S. 2020: Vision or Hindsight, It’s Time for a Federal Minimum Standard to Protect All Students

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Denise Stile Marshall, M.S.

I really love the fact that the Senate version of The Keeping All Students Safe Act is numbered S. 2020. I often find myself making sense of the world through analogy and could not help doing so here.

In one sense, the term “20/20” is typically understood to mean “perfect vision.” While this bill is by no means perfect, it does serve to raise the standard of protection for school students higher than any legislation introduced or passed to date, and, if enacted, this bill would promote effective intervention and prevention practices that would obviate the need for restraints and seclusion in the first place. In so doing, this bill would protect students from physical and mental abuse, aversive behavioral interventions, and any restraints imposed for purposes of coercion, discipline or convenience, or as a substitute for appropriate educational or positive behavioral interventions and supports. This bill would also work to ensure the safety both of students and school personnel. In other words, S. 2020 articulates both a solid vision of the need to protect all students (and staff) and the means by which to do so.

In fact, of course, there is no such thing as perfect vision; rather, the term “20/20” reflects visual acuity and describes the “sharpness of vision” by measuring the ratio between a subject’s visual acuity and a defined standard. Passage of a federal bill simply creates a standard acuity to which states must measure up. States themselves can define precisely how they will reach this acuity and the ways in which they will assess compliance and report progress. “How” remains totally within State control.

S. 2020 contains many provisions that provide a specific minimum floor of protection that does not yet exist in many states, while raising the bar in others. For example, under this bill, restraint would only be imposed on a student in cases of imminent danger of serious bodily injury, a well-defined legal term. S.2020 totally prohibits seclusion in schools – no longer would children be locked in rooms, closets, boxes, or other places from which they cannot freely exit. S. 2020 prohibits the use of restraint as a planned intervention in students’ education plans, including behavior plans and Individualized Education Programs (IEPs). Planning would be reserved for its intended purposes, namely, to encourage and teach positive behavior and to prevent situations in which students lose control and pose harm to themselves or others.

The quest to define a standard by which to measure visual acuity dates back to the 1800s. While the quest to define a standard for ensuring safety from the harms imposed by seclusion and
restraint does not date back nearly as far, the call for protection does go back more than a decade. In 1999, the first GAO report was issued on this subject, and in the same year The National Association of State Mental Health Program Directors (NASMHPD) called for the prevention and elimination of these techniques in mental health facilities. In the mental health field it became obvious that whether or not such practices were being utilized within an individual facility was more a matter of “culture…than clinical necessity”[1]. Changing culture requires more than words and good intentions; it requires leadership and a willingness to learn from one’s experiences and to act accordingly.

The following year (2000), the Children’s Health Act was passed. This important legislation was the first federal statute to assure that public or private general hospitals, nursing facilities, intermediate care facilities, and other health care facilities receiving support in any form from any program supported in whole or in part with funds appropriated to any federal department or agency shall protect and promote the rights of each resident of the facility, including the right to be free from physical or mental abuse, corporal punishment, and any restraints or involuntary seclusion imposed upon them for purposes of discipline or convenience. The Act further stated that restraints and seclusion may only be imposed upon residents to ensure the physical safety of the resident or a staff member, and only under certain conditions and with close medical supervision.

The second sense of the term “20/20” is illustrated by the oft-quoted saying, “hindsight is 20/20.” That saying certainly applies here. Had the words “educational facility” been included in this federal statute back then, students may not have died, been injured, or been traumatized through the imposition of seclusion and restraint to the degree that they have over the past 12 years. To all those who have suffered as a consequence of this omission, we can now only extend our deepest sympathy. Unfortunately, while the use of restraint and seclusion in many other facilities that serve children has declined over these past years, their use in schools has remained widespread. In fact, new data from the U.S. Department of Education shows that nearly 40,000 students were physically restrained during the 2009-2010 school year, with about 70% of those being students with disabilities. Our nation’s children deserve better and, quite frankly, we know better.

In looking towards a brighter future we must take action with the benefit of both historical hindsight and conventional wisdom. Much has been learned from the experiences of the mental health field in reducing and preventing the use of restraint and seclusion. Evidence of the effectiveness of positive behavior supports in the school setting abounds. The national policy arena echoes with a unified call for respectful and healthy school culture. We simply can no longer afford to get mired down in continued debate over outdated techniques and unfounded assertions. The vision is clear – the time to act is now.

Denise Stile Marshall, M.S., COPAA Executive Director

Denise graduated from Johns Hopkins University with a Master of Science in Applied Behavioral Science. Denise has 30 years experience in the field of disabilities in a variety of support, management, and advocacy capacities. Prior to becoming the Executive Director of COPAA in 2005, Denise was the Director of Training and Educational Outreach for the national organization TASH, and prior to that a Positive Behavior Support specialist and Director of the National Training Center for The Kennedy Krieger Institute Community Services UCEDD in Maryland. Denise’s introduction into the power of advocacy was in her role as a positive behavior support specialist and master level crisis prevention specialist. Denise knows firsthand the challenges some exhibited behaviors present; the difference it makes to train school personnel to design and implement positive behavior supports for students whose behavior endangers themselves and others; and the transforming effect of using only evidence-based, positive supports and interventions.