



March 1, 2010

Dear Members of Congress,

We are pleased that the Council for American Private Education is “stand(ing) in solidarity” with the sponsors of H.R. 4247/S. 2860 in a public affirmation that “as a matter of ethical principle, moral law, and basic human decency, the private school community is unreservedly committed to the safety and well-being of students.” It is unfortunate, however, that several basic misunderstandings of this important and potentially life-saving piece of legislation have led CAPE to press for the exemption of the schools they represent. APRAIS feels certain that a better understanding both of the bill and of the pressing need it addresses about the use of restraint and seclusion would lead educators in these member organizations to endorse it wholeheartedly. Below please find our responses to the concerns raised by CAPE:

- CAPE’s letter expresses concern that “The neighborhood and community schools we represent are likely to experience the reach of this legislation in ordinary and typical encounters: a teacher breaking up a schoolyard dustup, a coach holding back two hot-tempered players, an aide grabbing a child about to dart into the carpool lane at dismissal.” In fact, the GAO’s 2009 testimony, “Seclusions and Restraints: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers” (GAO-09-719T) and subsequent studies by COPAA (*Unsafe in the Schoolhouse: Abuse of Children with Disabilities*, available at http://www.copaa.org/pdf/UnsafeCOPAAMay_27_2009.pdf), NDRN (*School is Not Supposed to Hurt: Investigative Report on Abusive Restraint and Seclusion in Schools*, available at <http://www.ndrn.org/sr/SR-Report.pdf>) and TASH (http://www.tash.org/dev/tashcms/ewebeditpro5/upload/APRAIS_Survey_Exec_Summary_Media.pdf) emphasize the very ordinariness of encounters that have resulted in injury, trauma, and death from restraint: a child is noncompliant, gets out of his seat, calls out in class, or blows bubbles in her milk. As the GAO wrote, “...children with disabilities were sometimes restrained and secluded even when they did not appear to be physically aggressive and their parents did not give consent.” (p. 7)
- Referring to the examples above, CAPE expresses fear that the proposed bill “could effectively serve to inhibit such instinctively shielding behavior by causing the adult to hesitate or second-guess herself out of fear she might be violating federal law.” On the contrary, the bill is abundantly clear that restraint is permitted when a child is in

imminent danger, or is endangering others, and it backs up that clarity with training in crisis prevention and restraint safety.

- The bill does not detract from child safety in situations such as those cited. Instead, it adds a stronger dimension to that safety by assuring that teachers will have the tools they need to prevent and de-escalate situations *before* they become dangerous. By requiring reporting to the family, it also gives teachers, parents, and students a vital opportunity to explore what went wrong when restraint was used and to work together to prevent a recurrence. If students are engaging in physical fights that can only be stopped by physical means, parents of private school students should not have a lesser right to that information – or less involvement in solving the problem -- than do parents of public school students.
- Private schools have always been covered by, and not exempted from, a wide variety of health and safety regulations, including fire safety rules; building codes; health department regulations on food safety, handling, and cleanliness; and protocols for dealing with outbreaks of infectious disease. The requirements for a minimal level of staff training in crisis prevention and the safe use of potentially dangerous emergency measures as set forth H.R. 4247/S. 2860 are simply another positive contribution to a school's overall safety and preparedness. These requirements not only protect students and staff from harm, they serve to protect school administration from possible litigation. For example, the 2009 GAO testimony recorded cases such as one in which "A local school board.... was found civilly liable for negligently supervising and training teachers after a 4-year-old girl was strapped to a chair for allegedly being uncooperative." (p. 4)
- CAPE's interpretation that "Our read of this bill is that it was intended to address a narrow set of special-purpose schools and circumstances...." and that "the schools we represent do not fall in that category" is wholly inaccurate. The bill responds to the 2009 GAO testimony as well as the COPAA and NDRN reports which studied and presented examples of inappropriate and dangerous restraint and seclusion from both public and private schools. The bill specifically addresses the documented safety needs of *all* school students, not only those students with disabilities.
- Many students receiving special education services are placed by their public school districts into private schools. Parents should not lose vital health and safety protections for their child if they and/or their school district decide to make such a placement.
- The CAPE letter expresses surprise that schools receiving even modest levels of federal funding would fall under federal regulations, but that has always been the case. Applicable examples include the Americans with Disabilities Act and the Civil Rights Act. With public funds come public responsibilities; it is always possible for a school to opt out of various safety, reporting, or equity requirements by forgoing the funding.

- CAPE summarizes its three objections to the bill as:
- First, one or more teachers would have to be trained in crisis prevention. This is such a modest, quick, and inexpensive safety measure that many schools have embraced it even without a mandate, and objection – particularly in the face of the GAO’s findings -- seems quite unreasonable.
 - Second, CAPE finds fault with the requirement that each school must report annually to the state agency on the number of times seclusion and restraint are applied to students and on whether any incidents led to injury or death. This objection, too, is strangely out of proportion with the actual activity required. Other typical safety reporting, such as fire safety and food safety, is likely to take up as much or more time; injuries or deaths related to fire or food would surely be expected to be reported.
 - Finally, CAPE asserts that private school teachers would be confused over when restraint is permitted. Staff at many schools, programs, and health care settings across the country have successfully operated for decades on the simple rule of “emergency use only.” Evidence shows that following this clear and simple rule has a positive impact on school safety.

While we are reaching out to CAPE to correct any misinformation or misreading of the bill, we are deeply appreciative of legislative support for H.R. 4247/S. 2860, which offers a humane and commonsense approach to a very serious problem.

Sincerely,

Member Organizations of APRAIS:

American Association of People with Disabilities
Association of University Centers on Disabilities
Autism National Committee
Autistic Self Advocacy Network
Bazelon Center for Mental Health Law
Council of Parent Attorneys and Advocates
Families Against Restraint and Seclusion
Family Alliance to Stop Abuse and Neglect
National Alliance on Mental Illness
National Association of Councils on Dev. Disabilities
National Disability Rights Network
National Down Syndrome Congress
National Down Syndrome Society
National Fragile X Foundation
Respect ABILITY Law Center
TASH

The Arc of the United States
United Cerebral Palsy

Other Organizations in Support of this Position:

ADAPT of Montana
Autism Society of America
Autism Support and Advocacy, Pennsylvania
Center for Self Determination
Coalition of Inclusion Advocates, Pennsylvania
Family Voices
Family Voices, New Jersey
National Association of the Deaf
National Council on Independent Living
National Spinal Cord Injury Association
North Carolina Disability Action Network
Not Dead Yet
Parent Advocacy Network, New Jersey
United Spinal Association