



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

March 16, 2021

Via U.S. Mail and E-mail

The Honorable Nancy Pelosi
Speaker of the House of Representatives
U.S. House of Representatives
H-232, The Capitol
Washington, DC 20515

The Honorable Kevin McCarthy
Minority Leader
U.S. House of Representatives
H-204, The Capitol
Washington, DC 20515

The Honorable Charles Schumer
Majority Leader
U.S. Senate
S-221, The Capitol
Washington, DC 20510

The Honorable Mitch McConnell
Minority Leader
U.S. Senate
S-230, The Capitol
Washington, DC 20510

Re: Support for the Keeping All Students Safe Act

Dear Congressional Leaders:

We, the undersigned Attorneys General, urge Congress to enact the Keeping All Students Safe Act (KASSA) to ban isolated confinement and life-threatening restraint practices in the nation's elementary and secondary schools. As state Attorneys General tasked with protecting the rights of our constituents, we ask Congress to eliminate these detrimental disciplinary tactics which endanger the physical and psychological well-being of our nation's children.

KASSA would make it illegal for any school receiving federal funds to seclude children and would ban mechanical, chemical and supine restraint as well as practices that restrict breathing, including prone restraint.¹ In recognition of the disproportionate use of these interventions on students with disabilities, the bill also makes it illegal to use physical restraint that is contraindicated by a student's disability or educational plan. Non-prohibited physical

¹ See S. 4924, H.R. 8782 (116th Congress).

restraints are allowed when necessary to protect students and staff when a student's behavior poses an imminent danger of serious physical injury to the student or others. States will be required to monitor the law's implementation by collecting and analyzing data, establishing policies and procedures to ensure compliance, and improving school climate and culture by implementing positive behavior interventions and supports. The bill provides support to states by authorizing federal grants, to be awarded for three-year periods, on the basis of relative need. The U.S. Department of Education could withhold education funds from school systems that violate this statute, thereby holding them accountable for failures to protect students from seclusion and restraint practices. In summary, KASSA establishes a long-needed system of both accountability and support, to ensure our schools are safe and healthy environments in which children can learn without fear of abuse or discrimination.

Isolated confinement and the restraint practices banned by KASSA² are inherently dangerous behavior interventions that have no therapeutic or educational value, may exacerbate existing mental health conditions, and can cause long lasting emotional trauma. The U.S. Department of Education defines the practice of isolated confinement, also called seclusion, as involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving.³ The Department defines physical restraint as a personal restriction that immobilizes or reduces the ability of a student to move his or her torso, arms, legs, or head freely.⁴ Seclusion and restraint practices should not be used as punishment or discipline, as a means of coercion or retaliation, or as a convenience to school personnel.⁵ Rather, physical restraint should only be used when a child's behavior poses imminent danger of serious physical harm to self or others, and other interventions are ineffective.⁶ There is no evidence that using restraint or seclusion is effective in reducing the occurrence of the problem behaviors that frequently precipitate the use of such techniques.⁷ To the contrary, the evidence is clear that seclusion and restraint can escalate negative behaviors by increasing children's arousal, deepening negative behavior patterns, and undermining children's trust and capacity for learning.⁸

² KASSA's prohibited restraint practices include: mechanical; chemical; physical restraint or escort that is life threatening, restricts breathing, or restricts blood flow to the brain, including prone and supine restraint; and physical restraint that is contraindicated based on the student's disability, health care needs, medical, or psychiatric condition, as documented in a medical, behavior or education plan. *Id.* at Sec.101.

³ U.S. Department of Education, *Restraint and Seclusion: Resource Document* (May 2012), p. 10, available at www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf.

⁴ *Id.*

⁵ *Id.* at p.12.

⁶ *Id.*

⁷ *Id.* at p.2.

⁸ Hearings Before the Senate Comm. On Health, Education, Labor, and Pensions, 112th Congress (2012) (testimony of Daniel Crimmins, Director, Center for Leadership in Disability at Georgia State University).

Although seclusion and restraint are intended to be safety measures of last resort, they are often imposed in the absence of imminent danger of serious physical harm to punish or discipline students, compel compliance or retaliate for non-compliance, or for convenience of staff.⁹ Disturbing reports reveal that thousands of children a year, some as young as five, are locked away alone and terrified in empty rooms for misbehaving.¹⁰ Stories have surfaced of secluded children being left alone to cry in anguish, urinating on themselves, scratching at windows, tearing at or banging their heads against the walls, and throwing themselves at the door begging to be let out.¹¹ Some children spend hours inside these rooms missing class time for behavior as minor as spilling milk, refusing to do classwork, swearing, or throwing Legos.¹² Similarly concerning stories have been reported about children being physically restrained in ways that restrict their breathing or otherwise harm them.¹³ These abusive practices are not only emotionally traumatic, but can result in physical injury and even death. The Government Accountability Office has reported on hundreds of cases of alleged abuse and death to children and youth in schools resulting from these practices, including the report of a 13-year-old who hung himself in a seclusion room after prolonged confinement.¹⁴

Secluding and restraining children in K-12 schools is not just inhumane, it may deprive children with disabilities of rights afforded them by federal law. A pattern of exclusionary disciplinary measures may indicate the child's Individual Education Plan (IEP) is not reasonably calculated to enable the child to make progress appropriate in light of the child's circumstances¹⁵ in violation of the child's right to a Free Appropriate Public Education (FAPE) under the Individuals with Disabilities Education Act.¹⁶ The seclusion or restraint of a student with a disability may also violate the child's civil rights pursuant to Section 504 of the Rehabilitation Act¹⁷ or Title II of the Americans with Disabilities Act¹⁸ if the seclusion or restraint: (1) constitutes unnecessary different treatment; (2) is based on a policy, practice, procedure, or

⁹ See *The Quiet Rooms*, Chicago Tribune and ProPublica Illinois, (Nov. 19, 2019), available at <https://graphics.chicagotribune.com/illinois-seclusion/index.html>.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ See *The Quiet Rooms*, Chicago Tribune and ProPublica Illinois (Dec. 20, 2019), available at <http://www.propublica.org/article/illinois-school-restraints>.

¹⁴ See U.S. Government Accountability Office, *Seclusions and Restraints, Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers* (2009), GAO-09-719T.

¹⁵ See U.S. Department of Education, *Students with Disabilities and the Use of Restraint and Seclusion in K-12 Public Schools*, Presentation, slide 35, available at

<https://www2.ed.gov/about/offices/list/ocr/docs/20190725-students-with-disabilities-and-use-of-rs.pdf>

¹⁶ 20 U.S.C. §1400; 34 C.F.R. Ch. 15.

¹⁷ 29 U.S.C. 794; 34 C.F.R. pt. 104

¹⁸ 42 U.S.C. 12131 et seq.; 28 C.F.R. pt. 35

criterion that has a discriminatory effect on students with disabilities; or (3) denies a student's right to a FAPE.¹⁹

The federal government's own data and reports suggest that school districts are violating the education and civil rights of students with disabilities through seclusion and restraint. The U.S. Department of Education's Office for Civil Rights first reported data on the use of seclusion and restraint in schools as part of the Department's 2011-2012 Civil Rights Data Collection (CRDC). The most recent federal CRDC report released on October 20, 2020 indicated that students with disabilities were disproportionately secluded and restrained for the 2017-2018 school year, the most recent year for which data was collected.²⁰ The report revealed that students with disabilities comprised 80% of students who were subjected to physical restraint, and 77% of the students who were subjected to seclusion, despite only comprising 13% of the total enrolled student population. Among students with disabilities, male students were disproportionately impacted: while male students with disabilities comprised 66% of students served in special education, they comprised 83% of special education students subjected to physical restraint and 84% of special education students subjected to seclusion. The disproportionality reflected in the 2017-2018 data is consistent with all three prior CRDC biennial reports.²¹ This consistent disparity raises serious concerns that the use of seclusion and restraint in schools has resulted in a pattern and practice of unlawful discrimination against elementary and secondary students with disabilities in violation of federal laws.

Seclusion and restraint practices also disproportionately harm students of color and Black and Hispanic students in particular. The 2017-2018 CRDC data shows that 26% of students with disabilities who were physically restrained were Black or African American, even though they comprised only 18% of students with disabilities. A recent academic analysis of the 2015-2016 CRDC data concluded that Black students were almost 200% more likely and Hispanic students were 45% more likely to experience restraint or seclusion than their white counterparts.²²

¹⁹ See U.S. Department of Education, *Dear Colleague Letter: Restraint and Seclusion of Students with Disabilities* (Dec. 28, 2016), available at <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201612-504-restraint-seclusion-ps.pdf>. and U.S. Department of Education, *Students with Disabilities and the Use of Restraint and Seclusion in K-12 Public Schools*, Presentation, slide 35, available at <https://www2.ed.gov/about/offices/list/ocr/docs/20190725-students-with-disabilities-and-use-of-rs.pdf>.

²⁰ U.S. Department of Education, Office for Civil Rights, *Civil Rights Data Collection, 2017-18*, hereinafter CRDC 2017-18, available at <https://ocrdata.ed.gov/estimations/2017-2018>.

²¹ See U.S. Department of Education, Office for Civil Rights, *Civil Rights Data Collection, 2015-16*, hereinafter CRDC 2015-16, available at <https://ocrdata.ed.gov/estimations/2015-2016>; U.S. Department of Education, Office for Civil Rights, *Civil Rights Data Collection, 2013-14*, hereinafter CRDC 2013-14, available at <https://ocrdata.ed.gov/estimations/2013-2014>; U.S. Department of Education, Office for Civil Rights, *Civil Rights Data Collection, 2011-12*, hereinafter CRDC 2011-12, available at <https://ocrdata.ed.gov/estimations/2011-20142>.

²² See Katsiyannis, A., Gage, N.A., Rapa, L.J. *et al.*, Exploring the Disproportionate Use of Restraint and Seclusion Among Students with Disabilities, Boys, and Students of Color, *Adv. Neurodev. Disord.* 4, 271-278 (2020).

These disparities not only place students of color and students with disabilities at heightened risk for emotional or physical harm associated with restraint and seclusion, they also increase the likelihood that these students may be pushed out of the classroom and into the criminal justice system. The National Council on Disability has thus recommended that one component of ending the school-to-prison pipeline should be Congressional action to stop pervasive use of restraint and seclusion.²³

The U.S. Department of Education has addressed the dangers of seclusion and restraint by issuing guidance to help states limit the use of these practices. The 2012 Restraint and Seclusion Resource Document²⁴ outlines fifteen principles for states, school districts, and other stakeholders to consider when developing policies to avoid the use of restraint and seclusion in schools. Two Dear Colleague Letters published in 2016 provide further guidance, informing school districts how the use of restraint and seclusion may result in unlawful discrimination against students with disabilities,²⁵ and reminding states that providing behavioral interventions and supports to students with disabilities is part of ensuring a free appropriate education in the least restrictive environment.²⁶ Recognizing that the use of seclusion and restraint in our nation's schools is not decreasing, in January 2019 the U.S. Department of Education announced an initiative to conduct compliance and data quality reviews, and provide technical assistance to schools, to address the inappropriate use of seclusion and restraint.²⁷ Although well-intentioned, the Department's guidance documents and technical assistance do not carry the weight of law, and therefore merely recommend, rather than require, that states follow best practices to establish essential, minimum protections for students with disabilities.

In the absence of federal legislation, states and localities are left to monitor and regulate the seclusion and restraint of students in their schools, resulting in a patchwork of uneven laws and regulations. According to a 2019 analysis of state laws published by the Autism National Committee, approximately 30 states have enacted some level of protection against seclusion and restraint for all K-12 children incorporating the federal guidance principles to varying degrees, while the remainder have only suggested guidelines to their school districts or required nothing

²³ See National Council on Disability, *Breaking the School to Prison Pipeline for Students with Disabilities* (June 2015), available at https://ncd.gov/sites/default/files/Documents/NCD_School-to-PrisonReport_508-PDF.pdf.

²⁴ U.S. Department of Education, *Restraint and Seclusion: Resource Document* (May 2012), available at www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf.

²⁵ *Dear Colleague Letter: Restraint and Seclusion of Students with Disabilities* (Dec. 28, 2016), available at <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201612-504-restraint-seclusion-ps.pdf>.

²⁶ *Dear Colleague Letter*, (August 1, 2016), available at <https://www2.ed.gov/policy/gen/guid/school-discipline/files/dcl-on-pbis-i-ieps=08-01-2016.pdf>.

²⁷ See <https://www.ed.gov/news/press-releases/us-department-education-announces-initiative-address-inappropriate-use-restraint-and-seclusion-protect-children-disabilities-ensure-compliance-federal-laws>.

at all.²⁸ Unfortunately, the enactment of a state law does not guarantee students protection from seclusion and restraint; even in states that have enacted legislation incorporating many of the suggested federal principles, lack of oversight and accountability have resulted in egregious violations, leaving students subject to a pattern of abuse.²⁹

Federal data shows that the current framework of state laws and federal guidance are not effectively protecting students from seclusion and restraint. The CRDC biennial reports indicate the use of these dangerous interventions is not diminishing, and may even be increasing. During the 2017-2018 CRDC collection cycle, 70,833 students were reported as subjected to physical restraint,³⁰ increased from 59,217 during 2015-2016,³¹ and from 47,270 during 2013-2014.³² Similarly, the data monitoring seclusion shows that the number of students reported as subjected to seclusion increased from 28,967 during 2013-2014³³ to 31,224 in 2015-2016.³⁴ Although there appeared to be a modest decrease in the number of secluded students during 2017-2018 to 27,538, closer analysis reveals there was actually an increase in the disproportionality of students with disabilities who were secluded, going up from 66.4% during 2015-2016³⁵ to 77% in 2017-2018.³⁶ These troubling statistics may not even portray the full scope of the issue, since school districts, responsible for self-reporting, are less likely to accurately report on practices that do not portray them well. The Government Accountability Office has raised concerns that local school districts, particularly the large ones, are underreporting data, and has sounded the alarm on the need to address the quality of data collection efforts.³⁷ Regardless of the possibility of underreported data, four cycles of federal reports demonstrate that states need help to protect students entrusted to their care.

The use of seclusion and restraint is widespread and increasing. Our nation's children deserve better than the current inequitable patchwork of state and local regulations to ensure that every child is afforded an education in a safe environment. A child's safety in the schoolhouse should not be determined by geographical location, disability, gender, or race. The inherent

²⁸ How Safe is the Schoolhouse: An Analysis of State Seclusion and Restraint Laws, Regulations and Policies, Jessica Butler, (July 10, 2019), available at <http://www.autcom.org/pdf/HowSafeSchoolhouse.pdf>.

²⁹ See The Quiet Rooms, Chicago Tribune and ProPublica Illinois, (Nov. 19, 2019), available at <https://graphics.chicagotribune.com/illinois-seclusion/index.html> and The Quiet Rooms, Chicago Tribune and ProPublica Illinois (Dec. 20, 2019), available at <http://www.propublica.org/article/illinois-school-restraints>.

³⁰ See CRDC 2017-18.

³¹ See CRDC 2015-16.

³² See CRDC 2013-14.

³³ *Id.*

³⁴ See CRDC 2015-16.

³⁵ *Id.*

³⁶ See CRDC 2017-18.

³⁷ Government Accountability Office, K-12 Education, Education Needs to Address Significant Quality Issues with its Restraint and Seclusion Data (April 2020), GAO-20-345.

limitations of federal guidance and our responsibility to safeguard children from inhumane and discriminatory practices illustrate the urgent need to create a federal baseline of protection from seclusion and restraint for our most vulnerable students. KASSA will strengthen protections for students, support school personnel, and provide assistance to the states. We ask that Congress enact this legislation.

Respectfully,



KWAME RAOUL
Attorney General of Illinois



WILLIAM TONG
Attorney General of Connecticut



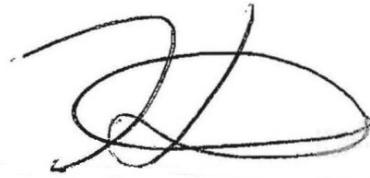
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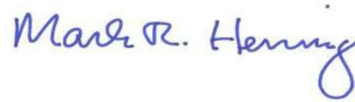
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