



NATIONAL ASSOCIATION OF
School Psychologists

4340 East West Highway, Suite 402, Bethesda, MD 20814

PHONE: 301-657-0270

FAX: 301-657-0275

February 26, 2019

The Honorable Gregorio Kilili Camacho Sablan
United States House of Representatives
Washington, DC 20515

The Honorable Rick Allen
United States House of Representatives
Washington, DC 20515

Dear Chairman Sablan and Ranking Member Allen:

Re: "Classrooms in Crisis: Examining the Inappropriate Use of Seclusion and Restraint Practices."

On behalf of the National Association of School Psychologists (NASP) I would like to thank you for your attention to the issue of seclusion and restraint in our nation's schools. NASP represents 25,000 school psychologists who work with students, educators, and families to support the academic achievement, positive behavior, and mental wellness of all students, especially those who struggle with barriers to learning. School psychologists work with parents and educators to help shape individual and system-wide supports that provide the necessary prevention and intervention services to ensure that students all have access to the mental health, social-emotional, behavioral, and academic supports they need to be successful at school. School psychologists help ensure that teachers, administrators, and other school staff have knowledge of positive behavioral interventions and supports and other preventive measures so that students' behavioral needs are met and that incidences of seclusion and restraint are used only when absolutely necessary to protect the safety of students, staff, and other school personnel.

Unfortunately, the use of restraint and seclusion is widespread. Data from the U.S. Department of Education Civil Rights Data Collection show that most students restrained and secluded were students with disabilities, who comprised 12 percent of all students enrolled yet represented 71 percent of all students restrained and 66 percent of all students secluded. Our nation's children deserve better. Restraint and seclusion are dangerous practices that continue to cause children trauma, injury and death, especially when utilized by staff without proper training.

We need more than the current patchwork of state laws to ensure that every child is afforded protection. Such legislation will strengthen protections in every state and support the safety of all students and school personnel. NASP is encouraged by the policies proposed in the *Keeping All Students Safe Act* (KASSA) and we look forward to working with you and your colleagues in Congress to move restraint and seclusion legislation forward. As you continue efforts to advance legislation designed to reduce the need for seclusion and restraint in our schools, we urge you to take the following comments into consideration.

Importance of Multitiered Systems of Support

NASP supports the use of multitiered problem-solving strategies to address the academic, behavioral, social, and emotional needs of students, and we appreciate the encouraged use of positive behavioral interventions and supports in the *Keeping All Students Safe Act*. Problem-solving models provide needed supports to all students in inclusive environments when problems are first identified, and allows for early support before behavioral problems escalate to the point of requiring the need for seclusion or restraint. Services that are provided through a multitiered model range from universal, system-wide preventive services provided to all students to intensive and individualized supports for those students who have more substantial needs. A significant body of research over the last decade has evaluated the

effectiveness of multitiered problem-solving models, with results indicating improved academic performance. Furthermore, research findings from individual case studies have indicated improved behavior, social–emotional learning, and academic outcomes.

Allowable Use of Physical Restraint

NASP recognizes that despite best efforts of school personnel to provide appropriate behavioral supports for students, there may be instances in which the use of seclusion and restraint is warranted to ensure the safety of students and/or staff. NASP supports that seclusion and restraint should only be used when absolutely necessary and only by school personnel who have received appropriate training in de-escalation techniques and in proper seclusion and restraint methods.

NASP recognizes that the use of physical restraint should not be used as a disciplinary tactic, should not interfere with the student’s ability to communicate, and should only be used when a range of preventive behavioral techniques have been unsuccessful. However, we are concerned with KASSA’s proposal that physical restraint may only be used if the student’s behavior poses an immediate danger of “*serious physical injury*” to self or others. Previous iterations of KASSA used the term “serious bodily injury.” This term means being inflicted with an injury or illness that involves: (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. Many states have defined the term “serious physical injury” in the same way that “serious bodily injury” is defined, which causes us some concern.

We believe that this standard is too high and goes beyond reasonable expectations necessary to maintain a safe learning environment. There are several instances when the meaning of “serious bodily injury” has been analyzed in case law. For example, in the *Pocono Mountain School District*, 109 LRP 26432 (SEA PA 2008) a student broke another student’s nose. The judge ruled that this student’s behavior was injurious, frightening, and intimidating; however, a broken nose did not fit within the definition of serious bodily injury. In *Tebachapi Unified Sch. Dist.*, 106 LRP 22450 (SEA CA 2006) a student’s behavior resulted in a mild concussion to one student and a broken nose to another, neither of which was determined to meet the definition of serious bodily injury. We ask you to remove the definition of serious physical injury as the minimum standard for allowable use of seclusion and restraint and adopt the term “physical injury” or another stringent, but lesser standard.

According to case law, including the aforementioned cases, determination of serious bodily injury is based on the type of follow-up care that is required by the injured party *after* the injury occurs. The language in KASSA would require that that this determination be made in the moments preceding a potential injury. Often, a decision to use seclusion and restraint is made in a moment of crisis, when a student’s behavior has escalated beyond the point of control, with the intent of keeping students and staff safe. It would be nearly impossible for school staff to predict if the student’s behavior would result in serious physical injury when making a decision to use physical restraint and may prevent the necessary use of appropriate restraint when it is warranted to ensure the safety of students and staff. Based on this same case law, injuries that school personnel and parents would typically consider very serious, such as a concussion or a broken bone, would likely be deemed to not meet the definition of “serious physical injury.” NASP believes that the term of “serious physical injury” is too stringent and that using this definition as the minimum standard for allowable use of physical restraint has the potential to create unclear expectations for educators’ response to student conduct, unsafe learning conditions for all students, and potentially unnecessary and expensive lawsuits. The law should require that school staff exercise reasonable professional judgment in determining that any individual’s physical safety is significantly at risk, and, therefore seclusion or restraint is required.

Mandatory Debriefing Session

NASP supports the requirement of parental notification, either verbally or electronically, when seclusion or restraint is used with a student. We also support a review of the antecedents leading up to the use of seclusion or restraint, the use of functional behavioral assessment, the implementation of evidence-based behavioral interventions, and the identification of additional strategies to be provided in the future. However, requiring a separate debriefing session

within 5 school days for each instance when seclusion or restraint is used places an unnecessary burden on school personnel. There may be instances, although rare, in which seclusion or restraint are necessary more than once in a given school day, or over the course of a few school days. This is especially true for students with the most severe behavioral concerns. Requiring a separate meeting to document each specific instance of seclusion or restraint would disrupt instruction and place a tremendous burden on staff and administrators. We are in full support of a mandatory meeting and all of the proposed components contained in KASSA, but ask that schools have the option of holding one meeting to discuss multiple incidents of seclusion and/or restraint if the events occur within short period of time.

In addition, NASP believes it is inaccurate to assume that when a child receives behavioral interventions in school, including seclusion and restraint, that it is because the student has a disability. Requiring school personnel to prove they are not negligent in identifying a student's disability would lead to a host of unintended consequences, including unnecessary referrals to special education and unnecessary litigation. We ask that you consider deleting this requirement as it relates to the debriefing session.

We appreciate your dedication and your hard work in ensuring that schools are safe environments for all students. NASP welcomes the opportunity to work with you and other Committee members in assisting with revisions of this legislation.

Thank you for your consideration of these comments. For additional information please contact Kelly Vaillancourt Strobach, PhD, NASP Director of Policy and Advocacy. (kvaillancourt@naspweb.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Kathleen Minke". The signature is fluid and cursive, with the first name "Kathleen" and last name "Minke" clearly distinguishable.

Kathleen Minke, PhD, NCSP
Executive Director