June 20, 2012

Chairman Thomas Harkin
Senate Committee on Health, Education, Labor and Pensions
615 Senate Hart Office Building
Washington, DC

Re: S. 2020 Keeping All Students Safe Act

Dear Chairman Harkin:

We write to express our strong support of S. 2020, the Keeping All Students Safe Act and to urge its swift passage. S. 2020 would promote effective intervention and prevention practices that obviate the need for restraints and seclusion; protect students from physical and mental abuse, aversive behavioral interventions, and any restraint imposed for purposes of coercion, discipline or convenience, or as a substitute for appropriate educational or positive behavioral interventions and supports. The bill also works to ensure the safety both of students and school personnel.

COPAA is a national organization of parents, advocates and attorneys dedicated to protecting the civil and educational rights of children with disabilities, whose members represent families in 48 States and the District of Columbia. As an organization that has taken a leading role in the nationwide effort to eliminate restraint and seclusion since 2008, we are pleased to say that S.2020 is a crucial and much-needed first step toward that end. See, COPAA Declaration of Principles Opposing the Use of Restraint, Seclusion and Aversive Interventions.

The need for this legislation to protect students is well-documented in studies by COPAA1, the GAO2, and NDRN3, among others. The legislation is especially important to protect students with disabilities as a March 2012 report by the US Department of Education Office of Civil Rights revealed that of the tens of thousands of school-aged children who are secluded or restrained at school each year, 70 percent are students with disabilities.4

Nor is there any evidence that restraint and seclusion works. Rather, several studies show its lack of efficacy and harm. Millstein and Cotton (1990) found, using the Adaptive Behavior Index, that the use of seclusion did not differentiate among children in their ability to cope with the environment, and in fact, that the periods an individual child spent in seclusion grew over

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time, demonstrating that seclusion did not teach the children behavioral control.\(^5\) Miller (1986) surveyed 5 to 13 year olds in their perception of seclusion, which included use of a locked isolation room, sitting on a chair, and being sent to one’s room. Miller found that when children were asked to draw and comment about seclusion or time-out, the pictures they drew did not indicate the children gaining self-control while in seclusion. Instead, the pictures conveyed punishment, in which the child was crying and pleading for help. The children’s descriptions of seclusion conveyed fear and abandonment.\(^6\)

Moreover, The National Association of State Mental Health Program Directors (NASMHPD) has long called for the prevention and reduction of these techniques, and has demonstrated that eliminating such coercive and dangerous practices on inpatient psychiatric units is “a hospital’s culture more than clinical necessity” that determines if the practices are used.\(^7\)

Despite these studies and efforts, we continue to hear from a small but vocal minority of individuals and groups, most notably the American Association of School Administrators, that they should continue to have free rein to use restraint and seclusion. Instead of evidence, they offer anecdotes. Instead of science, they offer unsupported conclusory assertions. While claiming to have the best interests of children in mind, they cling to outdated ideas and practices that we know are detrimental to the welfare of children, to school staff, and to the learning environment. The potential harm in subjecting a child to seclusion or physical restraint almost always outweighs any potential harm resulting from the behaviors that student may be exhibiting.

The time has come for federal legislation to eliminate the use of seclusion in schools. A child should never be locked in a room, closet, box, or other place, or secluded in place from which the he or she cannot freely exit. Such seclusion neither keeps the student safe nor teaches the student any positive skills. Several studies show its lack of efficacy and harm.

S. 2020 contains many provisions that provide a necessary minimum floor of protection that does not yet exist in many states. For example, restraint may only be imposed on a student if there is imminent danger of serious bodily injury, a well-defined legal term. We are extremely pleased that the bill prohibits restraint as a planned intervention in students’ education plans, including behavior plans and Individual Education Programs (IEPs). Planning should only be used to encourage and teach positive behavior and to prevent the imposition of restraint or seclusion.

We applaud the emphasis on evidence-based practices shown to be effective in the prevention of the use of physical restraint; in keeping both school personnel and students safe in imposing physical restraint in a manner consistent with this proposed Act; in the use of data-based decision-making and evidence-based positive behavioral interventions and supports.


debriefing, conflict prevention, behavioral assessments, de-escalation of challenging behaviors, and effective and safe conflict management.

We sincerely thank you, Chairman Harkin, for your unwavering commitment to the safety and welfare of our nation’s children and for introducing such a strong and comprehensive bill. Our priority is to raise the bar of protection for all students and COPAA will continue to work tirelessly to pass this critical legislation. To assure protection, a bright line must be drawn, and we will not rest until all students are protected.

Sincerely,

Denise Stile Marshall, M.S., Executive Director

Robert I. Berlow, Esq., Co-Chair COPAA Governmental Relations Committee

Andrew Feinstein, Esq., Co-Chair COPAA Governmental Relations Committee

Leslie Seid Margolis, Esq., Chair COPAA Governmental Relations Subcommittee on Restraint and Seclusion

Cc: Senate Committee on Health, Education, Labor and Pensions Members