



Restraint and Seclusion in Our Schools: *Congress Responds*

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Moderator: Welcome to "*Experts on the Record*," a presentation of The Advocacy Institute. Today's topic is *Restraint and Seclusion in our Schools: Congress Responds*. I'm your moderator, Jamie Ruppman and I serve on the Board of Directors of The Advocacy Institute.

Today's panel members have all been deeply involved in child advocacy for a number of years. They've each personally contributed to the nationwide efforts to protect children and youth from dangerous and sometimes fatal practices used as disciplinary or behavior management techniques in our nation's schools.

Pat Amos is a parent and advocate for individuals with autism and other developmental disabilities. Pat has written and published extensively on disability issues and works in the field with individuals with disabilities and their families. Pat is one of the founders of the *Alliance to Prevent Restraint, Aversive Interventions and Seclusion (APRAIS)*, a national level coalition working with Congress on current legislation.

Calvin Luker is an attorney who has practiced for 27 years. The last 18 years of his practice have been devoted exclusively to disability law. With his wife, Tricia, Calvin founded the *Respect Ability Law Center* in Michigan where he and Tricia work together to advocate for and protect children and adults with disabilities and their families.

Donna Gilles, our third panel member, is an Associate Director of Operations for the Partnership for People with Disabilities at Virginia Commonwealth University in Richmond, Virginia. Donna is a past president of TASH, an international association of people with disabilities, their families, other advocates and professionals, all dedicated to bringing about full inclusion and human right for our children and adults. Donna has extensive experience in professional development, personnel preparation, and education leadership.

In the spring of 2009, Congressional hearings and a lengthy Government Accountability Office (GAO) investigation revealed that students across the country have been subjected to abuse and neglect in school. Most are children with disabilities. Congress took action and the House of Representatives passed a bill – the Preventing Harmful Restraint and Seclusion in Schools Act - on March 3, 2010. A companion bill was introduced in the United States Senate by Senator Christopher Dodd and is currently under discussion. Both bills direct the US Secretary of Education to establish minimum standards regarding restraint and seclusion in the school.

Pat, several reports were published leading up to the final passage of legislation in the house all by advocacy and parent organizations reporting on very troubling and dangerous practices. Can you talk a bit about the key findings in those reports?

Pat Amos: Well, thank you, Jamie. The urgency of this subject is reflected in the fact that four major national reports have been released since January of 2009. There's also been quite a few state level reports but right now I'm only going to review the key national findings. The National Disability Rights Network (NDRN) which, as you know, is the non-profit membership organization of the federally mandated Protection and Advocacy Systems, released a report titled *"School is Not Supposed to Hurt"* in January of 2009.

After reviewing dozens of recent examples in which parents contacted their state Disability Rights Network organizations because their children had been injured or killed in the schools, NDRN concluded many children are secluded, battered and bound rather than safe and sound in our schools. NDRN's initial report exposed the appalling lack of protections that permits this to happen. They examined all states and US territories regarding laws, policies, and guidelines and found 41 percent have no laws, policies or guidelines considering restraint or seclusion used in schools.

Almost 90 percent still allowed prone restraint which is considered the most deadly form. Only 45 percent require or even recommend that schools automatically notify parents or guardians of any seclusion use. And in a January 2010 follow up report, NDRN found that despite extensive advocacy, only two state legislatures and six state departments of education strengthened their protections for school children in 2009. And one state, Utah, actually weakened existing rules.

NDRN considered the role of OSEP, the Office of Special Education Programs in the United States Department of Education which oversees the implementation of IDEA and in particular funds technical assistance projects on positive behavioral interventions and supports. For OSEP, the NDRN had these startling words, *"Because of its emphasis on positive behavioral interventions and support, you would expect OSEP to be supportive of alternatives and against the violent and abusive practice of restraint or seclusion. OSEP*

has done little, if anything, over the past 33 years to protect children with disabilities and the use of restraint and seclusion.”

Next up came COPAA, the non-profit Council of Parent Attorneys and Advocates, which released its own report titled *“Unsafe in the Schoolhouse: Abuse of Students with Disabilities”* in May of 2009. COPAA took a different tack, conducting a survey of what had actually happened in 143 restraint and seclusion cases. The results clearly showed how secretive the use of these techniques has been and how completely parents are kept out of the loop. Seventy-one percent had not consented to the use of aversive intervention, 16 percent had but many believed the interventions would only be used in limited circumstances where there was an imminent threat of injury. Moreover, 71 percent reported that the children involved in these situations did not have a research-based positive behavioral intervention plan. Ten percent reported that children did have a plan but the plan was not followed. Eighty-four percent of children restrained were under 14 years of age, 53 percent were only aged 6 to 10. The use of abusive interventions primarily occurred in segregated disability-only classrooms or in private seclusion rooms away from the eyes of witnesses.

Another survey was done by TASH researchers under the auspices of the national Alliance for the Prevention of Restraint, Aversive Interventions and Seclusion or APRAIS. Of 1,300 people who opened this questionnaire during the 2-week period, almost 65 percent said their child have been restrained, secluded or subjected to aversive interventions. Those responding “yes” reported the following: throughout their time in school, and that means so far these could be very young children, the procedures had been used an average of over 30 times per child. So, they were hardly rare. Restraints used included strapping the child to a chair, basket hold, four-point hold with one adult on each limb, twisting the child’s arm behind the back which resulted in a broken arm and handcuff. More than a quarter of restraints and half of all seclusions lasted between 30 minutes to more than 3 hours. Aversive interventions have included denying restroom all day, kicking, punching, and choking, and pushing into a wall. Meaning there is little evidence of effort to choose the least dangerous method or the least force possible. Common reactions to these types of procedures included the child developing inappropriate behavior such as running away, ripping clothes, self-injury, or involuntary tics. Almost 93 percent of respondents said the procedures resulted in emotional trauma, 42 percent reported physical injury. Again, these procedures occurred most commonly in special education classrooms. Sixty-six percent of respondents said they were rarely or never informed when one of these interventions had been used.

And last but not the least, came the gold standard of 2009. The Congress received in May of that year the GAO - United States Government Accountability Office - report titled *“Seclusions and Restraints: Selected Cases of Death and Abuse at Public and Private*

Schools and Treatment Centers.” And the GAO completely backed up what the other research had already found: no federal laws restricting the use of seclusion and restraint in public and private schools, widely diverted laws at the state level, hundreds of cases of alleged abuse and death related to the use of these methods on school children during the past two decades, no single website, federal agency or other entity that collects information on the use of these methods or the extent of alleged abuse. The GAO was clear about the dangers, finding that restraints of blocked air to the lungs can be deadly. Teachers and staff in the cases they reviewed were often not trained in the use of seclusion and restraint. Teachers and staff from at least five of the ten cases detailed on their report continue to be employed as educators.

The GAO also cited its findings from two recent related reports. First, that children are subjected to restraint and seclusion at higher rates than adults and are at much greater risk of injury. And also, that if no physical injury is sustained, individuals can still be severely traumatized during restraint.

So, the quick recap is, few protection on law of regulation at the state or federal level, OSEP sleep at the helm for over 33 years, parents kept in the dark, and many children seriously harmed.

Moderator: Wow. One can only imagine how these reports in their total have been reviewed and received by parents and how frightening it must be to parents whose children particularly are those whose children are in special education - to think that they had widespread practices such as these are left unaddressed, which brings us to the Congressional response.

Calvin, how do the provisions in the House and Senate bills address these practices and concerns? And which of those do you believe are most important to parents and advocates? What would they accomplish, in other words?

Calvin: Well, there's one victory that comes from the introduction and we hope the passage of these bills is that it does – it does bring uniformity into play. What Pat was describing were heinous practices that have basically existed in a vacuum. We're not aware of what states are doing what practices. We don't know from state to state whether or not the practices are going to be consistent. What the federal bills try to do at the outset is to bring uniformity to the issue, to have one – to have one set of definitions that applies nationwide, to have one set of practices that applies nationwide, and to the extent that the bills prohibits conduct, it would prohibit that conduct nationwide. The provisions that we've – that we've been focused on - that we think are most important to the children and the families at this stage, I've identified four.

The first is that the bills ban or prohibit the use of – they prohibit including the use of restraint and seclusion as part of an individualized educational program – a student’s individualized educational program or IEP. Now, what that means is that, it would not be – it would no longer be possible for school districts to include provisions in a student’s IEP that say that if Johnny has a challenging behavior then what we do to respond to that behavior is we take him and put him into a seclusion room or strap his arms to a chair or take similar actions that would constitute seclusion or restraint.

The second change that’s so important is that it only permits the use of seclusion or restraint in situations where there is imminent danger of harm or injury to physical injury to the person him or herself or others. And only if that imminent danger exists and no less restrictive means are available to use in order to eliminate the danger and to keep the child or the people around the child safe.

The third change is that it introduces nationwide reporting standards. And those reporting standards are important in two respects. As Pat mentioned in the reports, they disclosed that frequently – perhaps a majority of the time, seclusion and restraint is used on children and their parents don’t even know that it’s been used, let alone the number of times that it’s been used and under what circumstances. The bills would require that the parents be notified within 24 to 72 hours of the incident actually occurring. And that would be for every instance of restraint. But the law also imposes reporting that – reporting requirements on states so that individual states can – so that it isn’t necessarily possible for the states individually to continue to engage in dangerous restraint and seclusion practices without others finding out about it, without the feds finding about it, without parents in general finding out about it.

The fourth thing that the statutes do is they ban completely the use of mechanical restraints like handcuffs, strapping to chairs, straight jackets, things of that. It bans completely the use of chemical restraints. It bans the use of all restraints that interfere with breathing. And it bans the use of aversives that harm health or safety. These practices of mechanical restraint, chemical restraints, restraint that interfere with breathing and banning of aversive, we feel – even in the case of emergencies - we feel improves the likelihood that a child, if the child ever needs to be restrained, is going to be restrained in a way that could lead directly to the student’s serious injury or death.

Moderator: You know, I can see as the moderator, why these are so important to children and youth, why these provisions are so important. But you know, Pat, I’m going to put that aside for a minute. And let’s ask Donna, how would the adoption of these provisions, these standards that Calvin has just gone over, assist teachers and staff in their work with all children? What are the best practices that schools can adopt working

in their schools to make sure that their schools are safe places and good places for children and especially for those children who may be troubled or challenging?

Donna Gilles: Well, let me answer the first question – part of that question and I’m coming from the perspective of also being a former teacher and so, I will always look for what happens for the teacher in some of these discussions. And so, this bill provides for the much needed training and proactive measures in regards to challenging behaviors. Those measures that will decrease the likelihood that using restraint or seclusion will ever become necessary. Teachers may or may not have adequate training from their university programs but regardless, the training and what you do about challenging behavior is often compartmentalized, separated out from other courses and it’s out of context. And often it’s only targeted on how to deal with the behavior after it occurred and less so on how to incorporate good teaching strategies that will serve to prevent challenging behavior from occurring or escalating.

I want to point out that I think it’s natural for all of us to react quickly and negatively to behavior that challenges us - whether it’s the driver who cuts you off on a highway, the neighbor who leaves their dog out all night barking or the child in your classroom who is screaming at you. But, in order to have an acceptable, positive learning environment for all students, teachers have to rise above that natural urge to react quickly and negatively. But they need the tools to be able to accomplish that, the tools that they use for everyone, all day, everyday. And when provided with some training and practice and how to teach from the perspective that all children can learn skills better when the context in which they’re being taught facilitates or complements their learning and doesn’t create an environment that makes learning new skills an unpleasant ordeal, then the stage is set for minimizing behavior that challenges us.

The second part of that question about what are best practices that schools can adopt, first of all, recognizing that challenging behavior does not occur in isolation from the actual relationship between students and adults. That’s important. In programs such as positive behavior supports that are mentioned in the bill, can help school staff identify what strategies can be embedded in instruction across the day at school, in the classroom and at individual levels. And that will make it less likely that we will see those behaviors. Many of those strategies basically comprise the tenants of good teaching and when practiced, they take less time to use than the time and energy it takes to react to a challenge. So, some of the strategies might be to making the classroom environment more predictable for students and that goes for everybody, and engaging students in all parts of activities to decrease that down-time that occurs, providing meaningful content and providing it in a way using strategies that are meaningful for the students.

Understanding that challenging behavior occurs for a reason is a key point to address and it talks about the functional behavioral assessment and – which provides insight into why a student might be engaging at a particular behavior. And then it helps the school team to identify more acceptable behaviors to replace them with. And it provides the guidance to classrooms teachers as to what strategies are necessary to maintain a good productive, learning environment.

Moderator: And these are strategies and practices that we would want to see use with all students, correct?

Donna Gilles: That is correct, yes. Yes. Teaching is teaching.

Moderator: One of the key provisions in the House bill and the bill introduced in the Senate is a prohibition on placing the use of restraint and seclusion into the individual education program (IEP) of a student receiving special education services. First of all, Calvin, what does this prohibition accomplished legally?

Calvin Luker: The individualized educational program of a student, or the IEP, is something that's required by federal special education law for all students who have disabilities. That plan- developed by parents and members of the – members of the students' teaching team and administrators at the student's school is developed to identify educational goals and to identify the services and supports that are necessary in order for the student to be able to meet those educational goals. It – the IEP - is not a punishment plan, is not a behavior plan, it is an educational plan.

And as I was explaining earlier, one of the provisions of the laws would be that restraint and seclusion can only be used, if ever, in cases of imminent danger where no less restrictive means of addressing the emergency exists. IEPs are not planning documents for emergencies. They are planning documents for educational support and educational services. If IEP teams are not permitted to put restraint and seclusion into IEP plans, it actually will reduce the likelihood that restraint and seclusion will be used as a matter of practice or a matter of planning on individual students with disabilities. Indeed, what we're talking about with the use of restraint and seclusion is "emergency." And emergency planning is the antithesis of the IEP plan.

Moderator: Interesting. And now, Pat, Calvin has mentioned several key items in the legislation passed in the House and also focused specifically on this one prohibition around the individual education program (IEP). From your perspective, why are these – what are some of the important aspects of these provisions? And why?

Pat Amos: Well, first of all, I think the provisions would be extremely important to children and youth. And I say that as a parent and a parent advocate myself and that's because these provisions will go a long way toward assuring the school is a safe and nurturing place for all students. And all means all, not just students with IEPs. Students not only need to feel personally safe from seclusion and restraint, they need to be safe from the distress and anxiety of seeing hurtful and unacceptable things done to their classmates by the very teachers they rely on and who are supposed to be their role models. So the bill is a simple, practical recipe for a healthy school culture and for assuring that teachers are in the valued social role that we and they need them to take.

Second, all students need to know that it "might" just not make "right." They need to know that receiving special education services does not make a student "second class" and make it okay to treat him or her differently by planning for the routine use of demeaning and draconian techniques in the name of treatment or education. I've spoken with many adults with disabilities who were subjected to restraint and seclusion in their schools and they are still struggling with the psychological aftermath. One very gentle and upstanding adult confided that for years he believed that he must have been placed in special education because he was a bad person.

Getting seclusion and restraint out of children's educational plan and assuring that any emergency use of just that rare and brief, reported at once, taken very seriously will break that unjust and demeaning connection in the minds of our children.

And, last but not least, the bill's provisions will bring parents back into the mix, into the center of the mix where all the research I talked about earlier showed that they currently are not and where they desperately need to be. If an emergency involving restraint or seclusion occurs, they will know at once and be able to get involved with the school at once.

From the student's point of view, informed parental involvement changes everything. Remember, most students just assume that their parents know what is going on in school and that their parents must approve or why would they allow it to happen. This fundamental error - so typical of children's view of the adult world - means that harmful conditions at schools have been spilling over into homes and into children's distress and sudden anger with their parents, who they assume know all about what is happening to them and think it's just fine. So, is it any wonder the parents report that their child suddenly started acting out at home and that they didn't know why until they discovered that restraint or seclusion was being used? This one provision of the bill alone will open a window so that parents can readily and clearly see and respond meaningfully to their child's school experience.

But then, we come to the restraint and seclusion prohibition and I would say, Jamie, that that is key to the entire bill. First of all, there is the danger. Here we have physical techniques that are so dangerous that parents might expect a visit from the state's child welfare agency if they even try them at home. Techniques so dangerous that medical and psychiatric care settings for children are committed to preventing their use entirely despite the fact that they have been highly trained and they have supervise staff and sophisticated medical equipment. So what right does the school have to ask parents to sign their permission for the impermissible - for those same dangerous techniques to be used routinely?

And this brings me to another important point for the families I work with: the burden - usually insurmountable - placed on parents who do not wish to give permission. The IEP is a legal contract, as Calvin Luker says, between family and school district to perform certain services. When a school district wants to perform restraint and seclusion and a parent says "no," the parent's only recourse is due process. That means finding an attorney who knows education law - impossible in many parts of the country. It means a large financial outlay, not reimbursable if the case is lost; the high cost of expert witnesses, not reimbursable even if the case is won; days off from work off, often without pay; the possibility of facing appeal from the court system; and enormous family stress.

School districts are set up to handle this due process hearing as a matter of routine but the impact on families is anything but they are at a huge disadvantage. Add to this the burden that families are often easily misdirected, told that this permission is routine, that it will never be used, or they're asked to sign permission for restrictive procedures without being told that this means more than safety belts on the school bus. And it becomes clear that nothing short of a prohibition on placing these techniques into an IEP will work. If the IEP process provided adequate protection, we would not be facing these same tragedies after 35 years of that IEP process.

One thing I know - and this is the last thing I have to say - I know from all the cases of restraint and seclusion I have seen, you can't say that they're for emergency use only and put them in the IEP. IEPs only work if they are positive plans of action, if they fail so badly that a restraint emergency occurred, everyone needs to be clear that they went outside the plan. The plan failed. The plan must be fixed. But once restraint or seclusion is in the plan, then each usage means we follow the plan. The child failed. And the child must be fixed by our continued adherence to the restraint and seclusion plan. The only way to turn this around is not to make ongoing plan failure an acceptable part of the plan.

Moderator: So, it would seem to me, Donna, that if one of the things we want to accomplish in terms of good practice around school climate and managing the behavior of young and active children, whether they have a disability or not, but we want our

teachers to be proactive, then some of what is accomplished in this bill will be helpful. Can you think of anything in the provisions that would prevent teachers and administrators from keeping their school safe for all of their students?

Donna Gilles: Absolutely not. I don't think it does prevent them from keeping all students safe. And in fact, I believe - I firmly believe - that it enhances their capacity to keep all students safe by ensuring that, you know, this image of challenging behavior is not owned solely by students receiving their special education services. And I would say that the most dangerous behaviors that happen in schools do not necessarily involve students with disabilities.

Keeping all students safe is the responsibility of everybody, all school staff from the principal to the office staff to classroom teachers to volunteers and not the sole responsibility of special education and related services personnel, as allowing it to be written in the IEP might imply.

Moderator: This has been an excellent overview of a very complex and important issue and some rather complex legislation. We give great thanks to our three excellent panelists and want you to know that more information about the efforts to prevent the use of restraint and seclusion in schools, links to the organizations who are working on this legislation, the legislation itself, and reports discussed here today will be available to listeners on The Advocacy Institute website. That's advocacyinstitute.org.

And again, we thank you for your time and your energy and your passion around this very, very complex issue. And wish you all the very best of luck in your work with Congress in passing the Preventing Harmful Restraint and Seclusion in Schools Act. Good luck with the Senate and thank you all.