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## CASE Response to Senate Legislation on Physical Restraint and Seclusion in Schools

The Council of Administrators of Special Education (CASE), in cooperation with other organizations, continues to work collaboratively to support efforts that protect and address the needs of all students through positive, effective approaches in schools. Over the past year, CASE has continued to focus on ways to emphasize the importance of well-defined research-based trainings for school staff on appropriate use and implementation of positive behavioral strategies and on the appropriate use of seclusion and restraint. CASE leadership has provided written testimony and recommendations to legislators and other organizational leaders as it relates to important next steps, both legislative and in terms of best practice. As an organization, CASE continues to value the importance of quality and consistency in professional development and training on appropriate behavioral strategies for students, articulated expectations, and commitment of funding and accountability for school systems to ensure schools reflect a positive, safe learning environment for all students. We also appreciate the recognition in the proposed legislation of the fact that there are times when a student's behavioral needs are so intense additional supports are necessary. Therefore, considerations need to be allowed to permit trained school personnel to use the appropriate physical interventions in emergency situations to avoid harm or injury to a student or others when there is immediate danger to the student or others.

We support the efforts of Senator Harkin to address the concerns raised regarding misuse or inappropriate use of physical restraint and seclusion in schools and support the inclusion of this language in the reauthorization of ESEA.

### Comments and Recommendations:

Based on thorough review by CASE leadership and input from our members, the following comments and recommendations of the proposed legislative language to allow school administrators the flexibility needed to ensure safe school environments for all students are offered.

CASE recommends:

- the use of safe, effective, evidence-based strategies to support children who display challenging behaviors, effective implementation of school-wide positive behavior supports, and evidence-based techniques training for school personnel on techniques shown to be effective in the prevention and safe use of seclusion and restraint and skills training related to positive behavior supports, conflict prevention, de-escalation, and conflict management. Remove the requirement "state approved crisis intervention training program". This would incur additional costs to states at a time when education budgets are strained to the maximum to meet current federal mandates.
- the use of the language "Imminent danger of bodily injury" throughout rather than "imminent danger of serious bodily injury". Under paragraph (3) and (4) of subsection (h) of section 1365 of title 18, United States Code "**serious bodily injury**" means injury which involves (A) a substantial risk of death; (B) extreme physical pain; (C) protracted and obvious disfigurement; or (D) protracted loss or impairment of the function of a bodily member, organ or mental faculty; and (4) the term "**bodily injury**" means (A) a cut, abrasion, bruise, burn, or disfigurement; (B) physical pain; (C) illness; (D) impairment of the function of a bodily member, organ, or mental faculty; or (E) any injury to the body, no matter how temporary. The use of the term "serious bodily injury" carries a standard of injury that would prevent the use of appropriate physical restraint or seclusion when a



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student poses an imminent danger of cutting, burning or disfiguring themselves, therefore “bodily injury” is an appropriate standard.

- *the prevention of the inappropriate use of both physical restraint and seclusion in schools rather than a complete ban on the use of seclusion*. Seclusion should be used only rarely and only in emergency circumstances to prevent injury or harm. Regulations or guidelines and procedures should apply to all students, not just students with disabilities. Seclusion may occur in proper unlocked spaces with clearly defined parameters and continuous observation by an adult with both visually and aurally for the entire period of the seclusion. The limited use of seclusion is absolutely necessary to provide safe support to students in emergencies. Also, without the ability to use seclusion in limited situations, there is a greater likelihood of students with disabilities being moved to more restrictive environments.
- the use of physical restraint or seclusion as a planned intervention *shall not* be written into a student’s *education* plan or individualized *education* program (IEP). Allow school personnel to include appropriately administered physical restraint as part of an individual behavioral intervention plan for any student used only when required in an emergency situation where anyone’s personal safety is threatened. CASE recommends the “*potential* use of physical interventions” could be a part of a student’s behavior intervention plan for emergency situations where personal safety is concerned and could also be stated as a part of a school wide behavior plan for all students in an emergency situation when a student’s behavior poses a threat of imminent danger to the student or others.
- timely notification of parents following an incident, however, recommends flexibility for school personnel when written notification to parents within 24 hours of the incident may not be feasible due to weekends, lack of a parental address, or unforeseen circumstances. Otherwise, immediate notification is expected.
- the requirement for debriefing sessions with staff and communication with parents to occur as soon as possible after an incident of physical restraint or seclusion. The debriefing and documented communication with parents should include a review of the events leading to the use of the physical restraint, identifying additional preventive strategies to avoid future use of physical restraint, and assessment of the need to develop or revise the behavior plan. **However, CASE recommends the details of debriefing meetings should be left to state/local policies.**
- deletion of F (4e) in the debriefing session. It is burdensome to establish a statutory presumption that because physical restraint is used, a disability is suspected and a special education referral is required or documentation must be provided for declining such a referral.
- State law *rather than federally established procedures* should be followed in the enforcement of this act and in any investigations of child abuse and in allowing access to any educational records, personnel, or students involved in the investigation. States have existing agencies at the state and local levels who have established policies and procedures for investigating allegations of child abuse, developing action plans, monitoring implementation, and enforcement. These agencies should be responsible for the enforcement of this Act. Any further reporting requirements would be redundant and burdensome.

CASE will continue to work diligently to support efforts that ensure that the combination of quality, effective, positive behavioral training for staff, coupled with evidenced-based strategies that address a wide range of students’ behavioral needs, continue to be an important component in schools and programs across the country.

CASE also underscores the importance of legislation that provides a sufficient appropriation for funding the necessary resources required to provide the appropriate staffing levels and high quality training to implement the effective practices to ensure safe learning environments for ALL students.

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