

# DISABILITY ADVOCATES, INC.

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November 16, 2010

Senator Kirsten Gillibrand  
478 Russell  
Washington, DC 20510

## Re: S-3895 Keeping All Students Safe Act

Dear Senator Gillibrand:

I write on behalf of Disability Advocates, Inc.<sup>1</sup>, and several other advocacy organizations<sup>2</sup>, to request your support in addressing a serious issue affecting children with disabilities in New York State: the use of physical restraints and seclusion on children in schools. As a mother of two young children and an active advocate in the areas of education and child safety, we hope that you will support S3895 the Keeping All Students Safe Act.

Our organizations represent numerous families of students with disabilities who have been physically restrained in New York State schools. Students with disabilities are especially vulnerable to inappropriate use of restraints because untrained teachers and other school personnel are often left without the adequate resources to deal with their behaviors and because they are often medically vulnerable. We advocate for the stricter uniform guidelines on restraint and seclusion which are set forth in the Keeping All Students Safe Act.

Children with disabilities have been frequently harmed by the use of physical restraints. Families are often unaware that their children are being physically restrained by school district personnel; children are often being restrained by school staff untrained in safe restraint techniques; restraint is often used as a first response to behavioral challenges instead of a last resort; and children are injured physically and emotionally as a result of physical restraints. Legislation is necessary to resolve these concerns and S3895 is the legislation that could address all of these injustices.

Under current New York law, schools may use physical restraints, including straps, "take-downs", and "time-out rooms", for unlimited periods of time for minor infractions, including any behavior that may "disrupt the order of the school." Such restraints are often used by poorly-trained staff, and the potential for serious injury is high. Experts in education universally agree that restraints should only be used as emergency measures on children who are

immediately and seriously dangerous to themselves or others, and that use of restraints under those circumstances should trigger an immediate comprehensive response to investigate antecedents to the problem behavior and develop pro-active plans to address it.

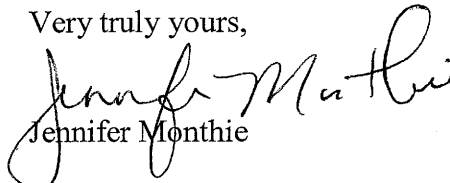
The Keeping All Students Safe Act significantly curtails the use of physical restraints, only permitting its use when a student's behavior poses an *imminent* danger of serious bodily injury to the student, school personnel, or others; and less restrictive interventions would be ineffective in stopping such imminent danger of serious bodily injury. S3895 also requires that the restraint be administered by a trained person who continuously monitors the child throughout the restraint. This legislation also requires contemporaneous reporting and collection of data to track the frequency, use and misuse of physical restraints in educational programs.

We are concerned with one term that was recently added to the Keeping All Students Safe Act – "Physical Escort." S3895 defines physical escort as, "the temporary touching or holding of the hand, wrist, arm, shoulder, or back for the purpose of inducing a student who is acting out to walk to a safe location." This definition incorporates new undefined terms like, 'acting out' and 'safe location.' It leaves open the question of whether a "physical escort" is permitted for behavior that would not justify a "physical restraint." It is critical that legislation which addresses physical restraints be prescriptive and limiting so that all students no matter the school district are subject to the same practice and that this practice is used as a last not first resort to behavior.

The misuse of physical restraints is not only a widespread problem in New York State, but a national problem of shocking dimensions, as revealed by a report by the National Disability Rights Network (NDRN), an association of disability protection and advocacy agencies from around the nation and a report from the Government Accountability Office (GAO). NDRN's report, *School is Not Supposed to Hurt*, was released in January 2009. The front page of the report shows a photograph of a 7-year-old girl from Wisconsin who was killed while being physically restrained and excluded. The GAO report, released in May 2009, found "widespread" allegations of abuse involving the physical restraint and seclusion practices in schools — even when students aren't physically aggressive or dangerous to themselves or others.

These reports highlight the need for federal legislation and oversight of the use of physical restraints and seclusion in schools. I have enclosed with this letter numerous stories of how New York State children are being harmed on a daily basis by the lack of comprehensive statewide standards for the use of physical restraints and seclusion. Our offices continue to be contacted by families with children that are harmed because there are no effective uniform standards for the use of physical restraints and seclusion. Without S3895, New York State children are at risk of serious harm or death. We urge you to support S3895, Keeping All Students Safe Act, by joining as a sponsor to this legislation. We welcome the opportunity to discuss this with you at your convenience. Thank you for your consideration of our concerns.

Very truly yours,

  
Jennifer Monthie

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<sup>1</sup> **Disability Advocates, Inc.**, (DAI) is a not-for-profit law office that represents individuals with disabilities throughout New York State. DAI has been representing individuals with disabilities for 20 years. DAI protects and advocates for the rights of adults and children who have disabilities so that they can freely exercise their own life choices, enforce their rights, and fully participate in their community life. We achieve this goal through policy advocacy, litigation, coalition-building, public information and technical support for other advocates for people with disabilities in New York.

<sup>2</sup> **ARISE** is a local Center for Independent Living, providing advocacy and services to people with disabilities in Onondaga, Madison and Oswego counties. Our Executive director is Tom McKeown.

**The Autism Connection, Inc.** Connecting individuals impacted by autism to community resources such as educational, medical, and support services.

**The Autism Society of the Greater Capital Region New York** serves people living with Autism in the Greater Capital District and their families. Our mission is to promote lifelong access and opportunities for people on the autism spectrum and their families so they can be fully participating, included members of their communities. We do this through: Advocacy; Public awareness; Education and Compassionate support.

**The Disability Rights Clinic (DRC) at Syracuse University College of Law** is a clinic within the Office of Clinical Programs of the Syracuse University College of Law, dedicated to providing representation to individuals and groups in Central New York who are unable to secure representation elsewhere. In 2004, Associate Professor Michael Schwartz was hired to direct the DRC. As an expert in disability rights law, particularly the rights of people who are deaf, Professor Schwartz has the DRC focusing its litigation and advocacy efforts on the rights of children and adults with disabilities in Syracuse and surrounding communities. The DRC also collaborates with other SU College of Law clinics, especially on cases involving families with children who have mental or physical disabilities.

**Empire Justice Center** is a statewide, public interest non-profit firm that works on multiple issues, including the practice of disabilities rights law and special education law.

**Families Together in New York State** is a family-run organization which strives to establish a unified voice for children and youth with emotional, behavioral and social challenges.

**Learning Disability Association (LDA) of New York State** is a nationally affiliated non-profit parent/professional organization chartered by the New York State Board of Regents in 1958 to promote the education and general welfare of individuals with learning disabilities. LDA of New York State membership includes parents, educators, adults with learning disabilities and professionals from a variety of related fields.

**The Mental Health Association in New York State** is a not for profit mental health agency that works to provide public education and trainings about mental health services and to advocate for the positive transformation of the mental health system.

**NAMI-NYS** is the state organization of the National Alliance on Mental Illness, the nation's largest grassroots organization for people with mental illness and their families. Founded in 1979, NAMI has affiliates in every state and in more than 1,100 local communities across the country. NAMI-NYS

provides support to family and friends of individuals with mental illness and persons living with mental illnesses through more than 50 affiliates statewide.

**New York Association on Independent Living (NYAIL)** is a membership organization representing Independent Living Centers throughout the State of New York. NYAIL is dedicated to improving the quality of life and safeguarding the civil rights of people with disabilities of all ages.

**Resource Center for Accessible Living, Inc.**, is a non-profit, community based service and advocacy organization run by and for people with any type of disability and offers a wide range of services and advocacy. Since 1983, RCAL has been dedicated in assisting and empowering disabled individuals in Ulster County, of all ages, to live independently and participate in all aspects of community life. RCAL operates in accordance with the conviction that people with disabilities can and should make their own choices and decisions, and take control of all aspects of daily living, education, employment, housing, health care, recreation, etc.

Since 1872, the **Schuyler Center for Analysis and Advocacy (SCAA)** has been a statewide, nonprofit, policy analysis and advocacy organization working to shape policies that improve health, welfare and human services in New York State.

**Social Justice Committee of the Ithaca Monthly Meeting of the Religious Society of Friends** provides a focus in our meeting for responding to concerns related to social justice, and encourages and supports leadings of Meeting members and attenders working for social justice. The committee seeks ways to cooperate with community groups working non-violently for social justice. The committee supports measures which will promote economic justice and equal opportunity for all, in order to build a society in which every person may find both personal fulfillment and opportunities to make positive contributions to our community and to the world.

**Southern Tier Independence Center, Inc. (STIC)**, is a Center for Independent Living located in Binghamton, NY. STIC has a long and successful history of leading and participating in effective statewide coalitions around issues such as TBI services, personal attendant services, supported employment, and more.

**Special Education and Related Services (SERS) Advocates of Greene County** gives parents or caregivers of a child with a disability guidance and direction in negotiating the Special Education system.

**Western New York Independent Living, Inc. (WNYIL)** a Family of Agencies is a multi-cultural, grassroots, peer directed, civil rights organization that provides a full range of assistance, programs and services to enhance the quality of life for all individuals with disabilities. The WNYIL Board of Directors, Independent Living of Niagara County Council, OAHIO (Formerly NAILS) Council, Mental Health Peer Connection Council, Independent Living of Genesee Region, staff and volunteers, comprised of a majority of persons with disabilities, operate a professional and efficient organization creating opportunities for choice, independence and community participation.

**YOUTH POWER!** is a New York State network of young people who have been labeled and are seeking change. Administered through Families Together in NYS, YP! is led by young adults with disabilities and cross-systems experiences. Through peer-to-peer mentoring YP! empowers young people to be active citizens that are aware of government operations, their rights and the ability to use their voices to influence policies, practices, regulations and laws.