements for each of these states, including how often Local Education Agencies (LEAs) report data, exactly what is included in the data provided to the states (ie, incidents, abusive incidents, demographics, information on individual students/teachers/buildings, other * * *)?
3. What, if anything, are these states doing with this data? Do patterns or information in the data trigger any action by the state?
4. Is the data publicly available? If not, who has access to the data?

GAO Response

To respond to these questions, GAO reviewed state laws, regulations, policies, procedures, guidance, and forms regarding the collection of data on the school use of restraint, seclusion or other interventions on students. We also interviewed state Department of Education officials who work with this information. We did not attempt to verify whether the states' education departments were following the laws, regulations, policies, procedures, and guidance on data collection nor did we attempt to evaluate whether representations made by state officials were accurate. We also had obtained restraint data collected by two states—California and Texas—and reported it to you in our May testimony. We performed our work in accordance with standards prescribed by the Council of Inspectors General for Integrity and Efficiency (CIGIE).

California

Definitions. State regulations require special education local plan areas to annually report the number of "Behavioral Emergency Reports" made by school staff to the California Department of Education and the Advisory Commission on Special Education.[1] Behavioral Emergency Reports must be completed each time an "emergency intervention" is used on special education students or serious property damage occurs. It must be maintained in the student's file. The regulations do not define what an emergency intervention is on a state-wide level, but rather leaves the decision for what constitutes one up to each special education local plan area. Specifically, they state the action may not include the following:

- Locked seclusion, unless it is in a facility otherwise licensed or permitted by state law to use a locked room;
- Employment of a device or material or objects which simultaneously immobilize all four extremities, except that techniques such as prone containment may be used as an emergency intervention by staff trained in such procedures; and
- An amount of force that exceeds that which is reasonable and necessary under the circumstances. State regulations do not define restraint or seclusion either, but state guidance to school administrators notes that emergency interventions in particular involving these techniques should only be used by properly trained personnel and only with the degree of force and for the amount of time that is reasonable and necessary to control the emergency. Generally, the regulations state that emergency interventions may only be used "to control unpredictable, spontaneous behavior which poses clear and present danger of serious physical harm to the individual or others and which cannot be immediately prevented by a response less restrictive than the temporary application of a technique used to contain the behavior." The regulations also prohibit the following interventions on special education students:
- Any intervention that is designed to, or likely to, cause physical pain;
- Releasing noxious, toxic or otherwise unpleasant sprays, mists, or substances in proximity to the individual's face;
- Any intervention which denies adequate sleep, food, water, shelter, bedding, physical comfort, or access to bathroom facilities;
- Any intervention which is designed to subject, used to subject, or likely to subject the individual to verbal abuse, ridicule or humiliation, or which can be expected to cause excessive emotional trauma;
- Any intervention that precludes adequate supervision of the individual; and

[1] An official with the California Department of Education's Division of Special Education said, in practice, his agency reports the information to the Advisory Commission on Special Education.

• Any intervention which deprives the individual of one or more of his or her senses.

Reporting Requirements. The Special Education Local Plan Area (SELPA)—a consortium of school districts and county school offices formed to serve all special education students within a geographic region—submits aggregate data to the state on the number of Behavioral Emergency Reports made by school staff. The regulations specify that the reports be maintained in the student's file, but the following report information is not required to be sent to the state:

• The name and age of the individual;
• The setting and location of the incident;
• The name of the staff or other persons involved;
• A description of the incident and the emergency intervention used, and whether the individual is currently engaged in any systematic behavioral intervention plan; and
• Details of any injuries sustained by the individual or others, including staff, as a result of the incident The aggregate number of Behavioral Emergency Reports is the data we obtained from the state and included in our testimony .

Data Uses. An official with the California Department of Education's Division of Special Education said the agency does not use the data it receives.

Public Availability of the Data Yes, the aggregate data on the annual number of Behavioral Emergency Reports are publicly available. We obtained this information from the California Department of Education.

Pennsylvania

Definitions. State regulations require the Pennsylvania Department of Education to review the data schools maintain and report on the use of restraint on students with disabilities. Restraints are defined as the application of physical force, with or without the use of any device, for the purpose of restraining the free movement of a student's or eligible young child's body. The term does not include briefly holding, without force, a student or eligible young child to calm or comfort him, guiding a student or eligible young child to an appropriate activity, or holding a student's or eligible young child's hand to safely guide her from one area to another. The term also does not include hand-over-hand assistance with feeding or task completion and techniques prescribed by a qualified medical professional for reasons of safety or for therapeutic or medical treatment, as agreed to by the student's or eligible young child's parents and specified in the Individual Education Plan (IEP). Devices used for physical or occupational therapy, seatbelts in wheelchairs or on toilets used for balance and safety, safety harnesses in buses, and functional positioning devices are examples of mechanical restraints which are excluded from this definition. State regulations prohibit the use of locked boxes, or other structures or spaces from which a student with disability cannot readily exit.

Reporting Requirements. The Pennsylvania Department of Education developed a web-based system to track the school use of restraints on children with disabilities called the Restraint Information System Collection (RISC). It explained this new system in a document titled "Guidelines for De-Escalation and Use of Restraints in Educational Programs." The data that school officials are required to enter about each restraint incident includes the following self-reported information:

• Student ID number
• Student name
• Student's disability
• Student's grade level or age
• School building attended
• Date when restraint was used to control aggressive behavior
• Physical location where restraint occurred
• Type of restraint(s) used
• Length of time restraint lasted
• Number of staff who conducted the restraint
• Staff titles of individuals who conducted the restraint
• Did any injury occur to student and/or staff and what kind?
• Date the injury of student or staff was reported to the state Department of Education's Bureau of Special Education (maximum of three school days from incident).
• Was the student who was restrained referred to law enforcement?
• Was the use of restraints listed in the student's IEP?
• Date of Parent Notification of the Use of a Restraint (within one school day from the incident)
• Date IEP Team Meeting Held
• If appropriate, date waiver of IEP team meeting signed by parent

• During IEP meeting, which were considered and discussed: Functional Behavioral Assessment re-evaluation, new or revised behavior support plan, or change of placement?

Data Uses. A special education official with the state education department said the agency uses the data to make sure school officials are complying with state law. According to state guidelines, each time a restraint is entered into RISC, the department's Bureau of Special Education (BSE) staff is notified via email. The restraint is supposed to be reviewed within two working days of recording. Monthly reports for each school entity are to be provided to the BSE director and the special education adviser assigned to the school district and intermediate unit. Follow-up actions are determined as appropriate, the guidelines state. The state special education official also said the department will be verifying whether the data submitted to the state electronically is corroborated in individual student files. It will conduct this check during the periodic audit the state performs on school district special education programs. The audits—called Cyclical Monitoring—are performed once every six years and state officials will be sampling student records to check for compliance, according to the official. This is the first year the state has collected the data.

Public Availability of the Data Yes, but a special education official with the state education department said the release would protect the student's identity.

Rhode Island

Definitions. Rhode Island Board of Regents for Elementary and Secondary Education regulations require public educational programs to annually provide the state Department of Education with "a record of every incident of the use of a physical restraint." The regulations define four types of restraint: manual, mechanical, chemical, and seclusion. Manual restraint means the use of physical intervention intended to hold a person immobile or limit a person's movement by using body contact as the only source of physical restraint. Mechanical restraint is defined as the use of devices such as mittens, straps, or restraint chairs to limit a person's movement or hold a person immobile as an intervention precipitated by the person's behavior. Mechanical restraint applies to uses intended to prevent injury with persons who engage in behaviors such as head-banging, gouging, or other self-injurious actions that result in tissue damage and medical problems. Mechanical restraint does not apply to restraint used to treat a person's medical needs or to position a person with physical disabilities. Chemical restraint means the administration of medication for the purpose of restraint. The use of medication restraint is prohibited in public education programs. Seclusion restraint is defined as physically confining a student alone in a room or limited space without access to school staff. The use of seclusion restraint is prohibited in public education programs. The regulations do not consider the use of "time out" procedures during which a staff member remains accessible to the student as "seclusion restraint."

Reporting Requirements. Rhode Island collects aggregate data from districts on the number of students restrained and the number of restraint incidents, according to a human resources administrator with the department. It also receives incident reports from districts that school officials complete providing details on the restraint.

The department specifically collects restraint information through its "Annual Physical Restraint Reporting Form," which asks school district officials for written responses to the following questions:

• Do you have a district level physical restraint policy? If yes, please provide us with the date the policy was passed and/or amended.

• Has your physical restraint policy been disseminated to staff? If yes, how often do you disseminate the policy to staff (annually, semi-annually, etc.)? Please provide us with the date of your last dissemination. How is your physical restraint policy disseminated to staff?

• Has your complaint procedure been disseminated to parents? If yes, how often do you disseminate the complaint procedure to parents?

• Do you have annual physical restraint training? What was the date of your last training?

• Did you maintain a record of all staff who attended your last physical restraint training? If yes, please attach a copy of your training roster to this report.

• Does your district have a designated trainer for physical restraint? If yes, please provide contact information for your district's trainer.

• Please provide the name(s) and job title(s) for each staff member within your district who has undergone advanced physical restraint training.

• If your school or district had any physical restraint in the past academic year, was each incident reported to the responsible parent or guardian? Was each incident

reported to school/district special education? Was each incident reported to Rhode Island Department of Education's Office of Civil Rights?

• Please provide us with the number of physical restraint incidents in your district during the previous academic year.

• Please provide us with the number of students involved in physical restraint incidents in your district during the previous academic year.

The "Required Restraint Incident Report" form that the school staff member(s) who performed the restraint must complete seeks the following information:

• Student name
• Date of restraint
• Time began
• Time ended
• Nature of restraint (describe type of physical restraint used)
• Location of restraint
• Name(s) and job title(s) of staff member(s) administering restraint
• Name(s) and job title(s) of physical restraint observer(s)
• Name of administrator who was verbally informed of the physical restraint
• Description of activity in which student was engaged immediately preceding the use of restraint
• Student's behavior that prompted restraint—options include the following:
  • imminent serious physical harm to self
  • imminent serious physical harm to others
  • imminent serious physical harm to themselves and others
  • imminent serious property destruction
  • imminent serious physical harm to themselves and imminent serious property destruction
  • imminent serious physical harm to others and imminent serious property destruction
  • imminent serious physical harm to themselves and others and imminent serious property destruction
• Explanation of student behavior(s) that prompted physical restraint
• Efforts made to deescalate the situation: provided choices, verbal redirection, calming techniques, reduced demands, reduced verbal interaction, or other. Explain.
• Alternatives to restraint that were attempted: removal of other students, request for assistance, voluntary removal of student to another location, or other. Explain.
• Observation of student at end of restraint
• Following the release of a student from a restraint, the Public Education Program must implement follow-up procedures. The options include: incident was reviewed with the student; behavior that precipitated the restraint was addressed with student; appropriate follow-up for students who witnessed the incident was considered; the incident was reviewed with the staff member(s) who administered the restraint to determine whether proper restraint procedures were followed, or other.

Data Uses. The Rhode Island Department of Education collects the forms from school officials and a database is being developed this summer to digitize the information from the incident reports so data analysis can be performed, according to a human resources administrator with the department.

Public Availability of the Data Yes, the data can be released to the public, but the education department's interim director for human resources told us that identifying information on the student is redacted from the incident reports to comply with the Family Educational Rights and Privacy Act (FERPA).

Texas

Definitions. Texas regulations require data on the restraint of special education students be electronically reported to the Texas Education Agency (TEA). Restraint is defined as the use of physical force or a mechanical device to significantly restrict the free movement of all or a portion of the student's body. State statute prohibits school personnel from placing a student in seclusion, defined as a behavior management technique in which a student is confined in a locked space that is designed solely to seclude a person and contains less than 50 square feet of space.

Reporting Requirements. TEA collects data on which students are being restrained as well as how many times the technique is used, according to a program specialist with the agency's Division of Individuals with Disabilities Education Act (IDEA) Coordination. TEA documents state that restraint records are included in TEA's Public Education Information Management System (PEIMS), which encompasses all data requested and received by the state about public education, including student demographic and academic performance, personnel, financial, and organizational informa-

tion. School districts report this information to TEA at the end of each school year as part of a larger submission of student data, according to PEIMS data standards. The restraint data includes the following:

• Record Type—the identification number identifying the information as a restraint record.

• District ID—the district identification number registered with TEA.

• Student ID—the student's SSN or state approved alternative identification number.

• Campus ID—the identification number for the campus where student was restrained.

• Restraint Incident Number—unique number that differentiates between two or more separate restraint incidents reported for one student.

• Instructional Setting Code—identifies the setting used in providing instruction to students.

• Reporting Period Indicator Code—indicates the period for which the attendance data are being reported: imminent, serious physical harm to the student or others or imminent, serious property destruction.

• Primary Disability Code—indicates primary disability recorded in the student's IEP.

• Date of Restraint Event—reflects the actual date on which the student with a disability was restrained.

Data Uses. The data are used to inform TEA's continuous improvement process and technical assistance projects, according to a program specialist with the agency's Division of IDEA Coordination. It is the intent of the state to expand the use of this data in the future to reduce the number of students who are restrained as well as the number of incidents, the official said. Restraint data are also available in the Special Education Ad Hoc Reporting System (SPEARS). The official described SPEARS as a dynamic reporting tool designed for accessing and analyzing data related to special education in the state of Texas. School districts and charter schools submit the data to the state through PEIMS. Originally, SPEARS was designed to provide statewide and regional reports to the general public, according to the official. Recent guidance from the U.S. Department of Education's Office of Special Education Programs and Family Policy Compliance Office, though, required the TEA to limit access to SPEARS to Texas Education Agency Security Environment (TEASE) account holders. TEASE Account Holders include personnel at TEA, Education Service Center (ESC) and school districts. These personnel are permitted to access the confidential student data SPEARS generates (for example, ESC staff can view their regional data; district staff can view their district data).

Public Availability of the Data Yes, the public may request restraint data through a public records request, but the program specialist with the agency's Division of IDEA Coordination said the agency would comply with FERPA, which protects the privacy of student records. We obtained aggregate data from TEA on the number of students restrained and the number of restraint incidents. We included this information in our testimony.

We appreciate the opportunity to provide this information to you. If you have any questions, please contact me at (202) 512-9505 or Assistant Director Andy O'Connell at (202) 512-7449.

Sincerely yours,

GREGORY D. KUTZ, *Managing Director,*
Forensic Audits and Special Investigations.

[Additional materials submitted by Mr. Miller follow:]

California's protection and advocacy system

BAY AREA REGIONAL OFFICE
1330 Broadway, Suite 500
Oakland, CA 94612
Tel: (510) 267-1200
TTY: (800) 719-5798
Toll Free: (800) 776-5746
Fax: (510) 267-1201
www.disabilityrightsca.org

May 28, 2009

Representative George Miller
Chairman, Committee on Education & Labor
U.S. House of Representatives
B346 Rayburn House Office Building
Washington, DC 20515

RE: June 19, 2009 Hearing: *Examining the Abusive and Deadly Use of Seclusion and Restraint in Schools*

Dear Mr. Chairman and Member of the Committee,

Thank you for holding this hearing on the important issue of behavioral restraint and seclusion of children in schools and for providing me with the opportunity to submit written remarks. I am the Director of the Investigations Unit at Disability Rights California, the protection and advocacy system for the State of California. We investigate allegations of abuse or neglect involving individuals with disabilities.

Since August 2000, I have investigated or overseen the investigation of 50 deaths or serious injuries related to the use of behavioral restraint or seclusion in care facilities and another 15 cases of children restrained or secluded in schools. In June 2007, we issued a landmark report entitled, "*Restraint and Seclusion in California Schools: A Failing Grade.*" Our investigations have consistently found that behavioral restraint and seclusion are excessively and inappropriately used in schools and that current state and federal law fail to adequately define and regulate their use.

Behavioral restraint and seclusion are dangerous and traumatic practices to both the individuals subjected to them and the staff executing these

interventions. Students are physically injured and forever traumatized from these practices, fearing teachers and schools, jeopardizing their enthusiasm for learning, and potentially permanently undermining their education.

Restraint and seclusion are not therapeutic or educational. Their use does not positively change behavior or promote a supportive learning environment. In every other setting, the use of seclusion and restraint is only permitted when an individual poses an imminent risk of serious physical harm to self or other. Restraint and seclusion may not be used for coercion, discipline, convenience or retaliation by staff. Yet, in cases that I have investigated, restraint and seclusion in schools were universally used for punishment, coercion, or, at best, "behavior modification" in response to student noncompliance with an adult command and not for imminently dangerous behavior.

Although California is one of the few states that has regulations pertaining to assessment and behavioral intervention for students with "serious behavior problems," these regulations provide minimal standards for the use of behavioral restraint and seclusion. Too often, restraint and seclusion are used as a routine, planned intervention for student noncompliance. Teachers and aides who apply restraint techniques are not required to be trained and are frequently either not trained or stray from approved restraint techniques. Students are restrained and secluded for extended periods of time, day after day; deprived of their basic needs and an education. Parents are not informed of restraint or seclusion events. IEP team meetings are not convened to discuss the incident or review the necessity for development or modification of the child's behavior plan. Data regarding the use of restraint and seclusion is not collected or reported. School boards and the Department of Education provide little, if any, oversight. A recent legislative attempt to provide minimal safeguards failed as some in the education community persist in seeing restraint and seclusion as necessary to keep children and school personnel safe rather than recognizing that these are dangerous and traumatic events that may cause serious physical and psychological harm -- even death.

We have learned in other settings that the use of restraint and seclusion can be reduced and even eliminated. Key components to a success restraint and seclusion reduction program include a commitment by senior leadership to change the organization's culture of use, utilization and public

accountability of data regarding use, workforce development to understand the risks of restraint and seclusion and alternative methods of intervention, utilization of restraint and seclusion alternatives, involvement of consumers and family members in reduction strategies, and implementation of incident debriefing following every occurrence. These successfully strategies can be applied to the school setting.

Principals, school boards, and the state and federal Departments of Education must take a leadership role in changing the culture in schools from tolerating or endorsing these practices to recognizing alternative strategies to addressing problematic student behavior. Dangerous restraint and seclusion techniques must be prohibited and safeguards must be required to minimize the risk of harm if use is unavoidable. Alternatives must be implemented – specifically, requiring schools to implement a universal, school-wide culture of positive behavioral support and developing and implementing behavioral intervention plans for individual students with problematic behaviors. Education personnel must be trained in positive behavior support, de-escalation, and alternative behavior management techniques. Teachers and school staff must be cautioned about the tremendous physical, psychological and educational risks associated with restraint and seclusion. Every restraint or seclusion event must be examined ("debriefed") as these provide opportunities for evaluating failed intervention strategies and promptly developing alternatives. Parents and the public must be informed of and schools held accountable for patterns of restraint and seclusion use. Parents and current and former students must be included at the local school, district, state, and federal level to assist in developing and reviewing reduction strategies.

I urge Congress to take action. It is time that students in schools are provided the same protections and safeguards regarding these dangerous practices as they are afforded in other settings. It is time to recognize that restraint and seclusion are dangerous practices to everyone involved; that restraint and seclusion do not keep children or education staff safe and do not positively change behavior. It is time that educators be held accountable for these abusive practices and be required to implement alternative strategies. It is time for schools to recommit to providing safe, nurturing, learning environments free from abusive, traumatic and harmful restraint and seclusion practices.

Thank you for this opportunity to comment on this issue and for bringing topic to the forefront of discussion.

Sincerely,

Leslie Morrison, MS, RN, Esq.
Director, Investigations Unit
Disability Rights California

May 19, 2009

Chairman George Miller
Ranking Member Buck McKeon
Committee on Education and Labor
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Miller and Ranking Member McKeon:

I regret to inform you that Dr. Mary Kealy will be unable to testify this morning on seclusion and restrain policies and practices before the House Education and Labor Committee.

Late last night we were informed that one of the teachers involved in one of the cases GAO reviewed is currently employed by Loudoun County Public Schools. Upon notification, the teacher was immediately placed on administrative leave, pending investigation. Out of respect for the parents who will be testifying today, Dr Kealy will not appear to give testimony in person, but will be submitting a written statement for the record which outlines the policies the county has in place regarding seclusion and restraints. Dr Kealy is aware that GAO has referred the matter of the teacher in question to the Virginia Board of Education for consideration. The district is investigating the case, and pending this investigation, believes it is inappropriate to comment publicly until all the facts are known.

We apologize for any inconvenience that this might have caused for today's hearing. Please let us know if you have any questions or concerns.

Sincerely,

Mary Kusler

Mary Kusler
Assistant Director, Advocacy & Policy

MICHAEL CAREY,
OAKWOOD RD.,
Glenmont, NY, May 20, 2009.

Hon. GEORGE MILLER, *Chairman,*
Committee on Education and Labor, U.S. House of Representatives, Washington, DC.

DEAR CHAIRMAN MILLER: Thank you for all your doing to seriously address these severe problems of seclusion and restraints nationwide. As you are aware, my son Jonathan was mentally retarded and autistic, and was only 13 years old when he was killed being improperly restrained by his caregiver. Prior to this incident, when Jonathan was 11 years old and he was residing at the Anderson School, a private residential school for children with autism, he was severely abused in repeated unauthorized restraints, and he was also secluded in his room for extended periods of time, while employees repeatedly held the door, causing him to miss eight full days of school over a two week period. There was no parental consent or consent from any Human Rights Committee for any of these measures used by the school, and Jonathan was removed from the school due to this abusive treatment.

Part of my son Jonathan's horrible story is presented as Case 3 in the GAO testimony before the Committee on Education and Labor, House of Representatives, in which you Chair. The report called "Seclusion and Restraints—Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers" (GAO-09-719T). Some of what happened to Jonathan can be found again as Case 3 on pages 11, 17, 18 & 19 of this important report.

As a father who has lost his son and is now a full time advocate for children and adults with disabilities, I strongly urge federal legislation in regard to both seclusion and restraints, which are proven to be extremely dangerous and even deadly. I strongly urge completely banning the use of face down prone restraints, and all forms of seclusion. Authorized restraints in extreme cases or emergencies which are safe, and very limited timeout with parental consent is appropriate, but there must be strict and enforceable guidelines. There must always be "Informed consent" from parents or legal guardians. Any type of safe restraint or timeout of any child or disabled adult must have proper parental approval, free from any manipulation or intimidation by schools, facilities, or anyone involved in the individual's care. All restraints or timeout methods should be thoroughly discussed in person, as well as in writing, clearly defining any possible physical, or emotional dangers. This would give parents the option to make knowledgeable decisions and be able to decide if certain restraints or even time out methods were unacceptable to them. Many parents will not authorize one or both these methods and rightfully so, they are the parents. All agreements or disagreements should be thoroughly documented with the required signatures of all parties involved, especially the parents or legal guardians. There must be safe nationwide standardized programs regarding the mandatory training of use of restraints (possibly 2-3 safe training methods). Anyone in all schools, residential facilities, group homes, or in home care services, must be thoroughly trained in safe restraint techniques, or they must never restrain an individual, unless it is a life threatening situation. All legal restraints should always be the very last resort used, because positive approaches are almost always the best and safest methods for all people involved. I am not personally knowledgeable about the PBIS Program mentioned in the Committee hearing, but positive approaches are the best. Individuals in the care of others need kindness, respect, and security, and love to prosper.

From the testimony presented at the hearing, it is critical that federal legislation be immediately drafted to standardize methods of restraints and training, to be signed into law as quickly as possible to protect extremely vulnerable children and adults with disabilities nationwide. These safeguards should also be included and enforced in all juvenile centers or juvenile boot camps. I also believe that a proper and just criminal offense or punishment should be attached for offenders. I agree with some of the committee members that teachers involved in such abuse or crimes should lose their license to teach, and be unable to move to another state to teach again. Therefore, it seems that a nationwide abuse registry is also vital. The staggering numbers presented at the hearing, totaling 33, 000 reported cases of seclusion or restraints in California and Texas in 2008, speaks loud and clear for the dire need of immediate changes. Seclusion and restraints severely damaged our son Jonathan emotionally for the last two and a half years of his life, before he was later killed during a restraint at a state run facility near our home in upstate New York.

I understand that restraints are necessary during times of emergency, but they should never be done by an untrained individual. Again, there must be proper informed consent ahead of time, and restraints must always be the absolute last thing done only after all positive behavioral interventions have been used and failed. All restraints should always be documented and reported to the parents or legal guardians, with complete open access to those reports at all times. Thank you for all of your assistance, thank you for caring, and thank you for doing everything possible to enact safe nationwide standards of restraints and banning all seclusion, to protect countless children from abuse and death. Many other people must be spared from this type of physical abuse, emotional damage, and a horrible premature death. Jonathan's testimony, along with many others, many of whom cannot speak, speaks clearly for necessary vital changes.

MICHAEL CAREY,
The father of Jonathan Carey.

May 15, 2009.

Hon. GEORGE MILLER, *Chair,*
Education and Labor Committee, U.S. House of Representatives, Washington, DC.

Re: Examining the Abusive and Deadly Use of Seclusion and Restraints in School

The Council of Parent Attorneys and Advocates (COPAA) is a national nonprofit organization of parents, advocates, and attorneys who work to protect the civil rights of children with disabilities and ensure that they receive appropriate educational services. We have over 1200 members in 47 states and the District of Columbia. Our members see the successes and failures of special education through thousands of eyes, every day of every year. We thank you and the House Education

and Labor Committee for allowing us to submit this letter for the record describing the harm to children from aversive interventions in school. We thank you for your work in examining the extent of restraint and seclusion in American schools.

Abuse of children with disabilities is a particularly pernicious problem. Children with disabilities are a vulnerable population, at special risk of being subject to restraint and seclusion. Their disabilities may manifest in what appears to be misbehavior, or they may have great difficulty following instructions. Children may have communication, emotional, cognitive, or developmental impairments that may impede understanding or the ability to effectively report what happened to them. They may be unable to comply with instructions that are made a condition for ending the abusive intervention and unable to communicate pain or danger. They may be in segregated disability-only classrooms, with few witnesses who can report what has happened.

COPAA's Survey: 155 Incidents of Abuse

In March-May 2009, COPAA conducted a survey that identified 155 situations in which children with disabilities were subjected to aversive interventions. (We use the term aversive interventions to include restraint, seclusion, and other forms of abusive interventions in school.) Our report entitled, Unsafe In The Schoolhouse: Abuse Of Children With Disabilities, is available at *http://www.copaa.org/news/unsafe.html.* We received reports of children injured by adults who restrained them; tied, taped and trapped in chairs and equipment; subject to prone restraints; forced into locked seclusion rooms; made to endure pain, humiliation and deprived of basic necessities, and subjected to a variety of other abusive techniques.[1]

Perhaps most striking, 71% of the survey respondents reported that the children who were abused did not have a research-based positive behavioral intervention plans; ten percent (10%) did, but the parents often said the plan was ignored. Positive behavioral interventions are proactive techniques that reduce and prevent problem behaviors. They prevent acute episodes of dangerous and difficult conduct from occurring. But these numbers appear to indicate that rather than proactively using positive techniques, the school personnel relied on reactive, aversive interventions. Restraint and seclusion are ineffective, harmful, and violative of human rights and dignity. Positive behavioral supports use research-based strategies to lessen problem behaviors while teaching replacement skills, and at the same time create an environment that teaches children about healthy relationships, conflict resolution skills, and valuing each person.[2]

Moreover, 71% of the parents had not consented to the use of aversive interventions. Nearly 16% had consented, but many believed the interventions would only be used in highly-limited circumstances where there was an imminent threat of injury and found instead that school districts used their permission when there was not. Furthermore, the relative ages of the children underscores the imbalance between larger, older adults and young children. Approximately 86% of the children were under age 14, with 53% aged 6-10. Of course, mistreating older teenagers is as wrong as mistreating preschoolers, particularly given the vulnerabilities of children with disabilities. Finally, abusive interventions were used primarily in segregated disability-only classrooms and in private seclusion rooms, away from the eyes of potential witnesses. Only 26% of the respondents reported incidents in the regular classroom.

Restraint and seclusion were used against children in almost every disability category: Autism/Asperger's Syndrome (cited by 68% of the survey respondents), ADD/ADHD (27%); Developmental Delay, Emotional Disturbance, Intellectual Disability and Speech/Language Impairment (14%-20% of respondents); Specific Learning Disability (11%), and others. Many parents also indicated that their children had Down Syndrome, epilepsy, Tourette Syndrome and other conditions.

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[1] This was a limited sample collected over 2 months; there are many more incidents of the use of such interventions in this country. We also used the internet to collect data and were unable to obtain reports from those without internet access; many low-income families lack access. *www.ntia.doc.gov/reports/2008/Table—HouseholdInternet2007.pdf*

[2] We recognize that, at times, students with significant behavioral challenges may not respond to traditional means of discipline or classroom reinforcement, and behavioral challenges can seem frustrating and daunting. Schools, however, have the responsibility to respond with evidence-based positive strategies and the supports and services required by law. Teachers should have adequate support in the classroom. The National Association of State Mental Health Program Directors, through its National Technical Assistance Center, has identified six core strategies for reducing seclusion and restraint based on the literature and prior experience in reduction across a variety of settings. They include: (1) leadership towards organizational change; (2) use of data to inform practice; (3) workforce development; (4) use of restraint and seclusion reduction tools; (5) consumer roles; and (6) debriefing techniques. See *http://www.nasmhpd.org/general—files/publications/ntac—pubs/SR%20Plan%20Template%20with%20cover%207-05.pdf*

Among the incidents of abuse reported to COPAA were these:

A 9 year old boy with autism in Tennessee was restrained face-down in his school's isolation room for four hours. The complaint alleges that for much of the time, one adult was across his torso and another across his legs, even though he weighed only 52 pounds. His mother was denied access to him, as she heard him scream and cry. His body was bruised and marked from the restraints. He was released to his mother only after she presented a due process hearing notice under the IDEA.

The teacher of a 15 year old Californian with Down Syndrome reported to his parents that he had been confined inside a closet with an aide as in-school suspension. The teacher believed the confinement to be wrong. The school district did not follow his behavioral intervention plan. He was in the closet all day. He was only allowed out to go to the bathroom, causing extreme humiliation as he walked in front of his classmates.

An 11 year old South Carolinian girl was regularly restrained with beanbags on the floor, and the school attempted to use a straightjacket restraint on her. As a result of advocacy by her attorneys, the restraints were terminated. Her curriculum was made more age-appropriate; her behaviors likely resulted from being bored. A new crisis plan was put into place: if the student became aggressive toward staff, the staff would break away and briefly leave the classroom. Using this plan, the child quickly calmed down and went to her desk area. She has made substantial progress in school and the school district no longer asks her parents to pick her up and bring her home early.

An elementary school child in Maine was placed in a prone restraint while in a school district's segregated disability-only classroom. The district was on notice from the child's doctor that the child should not be restrained for medical and psychological reasons. The child regressed as a result of the incident. The restraint claim was dismissed by the hearing officer as being outside the jurisdiction of an IDEA due process hearing.

A Palm Beach 14 year old with a severe emotional disturbance was handcuffed in an isolation room, defenseless. He spit at a school officer. Even though he was handcuffed and unable to hurt anyone, the officer pepper-sprayed him, injuring him. A civil rights case was filed in Southern District of Florida and the school district entered a consent decree enjoining further such action and ordering damages for the child.

A young girl in Colorado with multiple disabilities and developmental delays was regularly strapped into an occupational therapy device as punishment for actions that were the manifestation of her disability, including making noise in the classroom, not being able to sit still long enough, and not being able to stay on task.

Protection Randomly Decided by State Lines

Children in school have little protection from abuse. Geography and state lines have randomly determined whether a child has comprehensive protection or little or none. Roughly half of the states provide some protection against the use of restraints through a state statute, regulation, or binding state policy and roughly half do not. (Another five discourage the use of restraints through non-binding, voluntary best practices policies). Only six states prohibit prone restraint; only three ban any restraint that affects breathing; only nine require an evaluation of medical contraindications to use or require the school to prioritize the child's health and safety; and only four require that children who cannot speak have the ability to use a communications device or sign language to communicate pain, etc. while restrained.

About half of all states have no legal protection against seclusion. Seclusion is traumatic and it is particularly dangerous to lock a child in a room alone. The child may hurt himself or be unable to escape in an emergency. Yet, only 12 states forbid locked seclusion by statute, law or binding policy; only 15 require continual monitoring of the rooms (some of these are the same states that forbid locked seclusion and apply the monitoring rules to unlocked, closed rooms). Only 11 states set standards for the room, such as access to drinking water, heating and lighting, health and safety codes, etc. Only eight states impose time limits on the length of seclusion.

By contrast, federal law protects children in hospitals, health care facilities receiving Medicare or Medicaid funds, and residential centers are protected from restraint, seclusion, and aversive interventions by federal laws establishing minimum protections.[3] Children with disabilities in schools are a vulnerable population at special risk and merit the same protections.

[3] 42 U.S.C. §§ 290ii, 290jj (Children's Health Act); 42 C.F.R. § 483.356 (HHS regulations).

No child should be subject to abuse in the guise of education. Every child's dignity and human rights must be respected. Abusive interventions are neither educational nor effective. They are dangerous and unjust. The victims suffer physical harm, psychological injury, and have died. Aversive interventions are cruel, and dangerous, and violative of human rights and dignity.

Legislative Change to Protect Children with Disabilities

We urge Congress to adopt national legislation to protect children with disabilities. Among other things, legislation should provide the following.

Restraint and seclusion should be used only when the immediate safety of the child or others is at risk; less-restrictive alternatives have failed; only if not medically or psychologically contraindicated for the child; and never to coerce compliance, as punishment, or staff convenience. Restraint should be limited to only the degree of force needed to protect from imminent injury and no more. Restraint and seclusion should not be used in place of providing appropriate related services and behavioral supports in the classroom. Children who cannot speak should have the ability to use communications devices and sign language.

We ask Congress to prohibit prone restraints; any restraints that interfere with breathing; mechanical and chemical restraints; any other form of restraint except in situations in which the student poses a clear and imminent physical danger to himself or others; and any behavior management or discipline technique that is intended to inflict injury, cause pain, demean, or deprive the student of basic human necessities or rights. Locked seclusion rooms or other rooms from which a child cannot exit should also be prohibited, unless there is an imminent threat of immediate bodily harm that necessitates placing a child in a locked room while awaiting the arrival of law enforcement or crisis intervention team. If, in order to allow a child to de-escalate, unlocked time-out or cooling-off spaces are used, children must be able to exit them and the children must be supervised at all times.

School districts and employees should be held accountable when abusive interventions are used. If children are subjected to these wrongful interventions, parents must have access to all available legal remedies, including the right to seek redress in a court of law. Retaliation for reporting abuse should be prohibited. Effective enforcement is also important. Even in states with comprehensive statutes, the use of abusive interventions has been documented.

We ask Congress to mandate that children receive effective positive behavior supports developed within a comprehensive, professionally-developed individualized plan of behavioral accommodations, related services, and interventions. Such supports prevent acute episodes of difficult behavior from occurring; they enable children to de-escalate. Such plans should include properly-conducted Functional Behavioral Assessments when appropriate. Children must have adequate supports and services in the classroom.

We believe legislation should require staff to be trained on positive behavioral techniques, de-escalation, the risks and harms of restraint and seclusion, and the requirements under the law with which they must comply regarding aversive interventions.

Congress should make clear that schools should adhere to IDEA requirements that parents and school staff should work together collaboratively—as equals—to ensure that children receive appropriate interventions. Parents must be informed about any proposed interventions, possible harms, and the child's rights under the law. They should have the ability to observe in the classroom. Parents and senior administrators should be notified immediately in writing of any use of seclusion or restraint or violation of the law, given the dangers involved.

Schools should gather and report data, regarding each incident of in which an aversive intervention was used, and the circumstances surrounding its use. Data should be analyzed for possible trends to ensure that positive behavioral interventions are used. Data should be reported at the local, state, and federal levels. Currently, over half of the states require some reporting at the local level, either to parents or to school administrators. Yet only six apparently require the data to be reported to the state; others simply let the school district decide.

Conclusion

We appreciate the Committee's examination of the dangers of restraints and seclusion in school. We ask Congress to enact legislation to make our most vulnerable children—children with disabilities—safe from abusive interventions in all educational settings. The 7.1 million children with disabilities in America deserve it.

We look forward to working with the Committee and are happy to provide further information.

Sincerely,

ROBERT BERLOW, *Chair, Government Relations,*
JESSICA BUTLER, *Co-Chair, Government Relations (for Congressional Affairs),*
DENISE MARSHALL, *Executive Director,*
Council of Parent Attorneys and Advocates, Inc. (COPAA).

Prepared Statement of Curtis Decker, Executive Director, National Disability Rights Network

Thank you, Chairman Miller and the Education and Labor Committee for holding this hearing today. This hearing demonstrates your recognition of the gravity of the abusive practice of restraint and seclusion, and I thank you for your initiative. I submit this testimony today in my capacity as the Executive Director of the National Disability Rights Network (NDRN), a nonprofit membership organization for the federally mandated Protection and Advocacy system, set in place in the 1970's to protect the rights of children and adults with disabilities and their families.

As the national membership organization, NDRN receives reports and feedback regularly from the 57 Protection and Advocacy programs across the nation. Recently, a disturbing trend about abusive restraint and seclusion in our nation's schools has emerged. NDRN decided that because of the gravity of this trend, it warranted further attention. In January of this year we released a report, School is Not Supposed to Hurt, which chronicles the abuse of students with special needs in our nation's schools.

In Wisconsin, a 7 year-old girl with Attention Deficit Hyperactivity Disorder was suffocated to death through prone restraint when 3 adults held her down after she blew bubbles in her milk during "quiet time." In Alabama, a 9 year-old boy with disabilities was locked in a supply closet in his school library. In Delaware, a 10 year-old boy, unable to handle physical adult contact due to trauma as a young child, was held down and locked in a seclusion room for kicking at his teacher after his teacher placed a hand on the boy's shoulder. These are just a few of the dozens of examples included in our report.

While pushback from our report has been minimal, the criticism has been that we have only cited a few cases. We can only speculate how many other instances go without being reported out of fear, or, as in many cases, a sheer lack of ability on the part of the student to communicate. But, this criticism highlights one of the exact concerns we have about the current state of the law in the area—the lack of mandated reporting.

For starters, how many children being abused or killed in the classroom does it take to warrant seriously reconsidering the current lack of uniform regulation of restraint and seclusion? One child is already too many, and we have far surpassed that number even without data and reporting. A Government Accountability Office (GAO) report has uncovered a number of cases we did not include in our report, and family members of those victims were brave enough to share their stories with this committee today. The pain those family members convey and what their children had to endure at school is truly a tragedy.

Secondly, as noted in our report, the cited cases are just the tip of the iceberg. Seclusion and restraint in schools is a widespread problem that the public and even parents know little about. NDRN agrees with critics that the numbers in our report aren't high—accurately tracking restraint and seclusion is nearly impossible without any reporting requirements set in place. Clearly our numbers don't reflect the number of actual incidents—and we can only speculate how high that number is.

When a child is placed in a restraint or secluded during the school day, there should be a responsibility to report it on a number of levels. Parents, first and foremost, should be aware of how their children are being treated in school. Of the victim families with whom we've communicated, many did not know their children were being restrained or secluded, and those who were aware did not know the extent of physical restraint, the duration of seclusion, or the circumstances giving rise to the restraint or seclusion. Parents must have the right to know what is happening to their children at school.

Instances of restraint and seclusion must also be reported at the school district, state, and national levels. In addition, the reporting should also include reporting to an independent entity. A requirement to report instances of restraint and seclusion can be a positive first step to eliminating these practices by understanding how widespread they are and under what specific circumstances they are used. Being held accountable for reporting these actions each time they occur could also encour-

age teachers to reconsider using these techniques and seek alternative methods for behavior management.

For the last thirty years, children with disabilities have possessed the right to a free and appropriate education. However, inadequate assessments and education and behavioral plans, among other problems, have paved the way for inappropriate treatment in school. Autism is of particular concern—you will notice that many of the students highlighted in our report have been identified as students with Autism, a behavioral condition that can make communication and human interaction challenging. In order to work with children with special needs, it is imperative that school staff be aware of the specific needs of their students and of the full range of options to appropriately address those needs. Those needs never include being locked in seclusion or held face down for hours at a time. This should never be considered an option for educating our children.

However, alternative techniques to properly meet the needs of students with disabilities, including specific behavior management, have been proven to work but are still underutilized because of a lack of staff training. In addition, positive behavioral interventions and supports (PBIS) create an environment that minimizes inappropriate behaviors rather than escalating incidents of misbehavior. Moreover, in the rare instances where some type of restraint may be necessary, staff need to be properly trained to use the safest and least restrictive restraint possible.

It is our observation that most teachers who restrain and seclude children do so as what they perceive to be a last-resort tactic when they lack the supports to handle behavioral issues with a specific child in the classroom. In no way do we intend to strip teachers of the right to protect themselves or any of their students. However, the tools many of these teachers have been left with are inadequate for properly handling children with behavioral issues.

I recognize that teacher training is expensive, and many schools are already struggling to stay out of the red. This year school districts across the country are in a unique funding position to spend the one-time American Recovery and Reinvestment Act (ARRA) funds. Teacher training aligns nicely with the Department of Education's parameters for using these funds, which fall along the lines of one-time expenses rather than the creation of new programs that will be impossible to financially maintain.

In NDRN's report, we examined existing laws and found a patchwork of state and local laws that inadequately address the need to protect students at school. On the federal level, there is no law addressing the use of these abusive and sometimes lethal practices in schools.

NDRN has specific recommendations for mitigating dangers students with behavioral issues face. First, we call for banning prone restraint. It is clearly the most lethal form of restraint and is not necessary under any circumstances. Second, training in and implementation of system-wide PBIS, which has shown positive results in districts where it is practiced, should be required. It creates a positive school environment, encourages students to perform well, and significantly lessens incidents of problematic behaviors. Third, NDRN calls for a ban on the use of seclusion, as opposed to time-out, for students. Fourth, NDRN recommends reporting and data collection of all incidents of restraint and seclusion.

NDRN is pleased that after the release of the report School is not Supposed to Hurt, the issue of restraint and seclusion in schools has been gaining traction. Its seriousness should not be downplayed, and this Committee, by requesting a GAO report on the extent of this issue and holding this hearing today, has demonstrated a significant first step to preventing future abuses of restraint and seclusion in schools.

Thank you again for holding this important hearing. I look forward to working with this committee to address the abusive use of restraint and seclusion in school.

Prepared Statement of the Iowa Department of Education

The Iowa Department of Education (Department) offers the following written statement concerning seclusion and restraint in schools. Thank you in advance for your consideration, as well as the invitation to submit this statement.

Iowa recently amended its administrative rules on corporal punishment, physical restraint, and physical confinement and detention. These amendments became effective in November 2008, and a copy of the amended rules is attached to this statement. The rules process involved a lengthy process of reviewing empirical research on seclusion and restraint, seeking input from stakeholders, and ensuring the amendments were faithful to the enabling statute in the Iowa Code. These amended rules apply to all children, not just children in special education, and govern em-

ployees of local school districts, area education agencies, and accredited nonpublic schools. Several matters are notable about these amended rules.

First, the research consulted by the Department shows that seclusion and restraint are effective when used sparingly, when necessary, and when other approaches have been exhausted. The amended rules restrict the use of seclusion and restraint as a routine "classroom management" technique or as discipline for minor infractions, as the research shows that routine use of confinement or restraint decreases the effectiveness of these techniques. The amended rules require that other techniques be attempted first, but only if reasonable in the circumstances.

Second, the amended rules are grounded in the concept of reasonableness. An action under the amended rules may only be taken if it is reasonable. The rule of reason codified in the amended rules allows for flexibility and professional judgment, and avoids the risk of an exhaustive list of activities that may be unduly broad or narrow.

Third, the Department concluded that educators' calculations of reasonableness are better informed with training. Therefore, the Department added a training requirement to the amended rules. All staff will receive training on the rules, as well as the following topics: positive behavior interventions and supports (PBIS); alternatives to seclusion and restraint; crisis prevention, intervention, and de-escalation; and the safe and effective use of seclusion and restraint. The rules require that staff receive "adequate and periodic" training. This flexibility recognizes that some staff members may need longer, more frequent, or more intensive training. The Department understands that a classroom teacher who serves many children with behavior disorders may have differing needs than a teacher librarian, for example. The Department, however, concluded it was important for all staff who may engage in seclusion and restraint have working knowledge of certain key components. The Department has prepared training materials that may be completed in ninety minutes, which provides this working knowledge to all staff and serves as a platform for additional training.

Fourth, the Department also concluded that educators' calculations of reasonableness are better informed with data and documentation. Therefore, the amended rules require collection of data concerning each instance of physical restraint or physical confinement and detention. This documentation would be useful to evaluate the effectiveness of interventions for particular students, the effectiveness of interventions by particular staff members, and general patterns in the use of seclusion or restraint, on a building-wide or district-wide level. While local districts and area education agencies are not required to report this data to the Department, the data are available to for the Department's inspection for audit and accountability purposes.

Fifth, the Department concluded it was essential for discussions about seclusion and restraint to involve parents. This is accomplished in several ways. Parents are to receive annual notice about the provisions of the state's administrative rules on seclusion and restraint. Additionally, the amendments require that schools attempt to contact parents on the date that their children are secluded or restrained. Finally, the amendments require that parents receive a copy of the documentation referred to in the previous paragraph, to be postmarked within three school days. The Department concluded that better informed parents led to more fully informed decisions by educators and better outcomes for children.

Sixth, the Department concluded PBIS is an essential component to any rule on seclusion and restraint. As noted above, PBIS is a required training subject. The Department relied on research conclusively demonstrating PBIS reduces the need for disciplinary interventions, increases prosocial student behavior, and increases student attendance and academic achievement. PBIS techniques will help reduce the need for seclusion and restraint and refocus student and teacher time on the tasks of learning and teaching.

Finally, the Department concluded that certain techniques were inherently unreasonable because of unmanageable risks of death or injury. For that reason, the amended rules ban the prone restraint, with limited allowances for emergency situations, and ban any restraint that obstructs the airway.

The Iowa Department of Education believes policy decisions about seclusion and restraint are best made at the local and state level, and encourages states and localities to continue (or begin) a dialogue on these issues based on reason and research. The Department thanks the House membership and staff for their attention to this important issue, and hopes this attention will prompt local and state action where needed.

If there are any questions concerning this statement, please contact the Iowa Department of Education.

Prepared Statement of the Founding Members of the Family Alliance to Stop Abuse and Neglect

The Data Problem: where it goes and how it hides

All examinations of the use of restraint, seclusion, and related aversive techniques on children with disabilities in our nation's schools ultimately remark with great frustration on the lack of reliable data concerning prevalence. Stories of children who have been abused or even died are discovered serendipitously, and are subsequently archived and counted by parents and by advocacy organizations in the absence of a rigorous nationwide system of data collection. We say and we believe that the stories discovered represent only the tip of the iceberg, far more remaining unseen and unrecorded. Based on our work with families of special education students through TASH, The Statewide Parent Advocacy Network and The Family Alliance to Stop Abuse and Neglect—collectively 50? 60? years of experience—we would like to suggest where so much of this data goes and how it hides:

1. Settlement Agreements—Numerous parents who would have liked to come forward and tell their children's stories to Congress are banned, by the settlement agreements of their lawsuits against various schools, programs or facilities where their children were injured or died, from speaking about their individual experiences. Sometimes these agreements even prohibit their participation in any future advocacy on the general subject of reforming these practices. The mother of 14-year old Matthew Goodman, who died in a New Jersey program of pneumonia and sepsis after 16 months strapped in arm splints and a helmet, is one of those parents whose important testimony is now lost to us. Too many schools and programs like Matthew's continue to "wipe the slate clean" through multiple legal settlements and continue to present themselves publicly and to their state agency as free of any findings of wrongdoing. Parents lack the financial means, and their attorneys often lack the incentive and the will, to pursue a child's case all the way into a courtroom when settlement is offered. With settlement generally comes a "gag order" that effectively bars caring parents from contributing their knowledge and data to this national struggle, and which leaves the program in question free to continue its failed practices.

These types of settlement agreements also occur at lower levels of the Due Process system mandated under IDEA. Parents who allege that their child is being abused through the use of restraint, seclusion, or related aversive procedures may request a Due Process procedure before a hearing officer designated by their state education agency. School districts may then attempt to enter into a settlement agreement before the Due Process hearing or, if the hearing takes place and the hearing officer rules against the school district, may file an appeal to the state's Appeals Panel, and eventually to the Courts, while continuing to offer to stop the process if a settlement is agreed. During this process parents incur attorney's fees (which may eventually be paid by the school district if they prevail, but require them to gamble with substantial debt if they do not) and expert witness fees (which recent misguided federal court decisions have exempted from reimbursement even should parents prevail). We are aware of numerous cases in which parents signed settlement agreements that removed their child from a placement in which they were restrained and/or secluded, but in the process were required to sign away their right to speak of their experience or to advocate for other families. Because their stories have effectively been lost, other students continue to fall victim to the same abuse.

An even more worrying variant of this type of settlement is a legal tool called an "in lieu of FAPE agreement," through which a family signs away their child's future protections related to a Free and Appropriate Public Education (FAPE) under IDEA (including such weak protections as the current presumption in favor of positive behavioral supports) in exchange for a placement they perceive as safer or for the creation of a special needs trust by the school district for the remaining years of the child's education. The parents are then "cut loose" to find or create an education for their child outside the protections of the public special education system, having relinquished their child's IDEA rights in the process. The legality of the in lieu of FAPE concept—can a parent really sign away a child's civil rights?—so far remains unchallenged, and we believe that significant numbers of students with special needs who have been abused by restraint and seclusion are being pushed out of the database and off the radar through this maneuver.

2. "Dead End" Reporting—When parents discover that their son or daughter is endangered by the use of restraint, seclusion or aversives, they naturally ask themselves where they can turn for immediate relief. Turning to the school system triggers Due Process, which can take months to years to result in a decision. Matthew Goodman's family attempted to appeal directly to the Courts for relief of his prolonged restraint, only to be denied and redirected back to the Due Process system.

Their son exhausted his life before Due Process was exhausted. Parents have typically tried two other avenues to report and seek timely relief: local law enforcement and the state's child and family protective services.

As advocates, we continue to advise parents that "if you see something being done to a child with a disability that would not be acceptable if done to a child without a disability, then call the police." Unfortunately, little good tends to come of this advice. Law enforcement officers are assured by school district personnel that the use of restraint, seclusion, or other aversive intervention is standard practice and well within their right to apply. The police, in turn, are confused over whether they have jurisdiction and are ill-prepared and untrained to make this call. Time and again, the police dismiss parents' reports as unfounded and this data too disappears from the system. Sadly and ironically, a growing number of school districts are themselves summoning police officers so that school personnel can file charges against students with disabilities for allegedly "disruptive" behavior. We are aware of instances in which ongoing mistreatment within the school led to the "disruption" for which the student was arrested, yet at this point the police seem able to intervene only when invited by school personnel, and only in the direction to which those personnel point.

A similar pattern unfolds when parents contact their state's family and child protective services. These investigators too appear confused over whether they have jurisdiction and are ill-prepared and untrained to make this call. Our experience has been that parental allegations of abuse by school personnel are not adequately investigated, or investigated at all, by these agencies. Parents often report that the agency will not return their call or make even a preliminary investigation. In contrast, they note that allegations of abuse and neglect made by school district personnel against the parents of various students do receive prompt attention. Again, this is another potential source of important data, advocacy, and intervention that fails to find a role or play a part when special education students are endangered. Reports to the state family and child protection agency, like reports to law enforcement, hit a dead end and disappear from the database.

3. Double Category/Double Standard Reporting—Those statutes and regulations that currently exist to regulate the use of restraint and seclusion are widely hampered by a nonsensical double standard that allows restraint (and sometimes seclusion) use to be classified in either of two categories: emergency use or "planned" use. Emergency use is then treated as an activity to be discouraged, and is assigned heavy reporting and management requirements (e.g. rapid disclosure to the family and to the state agency, rapid meetings of the education team, changes in the child's support plan) while the use of the very same restraint or seclusion when it is written into the student's "behavior support plan" (which is placed in the IEP) has no immediate consequences for disclosure, meetings, or reconsideration of the plan. To make matters odder still, some state regulations stipulate that the meeting required subsequent to an emergency restraint may result in a decision to place restraint use into the student's plan—at which point no further meetings, changes, or uncomfortable disclosures to parents would need to occur. Clearly this dual system of categorization and reporting is counter-productive, creating a huge incentive to programs to get restraints (and possibly seclusion) into students' behavior plans, where they will be used more frequently but reported to parents and to the state agency less frequently and less directly, if at all. It is our belief that if we are to give more than lip service to the proposition that "restraint is not treatment; restraint is the failure of treatment," then school programs cannot be allowed to "plan" to fail. Any use of restraint (or seclusion, or other aversive intervention) must be seen as, recorded as, and reported as the emergency that it is. As far back as the GAO report in 1999 we were made painfully aware that serious injury and death from seclusion and restraint went unreported. Recommendations for consistent reporting standards were made and yet here we are in 2009 and there is still no mandate to collect or report data on restraints and seclusion that is happening in classrooms across this country every single day.

4. The lower standards to which so-called "planned" restraint and seclusion are held also create a great incentive for many school districts to secure parental consent for the "planned" use of these techniques. Parents frequently report being warned that their child will be denied or removed from a needed special education program if they do not sign consent for these techniques to be placed in his or her Behavior Support Plan. Many parents report that they were required to sign a consent statement containing language they did not understand. We are unaware of any parents who have reported a process of truly informed consent, in which the techniques and their dangers were clearly described. Because they are coerced, misinformed, and desperate, parental consent is easily obtained and manipulated to keep data about the frequency and duration of restraint, seclusion, and other aver-

sive techniques from being accurately reported. The consent process also serves as a means of preventing parents from litigating against a school or program if their child is harmed, which further reduces the stories and the information that come to light.

On behalf of the thousands of families in New Jersey that we speak to every year we would like to thank the committee for holding this very important hearing. We stand ready to assist your effort in abolishing these barbaric practices and appreciate your concern for the students and their families across this country.

Prepared Statement of TASH

TASH is an international grassroots leader in advancing inclusive communities through research, education and advocacy. Founded in 1975, we are a volunteer-driven organization that advocates for human rights and inclusion for people with the most significant disabilities and support needs—those most vulnerable to segregation, abuse, neglect and institutionalization. The inclusive practices we validate through research have been shown to improve outcomes for all people.

TASH appreciates the opportunity to submit these comments and thanks the Committee for giving them its consideration.

With the longstanding practices of subjecting students with disabilities to the use of restraint, seclusion, and other aversive interventions now coming under intense public scrutiny, the national discussion is appropriately turning to "what works" both to discourage and reduce these practices, and to replace them with methods of teaching and behavior support that are positive, productive, and safe. These two aspects of the solution are not necessarily the same: experience has shown that the introduction of Positive Behavior Supports alone will not necessarily succeed in driving out the use of restraint, seclusion, and other aversives in the absence of strong systemic incentives to reduce and eliminate their use. Too many schools continue to report that they "always try PBS first" but quickly revert to more familiar and coercive techniques.

The Special Education system has repeatedly tried two stratagems for reform: incorporating the use of restraint, seclusion, and other aversives into a student's Behavior Support Plan (BSP), which is created and implemented in conjunction with the Individualized Education Plan (IEP) required by federal law; and requiring designated school personnel to be trained in the skillful use of seclusion and restraint. Neither of these stratagems has demonstrated success, and in fact there is mounting evidence that they may exacerbate the problem and impede our ability to create safe and lasting solutions. This testimony will briefly review the reasons why these two attempted solutions fail, and will suggest that the public education system look to various components of a model of restraint and seclusion reduction and elimination pioneered in the mental health system for reform mechanisms that are evidence-based and that tightly link data collection and reporting with clear goals and incentives.

"Planned restraint" and parental consent as failed strategy

Whether tacitly or based in state regulation, many school districts currently apply a double standard in responding to the restraint or seclusion of students with disabilities. Use of these techniques is considered to be either "emergency" or "planned," and both safeguards and reporting can vary greatly depending on how an episode of restraint or seclusion is classified. When a student with disabilities becomes involved in an unanticipated emergency, many school systems mandate greater deference to the risks and dangers inherent in the application of restraint or seclusion to end that emergency. Reporting criteria for these "unusual incidents" tend to be higher, including prompt informing of parents and of the State Education Agency, and prompt re-convening of the IEP team to analyze the problem and assure that it does not re-occur. However, when a student is considered to regularly or frequently exhibit challenging behaviors, the same restraints and seclusion may be permitted on a virtually unlimited basis, without triggering further meetings or notification of parents and the state agency, once their use is written into that student's behavior support plan. There is no sensible rationale for this lower standard or protections when the behavior and the restraint or seclusion are both anticipated; in fact, when behaviors are anticipated they should therefore be within the school's capacity to plan for via positive programming. Furthermore, since regulations and guidelines typically include language prohibiting the use of restraint and seclusion as a "substitute for programming," this prohibition would seem to directly and fundamentally conflict with their use as part of a student's program of behavior support.

It is easy to understand why this double standard creates a strong incentive among many education providers to include restraint and seclusion among the approved interventions on a student's Behavior Support Plan. Each usage of "planned' restraint or seclusion creates fewer reporting and administrative problems for the school or program. The concept of having a "plan" is in itself very enticing, and may suggest a level of safety and thoughtful care that it does not in fact reflect. If our schools are to become responsive to the recognition by the health care and mental health systems that "restraints are not treatment; restraints are the failure of treatment" then a student's support plan cannot be a plan to fail, fail repeatedly, and fail with minimum oversight, data collection, and consequences for school personnel.

Obtaining the consent of parents or guardians is often used as a mechanism for validating the placement of restraint, seclusion, or other aversives into a student's behavior support plan. However, parents routinely report that their consent was not freely given, and that their child's enrollment in or continued attendance at a school or program was presented as contingent upon their signed consent for these procedures. Many also report giving consent based on terminology they did not understand. For example, one father gave permission for "restrictive procedures" to be used on his son, assuming that this meant safety catches on windows and seatbelts on the school bus. Only after his son had been pulled from his wheelchair to be restrained on the ground was he made aware of what he had signed. We are unaware of any consent forms and processes that rise to the level of informed consent, with parents or guardians made fully aware of the nature and the dangers of restraint, seclusion, and aversives—including injury, psychological trauma, and death. Unfortunately, these uninformed and coerced consents serve to protect schools and programs against litigation. When tragedies occur, the fact that parents gave permission is quickly raised and parents find themselves in an uphill struggle to seek accountability.

To assure that restraint use occurs only in an immediate, dangerous emergency—and that dangerous emergencies become increasingly rare—approaches likely to discourage and lessen the danger of restraint use can be addressed in a student's Behavior Support Plan. A student's plan should include the Positive Behavior Supports to be implemented, methods of de-escalation of problem behavior, relationship building, the student's strengths and abilities, and the use of alternatives to restraint. There is also a growing acceptance, founded on standards of care in the medical and mental health systems, that a student's plan should include any known medical or psychological limitations that would contraindicate the use of physical restraints on that student. This provision is interesting because it seems to admit that some individuals may, by medical necessity rather than by virtue of their actual behavior, simply be declared unable to trigger or to be part of a situation involving restraint because it is too dangerous. The possibility that some students may receive Behavior Support Plans prohibiting restraint raises the crucial question of whether more creative and humane means can and should be developed—under the principle of equal access to the least restrictive environment and the least dangerous approach—for all students with disabilities.

Restricting restraint to emergency use only, and clearly keeping it out of students' behavior support plans, not only eliminates the current double standard under which restraint use is held to a lower standard of reporting and accountability when it is "planned" than when it responds to an emergency, but it also clarifies and strengthens the rationale for a full prohibition on seclusion (forced isolation of the student in a room or space from which he/she cannot escape) and aversives (the deliberate infliction of physical or emotional pain for the purposes of behavior control). It becomes apparent that neither transporting someone to a seclusion room nor trying to hurt them would be appropriate or necessary in halting an immediate danger.

Staff training in restraint skills as failed panacea

Solutions which have as their centerpiece training school personnel in the proper use of restraint and seclusion constitute the second failed stratagem—or, more often, failed panacea. "More training" is too often the first, last, and only response to restraint abuse. The most responsible restraint trainers are now careful to warn that "there is no such thing as a safe restraint" and to re-frame the challenge as one of changing the entire culture of a school, program, or agency. Restraint researchers David Leadbetter and Michael Budlong, writing in the journal of The Child Welfare League of America, observed, "* * * agency ethos is the strongest predictor of assault and restraint usage. Consequently, the prevailing 'reductionist' approach of many violence-management training programs, which emphasize the interpersonal skills of deescalation and restraint, is to locate the problem within a faulty paradigm. Defining the problem solely as an issue of staff skill may actually increase incidents and reinforce the prevailing blame and power culture so preva-

lent in many agencies." ("Safe Practice in Physical Restraint: A Transatlantic Perspective," Residential Group Care Quarterly, Vol. 3. No. 3, Winter 2003)

Without a broad and deep commitment to culture change, training school personnel in restraint can have an effect opposite to the one desired. With time and money being spent on this training and with credentials being earned, an impression is often created of a valuable, powerful new resource that the school should tap. Personnel who have been trained may feel a responsibility to put their restraint training to use, with iatrogenic effects on the health of the school community: restraints teach that might makes right and that physical means of problem-solving are acceptable; restraints destroy the trusting relationship between students and teachers which is essential to learning and progress; and the effects of restraints generalize to unwanted domains (e.g. a child restrained in the classroom may come to fear and avoid not only the so-called "target behavior" but the classroom itself, the teacher, the school, and the learning process in general). In the absence of system-wide reforms, mandating and funding increased staff skill in restraint use may simultaneously increase good intentions, staff confidence, and restraint incidents.

Successful models for reform

One of the most troubling aspects of restraint and seclusion use in our education system is that these fundamentally medical interventions are being implemented without any clear sense of their failed history in the treatment of persons with disabilities, with little to no medical oversight and medical knowledge, and with no awareness of the proven and positive reform models that have emerged in hospitals, nursing homes, and psychiatric facilities over the last two decades. A consensus has emerged within those systems of care that restraint and seclusion have no place in a treatment plan, that restraint is for emergencies only and should be targeted for elimination, and that the best practices known as "trauma informed care" require acute awareness of the psychological effects of our attitudes and actions on recipients of our services. This knowledge base has yet to be recognized by and incorporated into the education system, where it may hold the key to reform.

One large-scale, successful effort at MH systems change can be used to illustrate some of the strategies that our education system could adopt. In 1997, the Pennsylvania Department of Public Welfare instituted an aggressive program to reduce and ultimately eliminate seclusion and restraint in its nine large state hospitals. Charles Curie, then deputy secretary of mental health and substance abuse services, articulated the philosophy behind the change in policy: "Seclusion and restraint were symptoms of a whole approach to caring for patients. We felt that it was important to make it clear that these practices are not treatment interventions but treatment failures to be used only as a last resort." Five years later, Pennsylvania had reduced incidents of seclusion and restraint in its nine state hospitals by 90% and hours of restraint use by 95%. Even among individuals with severe mental illnesses such as schizophrenia and paranoia, restraints came to be used rarely and in only the direst of emergencies. Pennsylvania's hospitals experienced no increase in staff injuries. In addition, these changes were implemented without any additional funds, using only existing staff and resources. (Subsequent studies have documented very significant cost benefits to programs successfully engaging in restraint reduction and elimination. See "The Economic Cost of Using Restraint and the Value Added by Restraint Reduction or Elimination," by Janice LeBel, EdD and Robert Goldstein PhD, in Psychiatric Services *http://ps.psychiatryonline.org,* September 2005, Vol. 56, No. 9.) In October 2000, Pennsylvania's Seclusion and Restraint Reduction Initiative received the prestigious Harvard University Innovations in American Government Award.

Pennsylvania began its reform project by carefully tracking the use of seclusion and restraint, and then used that data as its baseline to measure improvements. A workgroup of practicing hospital clinicians set about developing new policies and procedures, goals, strategies, and monitoring systems to design and implement the new approach. Key among these goals was developing a new philosophy of care—one that identified seclusion and restraint as treatment failure and restricted it to emergency use only. Trainings were geared to fully entrenching that philosophy of care rather than to simply teaching a skill set, and were evaluated for outcomes and effectiveness. Leadership and continuous involvement from the top, with clear expectations, was another essential feature. Transparency and public reporting of all restraint and seclusion data, hospital by hospital, was provided on the state agency's web site and created a powerful incentive to succeed. Good working partnerships with clients and their families were emphasized, and immediate meetings and debriefings to rectify any problems were mandatory. Strict medical oversight before, during, and after any use of restraint and seclusion was required, and acted as both

deterrent and safeguard. Extensive analyses of this reform effort and its components are readily available on the web.

In summary, we strongly urge that these valuable lessons about successful restraint and seclusion reduction and elimination in medical and mental health settings be utilized in our nation's schools, where the techniques being used are no less dangerous but the awareness of that danger is alarmingly low. A commitment to remove these techniques from children's Behavior Support Plans or other treatment plans, to retrain staff not around isolated skill sets but as part of a system-wide, values-based and goals—based reform effort, to collect data meaningfully and share it publicly, and to provide clear leadership from the top is desperately needed to stop the abuse of children with disabilities across our nations' special education system. With so many of these effective tools already identified, it is time to pick them up and do the job.

[Whereupon, at 12:09 p.m., the committee was adjourned.]