IN THE SENATE OF THE UNITED STATES

MARCH 4, 2010

Received; read twice and referred to the Committee on Health, Education, Labor, and Pensions

AN ACT

To prevent and reduce the use of physical restraint and seclusion in schools, and for other purposes.

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

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

SEC. 2. FINDINGS.

Congress finds the following:

(1) Physical restraint and seclusion have resulted in physical injury, psychological trauma, and death to children in public and private schools. National research shows students have been subjected to physical restraint and seclusion in schools as a means of discipline, to force compliance, or as a substitute for appropriate educational support.

(2) Behavioral interventions for children must promote the right of all children to be treated with dignity. All children have the right to be free from physical or mental abuse, aversive behavioral interventions that compromise health and safety, and any physical restraint or seclusion imposed solely for purposes of discipline or convenience.

(3) Safe, effective, evidence-based strategies are available to support children who display challenging behaviors in school settings. Staff training focused on the dangers of physical restraint and seclusion as well as training in evidence-based positive behavior supports, de-escalation techniques, and physical re-
straint and seclusion prevention, can reduce the incidence of injury, trauma, and death.

(4) School personnel have the right to work in a safe environment and should be provided training and support to prevent injury and trauma to themselves and others.

(5) Despite the widely recognized risks of physical restraint and seclusion, a substantial disparity exists among many States and localities with regard to the protection and oversight of the rights of children and school personnel to a safe learning environment.

(6) Children are subjected to physical restraint and seclusion at higher rates than adults. Physical restraint which restricts breathing or causes other body trauma, as well as seclusion in the absence of continuous face-to-face monitoring, have resulted in the deaths of children in schools.

(7) Children are protected from inappropriate physical restraint and seclusion in other settings, such as hospitals, health facilities, and non-medical community-based facilities. Similar protections are needed in schools, yet such protections must acknowledge the differences of the school environment.
(8) Research confirms that physical restraint and seclusion are not therapeutic, nor are these practices effective means to calm or teach children, and may have an opposite effect while simultaneously decreasing a child’s ability to learn.

(9) The effective implementation of school-wide positive behavior supports is linked to greater academic achievement, significantly fewer disciplinary problems, increased instruction time, and staff perception of a safer teaching environment.

SEC. 3. PURPOSES.

The purposes of this Act are to—

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

(2) ensure the safety of all students and school personnel in schools and promote a positive school culture and climate;

(3) protect students from—

(A) physical or mental abuse;

(B) aversive behavioral interventions that compromise health and safety; and

(C) any physical restraint or seclusion imposed solely for purposes of discipline or convenience;
(4) ensure that physical restraint and seclusion are imposed in school only when a student’s behavior poses an imminent danger of physical injury to the student, school personnel, or others; and

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

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

(B) providing school personnel with the necessary tools, training, and support to ensure the safety of all students and school personnel;

(C) collecting and analyzing data on physical restraint and seclusion in schools; and

(D) identifying and implementing effective evidence-based models to prevent and reduce physical restraint and seclusion in schools.

SEC. 4. DEFINITIONS.

In this Act:

(1) CHEMICAL RESTRAINT.—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.

(2) Educational service agency.—The term “educational service agency” has the meaning given such term in section 9101(17) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801(17)).

(3) Elementary school.—The term “elementary school” has the meaning given the term in section 9101(18) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801(18)).

(4) Local educational agency.—The term “local educational agency” has the meaning given the term in section 9101(26) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801(26)).

(5) Mechanical restraint.—The term “mechanical restraint” has the meaning given the term
in section 595(d)(1) of the Public Health Service Act (42 U.S.C. 290jjj(d)(1)), except that the meaning shall be applied by substituting “student’s” for “resident’s”.

(6) PARENT.—The term “parent” has the meaning given the term in section 9101(31) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801(31)).

(7) PHYSICAL ESCORT.—The term “physical escort” has the meaning given the term in section 595(d)(2) of the Public Health Service Act (42 U.S.C. 290jjj(d)(2)), except that the meaning shall be applied by substituting “student” for “resident”.

(8) PHYSICAL RESTRAINT.—The term “physical restraint” has the meaning given the term in section 595(d)(3) of the Public Health Service Act (42 U.S.C. 290jjj(d)(3)).

(9) POSITIVE BEHAVIOR SUPPORTS.—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 reoccurrence 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.

(10) PROTECTION AND ADVOCACY SYSTEM.—The term “protection and advocacy system” means a protection and advocacy system established under section 143 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15043).

(11) SCHOOL.—The term “school” means an entity—

(A) that—

(i) is a public or private—

(I) day or residential elementary school or secondary school; or

(II) early childhood, elementary school, or secondary school program that is under the jurisdiction of a school, local educational agency, educational service agency, or other educational institution or program; and

(ii) receives, or serves students who receive, support in any form from any program supported, in whole or in part, with
funds appropriated to the Department of Education; or

(B) that is a school funded or operated by the Department of the Interior.

(12) SCHOOL PERSONNEL.—The term “school personnel” has the meaning—

(A) given the term in section 4151(10) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7161(10)); and

(B) given the term “school resource officer” in section 4151(11) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7161(11)).

(13) SECONDARY SCHOOL.—The term “secondary school” has the meaning given the term in section 9101(38) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801(38)).

(14) SECLUSION.—The term “seclusion” has the meaning given the term in section 595(d)(4) of the Public Health Service Act (42 U.S.C. 290jj(d)(4)).

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

(16) STATE-APPROVED CRISIS INTERVENTION TRAINING PROGRAM.—The term “State-approved
crisis intervention training program” means a training program approved by a State and the Secretary that, at a minimum, provides—

(A) training in evidence-based techniques shown to be effective in the prevention of physical restraint and seclusion;

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

(C) evidence-based skills training related to positive behavior supports, safe physical escort, conflict prevention, understanding antecedents, de-escalation, and conflict management;

(D) training in first aid and cardiopulmonary resuscitation;

(E) information describing State policies and procedures that meet the minimum standards established by regulations promulgated pursuant to section 5(a); and

(F) certification for school personnel in the techniques and skills described in subparagraphs (A) through (D), which shall be required to be renewed on a periodic basis.
(17) **STATE.**—The term “State” has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(18) **STATE EDUCATIONAL AGENCY.**—The term “State educational agency” has the meaning given the term in section 9101(41) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801(41)).

(19) **STUDENT.**—The term “student” means a student enrolled in a school defined in section 11, except that in the case of a private school or private program, such term means a student enrolled in such school or program who receives support in any form from any program supported, in whole or in part, with funds appropriated to the Department of Education.

(20) **TIME OUT.**—The term “time out” has the meaning given the term in section 595(d)(5) of the Public Health Service Act (42 U.S.C. 290jj(d)(5)), except that the meaning shall be applied by substituting “student” for “resident”.

**SEC. 5. MINIMUM STANDARDS; RULE OF CONSTRUCTION.**

(a) **MINIMUM STANDARDS.**—Not later than 180 days after the date of the enactment of this Act, in order to
protect each student from physical or mental abuse, aversive behavioral interventions that compromise student health and safety, or any physical restraint or seclusion imposed solely for purposes of discipline or convenience or in a manner otherwise inconsistent with this Act, the Secretary shall promulgate regulations establishing the following minimum standards:

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

   (A) Mechanical restraints.

   (B) Chemical restraints.

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

   (D) Aversive behavioral interventions that compromise health and safety.

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

   (A) the student’s behavior poses an imminent danger of physical injury to the student, school personnel, or others;

   (B) less restrictive interventions would be ineffective in stopping such imminent danger of physical injury;
(C) such physical restraint or seclusion is imposed by school personnel who—

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

(ii) if school personnel safety is significantly compromised by such face-to-face monitoring, are in continuous direct visual contact with the student;

(D) such physical restraint or seclusion is imposed by—

(i) school personnel trained and certified by a State-approved crisis intervention training program (as defined in section 4(16)); or

(ii) other school personnel in the case of a rare and clearly unavoidable emergency circumstance when school personnel trained and certified as described in clause (i) are not immediately available due to the unforeseeable nature of the emergency circumstance; and

(E) such physical restraint or seclusion end immediately upon the cessation of the conditions described in subparagraphs (A) and (B).
(3) States, in consultation with local educational agencies and private school officials, shall ensure that a sufficient number of personnel are trained and certified by a State-approved crisis intervention training program (as defined in section 4(16)) to meet the needs of the specific student population in each school.

(4) The use of physical restraint or seclusion as a planned intervention shall not be written into a student’s education plan, individual safety plan, behavioral plan, or individualized education program (as defined in section 602 of the Individuals with Disabilities Education Act (20 U.S.C. 1401)). Local educational agencies or schools may establish policies and procedures for use of physical restraint or seclusion in school safety or crisis plans, provided that such school plans are not specific to any individual student.

(5) Schools shall establish procedures to be followed after each incident involving the imposition of physical restraint or seclusion upon a student, including—

(A) procedures to provide to the parent of the student, with respect to each such incident—
(i) an immediate verbal or electronic
communication on the same day as each
such incident; and

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

(B) any other procedures the Secretary de-
termines appropriate.

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

c) RULE OF CONSTRUCTION.—Nothing in this sec-
tion shall be construed to authorize the Secretary to pro-
mulgate regulations prohibiting the use of—

(1) time out (as defined in section 4(20)); or

(2) devices implemented by trained school per-
sonnel, or utilized by a student, for the specific and
approved therapeutic or safety purposes for which
such devices were designed and, if applicable, pre-
scribed, including—

(A) restraints for medical immobilization;

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

(C) vehicle safety restraints when used as
intended during the transport of a student in a
moving vehicle; or

(3) handcuffs by school resource officers (as
such term is defined in section 4151(11) of the Ele-
mentary and Secondary Education Act of 1965 (20
U.S.C. 7161(11)))—

(A) in the—

(i) case when a student’s behavior
poses an imminent danger of physical in-
jury to the student, school personnel, or
others; or

(ii) lawful exercise of law enforcement
duties; and

(B) less restrictive interventions would be
ineffective.

SEC. 6. STATE PLAN AND REPORT REQUIREMENTS AND EN-
FORCEMENT.

(a) State Plan.—Not later than 2 years after the
Secretary promulgates regulations pursuant to section
5(a), and each year thereafter, each State educational
agency shall submit to the Secretary a State plan that pro-
vides—
(1) assurances to the Secretary that the State has in effect—

(A) State policies and procedures that meet the minimum standards, including the standards with respect to State-approved crisis intervention training programs, established by regulations promulgated pursuant to section 5(a); and

(B) a State mechanism to effectively monitor and enforce the minimum standards;

(2) a description of the State policies and procedures, including a description of the State-approved crisis intervention training programs in such State; and

(3) a description of the State plans to ensure school personnel and parents, including private school personnel and parents, are aware of the State policies and procedures.

(b) Reporting.—

(1) Reporting requirements.—Not later than 2 years after the date the Secretary promulgates regulations pursuant to section 5(a), and each year thereafter, each State educational agency shall (in compliance with the requirements of section 444 of the General Education Provisions Act (commonly
known as the “Family Educational Rights and Privacy Act of 1974”) (20 U.S.C. 1232g)) prepare and submit to the Secretary, and make available to the public, a report with respect to each local educational agency, and each school not under the jurisdiction of a local educational agency, located in the same State as such State educational agency that includes the information described in paragraph (2).

(2) INFORMATION REQUIREMENTS.—

(A) GENERAL INFORMATION REQUIREMENTS.—The report described in paragraph (1) shall include information on—

(i) the total number of incidents in the preceding full-academic year in which physical restraint was imposed upon a student; and

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

(B) DISAGGREGATION.—

(i) GENERAL DISAGGREGATION REQUIREMENTS.—The information described in subparagraph (A) shall be disaggregated by—
(I) the total number of incidents in which physical restraint or seclusion was imposed upon a student—

(aa) that resulted in injury;

(bb) that resulted in death;

and

(cc) in which the school personnel imposing physical restraint or seclusion were not trained and certified as described in section 5(a)(2)(D)(i); and

(II) the demographic characteristics of all students upon whom physical restraint or seclusion was imposed, including—

(aa) the categories identified in section 1111(h)(1)(C)(i) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311(h)(1)(C)(i));

(bb) age; and

(cc) disability status (which has the meaning given the term “individual with a disability” in section 7(20) of the Rehabilita-
tion Act of 1973 (29 U.S.C. 705(20))).

(ii) Unduplicated count; exception.—The disaggregation required under clause (i) shall—

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

(aa) total number of incidents in the preceding full-academic year in which physical restraint was imposed upon a student; and

(bb) total number of incidents in the preceding full-academic year in which seclusion was imposed upon a student; and

(II) not be required in a case in which the number of students in a category would reveal personally identifiable information about an individual student.

(c) Enforcement.—

(1) In general.—
(A) Use of remedies.—If a State educational agency fails to comply with subsection (a) or (b), the Secretary shall—

(i) withhold, in whole or in part, further payments under an applicable program (as such term is defined in section 400(c) of the General Education Provisions Act (20 U.S.C. 1221)) in accordance with section 455 of such Act (20 U.S.C. 1234d);

(ii) require a State educational agency to submit, and implement, within 1 year of such failure to comply, a corrective plan of action, which may include redirection of funds received under an applicable program; or

(iii) issue a complaint to compel compliance of the State educational agency through a cease and desist order, in the same manner the Secretary is authorized to take such action under section 456 of the General Education Provisions Act (20 U.S.C. 1234e).

(B) Cessation of withholding of funds.—Whenever the Secretary determines
(whether by certification or other appropriate
evidence) that a State educational agency who
is subject to the withholding of payments under
subparagraph (A)(i) has cured the failure pro-
viding the basis for the withholding of pay-
ments, the Secretary shall cease the withholding
of payments with respect to the State edu-
cational agency under such subparagraph.

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

SEC. 7. GRANT AUTHORITY.

(a) In General.—From the amount appropriated
under section 12, the Secretary may award grants to State
educational agencies to assist the agencies in—

(1) establishing, implementing, and enforcing
the policies and procedures to meet the minimum
standards established by regulations promulgated by
the Secretary pursuant to section 5(a);

(2) improving State and local capacity to collect
and analyze data related to physical restraint and
seclusion; and
(3) improving school climate and culture by implement-
ing school-wide positive behavior support ap-
proaches.

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

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

(d) AUTHORITY TO MAKE SUBGRANTS.—

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

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

(1) IN GENERAL.—A local educational agency receiving subgrant funds under this section shall, after timely and meaningful consultation with appropriate private school officials, ensure that private school personnel can participate, on an equitable basis, in activities supported by grant or subgrant funds.

(2) PUBLIC CONTROL OF FUNDS.—The control of funds provided under this section, and title to materials, equipment, and property purchased with such funds, shall be in a public agency, and a public agency shall administer such funds, materials, equipment, and property.

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

(1) Researching, developing, implementing, and evaluating strategies, policies, and procedures to prevent and reduce physical restraint and seclusion in schools, consistent with the minimum standards established by regulations promulgated by the Secretary pursuant to section 5(a).
(2) Providing professional development, training, and certification for school personnel to meet such standards.

(3) Carrying out the reporting requirements under section 6(b) and analyzing the information included in a report prepared under such section to identify student, school personnel, and school needs related to use of physical restraint and seclusion.

(g) ADDITIONAL AUTHORIZED ACTIVITIES.—In addition to the required activities described in subsection (f), a State educational agency receiving a grant, or a local educational agency receiving a subgrant, under this section may use such grant or subgrant funds for one or more of the following:

(1) Developing and implementing high-quality professional development and training programs to implement evidence-based systematic approaches to school-wide positive behavior supports, including improving coaching, facilitation, and training capacity for administrators, teachers, specialized instructional support personnel, and other staff.

(2) Providing technical assistance to develop and implement evidence-based systematic approaches to school-wide positive behavior supports, including technical assistance for data-driven decision-making
related to behavioral supports and interventions in
the classroom.

(3) Researching, evaluating, and disseminating
high-quality evidence-based programs and activities
that implement school-wide positive behavior sup-
ports with fidelity.

(4) Supporting other local positive behavior
support implementation activities consistent with
this subsection.

(h) Evaluation and Report.—Each State edu-
cational agency receiving a grant under this section shall,
at the end of the 3-year grant period for such grant—
(1) evaluate the State’s progress toward the
prevention and reduction of physical restraint and
seclusion in the schools located in the State, con-
sistent with the minimum standards established by
regulations promulgated by the Secretary pursuant
to section 5(a); and
(2) submit to the Secretary a report on such
progress.

(i) Department of the Interior.—From the
amount appropriated under section 12, the Secretary may
allocate funds to the Secretary of the Interior for activities
under this section with respect to schools operated or
funded by the Department of the Interior, under such terms as the Secretary of Education may prescribe.

SEC. 8. NATIONAL ASSESSMENT.

(a) NATIONAL ASSESSMENT.—The Secretary shall carry out a national assessment to determine the effectiveness of this Act, which shall include—

(1) analyzing data related to physical restraint and seclusion incidents;

(2) analyzing the effectiveness of Federal, State, and local efforts to prevent and reduce the number of physical restraint and seclusion incidents in schools;

(3) identifying the types of programs and services that have demonstrated the greatest effectiveness in preventing and reducing the number of physical restraint and seclusion incidents in schools; and

(4) identifying evidence-based personnel training models with demonstrated success in preventing and reducing the number of physical restraint and seclusion incidents in schools, including models that emphasize positive behavior supports and de-escalation techniques over physical intervention.

(b) REPORT.—The Secretary shall submit to the Committee on Education and Labor of the House of Rep-
resentatives and the Committee on Health, Education, Labor, and Pensions of the Senate—

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

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

SEC. 9. PROTECTION AND ADVOCACY SYSTEMS.

Protection and Advocacy Systems shall have the authority provided under section 143 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15043) to investigate, monitor, and enforce protections provided for students under this Act.

SEC. 10. HEAD START PROGRAMS.

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

(1) the requirements established by regulations promulgated pursuant to section 5(a); and
(2) the reporting and enforcement requirements described in subsections (b) and (e) of section 6.

(b) Grant Authority.—From the amount appropriated under section 12, the Secretary may allocate funds to the Secretary of Health and Human Services to assist the Head Start agencies in establishing, implementing, and enforcing policies and procedures to meet the requirements established by regulations promulgated pursuant to subsection (a).

SEC. 11. LIMITATION OF AUTHORITY.

(a) In General.—Nothing in this Act shall be construed to restrict or limit, or allow the Secretary to restrict or limit, any other rights or remedies otherwise available to students or parents under Federal or State law or regulation.

(b) Applicability.—

(1) Private Schools.—Nothing in this Act shall be construed to affect any private school that does not receive, or does not serve students who receive, support in any form from any program supported, in whole or in part, with funds appropriated to the Department of Education.

(2) Home Schools.—Nothing in this Act shall be construed to—
(A) affect a home school, whether or not a home school is treated as a private school or home school under State law; or

(B) consider parents who are schooling a child at home as school personnel.

SEC. 12. AUTHORIZATION OF APPROPRIATIONS.

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

SEC. 13. PRESUMPTION OF CONGRESS RELATING TO COMPETITIVE PROCEDURES.

(a) Presumption.—It is the presumption of Congress that grants awarded under this Act will be awarded using competitive procedures based on merit.

(b) Report to Congress.—If grants are awarded under this Act using procedures other than competitive procedures, the Secretary shall submit to Congress a report explaining why competitive procedures were not used.

SEC. 14. PROHIBITION ON EARMARKS.

None of the funds appropriated to carry out this Act may be used for a congressional earmark as defined in
clause 9e, of Rule XXI of the rules of the House of Representatives of the 111th Congress.


Attest: LORRAINE C. MILLER, Clerk.