

March 1, 2010

H.R. 4247, the Keeping All Students Safe Act

In May 2009, the U.S. House Education and Labor Committee heard testimony from the U.S. Government Accountability Office (GAO) detailing incidents where schools' use of seclusion or restraint techniques on students, including children with disabilities resulted in injury or death. In response, Rep. George Miller (D-CA) introduced H.R. 4247, a bill that requires states to adopt federally prescribed seclusion and restraint policies. The bill was approved 34-10 by the Education and Labor Committee on February 4, 2010.

Current Protections for Students

- **Currently, 31 states have policies in place to govern the use of seclusion and/or restraint techniques in schools.** And according to a recent report from the U.S. Department of Education, an additional 15 states intend to have protections in place this year or in the near future. In contrast, the federal government has never regulated in this area, and has no expertise on the most effective policies to limit the use of seclusion and restraint while ensuring the safety of students and teachers. Nonetheless, H.R. 4247 discards the existing protections at the state level and replaces them with a new, one-size-fits-all federal policy.

Concerns with H.R. 4247

- **H.R. 4247 prescribes a federal solution without fully understanding the problem.** The U.S. Department of Education has only recently begun collecting data on the use of seclusion and restraint in schools. This legislation proposes a new national mandate in response to 10 specific incidents detailed by the GAO, but fails to first understand how and why these techniques are used, and whether it varies from state to state or school to school.
- **Private schools would fall under the same rigid mandates.** Although the GAO's investigation did not examine a single seclusion or restraint incident at a private school, H.R. 4247 would impose the same stringent requirements on independent schools as it does on schools that receive public funding. This undermines longstanding education policy that limits federal intrusion in private schools. As a result, many private schools may forfeit the services they and their students are entitled to under federal law to avoid these onerous new mandates.
- **H.R. 4247 would increase litigation in schools.** The legislation uses vague and overly broad language prohibiting certain practices in schools, creating a window of opportunity for trial lawyers to capitalize on schools' efforts to keep students and teachers safe. The bill also expands the role of the Protection and Advocacy system, a state-based system of trial lawyers, to enforce protections under the bill. Although

it is true the legislation does not expressly create a new private right of action, the powers it grants to the Protection and Advocacy system will create a no-win situation for schools under which they could be sued for using these techniques, or failing to use them to protect teachers and other students.

- **H.R. 4247 fails to remove dangerous teachers from the classroom.** The GAO examined “10 restraint and seclusion cases in which there was a criminal conviction, a finding of civil or administrative liability, or a large financial settlement” and found that “teachers and staff from at least 5 of the 10 cases continue to be employed as educators.” Yet H.R. 4247 fails to take any action to help schools remove dangerous teachers from their classrooms.

Objections from Schools

School leaders have expressed serious concerns with H.R. 4247, including the unintended consequences of a blanket prohibition on seclusion or restraint in schools unless certain federal criteria are met. In Kansas, for instance, it has been reported that **“schools are defaulting to the police”** rather than attempting to navigate guidance on proper use of techniques to contain unruly or potentially dangerous students.

Prominent school associations have objected to the legislation as well.

- “First, the policy in HR 4247 may result in schools relying on police to handle more dangerous situations because action by school employees is too restrained to be safely undertaken. Second, the restrictive rules on [Individualized Education Programs] and mechanical restraints will mean that **students who have a history of explosive outbursts will be increasingly placed in more restricted settings** to reduce the difficulties of teachers in protecting students during violent outbursts,” wrote the [American Association of School Administrators](#).
- “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,” wrote the [Council of the Great City Schools](#). “Every injury to a student in school is a matter of serious concern, but all such incidents are not necessarily matters of federal law.”

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