

Draft: Seclusion and Restraint Specs

Revision: September 08, 2011

A Bill to protect all school children and staff against harmful and life-threatening seclusion and restraint practices and to promote prevention of challenging behaviors in students.

Section 1. Short Title. This Act may be cited as the “Keeping All Students and Staff Safe Act”.

Section 2. DEFINITIONS

In this Act:

- (a) **APPLICABLE PROGRAM.**—The term “applicable program” has the meaning given the term in section 400(C) of the General Education Provisions Act (20 U.S.C. 1221(c)).
- (b) **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—
- (1) 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
 - (2) administered as prescribed by the licensed physician or other qualified health professional acting under the scope of the professional’s authority under State law.
- (c) **ESEA DEFINITIONS.** —The terms “educational service agency,” “elementary school,” “local educational agency,” “parent,” “school resource officers,” “school personnel,” “secondary school,” “state,” and “state educational agency” have the meanings given such terms in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).
- (d) **FEDERAL FINANCIAL ASSISTANCE.** —The term “federal financial assistance” means any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the Department of Education provides or otherwise makes available assistance in the form of:
- (1) funds;
 - (2) services of federal personnel; or
 - (3) real and personal property or any interest in or use of such property, including:
 - (i) transfers of leases of such property for less than fair market value or for reduced consideration; and
 - (ii) proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.
- (e) **FREE APPROPRIATE PUBLIC EDUCATION.**—The term “free appropriate public education” has the meaning given the term in section 602 of the Individuals with Disabilities Education Act (20 U.S.C. 1401).
- (f) **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. 290jj(d)(1)), except that the meaning shall be applied by substituting “student’s” for “resident’s”.

The term mechanical restraint does not mean devices used by trained school personnel, or used by a student, for the specific and approved therapeutic or safety purposes for which such devices were designed and, if applicable, prescribed, including—

- (1) Restraints for medical immobilization;
 - (2) Adaptive devices or mechanical supports used to allow greater freedom of mobility than would be possible without the use of such devices or mechanical supports; or
 - (3) Vehicle safety restraints when used as intended during the transport of a student in a moving vehicle.
- (g) **PHYSICAL ESCORT.** — The term “physical escort” means the temporary touching or holding of the hand, wrist, arm, shoulder, waist, hip, or back for the purpose of inducing a student who is acting out, to move to a safe location.
- (h) **PHYSICAL INJURY.** — The term “physical injury” means the impairment of the function of a bodily member, organ, or mental faculty; burn or disfigurement; a significant cut; illness; or another injury to the body.
- (i) **PHYSICAL RESTRAINT.** — The term “physical restraint” means a personal restriction that immobilizes or reduces the ability of an individual to move the individual's arms, legs, body, or head freely. Such term does not include a physical escort, mechanical restraint or chemical restraint.
- (j) **POSITIVE BEHAVIORAL INTERVENTIONS AND SUPPORTS.** — The term “positive behavioral interventions and supports” means a school-wide systematic approach to embed evidence-based practices and data-driven decision making to improve school climate and culture 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; such term encompasses a range of systemic and individualized positive strategies to reinforce desired behaviors and diminish reoccurrence of challenging behaviors from students.
- (k) **PROTECTION AND ADVOCACY SYSTEM.** — The term “protection and advocacy system” means a protection and advocacy system established under subtitle C of title I of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15041 et seq.).
- (l) **RECIPIENT.** — The term “recipient” means any state or its political subdivision; any instrumentality of a state or its political subdivision; any public or private agency, institution, organization, or other entity; or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.
- (m) **SECLUSION.** — The term “seclusion” means the isolation of a student in a room, enclosure, or space that is: (a) locked, or (b) is unlocked and the student is prevented from leaving.

- (n) SECRETARY. —The term “secretary” refers to the U.S. Department of Education Secretary and, where appropriate, the Secretary of the U.S. Department of the Interior and the Secretary of the U.S. Department of Defense.

- (o) STATE-APPROVED CRISIS INTERVENTION TRAINING PROGRAM. — The term “State-approved crisis intervention training program” means a training program approved by a State that, at a minimum, provides training in evidence-based practices shown to be effective
 - (1) in the prevention of physical restraint;
 - (2) in keeping both school personnel and students safe in imposing physical restraint in a manner consistent with this Act;
 - (3) in the use of evidence-based positive behavior interventions and supports, safe physical escort, conflict prevention, behavioral antecedents, functional behavioral assessments, de-escalation of challenging behaviors, and conflict management;
 - (4) in first aid, including the signs of medical distress, and cardiopulmonary resuscitation; and
 - (5) certification for school personnel in the practices and skills described in subparagraphs (1) through (4), which shall be required to be renewed on a periodic basis.

- (p) STUDENT.—The term “student” means a student—
 - (1) Who is enrolled in a public school or
 - (2) Who is enrolled in a private school and is receiving a free appropriate public education at the school under paragraph (B) or (C) section 612(a)(10) of the Individuals with Disabilities Education Act (20 U.S.C. 1412(a)(10)(B),(C)) or
 - (3) Who is enrolled in an Head Start or Early Head Start program under paragraph XXXXXXX of the Head Start Act (10 U.S.C. XXXXX) or
 - (4) Receives services under Section 619 or Part C of the Individuals with Disabilities Education Act (20 U.S.C. 1412(a)(10)(B))

Section 3. PURPOSE

The purposes of this Act are twofold: 1) to protect all students from physical or mental abuse, aversive behavioral interventions that compromise health and safety, and any physical restraint imposed for purposes of coercion, discipline or convenience, or as a substitute for appropriate educational or positive behavioral interventions and supports, and 2) to ensure that staff are safe from the harm that can occur from inexpertly using restraints.

Section 4. MINIMUM STANDARDS; RULE OF CONSTRUCTION

The following minimum requirements apply to all State and local educational agencies receiving federal financial assistance provided or otherwise made available by the Department of Education for students.

- (a) School personnel, contractors and resource officers are prohibited from imposing on any student:
 - (1) Seclusion.
 - (2) Mechanical restraint.
 - (3) Chemical restraint.

- (4) Aversive behavioral interventions that compromise health and safety.
 - (5) Physical restraint that restricts breathing.
 - (6) Physical restraint if contraindicated based on the student's disability, health care needs, medical, or psychiatric condition as documented in a health care directive/medical management plan, a behavior intervention plan, an Individualized Education Program and the Individualized Family Service Plan (as defined in section 602 of the Individuals with Disabilities Education Act (20 U.S.C. 1401)), or plan developed pursuant to Section 504 of the Rehabilitation Act, or other relevant record made available to the Local Education Agency.
- (b) Physical restraint may only be imposed if
- (1) The student's behavior poses an imminent danger of serious physical injury to self or others;
 - (2) It does not interfere with the student's ability to communicate in his or her primary language or mode of communication; and
 - (3) Less restrictive interventions have been ineffective in stopping the imminent danger of serious physical injury to the student, school personnel, or others, except in a case of a rare and clearly unavoidable emergency circumstance posing imminent danger of serious physical injury.
- (c) When applying a physical restraint, staff shall use only the amount of force necessary to protect the student or others from the threatened injury.
- (d) The use of physical restraint must end when
- (1) A medical condition occurs putting the student at risk;
 - (2) The student's behavior no longer poses an imminent danger of serious physical injury to the student, school personnel or others; or
 - (3) Less restrictive interventions would be effective in stopping such imminent danger of serious physical injury.
- (e) School personnel imposing physical restraint in accordance with Section 4(b)
- (1) Must be trained and certified by a State-approved crisis intervention training program, except
 - (2) In the case of rare and clearly unavoidable emergency circumstances when school personnel trained and certified are not immediately available due to unforeseeable nature of the emergency circumstance; and
 - (3) Engage in continuous face-to-face monitoring of the student.
- (f) The use of physical restraints as a planned intervention shall not be written into a student's education plan, individual safety plan, plan developed pursuant to Section 504 of the Rehabilitation Act, or the individualized education program and individualized family service plan (as defined in section 602 of the Individuals with Disabilities Education Act (20 U.S.C. 1401)).
- (g) State and local educational agencies, schools, and educational programs shall establish
- (1) Policies and procedures that ensure school personnel and parents, including private school personnel and parents, are aware of the State's policies and procedures;
 - (2) Policies and procedures to keep all students, including students with the most complex and intensive behavioral needs, and school personnel safe;
 - (3) Policies and procedures to be followed after each incident involving the imposition of physical restraint upon a student, including—

- (i) Procedures to provide to the parent of the student, with respect to each such incident—
 - (I) A verbal or electronic communication on the same day as each such incident; and
 - (II) Within 24 hours of each such incident, written notification; and
- (ii) after the imposition of physical restraint upon a student, all school personnel involved in the physical restraint, the parent, the student, appropriate supervisory and administrative staff, and appropriate IEP team members (for students eligible under IDEA) shall participate in a debriefing session. The debriefing session shall occur as soon as practicable, but no later than five school days following the imposition of physical restraint unless it is delayed by written mutual agreement of the parent and school. Parents shall retain their full legal rights for children under the age of majority concerning participation in the briefing or other matters.
- (iii) The debriefing session shall include—
 - (I) Identification of antecedents to the physical restraint;
 - (II) consideration of relevant information in the student’s records, from teachers, other professionals, the parent and student;
 - (III) planning to prevent and reduce reoccurrence of the use of physical restraint, e.g., consideration of the results of any Functional Behavioral Assessments, whether positive behavior plans were implemented with fidelity, recommendations of appropriate positive behavioral interventions and supports to assist personnel responsible for the student’s educational plan, Individualized Education Program for a student eligible under the Individuals with Disabilities Education Act, and for plans providing for reasonable accommodations under Section 504 of the Rehabilitation Act;
 - (IV) a plan to have a functional behavioral assessment conducted, reviewed, or revised by qualified professionals, the parent and the student; and
 - (V) for any student not identified as eligible under Section 504 or the IDEA, evidence of such a referral or documentation of the basis for declining to refer the student.
- (4) When a student attends a debriefing session, information communicated by the student may not be used against him or her in any disciplinary, criminal, or civil investigation or proceeding.
- (5) In a case in which bodily injury or death of a student occurs in conjunction with the use of physical restraint or any intervention used to control behavior, procedures to notify, in writing, within 24 hours after such injury or death occurs—
 - (i) The State educational agency and local educational agency
 - (ii) Local law enforcement
 - (iii) A protection and advocacy system, in the case of a student who is eligible for services from the protection and advocacy system.

Section 5. INTERACTION

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 (including regulations) or to restrict or limit stronger restrictions on the use of restraint, seclusion, or aversives in Federal or state law (including regulation).

Failure to meet the minimum standards of this Act as applied to an individual child eligible for accommodations from a plan developed pursuant to Section 504 of the Rehabilitation Act or for

education or related services under the Individuals with Disabilities Education Act will constitute a denial of a free appropriate public education.

Section 6. REPORT REQUIREMENTS

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 following information:

- (a) the total number of incidents in which physical restraint was imposed upon a student in the preceding full academic year.
- (b) The information described in subparagraph (A) shall be disaggregated by the total number of incidents in which physical restraint was imposed upon a student—
 - (i) that resulted in injury to students and/or school personnel;
 - (ii) that resulted in death; and
 - (iii) in which the school personnel imposing physical restraint were not trained and certified as described in Section 2(m), and
 - (iv) the demographic characteristics of all students upon whom physical restraint was imposed, including—
 - a. the sub-categories identified in 20 U.S.C. 6315(b)(2)(A) of the Elementary and Secondary Education Act;
 - b. age;
 - c. disability status (which has the meaning given the term “individual with a disability” in section 7(20) of the Rehabilitation Act of 1973 (29 U.S.C. 705(20))).
- (c) **UNDUPLICATED COUNT; EXCEPTION.** — The disaggregation required under clause (b) shall—
 - (i) be carried out in a manner to ensure an unduplicated count of the total number of incidents in the preceding full-academic year in which physical restraint 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.

Section 7. GRANT AUTHORITY

- (a) **IN GENERAL.** — From the amount appropriated under Section 8, the Secretary may award grants to state educational agencies to assist in –
 - (1) Establishing, implementing, and enforcing the policies and procedures to meet the minimum standards;
 - (2) Improving State and local capacity to collect and analyze data related to physical restraint; and
 - (3) Improving school climate and culture by implementing school-wide positive behavioral interventions and supports.

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- (b) DURATION OF GRANT. –A grant under this section shall be awarded to a state educational agency for a 3 year period.
- (c) APPLICATION. –Each state educational agency desiring a grant under this section shall submit an application 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 educational agency will target resources to schools and local educational agencies in need of assistance related to preventing and reducing physical restraint.
- (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 application to the applicable state educational agency at such time, in such manner, and containing such information as the state educational agency may require.
- (e) PRIVATE SCHOOL PARTICIPATION. –
 - (1) IN GENERAL. –A state educational agency receiving grant 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 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 reduce and prevent physical restraint in schools, consistent with the minimum standards.
 - (2) Providing professional development, training, and certification for school personnel to meet such standards.
- (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 the high-quality professional development and training programs to implement evidence-based systematic approaches to school-wide positive behavioral interventions and 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 behavioral interventions and supports, including technical assistance for data-driven decision-making related to positive behavioral interventions and supports in the classroom.

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- (3) Researching, evaluating, and disseminating high-quality evidence-based programs and activities that implement school-wide positive behavioral interventions and supports with fidelity.
- (4) Supporting other local positive behavioral interventions and supports implementation activities consistent with this subsection.

(h) EVALUTION AND REPORT. —Each state educational 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 in the schools located in the State, consistent with the minimum standards; and
- (2) Submit to the Secretary a report on such progress.

Section 8. AUTHORIZATION OF APPROPRIATIONS

There are authorized to be appropriated such sums as may be necessary to carry out this Act for fiscal year 2012 and each of the 4 succeeding fiscal years.

Section 9. ENFORCEMENT

- (a) USE OF REMEDIES. — If a State educational agency fails to comply with Sections 1-6, the Secretary shall—
 - (1) 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. 1234(d));
 - (2) require a State or local educational agency to submit, and implement, within one year of such failure to comply, a corrective plan of action, which may include redirection of funds received under an applicable program;
 - (3) issue a complaint to compel compliance of the State or local 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); or
 - (4) refer the state to the Department of Justice or Department of Education Office of Civil Rights for an investigation.
- (b) CESSATION OF WITHHOLDING OF FUNDS.—Whenever the Secretary determines (whether by certification or other appropriate evidence) that a State or Local educational agency who is subject to the withholding of payments under subparagraph (A)(i) has cured the failure providing the basis for the withholding of payments, the Secretary shall cease the withholding of payments with respect to the State educational agency under such subparagraph.