I. PROPOSED FEDERAL LEGISLATION

Currently pending federal legislation on restraint and seclusion was introduced in Congress in response to findings that:

- children are subjected to physical restraint and seclusion at higher rates than adults;
- some physical restraints have resulted in deaths of children in schools; and
- children are protected from inappropriate physical restraint and seclusion in other settings (e.g., hospitals, health facilities, and non-medical community-based facilities) and similar protections are needed in schools - which procedures must acknowledge the differences of the school environment.

A. H.R. 4247: "Keeping All Students Safe Act" (introduced 12/9/09 by Rep. George Miller [CA])

1. This bill directs the Secretary of the U.S. Department of Education to establish minimum standards that:

   (a) prohibit elementary and secondary school personnel\(^1\) from managing any student by using any mechanical\(^2\) or chemical restraint\(^3\), physical restraint\(^4\), or physical escort\(^5\) that restricts breathing, or aversive behavioral intervention that compromises student health and safety;

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\(^1\) The term "school personnel" includes teachers, principals, administrators, counselors, social workers, psychologists, nurses, librarians, and other support staff who are employed by a school or who perform services for the school on a contractual basis. The term also includes "school resource officer," defined as a career law enforcement officer, with sworn authority, deployed in community oriented policing, and assigned by the employing police department to a local educational agency to work in collaboration with schools and community based organizations.

\(^2\) The term "mechanical restraint" means the use of devices as a means of restricting a student's freedom of movement.

\(^3\) The term "chemical restraint" means a drug or medication used on a student to control behavior or restrict freedom of movement that is not (a) prescribed by a licensed physician, or other qualified health professional acting under the scope of the professional's authority under State law, for the standard treatment of a student's medical or psychiatric condition; and (b) administered as prescribed by the licensed physician or other qualified health professional acting under the scope of the professional's authority under State law.

\(^4\) The term "physical restraint" means a personal restriction that immobilizes or reduces the ability of an individual to move his or her arms, legs, or head freely. Such term does not include a physical escort.

\(^5\) The term "physical escort" means the temporary touching or holding of the hand, wrist, arm, shoulder or back for the purpose of inducing a resident who is acting out to walk to a safe location.
(b) prohibit such personnel from using physical restraint or seclusion, unless such measures are required to eliminate an imminent danger of physical injury to the student or others and certain precautions are taken;

(c) require states to ensure that a sufficient number of school personnel receive state-approved and evidence-based crisis intervention training and certification in first aid, cardiopulmonary resuscitation, and certain safe, effective, and evidence-based student management techniques, including:

- positive behavior supports;  
- safe physical escort;  
- conflict prevention;  
- understanding antecedents;  
- de-escalation; and  
- conflict management.

(d) prohibit physical restraint or seclusion from being written into a student’s education plan, individual safety plan, behavioral plan, or individual education program as a planned intervention; and

(e) require schools to establish procedures to notify parents in a timely manner, including (i) immediate verbal or electronic communication on the same day as each incident, and (ii) written notification within 24 hours of each incident, if physical restraint or seclusion is imposed on their child.

2. When physical restraint or seclusion of a student is required to eliminate an imminent danger of physical injury to such student or others, school personnel must continuously monitor such student face-to-face or, if their safety is significantly compromised by such monitoring, they must remain in direct visual contact with the student.

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6 The term “seclusion” means a behavior control technique involving locked isolation. Such term does not include a time out.

7 The term “positive behavior supports” means a systematic approach to embed evidence-based practices and data-driven decisionmaking to improve school climate and culture, including a range of systemic and individualized strategies to reinforce desired behaviors and diminish recurrence of problem behaviors, in order to achieve improved academic and social outcomes and increase learning for all students, including those with the most complex and intensive behavioral needs.
B. S. 2860: "Preventing Harmful Restraint and Seclusion in Schools Act" (introduced 12/9/09 by Senator Chris Dodd [CT])

This bill is substantially similar to H.R. 4247, with the following key exceptions:

1. If there is a "rare and clear unavoidable emergency circumstance" when trained and certified school personnel are not available due to the unforeseeable nature of the emergency circumstance, and after other preconditions are met, other school personnel may impose physical restraint or seclusion upon a student if his/her behavior poses an imminent danger of physical injury to self or others.

2. Within 72 hours after the imposition of physical restraint or seclusion upon a student, all school personnel involved and appropriate supervisory and administrative staff would be required to participate in a "debriefing session", including:

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

   (b) prevention planning.

Parents must be given advance notice of the debriefing session and an opportunity to attend.

3. S. 2860 would permit the use of devices implemented by trained school personnel, or utilized by a student, for the specific and approved therapeutic or safety purposes for which such devices were designed, including:

   (a) restraints for medical immobilization;

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

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

C. IMPLICATIONS FOR ILLINOIS?

1. See ISBE regulations at 23 Ill. Admin. Code §§1.280 and 1.285 on requirements for the use of isolated time-out and physical restraint in schools (attached).