

February 25, 2019

The Honorable Gregorio Kilili Camacho Sablan  
Chairman  
Subcommittee on Early Childhood, Elementary and Secondary  
Education  
House Committee on Education and Labor  
2176 Rayburn House Office Building  
Washington, DC 20515

The Honorable Rick Allen  
Ranking Member  
Subcommittee on Early Childhood, Elementary and Secondary  
Education  
House Committee on Education and Labor  
2176 Rayburn House Office Building  
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*President*

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*Executive Director*

Ronald Newman  
*National Political  
Director*

Dear Chairman Sablan and Ranking Member Allen:

On behalf of the American Civil Liberties Union and our more than three million members, activists, and supporters, we submit this letter for the record of the Subcommittee on Early Childhood, Elementary and Secondary Education’s hearing on “Classrooms in Crisis: Examining the Inappropriate Use of Seclusion and Restraint Practices.” We strongly support the Subcommittee’s scrutiny of the harmful use of aversives, restraint, and seclusion in our schools which deny students an equal educational opportunity and violate their civil and human rights.

The practice of restraining and secluding schoolchildren is not new and has been implicated in countless and often ongoing cases of severe, pervasive, and traumatic abuse across the country. Despite numerous studies, investigations, and governmental hearings at the state and federal level, too many of our schoolchildren continue to be subjected to actions by teachers, administrators, and other school personnel that threaten their health and safety. Over the years, we have become aware of the horrifying stories that pierced the public’s consciousness—stories of children being locked in closets, arms bound in handcuffs behind their back or even suffocating to death from inappropriate use of force.<sup>1</sup> Even when these techniques are used in less dramatic fashion, children often

experience lifelong trauma. And the alarming truth is that most incidents of restraint and seclusion occur in the shadows, with impunity, and far from public or even parental view. Indeed, a large percentage of school districts reported no data on students being subject to restraint and seclusion—despite parent reports of horrific abuses.

These draconian and dangerous practices are most frequently used against students with disabilities and students of color. Based on data provided by the Department of Education, while students with disabilities represent only 12% of school enrollment, they constitute 71% of those students subject to restraint and 66% of those students subject to seclusion.<sup>ii</sup> Although African-American students made up just 15.5% of total student enrollment, they were 25.1% of students subject to physical restraint, 33.7% of students subject to mechanical restraint and 22.4% of students subject to seclusion.<sup>iii</sup>

The effects include substantial and disproportionate physical and emotional injuries and disruptive exclusions from the educational process. The use of unnecessary restraint and seclusion by federally funded schools—either directly or through contractual arrangements with private special education schools—has no pedagogical basis, discriminates against students with disabilities, and impairs the educational objectives of public schools with respect to children with disabilities. Often, restraint and seclusion is carried out because of inadequate teacher training, a desire to punish a student on the part of school personnel, or bias against students with disabilities, students of color or those students who fall into both categories. This is not how we should treat our children. They deserve better.

Currently, no federal laws restrict the use of restraint and seclusion in schools. At the state level, as of the end of 2016, less than half of states and the District of Columbia have laws limiting restraint of all children to immediate threats of physical danger.<sup>iv</sup> Only five states have laws banning seclusion for children with disabilities, and only two bar all uses of seclusion for every child.<sup>v</sup> A national response is necessary and long overdue.

The Keeping All Students Safe Act (KASSA) would provide much needed protections for all students, and particularly those disproportionately impacted by these practices. It would put in place national standards regarding these practices. KASSA would prohibit the use of seclusion, mechanical restraint, chemical restraint and aversives, and limit the use of physical restraints to emergency situations where a student's behavior poses an imminent danger of serious physical injury and where less restrictive interventions would be ineffective in stopping such imminent danger. Additional KASSA provisions would increase reporting and accountability by requiring that Protection and Advocacy organizations be notified when physical injury or death results from any intervention used to control behavior at school. It would also provide support to school staff by requiring states to ensure that a

sufficient number of school personnel are trained and certified by a state-approved crisis intervention training program, and establish a system of competitive grants to assist states in meeting the legislation's minimum standards.

Creating safer, more positive and supportive learning environments requires addressing the entire spectrum of counterproductive and excessively harsh punishments that disproportionately affect our country's most vulnerable students—most often low-income students, students with disabilities, and students of color. Eliminating the use of seclusion and drastically reducing the use of restraints in our schools is a critical component of that effort. We look forward to working with members of the committee to achieve this goal.

If you have any questions, please contact Vania Leveille at [vleveille@aclu.org](mailto:vleveille@aclu.org) or Mike Garvey at [mgarvey@aclu.org](mailto:mgarvey@aclu.org).

Sincerely,



Ronald Newman  
National Political Director



Vania Leveille  
Senior Legislative Counsel



Mike Garvey  
Senior Policy Analyst

CC: Chairman Bobby Scott, Committee on Education and Labor  
Ranking Member Virginia Foxx, Committee on Education and Labor

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<sup>i</sup> U.S. Gov't Accountability Office, *Seclusions and Restraint: Selected Cases of Death and Abuse and Public and Private Schools and Treatment Centers* (May 2009), *available at* [gao.gov/new.items/d09719t.pdf](http://gao.gov/new.items/d09719t.pdf); U.S. Dep't of Educ., Office for Civil Rights, *Civil Rights Data Collection, Data Snapshot: School Discipline Data* (Mar. 21, 2014) (OCR Data); National Disability

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Rights Network, *School Is Not Supposed to Hurt* (2010), *available at* <http://www.ndrn.org/images/Documents/Resources/Publications/Reports/School-is-Not-Supposed-to-Hurt-NDRN.pdf>.

ii U.S. Dep't of Educ., Office for Civil Rights, *School Climate and Safety: Data Highlights on School Climate and Safety in Our Nation's Public Schools 12* (2018), *available at* <https://www2.ed.gov/about/offices/list/ocr/docs/school-climate-and-safety.pdf>.

iii U.S. Dep't of Educ., Civil Rights Data Collection, 2013-14 State and National Estimations, *available at* [https://ocrdata.ed.gov/StateNationalEstimations/Estimations\\_2013\\_14](https://ocrdata.ed.gov/StateNationalEstimations/Estimations_2013_14).

iv Jessica Butler, Autism Nat'l Comm., *How Safe is the Schoolhouse? An Analysis of State Seclusion and Restraint Laws and Policies 25* (2017), *available at* <http://www.autcom.org/pdf/HowSafeSchoolhouse.pdf>.

v *Id.* at 5.