

13017 Wisteria Drive #457
Germantown, MD 20874
301-916-8460 (tel)
301-916-8485 (fax)
cape@capenet.org

www.capenet.org

**CAPE member
organizations:**

Agudath Israel
of America
American Montessori
Society
Association Montessori
International—USA
Association of Christian
Teachers and Schools
Association of Christian
Schools International
Association of Waldorf
Schools of N.A.
Christian Schools
International
Evangelical Lutheran
Church in America
Friends Council
on Education
Lutheran Church—
Missouri Synod
National Association of
Episcopal Schools
National Association of
Independent Schools
National Catholic
Educational Association
National Christian
School Association
Oral Roberts University
Educational Fellowship
Seventh-day Adventist
Board of Education
United States Conference
of Catholic Bishops
Wisconsin Evangelical
Lutheran Synod Schools
32 Affiliated State
Organizations

February 3, 2010

To: Members of the House Committee on Education and Labor

Re: H.R. 4247, *Preventing Harmful Restraint and Seclusion in Schools Act*

The Council for American Private Education (CAPE), a coalition of 18 major national organizations (listed left) and 32 state affiliates that serve religious and independent PK-12 schools, writes to express strong concerns regarding H.R. 4247. At the start, we must be clear that as matter of ethical principle, moral law, and basic human decency, the private school community is unreservedly committed to the safety and well-being of students. Parents willingly entrust the education and care of a child to a religious or independent school because they know the school will act to ensure the child's best interests. Thus, with respect to the bill's intent to protect children from harm, we stand in solidarity with the sponsors. Our disagreement is with specific provisions of the bill, not its overall purpose.

CAPE is deeply concerned about the possible adverse effects the bill could have on the welfare of students. The neighborhood and community schools we represent are likely to experience the reach of this legislation in ordinary and typical encounters: a teacher breaking up a schoolyard dustup, a coach holding back two hot-tempered players, an aide grabbing a child about to dart into the carpool lane at dismissal. Under such circumstances, competent professionals instinctively apply physical restraint in order to protect a child from imminent danger—restraint that meets the definition referenced in the bill (i.e., “a personal restriction that immobilizes or reduces the ability of an individual to move his or her arms, legs, or head freely”). Yet the burden of this legislation, with its array of conditions and clauses (see section 5(a)) specifying when and under what circumstances and by whom such ordinary, protective action may lawfully be carried out, could effectively serve to inhibit such instinctively shielding behavior by causing the actor to hesitate or second-guess herself out of fear she might be violating federal law. Hesitation in such circumstances could be dangerous.

Our read of this bill is that it was intended to address a narrow set of special-purpose schools and circumstances in which students are restrained or secluded for an extensive period of time in connection with an institution's inappropriate disciplinary practice or policy. But the schools we represent do not fall in that category and would be inadvertently and unintentionally affected by the bill's far-reaching provisions.

Another serious concern we have is that this legislation would impose an unprecedented degree of federal mandates on religious and independent schools.

The class of schools that would be affected by this bill is broad. Based on the definition of “school” found in section 4(11), a religious school with even a single student receiving math or reading instruction under Title I of the *Elementary and Secondary Education Act* (ESEA) would be subject to all the provisions of this bill, as would a school receiving a single piece of instructional material or professional development for a single teacher under any other ESEA title. The U.S. Department of Education reported in 2007 that a full 80 percent of Catholic schools across the country participate in one or more programs under ESEA.

What requirements would apply to affected schools? *First*, they would have to have one or more teachers trained and certified under a state-approved training program, as defined in section 4(16). The required number of trained teachers for each school would be determined by the state (see section 5(a)(3)). In the history of education legislation, the federal government has never imposed training or certification requirements on religious and independent schools for any reason.

Second, they would have to comply with the annual reporting requirements involving disaggregated demographic data on the number of incidents in which physical restraint was imposed upon a student. (And keep in mind that the bill’s cross-referenced definition of “physical restraint” encompasses the ordinary occurrences described above.) Although states are required to file the reports described in section 6(b), schools themselves would have to provide the data, since states are obligated to report on the number of instances “for each local educational agency and each school not under the jurisdiction of a local educational agency.”

Third, and most important, they would have to comply with the school-related provisions of the law that, in our judgment, could have the unintended adverse effects on the health and safety of students described above.

We urge you to amend this legislation so that it achieves its intended purposes without the harmful side effects attached to the current version.

Sincerely,

A handwritten signature in black ink that reads "Joe McTighe". The signature is written in a cursive style with a large, stylized "J" and "M".

Joe McTighe
Executive Director