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February 3, 2010

Committee on Education and Labor
 U.S. House of Representatives
 Washington, D.C. 20515

Subject: Education and Labor Committee Mark-up of HR 4247 on February 4, 2010.

Dear Representative:

It is unusual that the Council of the Great City Schools, the coalition of the nation's largest central city school districts, cannot support an education-related bill awaiting mark-up before the Education and Labor Committee, but H.R. 4247, the restraint and seclusion bill, is not supportable in its current form. The underlying bill and the committee amendment are overly broad and will override numerous state and local policies that already address this issue and will do so in ways that will be hard to predict.

Every injury to a student in school is a matter of serious concern, but all such incidents are not necessarily matters of federal law. Testimony before the Committee clearly points out that the extent of the use of inappropriate restraints and seclusion in schools could not be specifically determined. The Government Accountability Office (GAO) report provided only ten case studies—three of which involved incidents occurring between ten and fifteen years ago; two involved residential facilities that were not regular public schools; and one involved a school volunteer. The National Disability Rights Network study in January 2009 provided information on multiple incidents, but failed to cite either the year or the decade of the occurrence. In recognition of the limited data on the scope of inappropriate restraints and seclusion, the U.S. Department of Education has undertaken a formal data-collection initiative that may provide more up-to-date information on this issue. The Council suggests that it is premature for Congress to act until the Department's data collection effort is complete. At that time, depending on the results, the Council may revise its position.

Moreover, the requirements in the pending bill present serious concerns for the thousands of school districts and school officials, including school board members, charged with the responsibility of and subject to the potential liability of implementing the federally-crafted definitions and assurances. Section 9 of the bill will subject the nation's schools to an extraordinary outsourcing of investigations, monitoring, and enforcement actions to protection and advocacy attorneys under the Developmental Disabilities Act, in addition to oversight and enforcement by each state educational agency and the U.S. Department of Education – a new authority likely to result in additional disputes and litigation that may involve any student or employee, as well as contractors, service providers, other agencies, and potentially on-site community services and volunteers.

The Council also questions the assignment of policies, procedures, and requirements currently applicable to psychiatric hospitals, mental health programs, and medical facilities onto the nation's elementary, secondary and pre-schools, which are not designed, equipped, or staffed to implement these requirements, and are often excluded from the federal mental health funding or Medicaid reimbursements for related services that could assist in implementation. All current state and local restraint and seclusion laws, policies, guidelines, and procedures will have to be reviewed and aligned with this federal legislation.

In addition, H.R. 4247 mandates, without funding, a major training and certification program in order to comply with the proposed legislation. Again, the nation's schools will have to train and state-certify an unspecified number of personnel and then periodically re-certify each one. Moreover, this bill requires that each of these individuals from every school receive first aid and CPR training – an entirely new federal requirement for schools and one not directly related to restraints and seclusion. School responsibilities for training and certification extend to school contractors as well.

The Council is unable to adequately project how many school employees and service providers would have to be trained and certified in restraint and seclusion techniques, conflict resolution, first aid, and CPR in schools serving thousands of students. This broad unfunded mandate would be questionable under the best of circumstances, but in the current economic environment, where schools are laying off thousands of teachers and other support staff and seeing class sizes rise, such new federal requirements are also untimely.

The Committee could achieve the same basic objective by requiring local school districts and/or state educational agencies to adopt, implement and monitor policies for appropriate and restricted use of restraints and seclusion in disruptive, violent, and emergency circumstances — much like the federal gun-free schools policy or school prayer policy.

Appropriate restraint and seclusion policies, restrictions, and procedures are already in widespread use among the Great City Schools and a large number of states, though few if any as wide-ranging as H.R. 4247. The Council suggests that a bill requiring the limited number of states and/or other school districts without such policies to adopt and implement restraint and seclusion policies would likely garner broader support from school officials. We would be pleased to continue working with the Committee on provisions that would be more workable. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey A. Simering". The signature is fluid and cursive, with the first name "Jeffrey" being the most prominent part.

Jeffrey A. Simering
Director of Legislative Services