

## **Feds Revive Efforts to Regulate Seclusion and Restraint**

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### **Education Law Notes**

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On February 12, 2014 the United States Senate's Health, Education, Labor and Pensions ["HELP"] Committee released the results of its investigation into the use of restraint and seclusion in schools. Entitled *Dangerous Use of Seclusion and Restraints in School Remains Widespread and Difficult to Remedy: A Review of Ten Cases*, the report contains a discussion of ten high-profile cases involving restraint and/or seclusion, including the investigation of the alleged "scream rooms" within the Middletown Public Schools. The report repeatedly contends that there is no evidence that physical restraint or unsupervised seclusion serve any educational purpose or provide any therapeutic benefit to K-12 students and concludes that the use of such measures in non-emergency situations poses significant physical and psychological danger to students.

In the wake of the HELP Committee report, its Chairman, Senator Tom Harkin of Iowa, promptly implemented one of the report's recommendations by reintroducing legislation -- the Keeping All Students Safe Act -- which is designed to provide both federal control over the use of such measures and a federal remedy for students and their families. While this bill has been introduced numerous times in prior years, it has never garnered sufficient support for passage. In fact, Senator Chris Murphy of Connecticut, an original co-sponsor of the bill, has recently acknowledged that passing the federal legislation remains a "heavy lift"

Whatever the prospects of passage on the federal level, the issue persists as a hot topic in Connecticut, even though many of the restrictions in the proposed federal enactment, already are present under Connecticut law. These restrictions include general prohibitions on the use of life-threatening physical restraints, the use of other physical restraints outside of emergency situations, and the prohibition of seclusion except in emergency situations or when its use is part of a student's Individualized Education Program ["IEP"]. Additionally, Connecticut's existing law already provides for the state data compilation and parental notification proposed by the HELP report and the Keeping All Students Safe Act.

In addition to the limitations on restraint and seclusion that already exist under Connecticut law, over the past several months a coalition of eight Connecticut agencies has conducted a public education campaign aimed at reducing their use. Perhaps these efforts are having some effect. According to the State Department of Education's Annual Report on *The Use of Seclusion and Restraint In Connecticut for School Year 2012/2013*, the use of seclusion as part of an IEP fell significantly from 18,147 to 7,741.

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Given, then, the similarities between the proposed federal legislation and existing Connecticut law, and as the use of seclusion appears to be decreasing, educators may be tempted to question the significance of the proposed Keeping All Students Safe Act as it pertains to Connecticut schools. The answer to that question lies in the Act's proposed creation of a new civil remedy, permitting a student or the student's family to file a lawsuit in addition to pursuing their administrative remedies under the Individuals with Disabilities Education Act of 2004, 20 U.S.C. §§1400, *et seq.* ["IDEA"] or other statutes.

Permitting the contemporaneous pursuit of judicial and administrative remedies, or possibly even allowing students and their parents to bypass administrative processes altogether, would certainly affect Connecticut school districts. The financial burdens associated with defending against both administrative, due process challenges under the IDEA and federal litigation could be significant. Furthermore, such proposed civil actions could potentially expose district administrators and staff members to individual liability, something which is not available under the IDEA.

Faced with the specter of federal litigation, the passage into law of the Keeping All Students Safe Act might also have a chilling effect upon the Planning and Placement Team process, impairing the efforts of school districts to work collaboratively with parents in addressing their children's specialized needs. Such a result would be inconsistent with the clear congressional intent of the IDEA, and thus congressional response to this portion of the proposed Keeping All Students Safe Act should be interesting.

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