

Legislative Bulletin.....March 3, 2010

Contents:

H.R. 4247 – Preventing Harmful Restraint and Seclusion in Schools Act

H.R. 4247—Preventing Harmful Restraint and Seclusion in Schools Act
(Miller, D-CA)

Order of Business: The bill is scheduled to be considered on Wednesday, March 3, 2010 under a structured rule. The rule ([H.Res. 1126](#)) waives all points of order against consideration of the bill, except for clause 9 (earmarks) and clause 10 (“PAYGO”) of rule XXI. The rule allows one hour of debate and provides one motion to recommit with or without instructions. The rule makes in order two amendments. The RSC will provide a separate Legislative Bulletin on the amendments.

Summary: H.R. 4247 establishes safety standards regarding the use of restraint and seclusion in public and private schools that participate in federal programs or receive federal funding. The bill prohibits certain forms of seclusion and restraints and explicitly lays out minimum standards by which states must abide. *Please see the conservative concerns section below.*

Purposes.

- Prevent and reduce the use of physical restraint and seclusion;
- Ensure the safety of all students and school personnel and promote a positive school culture
- Protect students from physical or mental abuse, aversive behavioral interventions that compromise health and safety, and physical restraint or seclusion imposed solely for discipline or convenience;
- Ensure physical restraint and seclusion are imposed only when a student’s behavior poses an imminent danger of physical injury to the student, school personnel, or others; and
- Assist states, local educational agencies, and schools in collecting data on restraint and seclusion, establishing policies to keep students and personnel safe, providing school personnel with the necessary tools to ensure safety, and identifying effective evident-based models to prevent and reduce physical restraint and seclusion in schools.

Minimum Standards. No later than 180 days after enactment, the Secretary shall promulgate regulations on the following minimum standards:

- School personnel shall be prohibited from imposing on any student mechanical restraints, chemical restraints, physical restraint or physical escort that restricts breathing, and aversive behavioral interventions that compromise health and safety.
- Personnel is also prohibited from imposing physical restraint or seclusion on a student unless:
 - The student’s behavior poses an imminent danger of physical injury to himself or others;
 - Less restrictive methods would be ineffective in stopping injury;
 - Such physical restraint or seclusion is imposed by school personnel who continuously monitor the student face-to-face, or if the school personnel safety is significantly compromised by such face-to-face monitoring;
 - Such physical restraint or seclusion is imposed by personnel trained by a state-approved crisis intervention training program, or unless is it an emergency circumstance; and
 - Such physical restrain or seclusion end immediately after the conditions stop.
- States and local educational agencies shall ensure a sufficient number of personnel are certified by a state-approved crisis intervention training program;
- The use of physical restraint or seclusion as a planned intervention shall not be written into a student’s individual education plan; and
- Schools shall establish procedures to be followed after an incident involving the imposition of physical restraint or seclusion (i.e. immediate reporting, notification to parents).

Rule of Construction. Nothing shall prohibit the use of:

- Time outs;
- The use of devices such as restraints for medical immobilization, adaptive devices or mechanical supports used to achieve proper body position, balance, or alignment to allow freer movement than would be possible without the device; and vehicle safety restraints used during the transport of a student; and
- Handcuffs when the student poses an imminent danger of physical injury.

State Plan.

- No later than two years after the Secretary of Education promulgates regulations, the state educational agency must submit a state plan that includes:
 - State policies and procedures that meet minimum standards described above;
 - A mechanism to effectively monitor and enforce the minimum standards;

- A description of state policies and procedures including a the state-approved crisis intervention training programs in the state and a description of the plan to ensure personnel and parents from public *and private schools*, are aware of the state policies and procedures.

Reporting.

- No later than two years after regulations are promulgated, the state educational agency shall prepare and submit a report with respect to each local educational agency and each school not under the jurisdiction of a local educational agency. The report shall include the total number of incidents in the preceding year where physical restraints were imposed and where seclusion was imposed.
- The number of incidents shall be broken up by:
 - The number of incidents that resulted in injury, death, and where the school personnel imposing the restraint or seclusion were not certified; and
 - The demographic characteristics of all the students upon whom physical restraint or seclusion was imposed.

Enforcement.

- If a local educational agency fails to comply with the requirements of the bill, the Secretary shall:
 - Withhold further payments under an applicable program;
 - Require a state educational agency to submit and implement, within one year of such failure to comply, a corrective plan of action; and
 - Issue a complaint to compel compliance.

Grant Authority.

- The Secretary may award grants to state educational agencies to establish, implement, and enforce the policies and procedures to meet the minimum standards established by regulations; improve state and local capacity to collect and analyze data related to physical restraint and seclusion; and improve school climate and culture by implementing school-wide positive behavior support approaches.
- Grants are for three year periods.
- A local educational agency receiving subgrant money from states shall use the funds to research, develop, implement and evaluate strategies, policies and procedures to prevent and reduce physical restraint and seclusion in schools; provide training and certification for school personnel; and to carry out reporting requirements.

Evaluation and Assessment. The Secretary shall carry out a national assessment to determine the effectiveness of the act by analyzing data and the effectiveness of federal,

state, and local efforts to prevent and reduce physical restraint and seclusion incidents in schools.

Protection and Advocacy Systems. These programs, funded by the federal government, are authorized to investigate, monitor, and enforce protections provided for students under this act.

Head Start Programs. Directs the Secretary of Health and Human Services, in consultation with the Secretary of Education, to promulgate regulations with respect to Head Start relating to this act.

Limitation of Authority. Nothing in the act shall affect private schools that do not receive, or does not serve students who receive, federal funds. Home Schools are not affected by this act. Private schools that receive federal funding or participate in federal programs fall under this bill.

Authorization of Appropriations. Such sums as may be necessary from 2011-2015.

Additional Background: Thirty-one states have laws and regulations that govern the use of seclusion and restraint techniques. Fifteen states intend to have protections within the year or shortly thereafter. Each law or regulation varies from state to state. To see a list of these states and their policies, see [this report from the Department of Education](#) released last week.

The Children's Health Act of 2000 provided guidance on the uses of restraint and seclusion in hospitals and other medical and community-based facilities but did not cover schools.

On May 29, 2009, the House Education and Labor Committee held a hearing entitled, "Examining the Abusive and Deadly Use of Seclusion and Restraint in Schools." GAO testified that there have been hundreds of allegations of abuse of seclusion and restraint techniques. Other outside groups have also reported cases of abuse (see the Supporting Arguments section for links to the reports). After the bill was introduced, it was marked up in Committee on February 4, 2010, and passed by a vote of 34-10.

Supporting Arguments: Those in favor of the bill, including RSC Member Cathy McMorris Rodgers (R-WA), argue that minimum standards are necessary to prevent abuse of seclusion and restraint techniques, similar to the protections that exist in hospitals and other non-medical community based facilities. Supporters base their information off of information provided by groups such as the National Disability Rights Network, which issued [a report in January 2009](#) explaining alleged abuses of seclusion and restraints in two-thirds of the states. The Council of Parent Advocates and Attorneys also detailed alleged abuses in their [May 2009 report](#) which argues that abuse is extensive. The [May 2009 GAO report that](#) found "hundreds of cases of alleged abuse and death related to the use of these methods on school children during the past two decades."

Note: Please see the conservative concerns section for a response to this GAO report and some of the other studies.

According to a Dear Colleague sent by Congresswoman Cathy McMorris Rodgers, one of the many arguments in favor of this bill is because much of the guidance provided is inconsistent from one state to another. “Because of this lack of federal guidance, state policies and oversight has varied significantly state to state. Many states do not provide any guidance or assistance regarding these behavioral interventions at all.”

Potential Conservative Concerns: While conservatives are in agreement that the abuses of seclusion and restraint techniques should be prevented and not go unpunished, it is clear that many conservatives, including Ranking Member John Kline (R-MN) believe that this bill is an encroachment on states’ rights. The potential conservative concerns include the following:

Lack of Substantive Data. Some conservatives argue that there is a lack of data on the prevalence of the abuse of seclusion and restraint techniques. The [May 2009 GAO Report](#), for example, which asserts there are hundreds of cases of alleged abuse, also states that GAO “could not find a single Web site, federal agency, or other entity that collects information on the use of these methods or the extent of their alleged abuse.” Many Republicans on the Committee argue that it is imperative that before Congress addresses this alleged problem by a massive federal encroachment on states’ authority, it would be prudent to collect information to determine how widespread the problem is, or if there are merely isolated instances of abuse.

In fact, the Department of Education, through the Office for Civil Rights (OCR), recently issued a regulation requiring states to collect this data. Because the rule has not been finalized, the Committee believes that “the Democratic majority should suspend action on H.R. 4247 until OCR completes its review to see how widespread the problem of harmful seclusion and restraint techniques may be.”

With regard to the data collected by the National Disability Rights Network, the American Association of School Administrators states that the study “mixes data from regular public schools with data from schools for children with serious behavioral disorders and institutions for students who are regularly violent.” Thus, CAPE argues that the statistics are skewed due to the source of the collections.

Massive Federal Mandate. Thirty-one states have seclusion and restraint laws or regulations. Fifteen states intend to address the issue within the year or shortly thereafter. Despite the fact that laws vary, states are in the best position to determine the policies regarding seclusion and restraint techniques. This is just another way for the federal government to encroach upon an area that has traditionally been left to the states.

No Private School Exemption. Religious schools, and private schools that participate in any federal program, or receive any federal dollars, will be affected by this bill. For example, a school that has even one student that receives instruction under Title I of the

Elementary and Secondary Education Act is subject to the bill. According to [this Department of Education study](#), 43 percent “of private schools had at least one participant in IDEA” (Individuals with Disabilities Education Act). The report goes further to say that: “Overall, 44 percent of private schools had at least one participant in an *ESEA* program...Eighty percent of Catholic schools had *ESEA* program participants...” Under this legislation, each of these private schools would be affected by the bill.

Many private school organizations are opposed to this bill (see the list in the below section). In fact, the Council for American Private Education (CAPE) stated in [a letter they sent to Members of Congress](#), “In the history of education legislation, the federal government has never imposed training or certification requirements on neighborhood religious and independent schools for any reason.”

Influx of Needless Litigation. Protection and Advocacy agencies will be given broad authority to investigate and enforce the minimum standards in this bill. These agencies, funded by the Department of Education, consist of state-based trial lawyers. Many conservatives believe that the threat of litigation will create fear in the minds of teachers and staff. Their desire to protect a child from him/herself, and from others, may be construed as a violation of federal law. Many Republicans on the Committee, through the [additional views provided in the committee report](#), assert that “Supporters of H.R. 4247 claim it will not breed litigation because it does not expressly contain a private right of action. But, in reality, this bill will open schools to increased litigation through the power given to the protection and advocacy organizations under this bill and existing law.”

Committee Action: H.R. 4247 was introduced on December 9, 2009 and was referred to the House Education and Labor Subcommittee on Early Childhood, Elementary, and Secondary Education. A full committee markup was held February 4, 2010, and an amendment in the Nature of a Substitute was offered by [Rep. Miller](#) and was adopted by voice vote. [Rep. McCarthy](#) offered an amendment in the Nature of a Substitute and it was withdrawn. The bill was favorably reported, as amended, by a vote of [34-10](#).

Administration Position: No Statement of Administration Policy is provided.

Cost to Taxpayers: CBO estimates that H.R. 4247 would authorize \$337 million of new spending subject to appropriations.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes. The bill creates federal minimum standards that states must abide by and creates a new grant program for states in order to meet the standards.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: The committee report states that H.R. 4247 contains no intergovernmental or private-sector mandates as defined by the Unfunded Mandates Reform Act (UMRA). However, it requires states to abide by new federal requirements.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: According to the committee report, H.R. 4247 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clauses 9(d), 9(e) or 9(f) of rule XXI of the House of Representatives.

Constitutional Authority: The committee report states that the amendments made by this bill are within Congress' authority under Article I, section 8, clause 1 of the U.S. Constitution (General Welfare Clause).

Outside Groups Opposing: American Association of Christian Schools, Association of Christian Schools International, American Association of School Administrators, U.S. Conference of Catholic Bishops, Council of the Great City Schools, Council for American Private Education (CAPE)

Outside Groups Supporting: National Education Association, The National School Boards Association, American Federation of Teachers, National Association of State Directors of Special Education, National Disability Rights Network, The Arc of the United States, Council on Exceptional Children, and others.

RSC Staff Contact: Natalie Farr, natalie.farr@mail.house.gov, (202) 226-0718