



American Association of School Administrators

March 2, 2010

U.S. House of Representatives
Washington, D.C. 20515

Dear Representative:

The American Association of School Administrators, representing more than 13,000 school administrators and local educational leaders, would like to express serious concerns with HR 4247, the Preventing Harmful Restraint and Seclusion in Schools Act, which is expected to be considered in the next few days. We ask that the voices of rank-and-file teachers, principals, superintendents and school board members be heard and that HR 4247, as reported from Committee, be defeated.

The need to establish these particular federal regulations for seclusion and restraint has not been established by objective, carefully gathered and analyzed data. For example, the report by the National Disability Rights Network upon which HR 4247 partially relies mixes data from regular public schools with data from schools for children with serious behavioral disorders and institutions for students who are regularly violent. Further, the incidents took place over an unknown period of time -- perhaps a decade or more. It seems to us that most of those cases took place in settings serving either the small percentage of students with serious behavior disorders or the even smaller percentage of students who are a violent danger to themselves or others. Finally, the NDN report counts incidents of seclusion and restraint without noting whether those events took place over a decade or some other time period.

The Office of Civil Rights within the U.S. Department of Education is preparing to gather more objective information this coming school year. We urge the House to await objective, uniformly reported and analyzed data from OCR before acting. Based on experience, we are sure that a student in a regular public school is extremely unlikely to be physically harmed, secluded in a windowless room, taped to a chair or handcuffed to a fence by a teacher or administrator. Just how unlikely such events are is unknown because objective, uniformly gathered and analyzed data simply are not available.

In addition, the report recently released by the U.S. Department of Education states that 31 states currently have policies in place to oversee the use of seclusion and restraint and 15 states are in the process of adopting policies and protections. Given this massive state action, AASA questions the need for federal involvement on this issue.

Reviews of HR 4247 by state-based teacher, administrator and school board associations have identified a number of serious flaws, which they have raised to their congressional delegations, but so far their voices have not been included in the discussions.

HR 4247 includes a prohibition against including seclusion and restraint in the Individualized Education Plan (IEP) or behavioral plan. The IEP and behavioral plans are the communication platform for

parents and school staff to discuss the students' needs and corresponding school interventions. Prohibiting the inclusion of seclusion and restraint in the IEP or behavioral plans where past behavior clearly indicates a need will only lead to further conflicts and misunderstandings between parents and school staff.

The Protection and Advocacy agencies are given broad undefined authority to enforce the new law. P&A agencies have long monitored and investigated on behalf of disabled students, but enforcement is new. Enforcement of federal law has been the sole responsibility of state or federal agencies. A bigger problem for school systems is that the meaning of enforcement is undefined. For example, does the enforcement authority permit P&A staff to enter schools without checking in with appropriate school personnel? Arrest authority? Authority to change school policy on the spot?

HR 4247's prohibition against mechanical restraints is too broad and could prevent appropriate use of restraints in emergency situations where students must be restrained to protect themselves and others.

This legislation applies to both the special education and regular education populations, and thus raises mandated training and reporting costs for school districts. These increased fiscal and operational burdens are accompanied by miniscule authorization and few prospects for an appropriation. A huge, new, unfunded mandate is difficult to justify at a time when schools are cutting teaching staff and stretching resources to balance budgets.

HR 4247 also prescribes a debriefing session for school personnel and parents within 72 hours of the use of seclusion or restraint, to address documentation of the antecedents to the restraint or seclusion and prevention planning (although it cannot involve the IEP). School staff are already over-committed in their daily schedules. Imposing short, mandatory timelines for extensive meetings will likely result in the cancellation of other instructional commitments or missed timelines and new litigation.

Finally, the tone of HR 4247 is relentlessly negative toward teachers and administrators. This tone indicting all teachers and administrators is unwarranted by plain observation, is unsupported by any credible data and should be eliminated. AASA is certain that every member of the House knows at least one teacher or administrator who has dedicated his or her professional life to the education and development of children and who has never restrained or secluded a single student, even if his or her career spanned over 40 years.

Thank you for your consideration. If there are any questions, please do not hesitate to contact me for further discussion of this important issue.

Yours truly,

A handwritten signature in cursive script that reads "Dan Domenech".

Dan Domenech
Executive Director